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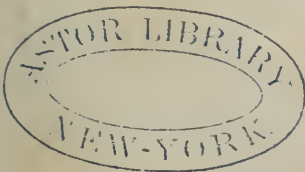
THOUSAND EIGHT HUNDRED AND THIRTY-FIVE.

TOGETHER WITH

THE CONSTITUTIONS OF MISSOURI AND OF THE UNITED STATES.

PRINTED AND PUBLISHED UNDER THE DIRECTION OF THE SUPERINTENDENT

APPOINTED BY THE GENERAL ASSEMBLY FOR THAT PURPOSE.



ST. LOUIS.

PRINTED AT THE ARGUS OFFICE.

.....

1835.



Handwritten signature or name in cursive script.

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ADVERTISEMENT.

Although no pains have been spared to secure perfect accuracy in the publication of the text, several errors of the press have been detected since the printing was completed. Such of them as appear to be important, are enumerated in a note at the end of the volume.

The words included in brackets [] in the text, have been introduced by the superintendent, believing them to be unintentional omissions, and necessary more fully to express the sense and meaning of the law.

October 10th, 1835.

Pursuant to the "Act concerning the Revised Statutes," passed on the 21st of March, 1835, the undersigned, a committee appointed to superintend the publication of the Revised Statutes, does hereby certify, that the text of the Revised Statutes, contained in this volume, has been examined and compared by him, with the transcript from the original rolls, furnished by the Secretary of State, of the acts passed by the eighth general assembly, and directed to be published in the Revised Statutes; and that this volume was printed under the authority conferred by law.

A. A. KING.

October 10th, 1835.

CONSTITUTION

OF THE

UNITED STATES.

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

ARTICLE I.

- § 1. Legislative power, in what body vested.
- § 2—1. Members of the House of Representatives, how chosen, who are electors of. 2. Qualifications of Representatives 3. Representation and taxation to be apportioned according to numbers. Indians and three fifths of all other Persons, exempt. Census to be taken every ten years—ratio to be then fixed. 4. Vacancies in representation, how filled. 5. Speakers and other officers how chosen.
- § 3—1. Senators of the United States, how chosen, their term of service, shall have but one vote. 2. Senate to be divided into three classes, the seats of one class of Senators to be vacated every second year, vacancies how filled. 3. Qualifications of a Senator. 4. Of the President of the Senate—shall give the casting vote. 5. President pro tempore and other officers of the Senate, how chosen. 6. Senate to try all impeachments, Chief Justice to preside at the trial of the President of the United States 7. Judgment in case of impeachment.
- § 4—1. Manner of electing members of Congress. 2. To assemble at least once in every year.
- § 5—1 Powers of each House of Congress. 2. Rules. 3. A journal to be kept by each House and to be published except in a certain case, yeas and nays to be entered at the request of one fifth of the members present. 4. Adjournment.
- § 6—1. Compensation and privileges of members of Congress.
- § 7—1. Of Revenue bills. 2. Form of proceeding in the enacting of Laws. 3. Of joint resolutions, orders, &c.
- § 8. Congress shall have power, 1. To lay and collect taxes, &c. 2. To borrow money. 3. To regulate commerce. 4. To establish rules concerning bankruptcies and naturalization. 5. To coin money. 6. To punish counterfeiters 7. To establish Post offices &c. 8. To promote the arts and sciences. 9. To constitute inferior courts, &c. 10. To declare war. 11. To raise and support armies. 12. To create a navy. 13. To make rules for army and navy. 14. To provide for calling forth the militia. 15. To provide for disciplining the militia, &c. 16. To establish the seat of government, &c. 17. General powers.
- § 9—1. Limitation of the powers of Congress. 2. Of the writ of Habeas Corpus. 3. Of *ex post facto* laws. 4. Direct Tax, how restricted. 5. Of export duty and commerce. 6. Expenditures, how regulated. 7. Titles of nobility, presents to officers, &c. prohibited.
- § 10—1. Powers which the states, individually, may not exercise. 2. Powers which the states can exercise only under the sanction of Congress.

SECTION 1.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2.

1. The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

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

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers,

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

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

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

SECTION 3.

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

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

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

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

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

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

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

SECTION 4.

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

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

SECTION 5.

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

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds, expel a member.

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

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

SECTION 6.

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

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

SECTION 7.

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

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

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

SECTION 8.

The congress shall have power—

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

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

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

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post offices and post roads:

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

9. To constitute tribunals inferior to the supreme court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

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

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

12. To provide and maintain a navy:

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

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions:

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

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

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

SECTION 9.

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

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

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

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

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

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

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

SECTION 10.

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

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

ARTICLE II.

- § 1—1. The executive power vested in a President, how elected. 2. Of Electors of President and Vice President. 3. Meeting of the electors and their proceedings. (This section is annulled. Vide amendments, Article 12.) 4. Time of choosing electors. 5. Who may be elected President of the United States. 6. Vacancies, how filled. 7. Of the President's compensation. 8 and 9. His oath.
- § 2—1. Powers and duties of President. 2. President to make treaties, appoint ambassadors and other officers. 3. President to fill vacancies during recess of the Senate.
- § 3. The President to give Congress certain information, and recommend measures
- § 4. How the President may be removed.

SECTION 1.

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

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. *The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal num-*

ber of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.

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

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

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

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

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

9. "I DO SOLEMNLY SWEAR (OR AFFIRM) THAT I WILL FAITHFULLY EXECUTE THE OFFICE OF PRESIDENT OF THE UNITED STATES, AND WILL, TO THE BEST OF MY ABILITY, PRESERVE, PROTECT, AND DEFEND THE CONSTITUTION OF THE UNITED STATES."

SECTION 2.

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

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

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

SECTION 3.

1. He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration, such measures as he shall judge

necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION 4.

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

ARTICLE III.

§ 1. Of the judicial power. Judges to hold their offices during good behavior.
 § 2—1. Extent of judicial power. 2. Original and appellate jurisdiction of the supreme court. 3. Of trials for crimes.
 § 3. Treason, definition and punishment of.

SECTION 1.

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

SECTION 2.

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

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

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

SECTION 3.

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

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

ARTICLE IV.

§ 1. Full faith to be given to the public acts, records, &c.

§ 2—1. Privileges and immunities of citizens. 2. Of fugitives from justice. 3. Of persons held to service or labor in one state and fleeing to another.

§ 3—1. Of the admission of new States into the Union. 2. Of the disposition of territory, &c.

§ 4. Guarantec and disposition of the several states.

SECTION 1.

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

SECTION 2.

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

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

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

SECTION 3.

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

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

SECTION 4.

1. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

§ 1. Amendments to the constitution, how made, and how ratified.

1. The congress, whenever two thirds of both house shall deem it necessary, shall propose amendments to this constitution, or on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress: Provided that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first

Article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

§ 1—1. Former debts of the Government valid under this Constitution. 2. The constitution, &c., the supreme law of the land. 3. All officers, state and national, to take an oath to support the Constitution of the United States—no religious test shall be ever required.

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

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

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

ARTICLE VII.

§ 1. When this Constitution shall take effect.

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

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

GEORGE WASHINGTON,
President, and deputy from Virginia.

NEW HAMPSHIRE.	PENNSYLVANIA.	Daniel of St. Tho. Jenifer,
John Langdon,	Benjamin Franklin,	Daniel Carroll.
Nicholas Gilman.	Thomas Mifflin,	VIRGINIA.
MASSACHUSETTS.	Robert Morris,	John Blair,
Nathaniel Gorham,	George Clymer,	James Madison, jun.
Rufus King.	Thomas Fitzsimons,	NORTH CAROLINA.
CONNECTICUT.	Jared Ingersoll,	William Blount,
William Samuel Johnson,	James Wilson,	Richard Dobbs Spaight,
Roger Sherman.	Gouverneur Morris.	Hugh Williamson.
NEW YORK.	DELAWARE.	SOUTH CAROLINA.
Alexander Hamilton.	George Read,	John Rutledge,
NEW JERSEY.	Gunning Bedford, jun.	Charles Cotesworth Pinkney,
William Livingston,	John Dickinson,	Charles Pinkney,
David Brearly,	Richard Basset,	Pierce Butler.
William Patterson,	Jacob Broom.	GEORGIA.
Jonathan Dayton.	MARYLAND.	William Few,
Attest, WILLIAM JACKSON, <i>Secretary.</i>	James M'Henry,	Abraham Baldwin.

CONSTITUTION OF THE UNITED STATES.

IN CONVENTION.

- RESOLVED 1. Constitution to be laid before congress &c.
 RES. 2. Congress to fix a day for appointing electors.
 RES. 3. How constitution to be carried into effect.

MONDAY, SEPTEMBER 17th, 1787.

Present: the states of New-Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

1. *Resolved*, That the preceding constitution be laid before the United States in congress assembled, and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to, and ratifying the same, should give notice thereof to the United States in congress assembled.

2. *Resolved*, That it is the opinion of this convention, that as soon as the conventions of nine states shall have ratified this constitution, the United States in congress assembled, should fix a day on which electors should be appointed by the states which shall have ratified the same, and a day on which the electors should assemble to vote for the president, and the time and place for commencing proceedings under this constitution. That after such publication, the electors should be appointed, and the senators and representatives elected. That the electors should meet on the day fixed for the election of the president, and should transmit their votes, certified, signed, sealed, and directed, as the constitution requires, to the secretary of the United States, in congress assembled; that the senators and representatives should convene at the time and place assigned; that the senators should appoint a president of the senate, for the sole purpose of receiving, opening, and counting the votes for president; and, that after he shall be chosen, the congress, together with the president, should, without delay, proceed to execute this constitution.

By the unanimous order of the convention.

GEORGE WASHINGTON, *President*.

WILLIAM JACKSON, *Secretary*.

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

AMENDMENTS TO THE CONSTITUTION.

- ARTICLE I. The free exercise of religion, freedom of speech, of the press, of the right to peaceably assemble, and to petition, guaranteed to the people.
 ART. II. Right to bear arms.
 ART. III. Of Quartering soldiers in time of peace.
 ART. IV. No search warrant to issue except on oath.
 ART. V. Capital and infamous crimes—Proceedings.
 ART. VI. Right of the accused in criminal cases.
 ART. VII. Trial by jury preserved.
 ART. VIII. Bail and Fines.
 ART. IX. Construction of powers delegated.
 ART. X. Powers.
 ART. XI. Restraint of judicial power.
 ART. XII. 1. Mode of electing President and Vice President. 2 and 3. Of the Vice President.
 ART. XIII. In what case persons forfeit their citizenship,

ARTICLE I.

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

ARTICLE II.

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

ARTICLE III.

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

ARTICLE IV.

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

ARTICLE V.

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

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII.

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

ARTICLE VIII.

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

CONSTITUTION OF THE UNITED STATES.

ARTICLE IX.

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

ARTICLE X.

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

ARTICLE XI.

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

ARTICLE XII.

1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president, shall be vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president: a quorum for the purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

ARTICLE XIII.

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

of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

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

CONSTITUTION OF THE UNITED STATES

Article I, Section 1: All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article II, Section 1: The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, shall have the Honor of the Office, and shall receive such Allowance as shall be made by Law.

Article III, Section 1: The judicial Power shall be vested in one or more Supreme Courts, and in such inferior Courts as the Congress may from time to time ordain and establish.

Article IV, Section 1: Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

Article V: The Congress, whenever two thirds of both Houses shall so require, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the States, shall call a Convention for that Purpose, and any Amendments proposed in either Mode shall be valid to all Intents and Purposes, when ratified by three fourths of all the States present.

Article VI: This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Article VII: The Ratification of the States which shall first attain the Number of nine, shall be valid to all Intents and Purposes.

Article VIII: No State shall enter into any Treaty, Alliance, or Confederation; State shall grant Letters of Marque and Reprisal; State shall enter into any War, unless actually invaded, or in such imminent Danger as not to admit of Delay.

Article IX: The Migration or Importation of Persons, in any Manner, shall be subject to the Regulation of the Congress, and the Congress shall have Power to prohibit the Importation of Persons, in any Manner, at any Time, but no Tax or Duty shall be laid on Persons imported, before they shall have arrived in the State to which they are to be transported.

Article X: No State shall be deprived of Territory, without its Consent.

Article XI: No State shall, without the Consent of the Congress, lay any Impost or Duty on Imports or Exports, except for the Purpose of Inspection, Regulation, or Taxation.

Article XII: The Electors in each State shall have the Qualifications requisite for Electors in that State.

Article XIII: No State shall be deprived of Territory, without its Consent.

Article XIV: No State shall, without the Consent of the Congress, lay any Impost or Duty on Imports or Exports, except for the Purpose of Inspection, Regulation, or Taxation.

Article XV: No State shall, without the Consent of the Congress, lay any Impost or Duty on Imports or Exports, except for the Purpose of Inspection, Regulation, or Taxation.

Article XVI: No State shall, without the Consent of the Congress, lay any Impost or Duty on Imports or Exports, except for the Purpose of Inspection, Regulation, or Taxation.

Article XVII: The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for the Term of six Years; and each Senator shall have the Honor of the Office, and shall receive such Allowance as shall be made by Law.

Article XVIII: The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors in that State.

Article XIX: The Electors in each State shall have the Qualifications requisite for Electors in that State.

Article XX: The Electors in each State shall have the Qualifications requisite for Electors in that State.

Article XXI: The Electors in each State shall have the Qualifications requisite for Electors in that State.

Article XXII: The Electors in each State shall have the Qualifications requisite for Electors in that State.

CONSTITUTION
OF THE
STATE OF MISSOURI.

WE, the people of Missouri, inhabiting the limits hereinafter designated, by our representatives in convention assembled, at St. Louis, on Monday the 12th day of June, 1820, do mutually agree to form and establish a free and independent republic, by the name of "THE STATE OF MISSOURI;" and for the government thereof, do ordain and establish this constitution.

ARTICLE I.

Of Boundaries.

§ 1. Description of the permanent boundaries of the state of Missouri.

We do declare, establish, ratify and confirm, the following as the permanent boundaries of said state, that is to say: "Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence west, along the said parallel of latitude, to the St. Francois river; thence up, and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude of thirty-six degrees and thirty minutes; thence west, along the same, to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river; thence, from the point aforesaid, north, along the said meridian line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line correspond with the Indian boundary line; thence east, from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down along the middle of the main channel of the said river Des Moines to the mouth of the same, where it empties into the Mississippi river; thence due east to the middle of the main channel of the Mississippi river; thence down, and following the course of the Mississippi river, in the middle of the main channel thereof, to the place of beginning."

ARTICLE II.

Of the distribution of powers.

§ 1. Of the distribution of the powers of the government.

The powers of government shall be divided into three distinct departments, each of which shall be confided to a separate magistracy; and no person charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE III.

Of the legislative power.

- § 1. Legislative power, in what body vested.
- § 2. Members of the house of representatives, how often, by whom, and for what length of time chosen; may not exceed 100.
- § 3. Qualifications of representatives.
- § 4. Enumeration of inhabitants and apportionment of representatives to be made every fourth year.
- § 5. Term of service and qualification of senators.
- § 6. Constitution of the senate—apportionment and districts.
- § 7. Senators to be classed.
- § 8. Elections, when held—electors privileged from arrest on election days except in certain cases.
- § 9. Writs of elections to supply vacancies—by whom issued.
- § 10. Electors, their qualifications.
- § 11. Officers not eligible to the general assembly.
- § 12. No disbursing or receiving officer eligible to the legislature who has not accounted for, and paid all monies due the State.
- § 13. Clergymen disqualified from holding any office except that of justice of the peace.
- § 14. Persons disqualified from holding office on account of crime.
- § 15. Disqualification for bribery.
- § 16. Disqualification of senators and representatives for certain offices.
- § 17. Each house to appoint its own officers—what constitutes a quorum.
- § 18. Powers and duty of each house—rules, expulsion &c. Journal to be published—yeas and nays to be recorded when desired by two members.
- § 19. Doors to be kept open, except in cases which require secrecy—power to punish for disrespect and contempt.
- § 20. Of adjournment.
- § 21. Bills may originate where, how often read, and by whom signed.
- § 22. Appointment of officers *viva voce*.
- § 23. Privileges of senators and representatives.
- § 24. Compensation.
- § 25. Of suits against the State.
- § 26. The power of the general assembly does not extend to—1st the passage of an emancipation law, or 2nd to prevent emigrants from removing their slaves to this state. The legislature may prohibit, 1st the introduction of slaves guilty of high crimes, or 2nd for the purpose of speculation, or 3rd in contravention of a statute of the United States; and 4th may permit their emancipation, good security being first given. It is their duty to pass laws, 1st to prevent the introduction of free negroes and mulattoes, and 2nd to compel masters to treat slaves with humanity.
- § 27. Rights of slaves in trials for crimes.
- § 28. Crimes committed on slaves.
- § 29. Of impeachment.
- § 30. Impeachment to be made by the house of representatives and tried by the senate.
- § 31. Of the treasurer and his duty.
- § 32. Appointment of officers—oath of office.
- § 33. Meetings of general assembly.
- § 34. Counties to be not less than 20 miles square.
- § 35. Revision of laws, how often.
- § 36. Style of laws.

§ 1. The legislative power shall be vested in a “*General Assembly*,” which shall consist of a “*Senate*,” and of a “*House of Representatives*.”

§ 2. The house of representatives shall consist of members to be chosen every second year by the qualified electors of the several counties. Each county shall have at least one representative, but the whole number of representatives shall never exceed one hundred.

§ 3. No person shall be a member of the house of representatives, who shall not have attained to the age of twenty-four years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state two years, and of the county which he represents one year next before his election, if such county shall have been so long established, but if not, then of the county or counties from which the same shall have been taken; and who shall not, moreover, have paid a state or county tax.

§ 4. The general assembly, at their first session, and in the years one thousand eight hundred and twenty-two, and one thousand eight hundred and twenty-four, respectively, and every fourth year thereafter, shall cause an enumeration of the inhabitants of this state to be made; and at the first session after each enumeration, shall apportion the number of representatives among the several counties, according to the number of free white male inhabitants therein.

§ 5. The senators shall be chosen by the qualified electors, for the term of four years. No person shall be a senator, who shall not have attained to the age of thirty years; who shall not be a free white male citizen of the United States; who shall not have been an inhabitant of this state four years, and of the district which he may be chosen to represent, one year next before his election, if such district shall have been so long established, but if not, then of the district or districts from which the same shall have been taken; and who shall not, moreover, have paid a state or county tax.

§ 6. The senate shall consist of not less than fourteen nor more than thirty-three members; for the election of whom the state shall be divided into convenient districts, which may be altered from time to time, and new districts established, as public convenience may require; and the senators shall be apportioned among the several districts, according to the number of free white male inhabitants in each: provided, that when a senatorial district shall be composed of two or more counties, the counties of which such district consists shall not be entirely separated by any county belonging to another district, and no county shall be divided in forming a district.

§ 7. At the first session of the general assembly, the senators shall be divided by lot, as equally as may be, into two classes. The seats of the first class shall be vacated at the end of the second year, and the seats of the second class at the end of the fourth year; so that one half of the senators shall be chosen every second year.

§ 8. After the first day of January, one thousand eight hundred and twenty-two, all general elections shall commence on the first Monday in August, and shall be held biennially; and the electors, in all cases, except of treason, felony, or breach of the peace, shall be privileged from arrest during their continuance at elections, and in going to, and returning from the same.

§ 9. The governor shall issue writs of election, to fill such vacancies as may occur in either house of the general assembly.

§ 10. Every free white male citizen of the United States who may have attained to the age of twenty-one years, and who shall have resided in this state one year before an election, the last three months whereof shall have been in the county or district in which he offers to vote, shall be deemed a qualified elector of all elective offices: provided, that no soldier, seaman, or mariner, in the regular army or navy of the United States, shall be entitled to vote at any election in this state.

§ 11. No judge of any court of law or equity, secretary of state, attorney general, state auditor, state or county treasurer, register or recorder, clerk of any court of record, sheriff, coroner, member of congress, nor other person holding any lucrative office under the United States or this state, militia officers, justices of the peace and postmasters, excepted, shall be eligible to either house of the general assembly.

§ 12. No person who now is, or who hereafter may be, a collector or holder of public money, nor any assistant or deputy of such collector or holder of public money, shall be eligible to either house of the general assembly, nor to any office of profit or trust, until he shall have accounted for and paid all sums for which he may be accountable.

§ 13. No person while he continues to exercise the functions of a bishop, priest, clergyman, or teacher of any religious persuasion, denomination, society or sect whatsoever, shall be eligible to either house of the general assembly; nor shall he be appointed to any office of profit within the state, the office of justice of the peace excepted.

§ 14. The general assembly shall have power to exclude from every office of honor, trust, or profit, within this state, and from the right of suffrage, all persons convicted of bribery, perjury, or other infamous crime.

§ 15. Every person who shall be convicted of having, directly or indirectly, given or offered any bribe to procure his election or appointment, shall be disqua-

lified for any office of honor, trust, or profit, under this state; and any person who shall give or offer any bribe to procure the election or appointment of any other person, shall, on conviction thereof, be disqualified for an elector, or for any office of honor, trust, or profit, under this state, for ten years after such conviction.

§ 16. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under this state, which shall have been created, or the emoluments of which shall have been increased during his continuance in office, except to such offices as shall be filled by elections of the people.

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

§ 18. Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause. They shall each, from time to time, publish a journal of their proceedings, except such parts as may, in their opinion, require secrecy; and the yeas and nays on any question shall be entered on the journal at the desire of any two members.

§ 19. The doors of each house, and of committees of the whole shall be kept open, except in cases which may require secrecy; and each house may punish, by fine or imprisonment, any person not a member who shall be guilty of disrespect to the house by any disorderly or contemptuous behaviour in their presence, during their session; provided, that such fines shall not exceed three hundred dollars, and such imprisonment shall not exceed forty-eight hours, for one offence.

§ 20. Neither house shall, without the consent of the other, adjourn for more than two days at any one time, nor to any other place than to that in which the two houses may be sitting.

§ 21. Bills may originate in either house, and may be altered, amended, or rejected, by the other; and every bill shall be read on three different days in each house, unless two thirds of the house where the same is depending shall dispense with this rule; and every bill having passed both houses, shall be signed by the speaker of the house of representatives, and by the president of the senate.

§ 22. When any officer, civil or military, shall be appointed by the joint or concurrent vote of both houses, or by the separate vote of either house of the general assembly, the votes shall be publicly given *viva voce*, and entered on the journals. The whole list of members shall be called, and the names of absentees shall be noted and published with the journal.

§ 23. Senators and representatives shall, in all cases, except of treason, felony, or breach of the peace, be privileged from arrest, during the session of the general assembly, and for fifteen days next before the commencement and after the termination of each session; and for any speech or debate in either house, they shall not be questioned in any other place.

§ 24. The members of the general assembly shall severally receive from the public treasury a compensation for their services, which may from time to time be increased or diminished by law, but no alteration, increasing or tending to increase the compensation of members, shall take effect during the session at which such alteration shall be made.

§ 25. The general assembly shall direct by law in what manner, and in what courts, suits may be brought against the state.

§ 26. The general assembly shall have no power to pass laws,
First. For the emancipation of slaves without the consent of their owners, or with

out paying them, before such emancipation, a full equivalent for such slaves so emancipated; and

Second. To prevent *bona fide* emigrants to this state, or actual settlers therein, from bringing from any of the United States, or from any of their territories, such persons as may there be deemed to be slaves, so long as any persons of the same description are allowed to be held as slaves by the laws of this state.

They shall have power to pass laws,

First. To prohibit the introduction into this state of any slaves who may have committed any high crime in any other state or territory;

Second. To prohibit the introduction of any slave for the purpose of speculation, or as an article of trade or merchandize;

Third. To prohibit the introduction of any slave, or the offspring of any slave, who heretofore may have been, or who hereafter may be, imported from any foreign country into the United States, or any territory thereof, in contravention of any existing statute of the United States; and

Fourth. To permit the owners of slaves to emancipate them, saving the rights of creditors, where the person so emancipating will give security that the slave so emancipated shall not become a public charge.

It shall be their duty, as soon as may be, to pass such laws as may be necessary,

First. To prevent free negroes and mulattoes from coming to, and settling in this state, under any pretext whatsoever; and

Second. To oblige the owners of slaves to treat them with humanity, and to abstain from all injuries to them extending to life or limb.

§ 27. In prosecutions for crimes, slaves shall not be deprived of an impartial trial by jury, and a slave convicted of a capital offence shall suffer the same degree of punishment, and no other, than would be inflicted on a free white person for a like offence; and courts of justice before whom slaves shall be tried, shall assign them counsel for their defence.

§ 28. Any person who shall maliciously deprive of life, or dismember a slave, shall suffer such punishment as would be inflicted for the like offence if it were committed on a free white person.

§ 29. The governor, lieutenant governor, secretary of state, auditor, treasurer, attorney general, and all judges of the courts of law and equity, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend farther than removal from office, and disqualification to hold any office of honor, trust, or profit, under this state.

§ 30. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate, and when sitting for that purpose the senators shall be on oath or affirmation to do justice according to law and evidence. When the governor shall be tried, the presiding judge of the supreme court shall preside; and no person shall be convicted without the concurrence of two thirds of the senators present.

§ 31. A state treasurer shall be biennially appointed by joint vote of the two houses of the general assembly, who shall keep his office at the seat of government. No money shall be drawn from the treasury but in consequence of appropriations made by law; and an accurate account of the receipts and expenditures of the public money shall be annually published.

§ 32. The appointment of all officers, not otherwise directed by this constitution shall be made in such manner as may be prescribed by law; and all officers, both civil and military, under the authority of this state, shall, before entering on the duties of their respective offices, take an oath or affirmation to support the constitution of the United States, and of this state, and to demean themselves faithfully in office.

§ 33. The general assembly shall meet on the third Monday in September next; on the first Monday in November, eighteen hundred and twenty-one; on the first

Monday in November, eighteen hundred and twenty-two; and thereafter the general assembly shall meet once in every two years, and such meeting shall be on the first Monday in November, unless a different day shall be appointed by law.

§ 34. No county now established by law shall ever be reduced by the establishment of new counties to less than twenty miles square, nor shall any county hereafter be established which shall contain less than four hundred square miles.

§ 35. Within five years after the adoption of this constitution, all the statute laws of a general nature, both civil and criminal, shall be revised, digested, and promulgated, in such manner as the general assembly shall direct; and a like revision, digest, and promulgation, shall be made at the expiration of every subsequent period of ten years.

§ 36. The style of the laws of this state shall be, "*Be it enacted by the general assembly of the state of Missouri.*"

ARTICLE IV.

Of the executive power.

1. Executive power vested in a governor.
2. Qualifications for governor.
3. Election of governor and term of service.
4. Ineligible for four years.
5. Commander of militia and navy.
6. Remission of fines and pardons &c.
7. Governor to give information to general assembly and may convene them.
8. To distribute and enforce laws.
9. Vacancies in offices, how supplied.
10. Power and duty in the approval or disapproval of bills—general assembly to re-consider, rejected bills.
11. Joint resolutions.
12. Auditor of public accounts, how appointed, duties &c.
13. Compensation of governor—not to be increased or diminished so as to affect Incumbent.
14. Lieutenant governor, election and qualification.
15. Lieutenant governor to be president of the senate.
16. Who to act as governor in case of vacancy &c.
17. Election to supply vacancy, when to be ordered.
18. Compensation of the lieutenant governor, and president of the senate.
19. Returns of elections of governor and lieutenant governor.
20. Contested elections.
21. Secretary of state, appointment, term of service, duties.
22. Seal of state.
23. Sheriff and coroner to be appointed.
24. Vacancies in office of sheriff and coroner, how filled.
25. Election of sheriff or coroner in case of a tie or contested election.

§ 1. The supreme executive power shall be vested in a chief magistrate, who shall be styled "*The Governor of the state of Missouri.*"

§ 2. The governor shall be at least thirty-five years of age, and a natural born citizen of the United States, or a citizen at the adoption of the constitution of the United States, or an inhabitant of that part of Louisiana now included in the state of Missouri at the time of the cession thereof from France to the United States, and shall have been a resident of the same at least four years next preceding his election.

§ 3. The governor shall hold his office for four years, and until a successor be duly appointed and qualified. He shall be elected in the manner following: At the time and place of voting for members of the house of representatives, the qualified electors shall vote for a governor; and when two or more persons have an equal number of votes, and a higher number than any other person, the election shall be decided between them by a joint vote of both houses of the general assembly at their next session.

§ 4. The governor shall be ineligible for the next four years after the expiration of his term of service.

§ 5. The governor shall be commander in chief of the militia and navy of this state, except when they shall be called into the service of the United States; but

he need not command in person, unless advised so to do by a resolution of the general assembly.

§ 6. The governor shall have power to remit fines and forfeitures, and, except in cases of impeachment, to grant reprieves and pardons.

§ 7. The governor shall, from time to time, give to the general assembly information relative to the state of the government, and shall recommend to their consideration such measures as he shall deem necessary and expedient. On extraordinary occasions, he may convene the general assembly by proclamation, and shall state to them the purposes for which they are convened.

§ 8. The governor shall take care that the laws be distributed and faithfully executed; and he shall be a conservator of the peace throughout the state.

§ 9. When any office shall become vacant, the governor shall appoint a person to fill such vacancy, who shall continue in office until a successor be duly appointed and qualified according to law.

§ 10. Every bill which shall have been passed by both houses of the general assembly, shall, before it becomes a law, be presented to the governor for his approbation. If he approve, he shall sign it; if not, he shall return it, with his objections, to the house in which it shall have originated,—and the house shall cause the objections to be entered at large on its journals, and shall proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall be in like manner reconsidered, and if approved by a majority of all the members elected to that house, it shall become a law. In all such cases, the votes of both houses shall be taken by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if the governor had signed it, unless the general assembly by its adjournment shall prevent its return, in which case it shall not become a law.

§ 11. Every resolution to which the concurrence of the senate and house of representatives may be necessary, except on cases of adjournment, shall be presented to the governor,—and before the same shall take effect, shall be proceeded upon in the same manner as in the case of a bill.

§ 12. There shall be an auditor of public accounts, whom the governor, by and with the advice and consent of the senate, shall appoint. He shall continue in office four years, and shall perform such duties as may be prescribed by law. His office shall be kept at the seat of government.

§ 13. The governor shall, at stated times, receive for his services an adequate salary, to be fixed by law, which shall be neither increased nor diminished during his continuance in office, *and which shall never be less than two thousand dollars annually.*

§ 14. There shall be a lieutenant governor, who shall be elected at the same time, in the same manner, for the same term, and shall possess the same qualifications as the governor. The electors shall distinguish for whom they vote as governor, and for whom as lieutenant governor.

§ 15. The lieutenant governor shall, by virtue of his office, be president of the senate. In committee of the whole he may debate on all questions; and when there is an equal division, he shall give the casting vote in senate, and also in joint vote of both houses.

§ 16. When the office of governor shall become vacant, by death, resignation, absence from the state, removal from office, refusal to qualify, impeachment, or otherwise, the lieutenant governor, or in case of like disability on his part, the president of the senate pro tempore, or if there be no president of the senate pro tempore, the speaker of the house of representatives, shall possess all the powers, and discharge all the duties of governor, and shall receive for his services the like

compensation, until such vacancy be filled, or the governor so absent or impeached shall return or be acquitted.

§ 17. Whenever the office of governor shall become vacant, by death, resignation, removal from office, or otherwise, the lieutenant governor, or other person exercising the powers of governor for the time being, shall, as soon as may be, cause an election to be held to fill such vacancy, giving three months previous notice thereof; and the person elected shall not thereby be rendered ineligible to the office of governor for the next succeeding term. Nevertheless, if such vacancy shall happen within eighteen months of the end of the term for which the late governor shall have been elected, the same shall not be filled.

§ 18. The lieutenant governor, or president of the senate pro tempore, while presiding in the senate, shall receive the same compensation as shall be allowed to the speaker of the house of representatives.

§ 19. The returns of all elections of governor and lieutenant governor shall be made to the secretary of state, in such manner as may be prescribed by law.

§ 20. Contested elections of governor and lieutenant governor shall be decided by joint vote of both houses of the general assembly, in such manner as may be prescribed by law.

§ 21. There shall be a secretary of state, whom the governor by and with the advice and consent of the senate shall appoint. He shall hold his office for four years unless sooner removed on impeachment. He shall keep a register of all the official acts and proceedings of the governor, and when necessary shall attest them; and he shall lay the same, together with all papers relative thereto, before either house of the general assembly whenever required so to do, and shall perform such other duties as may be enjoined on him by law.

§ 22. The secretary of state shall, as soon as may be, procure a seal of state, with such emblems and devices as shall be directed by law, which shall not be subject to change. It shall be called the "*Great Seal of the state of Missouri*;" shall be kept by the secretary of state, and all official acts of the governor, disapprobation of the laws excepted, shall be thereby authenticated.

§ 23. There shall be appointed in each county a sheriff and a coroner, who, until the general assembly shall otherwise provide, shall be elected by the qualified electors at the time and place of electing representatives. They shall serve for two years, and until a successor be duly appointed and qualified, unless sooner removed for misdemeanor in office, and shall be ineligible four years in any period of eight years. The sheriff and coroner shall each give security for the faithful discharge of the duties of his office in such manner as shall be prescribed by law. Whenever a county shall be hereafter established, the governor shall appoint a sheriff and coroner therein, who shall each continue in office until the next succeeding general election, and until a successor shall be duly qualified.

§ 24. When vacancies happen in the office of sheriff or coroner, they shall be filled by appointment of the governor; and the persons so appointed shall continue in office until successors shall be duly qualified, and shall not thereby be rendered ineligible for the next succeeding term.

§ 25. In all elections of sheriff and coroner, when two or more persons have an equal number of votes, and a higher number than any other person, the circuit courts of the counties, respectively, shall give the casting vote; and all contested elections for the said offices shall be decided by the circuit courts respectively, in such manner as the general assembly may by law prescribe.

ARTICLE V.

Of the Judicial Power.

1. Judicial power in what courts vested
2. Jurisdiction of supreme court.

3. Control over inferior courts—shall have power to issue certain writs.
4. Supreme court, of how many judges it shall consist.
5. Of Judicial districts.
6. Circuit court jurisdiction—terms.
7. Of judicial circuits.
8. Control over inferior courts.
9. Chancery court jurisdiction.
10. Chancery jurisdiction.
11. Inferior courts of chancery may be established.
12. Of inferior tribunals.
13. Appointment of judges.
14. Qualifications of judges.
15. Clerks of courts.
16. Judges, how removed.
17. Justices of the peace.
18. Attorney General.
19. Style of writs and process—of indictments.

§ 1. The judicial power as to matters of law and equity, shall be vested in a “supreme court,” in a “chancellor,” in “circuit courts,” and in such inferior tribunals as the general assembly may from time to time, ordain and establish.

§ 2. The supreme court, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state under the restrictions and limitations, in this constitution provided.

§ 3. The supreme court shall have a general superintending control over all inferior courts of law. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, and other original remedial writs; and to hear and determine the same.

§ 4. The supreme court shall consist of three judges, any two of whom shall be a quorum; and the said judges shall be conservators of the peace throughout the state.

§ 5. The state shall be divided into convenient districts, not to exceed four, in each of which the supreme court shall hold two sessions annually, at such place as the general assembly shall appoint; and when sitting in either district, it shall exercise jurisdiction over causes originating in that district only; provided however, that the general assembly may at any time hereafter direct by law, that the said court shall be held at one place only.

§ 6. The circuit court shall have jurisdiction over all criminal cases which shall not be otherwise provided for by law; and exclusive original jurisdiction in all civil cases which shall not be cognizable before justices of the peace, until otherwise directed by the general assembly. It shall hold its terms in such place in each county as may be by law directed.

§ 7. The state shall be divided into convenient circuits, for each of which a judge shall be appointed, who after his appointment, shall reside, and be a conservator of the peace within the circuit for which he shall be appointed.

§ 8. The circuit court shall exercise a superintending control over all such inferior tribunals as the general assembly may establish, and over justices of the peace in each county in their respective circuits.

§ 9. *The jurisdiction of the court of chancery shall be co-extensive with the state, and the times and places of holding its sessions shall be regulated in the same manner as those of the supreme court.*

§ 10. The court of chancery shall have original and appellate jurisdiction in all matters of equity, and a general control over executors, administrators, guardians and minors, subject to appeal in all cases to the supreme court, under such limitations as the general assembly may by law provide.

§ 11. Until the general assembly shall deem it expedient to establish inferior courts of chancery, the circuit courts shall have jurisdiction in matters of equity, subject to appeal to the court of chancery, in such manner, and under such restrictions, as shall be prescribed by law.

§ 12. Inferior tribunals shall be established in each county for the transaction of all county business, for appointing guardians, for granting letters testamentary

and of administration, and for settling the accounts of executors, administrators and guardians.

§ 13. The governor shall nominate, and by and with the advice and consent of the senate, appoint the judges of the supreme court, the judges of the circuit courts, and the chancellor, each of whom shall hold his office during good behaviour; and shall receive for his services a compensation which shall not be diminished during his continuance in office, *and which shall not be less than two thousand dollars annually.*

§ 14. No person shall be appointed a judge of the supreme court, nor of a circuit court, nor chancellor, before he shall have attained to the age of thirty years; nor shall any person continue to exercise the duties of any of said offices after he shall have attained to the age of sixty five years.

§ 15. The courts respectively shall appoint their clerks, who shall hold their offices during good behaviour. For any misdemeanor in office they shall be liable to be tried and removed by the supreme court, in such manner as the general assembly shall by law provide.

§ 16. Any judge of the supreme court or the circuit court, or *the chancellor*, may be removed from office on the address of two thirds of each house of the general assembly to the governor for that purpose; but each house shall state on its respective journal the cause for which it shall wish the removal of such judge or chancellor, and give him notice thereof, and he shall have the right to be heard in his defence in such manner as the general assembly shall by law direct; but no judge nor chancellor shall be removed in this manner for any cause for which he might have been impeached.

§ 17. In each county there shall be appointed as many justices of the peace as the public good may be thought to require. Their powers and duties, and their duration in office, shall be regulated by law.

§ 18. An attorney general shall be appointed by the governor, by and with the advice and consent of the senate. He shall remain in office four years, and shall perform such duties as shall be required of him by law,

§ 19. All writs and process shall run, and all prosecutions shall be conducted, in the name of the "*State of Missouri*;" all writs shall be tested by the clerk of the court from which they shall be issued, and all indictments shall conclude, "*against the peace and dignity of the State.*"

ARTICLE VI.

Of Education.

§ 1. Education shall be encouraged—Legislature shall preserve lands from waste and damage.

§ 2. University lands to be improved and funds properly applied.

§ 1. Schools and the means of education shall forever be encouraged in this state; and the general assembly shall take measures to preserve from waste or damage such lands as have been, or hereafter may be granted by the United States for the use of schools within each township in this state, and shall apply the funds which may arise from such lands in strict conformity to the object of the grant: one school, or more shall be established in each township as soon as practicable and necessary, where the poor shall be taught gratis.

§ 2. The general assembly shall take measures for the improvement of such lands as have been, or may hereafter be granted by the United States to this state for the support of a seminary of learning; and the funds accruing from such lands by rent or lease, or in any other manner, or which may be obtained from any other source for the purposes aforesaid, shall be and remain a permanent fund to support a university for the promotion of literature, and of the arts and sciences; and it shall be the duty of the general assembly, as soon as may be, to provide

effectual means for the improvement of such lands, and for the improvement and permanent security of the funds and endowments of such institution.

ARTICLE VII.

Of Internal Improvement.

Internal improvements shall be forever encouraged—roads and navigable waters to be provided for by law.

Internal improvement shall forever be encouraged by the government of this state; and it shall be the duty of the general assembly, as soon as may be, to make provision by law for ascertaining the most proper objects of improvement in relation to roads and navigable waters; and it shall also be their duty to provide by law for a systematic and economical application of the funds appropriated to those objects.

ARTICLE VIII.

Of Banks.

One bank and five branches may be established and no more—capital stock not to exceed five millions of dollars.

The general assembly may incorporate one banking company, and no more to be in operation at the same time.

The bank to be incorporated may have any number of branches, not to exceed five, to be established by law; and not more than one branch shall be established at any one session of the general assembly. The capital stock of the bank to be incorporated shall never exceed five millions of dollars, at least one half of which shall be reserved for the use of the state.

ARTICLE IX.

Of the Militia.

§ 1. Militia officers how appointed and by whom.

§ 2. Of staff officers.

§ 3. Adjutant general.

§ 1. Field officers and company officers shall be elected by the persons subject to militia duty within their respective commands. Brigadiers general shall be elected by the field officers of their respective brigades; and majors general by the brigadiers and field officers of their respective divisions, until otherwise directed by law.

§ 2. General and field officers shall appoint their officers of the staff.

§ 3. The governor shall appoint an adjutant general, and all other militia officers whose appointments are not otherwise provided for in this constitution.

ARTICLE X.

Of Miscellaneous Provisions.

§ 1. General assembly not to interfere with the disposal of the soil.

§ 2. Of navigation.

§ 1. The general assembly of this state shall never interfere with the primary disposal of the soil by the United States, nor with any regulation congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the property of the United States, nor shall lands belonging to persons residing out of the limits of this state ever be taxed higher than the lands belonging to persons residing within the state.

§ 2. The state shall have concurrent jurisdiction on the river Mississippi, and on every other river bordering on the said state, so far as the said river shall form a common boundary to the said state and any other state or states now, or hereafter to be formed, and bounded by the same; and the said river Mississippi, and the navigable rivers and waters leading into the same, whether bordering on, or within this state, shall be common highways, and forever free to the citizens of this state and of the United States, without any tax, duty, impost or toll therefor imposed by the state.

ARTICLE XI.

Of the permanent seat of Government.

- § 1. Commissioners to be appointed.
- § 2. A site to be selected, within what limits.
- § 3. General assembly to determine the location.

§ 1. The general assembly at their first session shall appoint five commissioners for the purpose of selecting a place for the permanent seat of government, whose duty it shall be to select four sections of the land of the United States which shall not have been exposed to public sale.

§ 2. If the commissioners believe the four sections of land so by them to be selected be not a suitable and proper situation for the permanent seat of government, they shall select such other place as they deem most proper for that purpose, and report the same to the general assembly at the time of making their report provided for in the first section of this article; provided, that no place shall be selected which is not situated on the bank of the Missouri river, and within forty miles of the mouth of the river Osage.

§ 3. If the general assembly determine that the four sections of land which may be selected by authority of the first section of this article, be a suitable and proper place for the permanent seat of government, the said commissioners shall lay out a town thereon, under the direction of the general assembly; but if the general assembly deem it most expedient to fix the permanent seat of government at the place to be selected by authority of the second section of this article, they shall so determine, and in that event shall authorize the said commissioners to purchase any quantity of land not exceeding six hundred and forty acres, which may be necessary for the purpose aforesaid; and the place so selected shall be the permanent seat of government of this state from and after the first day of October, one thousand eight hundred and twenty-six.

§ 4. The general assembly, in selecting the above mentioned commissioners, shall choose one from each extreme part of the state, and one from the centre, and it shall require the concurrence of at least three of the commissioners to decide upon any part of the duties assigned them.

ARTICLE XII.

Mode of amending the Constitution.

How amendments are to be proposed, and how ratified.

The general assembly may at any time propose such amendments to this constitution as two thirds of each house shall deem expedient, which shall be published in all the newspapers published in this state three several times, at least twelve months before the next general election; and if at the first session of the general assembly after such general election, two thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this constitution; provided that such proposed amendments shall be

read on three several days, in each house, as well when the same are proposed, as when they are finally ratified.

ARTICLE XIII.

Declaration of Rights

1. Sovereign power vested in the people.
2. The people have sole right to alter or abolish the constitution.
3. Right of protection, bearing arms, &c.
4. Rights of conscience, religious opinions, &c.
5. Corporations.
6. Of elections.
7. Administration of justice.
8. Of trial by jury.
9. Rights of accused in criminal cases.
10. No person to be twice tried for same offence.
11. Bail and habeas corpus.
12. Bail and fines.
13. No search except on oath.
14. Prosecutions for crimes by indictments.
16. Treason, evidence, conviction,
16. Freedom of speech and of the press.
17. Expost facto laws &c.
18. Exempt from military duty.
19. Taxation.
20. Titles of nobility.
21. Of migration.
22. Military power shall be in subordination to civil power.

That the general, great and essential principles of liberty and free government may be recognized and established, WE DECLARE,

1. That all political power is vested in, and derived from the people:
2. That the people of this state have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their constitution and form of government, whenever it may be necessary to their safety and happiness:
3. That the people have the right peaceably to assemble for their common good, and to apply to those vested with the powers of government for redress of grievances, by petition or remonstrance; and that their right to bear arms in defence of themselves and of the state cannot be questioned:
4. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can be compelled to erect, support or attend any place of worship, or to maintain any minister of the gospel or teacher of religion; that no human authority can control or interfere with the rights of conscience; that no person can ever be hurt, molested or restrained in his religious professions or sentiments, if he do not disturb others in their religious worship:
5. That no person on account of his religious opinions, can be rendered ineligible to any office of trust or profit under this state; that no preference can ever be given by law to any sect or mode of worship; and that no religious corporation can ever be established in this state:
6. That all elections shall be free and equal:
7. That courts of justice ought to be open to every person, and certain remedy afforded for every injury to person, property, or character; and that right and justice ought to be administered without sale, denial, or delay; and that no private property ought to be taken or applied to public use, without just compensation.
8. That the right of trial by jury shall remain inviolate:
9. That in all criminal prosecutions, the accused has the right to be heard by himself and his counsel; to demand the nature and cause of accusation; to have compulsory process for witnesses in his favor; to meet the witnesses against him face to face; and, in prosecutions on presentment or indictment, to a speedy trial by an impartial jury of the vicinage; that the accused cannot be compelled to

give evidence against himself; nor be deprived of life, liberty, or property, but by the judgment of his peers or the law of the land:

10. That no person, after having been once acquitted by a jury, can for the same offence, be again put in jeopardy of life or limb; but if in any criminal prosecution the jury be divided in opinion at the end of the term, the court before which the trial shall be had may, in its discretion, discharge the jury, and commit or bail the accused for trial at the next term of such court:

11. That all persons shall be bailable by sufficient sureties, except for capital offences when the proof is evident or the presumption great: and the privilege of the writ of *habeas corpus* cannot be suspended, unless when, in cases of rebellion or invasion, the public safety may require it:

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

13. That the people ought to be secure in their persons, papers, houses, and effects, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, can issue, without describing the place to be searched, or the person or thing to be seized, as nearly as may be, nor without probable cause, supported by oath or affirmation:

14. That no person can, for an indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger, or by leave of the court, for oppression or misdemeanor in office:

15. That treason against the state can consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; that no person can be convicted of treason unless on the testimony of two witnesses to the same overt act, or on his own confession in open court; that no person can be attainted of treason or felony by the general assembly; that no conviction can work corruption of blood or forfeiture of estate; that the estates of such persons as may destroy their own lives shall descend or vest as in cases of natural death; and when any person shall be killed by casualty, there ought to be no forfeiture by reason thereof:

16. That the free communication of thoughts and opinions is one of the invaluable rights of man, and that every person may freely speak, write and print on any subject, being responsible for the abuse of that liberty; that in all prosecutions for libels, the truth thereof may be given in evidence, and the jury may determine the law and the facts under the direction of the court:

17. That no *ex post facto* law, nor law impairing the obligation of contracts, or retrospective in its operation, can be passed, nor can the person of a debtor be imprisoned for debt after he shall have surrendered his property for the benefit of his creditors, in such manner as may be prescribed by law:

18. That no person who is religiously scrupulous of bearing arms, can be compelled to do so, but may be compelled to pay an equivalent for military service, in such manner as may be prescribed by law; and that no priest, preacher of the gospel, or teacher of any religious persuasion or sect, regularly ordained as such, be subject to military duty, or compelled to bear arms:

19. That all property subject to taxation in this state shall be taxed in proportion to its value:

20. That no title of nobility, hereditary emolument, privilege or distinction shall be granted, nor any office created the duration of which shall be longer than the good behaviour of the officer appointed to fill the same:

21. That the migration from this state cannot be prohibited:

22. That the military is, and in all cases and at all times shall be, in strict subordination to the civil power; that no soldier can, in time of peace, be quartered in any house without the consent of the owner,—nor in time of war, but in such manner as may be prescribed by law; nor can any appropriation for the support of an army be made for a longer period than two years.

SCHEDULE.

- § 1. Writs, actions &c., not affected by change of government.
- § 2. Territorial laws.
- § 3. Of fines &c.
- § 4. Recognizances, bonds, criminal prosecutions &c.
- § 5. Of other officers.
- § 6. Of first meeting of general assembly.
- § 7. Apportionment of representation.
- § 8. Senatorial districts.
- § 9. Writs for first election.
- § 10. Returns of votes for governor &c.
- § 11. Oath of office.
- § 12. Seal of state.

§ 1. That no inconvenience may arise from the change of government, we declare that all writs, actions, prosecutions, judgments, claims, and contracts of individuals and of bodies corporate, shall continue as if no change had taken place; and all process which may, before the third Monday in September next, be issued under the authority of the Territory of Missouri, shall be as valid as if issued in the name of the state.

§ 2. All laws now in force in the Territory of Missouri which are not repugnant to this constitution, shall remain in force until they expire by their own limitations, or be altered or repealed by the general assembly.

§ 3. All fines, penalties, forfeitures and escheats accruing to the Territory of Missouri, shall accrue to the use of the state.

§ 4. All recognizances heretofore taken, or which may be taken before the third Monday in September next, shall remain valid, and shall pass over to, and may be prosecuted in the name of the state; and all bonds executed to the governor of the territory, or to any other officer or court in his official capacity, shall pass over to the governor or other proper state authority, and to their successors in office, for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions which have arisen, or which may arise before the third Monday in September next, and which shall then be depending, shall be prosecuted to judgment and execution in the name of the state. All actions at law which now are, or which, on the third Monday in September next, may be depending in any of the courts of record in the territory of Missouri, may be commenced in, or transferred to any court of record of the state which shall have jurisdiction of the subject matter thereof; and all suits in equity may, in like manner, be commenced in, or transferred to any court of chancery.

§ 5. All officers civil and military now holding commissions under authority of the United States, or of the Territory of Missouri, shall continue to hold and exercise their respective offices until they shall be superceded under the authority of the state; and all such officers holding commissions under the authority of the Territory of Missouri shall receive the same compensation which they have hitherto received, in proportion to the time they shall be so employed.

§ 6. The first meeting of the general assembly shall be at St. Louis, with power to adjourn to any other place; and the general assembly at the first session thereof, shall fix the seat of government until the first day of October, one thousand eight hundred and twenty-six; and the first session of the general assembly shall have power to fix the compensation of the members thereof, any thing in the constitution to the contrary notwithstanding.

§ 7. Until the first enumeration shall be made, as directed in this constitution, the county of Howard shall be entitled to eight representatives; the county of Cooper to four representatives; the county of Montgomery to two representatives; the county of Lincoln to one representative; the county of Pike to two representatives; the county of St. Charles to three representatives; the county of St. Louis

to six representatives; the county of Franklin to two representatives; the county of Jefferson to one representative; the county of Washington to two representatives; the county of Ste. Genevieve to four representatives; the county of Cape Girardeau to four representatives; the county of New Madrid to two representatives; the county of Madison to one representative; the county of Wayne to one representative; and that part of the county of Lawrence situated within this state, shall attach to, and form part of the county of Wayne until otherwise provided by law, and the sheriff of the county of Wayne shall appoint the judges of the first election, and the place of holding the same, in the part thus attached: and any person who shall have resided within the limits of this state five months previous to the adoption of this constitution, and who shall be otherwise qualified as prescribed in the third section of the third article thereof, shall be eligible to the house of representatives, any thing in this constitution to the contrary notwithstanding.

§ 8. For the first election of senators, the state shall be divided into districts, and the apportionment shall be as follows, that is to say: the counties of Howard and Cooper shall compose one district, and elect four senators; the counties of Montgomery and Franklin shall compose one district, and elect one senator; the county of St. Charles shall compose one district, and elect one senator; the counties of Lincoln and Pike shall compose one district, and elect one senator; the county of St. Louis shall compose one district, and elect two senators; the counties of Washington and Jefferson shall compose one district, and elect one senator; the county of Ste. Genevieve shall compose one district, and elect one senator; the counties of Madison and Wayne shall compose one district and elect one senator; the counties of Cape Girardeau and New Madrid shall compose one district, and elect two senators; and in all cases where a senatorial district consists of more than one county, it shall be the duty of the clerk of the county second named in that district, to certify the returns of the senatorial election within their proper county to the clerk of the county first named, within five days after he shall have received the same; and any person who shall have resided within the limits of this state five months previous to the adoption of this constitution, and who shall be otherwise qualified, as prescribed in the fifth section of the third article thereof, shall be eligible to the senate of this state, any thing in this constitution to the contrary notwithstanding.

§ 9. The president of the convention shall issue writs of election to the sheriffs of the several counties (or in case of vacancy to the coroners) requiring them to cause an election to be held on the fourth Monday in August next, for a governor, a lieutenant governor, a representative in the congress of the United States for the residue of the sixteenth congress; a representative for the seventeenth congress; senators and representatives for the general assembly, sheriffs and coroners; and the returns of all township elections held in pursuance thereof, shall be made to the clerk of the proper county within five days after the day of election; and any person who shall reside within the limits of this state at the time of the adoption of this constitution, and who shall be otherwise qualified as prescribed in the tenth section of the third article thereof, shall be deemed a qualified elector, any thing in this constitution to the contrary notwithstanding.

§ 10. The elections shall be conducted according to the existing laws of the Missouri territory. The clerks of the circuit courts of the several counties shall certify the returns of the election of governor and lieutenant governor, and transmit the same to the speaker of the house of representatives at the temporary seat of government, in such time that they may be received on the third Monday of September next. As soon as the general assembly shall be organized, the speaker of the house of representatives and the president pro tempore of the senate shall, in the presence of both houses, examine the returns, and declare who are duly elected to fill those offices, and if any two or more persons shall have an equal number of votes, and a higher number than any other person, the general assembly

shall determine the election in the manner herein before provided: and the returns of the election for member of congress shall be made to the secretary of state within thirty days after the day of election.

§ 11. The oaths of office herein directed to be taken, may be administered by any judge or justice of the peace, until the general assembly shall otherwise direct.

§ 12. Until a seal of state be provided, the governor may use his private seal.

Done by the representatives of the people of Missouri in convention assembled, at the town of St. Louis, on the nineteenth day of July, in the year of our Lord one thousand eight hundred and twenty, and of the independence of the United States of America the forty-fifth.

DAVID BARTON,

President of the convention, and representative from the county of St. Louis.

From the county of Cape Girardeau.

Stephen Byrd,	Alexander Buckner,
James Evans,	Joseph M'Ferron.
Richard S. Thomas,	

From the county of Cooper.

Robert P. Clark,	William Lillard.
Robert Wallace,	

From the county of Franklin.

John G. Heath.

From the county of Howard.

Nich's S. Burckhartt,	Jonathan S. Findlay,
Duff Green,	Benjamin H. Reeves.
John Ray,	

From the county of Jefferson.

S. Hammond.

From the county of Lincoln.

Malcolm Henry.

From the county of Montgomery.

Jonathan Ramsay,	James Talbott.
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From the county of Madison,

Nathaniel Cook.

From the county of New-Madrid.

Robert D. Dawson,	Christopher G. Houts.
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From the county of Pike,

Stephen Cleaver.

From the county of St. Charles,

Hiram H. Baber,	Nathan Boone.
Benjamin Emmons,	

From the county of Ste. Genevieve,

R. T. Brown,	John D. Cook,
H. Dodge,	John Scott.

STATE CONSTITUTION.

From the county of St. Louis.

Edward Bates,
A. M'Nair,
William Rector,
John C. Sullivan,

Pierre Chouteau, Jun.
Bernard Pratte.
Thomas F. Riddick.

From the county of Washington,

Jno. Rice Jones
Samuel Perry,

John Hutchings.

From the county of Wayne,

Elijah Bettis.

ATTEST, WM. G. PETTUS, *Secretary of the convention.*

AMENDMENTS TO THE CONSTITUTION,

Proposed by the last general assembly, at their special session in June, one thousand eight hundred and twenty-one, and ratified by this general assembly at their first session, begun and held at St. Charles, on the first Monday of November, one thousand eight hundred and twenty-two.

- § 1. Of chancery courts.
- § 2. Judiciary powers.
- § 3. Compensation of judges.
- § 4. Of United States Officers.
- § 5. Salary of governor.
- § 6. Salaries of judges.
- § 7. Expiration of judges commission.

§ 1. The office of chancellor is hereby abolished, and the supreme court and circuit courts shall exercise chancery jurisdiction, in such manner and under such restriction as shall be prescribed by law.

Passed in senate—yeas fifteen, nays one; ratified by the house of representatives—yeas forty-six, nays five.

§ 2. The judicial power, as to matters of law and equity, shall be vested in a supreme court, in circuit courts, and in such inferior tribunals as the general assembly may, from time to time, ordain and establish; provided, the general assembly may establish a court or courts of chancery, and from time to time prescribe the jurisdiction, powers and duties thereof.

Passed in the senate—yeas fifteen, nays one; ratified by the house of representatives—yeas forty-nine, nays two.

§ 3. The judges of the supreme court, and the judges of circuit courts and chancellor, shall at stated times receive a compensation for their services, to be fixed by law.

Passed in senate—yeas twelve, nays four; ratified by the house of representatives—yeas forty-five, nays seven.

§ 4. No person holding an office of profit under the United States, and commissioned by the president, shall, during his continuance in such office, be eligible, appointed to, hold, or exercise, any office of profit under the state.

Passed in senate—yeas sixteen; ratified by the house of representatives—yeas forty-nine, nays two.

§ 4. So much of the thirteenth section of the fourth article of the constitution of this state, as provides that the compensation of the governor shall never be less than two thousand dollars annually, shall be repealed.

Passed in senate—yeas sixteen; ratified by the house of representatives—yeas fifty-one.

§ 6. So much of the thirteenth section of the fifth article of the constitution of this state, as provides that the compensation of the judges of the supreme and circuit courts and chancellor shall never be less than two thousand dollars annually, shall be repealed. Passed in senate—yeas sixteen; ratified by the house of representatives—yeas fifty-one.

§ 7. The offices of the judges of the supreme court and of the judges of the circuit courts, shall expire at the end of the first session of the next general assembly of this state, or as soon as their successors are respectively elected and qualified. Passed in senate—yeas fourteen, nays two; ratified by the house of representatives—yeas forty, nays eleven.

WILLIAM H. ASHLEY,
President of the Senate.

HENRY S. GEYER,
Speaker of the House of Representatives, and member from St. Louis county.

MEMBERS OF THE SENATE.

John S. Ball,	William Biggs,	Joseph Bogy,
A. Buckner,	Abraham Byrd,	Bennet Clark,
Benjamin Emmons,	Duff Green,	David Jones,
David Logan,	James M'Allister,	Samuel Perry,
Benjamin H. Reeves,	James Talbott,	A. J. Williams,
B. Young.		

BERNARD O'NEILL, *Secretary of the Senate.*

MEMBERS OF THE HOUSE OF REPRESENTATIVES.

Alfred Basye,	E. Bates,	Elijah Bettis,
George Burckhartt,	Nich's S. Burckhartt,	G. A. Bird,
Isaac Clark,	Simon Cockrell,	Nathaniel Cook,
Philip Cole,	Daniel Dunklin,	John English,
Jos. Evans,	Asa Finly,	Joseph Frizel,
B. Gooch,	John Hall,	Benj. F. Hickox,
Frederick Hyatt,	William Johnson,	Peter Journey,
James Kegans,	Richard Kerr,	Henry Lane,
Augustan Longan,	S. B. M'Knight,	John Miller,
Isidore Moore,	James W. Moss,	James North,
Jordan O'Bryan,	John O'Fallon,	Ignatius P. Owens,
Samuel C. Owens,	Jonathan Ramsay,	Stephen Rector,
James H. Relfe,	Edmund Rutter,	Felix Scott,
George H. Scripps,	Robert Simpson,	Philip Sitton,
Chauncy Smith,	Robert M. Stevenson,	George Taylor,
Stephen Trigg,	Richard H. Waters,	N. W. Watkins,
Robert William Wells,	D. C. Westerfield,	Peter Wright.

THOMPSON DOUGLASS,
Clerk of the House of Representatives.

AMENDMENTS TO THE CONSTITUTION,

Proposed by the General Assembly, at *their last session*, begun and held at the City of Jefferson, on the third Monday of November, eighteen hundred and thirty-two, and ratified at *this session* of the General Assembly, begun and held at the City of Jefferson, on the third Monday of November eighteen hundred and thirty-four.

- § 1. Offices of circuit court judges declared vacant on 1st January. 1836.
- § 2. Part of the 15th section of 5th article of the constitution abolished.
- § 3. Offices of the clerks of courts declared vacant on the 1st day of January 1836—circuit and county court clerks to be elected by the people.
- § 4. Boundary line of the state altered.
- § 5. Further alteration of boundaries.

§ 1. That the offices of the several judges of the circuit courts within this state shall be vacated on the first day of January eighteen hundred and thirty-six.

Passed in senate, yeas fifteen, nays seven; ratified by the house of representatives, yeas forty-eight, nays twenty-three.

§ 2. That so much of the fifteenth section of the fifth article of the constitution of this state as provides, that the courts respectively shall appoint their clerks, and that they shall hold their offices during good behaviour, shall be, and the same is hereby abolished.

Passed in senate, yeas fifteen, nays seven; ratified by the house of representatives, yeas fifty, nays twenty-one

§ 3. That the offices of the clerks of the several courts within this state shall be vacated on the first day of January eighteen hundred and thirty-six, and the clerks of the circuit and county courts of the respective counties, shall be elected by the qualified electors of their respective counties, and shall hold their offices for the term of six years, and until their successors are duly elected, commissioned and qualified.

Passed in senate, yeas fifteen, nays seven; ratified by the house of representatives, yeas forty-nine, nays twenty-two.

§ 4. That the boundary of the state be so altered and extended as to include all the tract of land lying on the north side of the Missouri river, and west of the present boundary of this state, so that the same shall be bounded on the south by the middle of the main channel of the Missouri river, and on the north by the present northern boundary line of the state, as established by the constitution, when the same is continued in a right line to the west, or to include so much of said tract of land as congress may assent.

Passed in senate, yeas twenty-two, nays none; ratified by the house of representatives, yeas sixty-nine, nays two.

§ 5. That the boundaries of the state be so altered and enlarged as to include all the tract of land lying in the fork of the Mississippi and Des Moines rivers; so that the same shall be bounded on the north by the present northern boundary of the state, as established by the present constitution, when continued in a right

line eastward to the middle of the main channel of the Mississippi river; thence down the middle of the main channel of said river, &c.

Passed in senate, yeas twenty-two, nays none; ratified by the house of representatives, yeas sixty-nine, nays two.

LILBURN W. BOGGS,

Lieut. Governor and President of the Senate,

JOHN JAMESON,

Speaker of the House of Representatives, and a member from Callaway county.

MEMBERS OF THE SENATE.

Daniel Ashby,	James H. Birch,	Abram Bird,
Franklin Cannon,	Julius Emmons,	Andrew Goforth,
W. Lucas,	John Matthews,	Abraham McClellan
John Miller,	Hugh O'Neil, Jr.	B. H. Reeves,
A. M. Robinson,	Hans Smith,	J. T. V. Thompsor
Ch's. C. Valle,	W. K. Van Arsdall,	John D. Williams.
Attest,	W. B. NAPTON,	<i>Secretary of the Senate.</i>

MEMBERS OF THE HOUSE OF REPRESENTATIVES.

Alonzo Abernathy,	Corbin Alexander,	David R. Atchison,
Hugh Barclay,	Edw'd Bates,	John S. Besser,
George F. Bollinger,	William Brown,	Lewellyn Brown,
Matthew Caldwell,	William M. Campbell,	Charles Canole,
S. W. B. Carnegy,	Thos. Chilton,	R. D. Cowan,
C. M. Cravens,	Clement Detchemendy,	O. Dickerson,
M. W. Flournoy,	Wm. Fort,	Richard Fristoe.
H. S. Geyer,	Peter G. Glover,	John B. Gordon, (opposed.)
Thomas C. Gordon,	Benjamin Harrison,	John Harvey,
Waller Head,	Aris Hudspeth,	Frederick Hyatt,
John English,	David Jones,	Dabney Jones,
A. A. King,	A. Leonard,	Adam Mase,
John Martin,	Tho's. C. Maupin,	G. W. Miller,
Thomas Moseley, Jr.	Clifton Mothershead,	Smallwood V. Noland,
Jordan O. Bryan,	James D. Owen,	D. C. M. Parsons,
George Penn,	W. C. Pollard,	Henry Porter,
Wilson Primm,	Owen Rawlins,	John D. Shannon,
John P. Smith,	Joseph Stevens,	Joseph M. Stevenson,
George F. Strother,	Jesse B. Thompson,	N. W. Watkins,
Thomas Watson,	Henry Watts,	R. M. White
Morgan B. White,	Henry C. Wright.	

Attest, JAMES B. BOWLIN, *C. Clerk of the House of Representatives*

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STATUTE LAWS
OF THE
STATE OF MISSOURI,

REVISED AND DIGESTED BY THE EIGHTH GENERAL ASSEMBLY, AND PUBLISHED UNDER THE DIRECTION OF THE SUPERINTENDENT,
APPOINTED BY THE LEGISLATURE FOR THAT PURPOSE.

DANIEL DUNKLIN, GOVERNOR.

LILBURN W. BOGGS, LIEUTENANT GOVERNOR, AND PRESIDENT OF THE SENATE.

JOHN JAMESON, SPEAKER OF THE HOUSE OF REPRESENTATIVES.

ACCOUNT.

An act regulating the action of Account.

1. Joint tenants, &c. liable to account, and to whom.
2. Joint tenants may maintain action of, when and against whom.
3. Residuary legatees may maintain action of, against whom.
4. When action may be maintained against executors and administrators.
5. Of the original process and manner of service.
6. Action of account when to be referred.
7. Powers and duties of referees thereon.
8. To notify parties; and report to court.
9. Proceedings against parties refusing to account.
10. Power of referees, when either party refuse to be sworn, or answer questions.
11. Judgment on report of referees.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. Where one or more joint tenants, tenants in common or co-parceners, in any estate, real or personal, shall take more than his, or their due proportion of the benefit thereof, such tenant or tenants, shall account therefor to his or their co-tenant, jointly or severally.

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

§ 3. Residuary legatees may maintain actions of account, against executors and administrators of the estate of the testator or intestate in their hands.

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

§ 5. The original process in an action of account shall be the same that is provided by law for other personal actions, and shall be served and returned in the same manner.

§ 6. When judgment shall be rendered in an action of account, that the parties account, or that the defendant account to the plaintiff, the cause shall be referred to

referees in the same manner, and subject to the same provisions, that are prescribed in the case of references of personal actions pending in any court of record.

§ 7. Such referees shall proceed in the manner required by law, in other cases of reference, with the like powers and subject to the same provisions in all respects: And they shall have power to examine the parties on oath, to be administered by the referees, or either of them, and to require the production of all books of accounts, papers and documents, in the custody or under the control of either party.

§ 8. The referees shall give notice in writing, to the parties required to account before them, of the time and place, at which they will take such account, and shall take, audit and settle such account, and report thereon to the court.

§ 9. If any party shall neglect or refuse to account, pursuant to such notification, or to produce any books, papers or documents, required by the referees, the referees may report such neglect or refusal to the court, who shall proceed against the party for his disobedience, and imprison him until he submit to account, or produce such books, papers and documents; or the referees may receive a statement of the account from the adverse party, examine such party, and the witnesses that he may produce, on oath, in relation thereto, and report such sum to be due, as they, on such examination, shall find due.

§ 10. If either party shall refuse to be sworn, or when sworn shall refuse to answer any proper question, the referees may imprison him until he consent to be sworn, or to answer such questions.

§ 11. If the referees report a balance in favor of either party, and such report be confirmed, judgment shall be rendered thereon in favor of such party, as in other cases of reference, and if they report that no balance is due either party, judgment shall be rendered against the plaintiff, with the like effect as upon a verdict.

Approved, February 11th, 1835.

ADDRESS.

An act regulating the removal of officers by address.

- § 1. When and how charges may be preferred by the general assembly.
2. Proceedings of the general assembly in preferring charges
- 3 & 4. When, how and by whom, accused to be notified.
5. Managers to be appointed.
6. Proceedings to obtain witnesses and depositions.
7. Accused to respond in writing, and replication; failing to respond and how to proceed.
8. Two houses to assemble at the trial.
9. Postponement, when.
10. Proceedings on the trial regulated.
11. Questions arising during the trial, how determined.
12. Each house to determine on the charges separately.
13. When charges may be withdrawn.
14. If respondent be found guilty, address to be voted.
15. Governor to communicate his decision, when.
16. Entry of removals, when to be made, and effect of.

Be it enacted by the General Assembly of the State of Missouri, as follows:

§ 1. When either house of the general assembly shall be satisfied, that there is probable cause for proceedings against any judge, or other officer, for any matter for

which he may be removed from office, by address of two thirds of each house to the governor, they shall cause formal charges and specifications to be transmitted to the other house, with the information upon which they are founded.

§ 2. Such house shall proceed thereon as in joint resolutions, and may make such amendments, and prefer such additional charges and specifications, as to them shall seem proper; and when both houses concur in exhibiting any charge, it shall be entered upon the journals of each house, and the two houses shall, by concurrent resolution, fix a day for the trial.

§ 3. The president of the senate shall immediately cause a notice of the time and place of trial, with a copy of the charges annexed, directed to the accused, signed by himself, and attested by the secretary of the senate, to be issued; which shall be delivered to the party charged, ten days at least before the day appointed for trial, by the sergeant at arms of either house, or such special messenger as shall be appointed by the senate for that purpose, whose return shall be verified by affidavit.

§ 4. If the party charged cannot be found, the notice shall be served by leaving a copy of said notice, and charges annexed, at his dwelling house or usual place of abode.

§ 5. When charges shall be exhibited as aforesaid, there shall be appointed, by joint vote of both houses, two or more competent managers to prosecute such charges.

§ 6. The presiding officer of each house, shall cause subpoenas to be issued for any witness, whose attendance shall be required by either of the managers, the accused, or his counsel; and commissions to take depositions where the witness is unable to attend, from sickness or other infirmity, or where the witness is out of the limits of this state; which deposition shall be taken in like manner, and the like notice given thereof, as in the taking of depositions to be read in the circuit courts.

§ 7. The party accused, shall respond in writing to the charges against him, one day before the day of trial, and the managers, if they deem it necessary, shall reply thereto without delay; but if the accused shall be served with notice and a copy of the charges, and do not respond, proceedings shall be had against him *exparte*, unless, further time be given him to respond.

§ 8. When notice shall be duly served, the two houses shall assemble in joint meeting, in the hall of the house of representatives, and proceed to trial.

§ 9. For good cause shewn, before, or on the day appointed for trial, a different day may be appointed by concurrent resolution, as often as may be necessary.

§ 10. When the two houses shall be assembled for the trial, convenient seats shall be provided for the accused and his counsel, and the two houses, shall hear the testimony for and against the accused, and the arguments of counsel and managers in joint meeting.

§ 11. If any question upon the competency of any witness, the admissibility of testimony of any kind or otherwise, arise during the trial, the same shall be determined, by concurrent vote of the two houses, in which case, the vote of the house of representatives shall be first taken, after which, the vote of the senate, and if there be a difference of opinion between the two houses, on any point, the decision shall

be in favor of the accused; and in case either house be equally divided the presiding officer of the house, shall give the casting vote.

§ 12. After the two houses shall, in joint meeting, have heard all the testimony adduced, and the arguments on both sides, each house shall proceed to determine, separately, whether the accused be guilty or not guilty, of the several charges and specifications exhibited against him, and shall vote upon each charge, separately, and viva voce, and no amendment or alteration shall be made in any charge or specification.

§ 13. At any time during the trial, the managers may withdraw any charge or specification, with the permission of both houses.

§ 14. If two thirds of each house shall concur in finding the accused guilty of any of the charges or specifications, either house may originate an address to the governor, setting forth the charges and specifications of which the accused was found guilty, and praying his removal; which address may be amended by the other house, as joint resolutions, and if two thirds of each house concur in passing such address, it shall be immediately transmitted to the governor.

§ 15. The governor shall, within ten days after receiving any address as aforesaid, communicate his decision, and proceedings thereon, to both houses, if the session so long continue, and if not, then before the end of the session.

§ 16. When he shall remove any person from office, in pursuance of any address, he shall cause an entry thereof to be made in the office of the secretary of state; after which the commission, and authority, of the person so removed, shall be vacated, and revoked.

Approved, February 20th, 1835.

ADMINISTRATION.

An act respecting executors and administrators.

ARTICLE 1. Of their appointment and removal from office.

ART. II. Of their duties respecting money and property.

ART. III. Of their duties respecting the sale of real estate.

ART. IV. Of the allowances of demands against estates.

ART. V. Of the settlement of their accounts.

ART. VI. Of distribution of the estate.

ART. VII. Of proceedings against executors, administrators and their securities.

ART. VIII. Of appeals.

ARTICLE I.

Of their appointment and removal from office.

- § 1 Letters testamentary and of administration, by whom granted.
2. Where to be granted.
3. Proceedings entrusted to the county court, where to be had.
4. Who shall not be executor or administrator.
5. Who entitled to administration, next of kin.
6. Other persons.
7. Persons entitled may be required to appear by citation; failure deemed a renunciation.

- § 8. Letters testamentary, and of administration with the will annexed, to whom granted,
9. Letters during minority or absence of executor or *pendente lite*.
10. Applicants for administration to discover on oath the heirs. Administrator to take oath.
11. Administrator during minority or absence of executor, or *pendente lite* or of goods unadministered to take oath.
12. Oath of executor or administrator with the will annexed.
13. Bond by the administrator.
14. Condition of the bond.
15. Bond by executor or administrator with the will annexed.
16. Who shall not be security in bonds required by this act.
17. Who to be taken as security.
18. Bonds to be recorded, originals filed, taken in vacation presented to court
19. Letters to be recorded and certified.
20. Penalty for delivering letters not recorded.
21. Copies of letters and bonds, and of the record, evidence.
22. Letters revoked on production of will.
23. Letters revoked if will set aside, other letters granted.
24. Marriage of *femme sole*, revocation of her letters.
25. For what can, ansed how letters may be revoked.
26. For what causes application for additional security may be made.
27. Bond and additional security may be required.
28. Former security discharged. effect and extent of.
29. Failing to give such additional bond and security, letters revoked.
30. Resignation and surrender of letters, how made.
31. Letters surrendered, expense paid by the applicant.
32. Letters of one revoked, or surrendered, others to proceed.
33. Administration of goods unadministered, when to be granted.
34. Executors or administrators, die, resign, or letters revoked. how to account
35. Who may proceed against the delinquent and his securities.
36. Securities not to be sued after seven years.
37. Failing to make settlement after citation, court may revoke letters.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The county courts and clerks thereof in vacation, subject to the confirmation or rejection of the court, shall grant letters testamentary and of administration.

§ 2. Letters testamentary and of administration shall be granted in the county in which the mansion house, or place of abode of the deceased is situate. If he had no mansion house or place of abode at the time of his death, and be possessed of lands, letters shall be granted in the county in which the land or part thereof lies. If the deceased had no mansion house or place of abode, and was not possessed of lands, letters may be granted in the county in which he died, or where the greater part of his estate may be. If he died out of the state, having no mansion house, place of abode, or lands in this state, such letters may be granted in any county.

§ 3. All orders, settlements, trials and other proceedings entrusted by this act to the county court, shall be had or made in the county in which the letters testamentary or of administration were granted.

§ 4. No clerk of any county court in his own county, or his deputy, and no person under twenty-one years of age, or of unsound mind, shall be executor or administrator; no married woman shall be executrix or administratrix, nor shall the executor of an executor, in consequence thereof, be executor to the first testator.

§ 5. Letters of administration shall be granted, first, to the husband or wife, or to

those who are entitled to distribution of the estate, or one or more of them, as the court or clerk in vacation, shall believe will best manage and improve the estate.

§ 6. If no such person apply for such letters, within sixty days after the death of the deceased, letters may be granted to any person, whom the court or clerk in vacation, shall consider most suitable.

§ 7. The county court or clerk thereof in vacation, on the application of any person interested, may issue a citation to the persons entitled to administration calling on them to administer, and if they fail to take letters within thirty days after the service of the citation, or if the persons entitled to preference, file their renunciation thereof in writing with the clerk of the county court, letters of administration shall be granted, to the person next entitled thereto.

§ 8. After probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act or be disqualified, letters of administration shall be granted to the person, to whom administration would have been granted, if there had been no will.

§ 9. If the validity of a will be contested, or the executor be a minor, or absent from the state, letters of administration shall be granted, during the time of such contest, minority or absence, to some other person, who shall take charge of the property, and administer the same according to law under the direction of the court, and account for, and pay and deliver all the money and property of the estate to the executor or regular administrator when qualified to act.

§ 10. Every applicant for letters of administration, at the time of application, shall make an affidavit, stating to the best of his knowledge and belief, the names and place of residence of the heirs of the deceased; that the deceased died without a will, that he will make a perfect inventory of, and faithfully administer, all the estate of the deceased; and pay the debts as far the assets will extend and the law direct, and account for and pay all assets which shall come to his possession or knowledge.

§ 11. A similar affidavit, with such variations as the case may require, shall be made by administrators of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the minority or absence of an executor.

§ 12. Every administrator with the will annexed, and executor at the time letters are granted to him, shall make an affidavit, that he will make a perfect inventory of the estate, and faithfully execute the last will of the testator, pay the debts and legacies, as far as the assets will extend, and the law direct, render just accounts, and faithfully perform all things required by law, touching such executorship or administration.

§ 13. The county court or the clerk thereof in vacation, shall take a bond of the person to whom letters of administration are granted, with two or more sufficient securities resident in the county, in such amount as the court or clerk shall deem sufficient, not less than double the amount of the estate.

§ 14. The condition of such bond shall be as follows, "The condition of the above bond is, that if A. B. administrator of the estate of W. C. deceased, shall faithfully administer said estate, account for, pay and deliver all money and property of said estate, and perform all other things touching said administration required by law, or the order of any court having jurisdiction, then the above bond to be void, otherwise to remain in full force."

§ 15. A similar bond with such variations as the case may require, shall be given by all executors, and administrators with the will annexed, or of the goods remaining unadministered, and all administrators, during the time of a contest about a will, or of the minority or absence of an executor.

§ 16. No sheriff, clerk of a court, or the deputy of either, and no attorney at law, shall be taken as security in any bond required to be taken by this act.

§ 17. The county court, or clerk in vacation, shall take special care to take as securities, men who are solvent and sufficient, and who are not bound in too many other bonds, and to satisfy themselves, the justices thereof, may take testimony, or examine on oath, the applicant or the persons offered as securities.

§ 18. The clerk of the county court shall record in a well bound book, kept for that purpose, all bonds given by executors and administrators, preserve the originals in regular files, and present all such as are taken in vacation to the county court at the next term.

§ 19. All such letters shall be recorded by the clerk of the county court, in a well bound book, kept for that purpose, before they are delivered to the executor or administrator, and the clerk shall certify on the letters, that they have been recorded.

§ 20. If any clerk deliver such letters without recording the same, he may be fined by the court, and shall forfeit to the party injured double the damages occasioned by such default.

§ 21. Copies of such letters and of the official bonds given by executors and administrators, and copies of the record thereof, certified under the seal of the county court, shall be evidence.

§ 22. If, after letters of administration granted, a will of the deceased be found, and probate thereof granted, the letters shall be revoked, and letters testamentary or of administration with the will annexed shall be granted.

§ 23. If a will be proved, and letters thereon granted, and the will be afterwards set aside, the letters shall be revoked, and other letters granted of the goods unadministered.

§ 24. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereby devolve upon him, but the marriage shall extinguish her powers, and her letters be revoked.

§ 25. If any executor or administrator become of unsound mind, or be convicted of felony or other infamous crime, or become a habitual drunkard, or otherwise incapable or unsuitable to execute the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-ex-

ecutor or co-administrator, the county court upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person, complained of, shall hear the complaint, and if they find it just, shall revoke the letters granted.

§ 26. If any heir, legatee, creditor, co-security or other person interested in any estate, file in the county court an affidavit, stating that the affiant has sufficient cause to believe that security in the executor's or administrator's bond, has, or is likely to become insolvent, or has died, or has removed from this state, or that the principal in such bond, has, or is likely to become insolvent, or is wasting the estate, or that the penalty of any such bond is insufficient, or that such bond has not been taken according to law, and shall have given to the principal in such bond, due notice of the complaint, the court shall examine into the complaint.

§ 27. If the county court find the complaint to be just, it shall order another bond and such further security as they may think necessary to be given.

§ 28. Such additional bond, when given and approved, shall discharge the former securities from any liability arising from any misconduct of the principal, after filing the same, and such former securities shall only be liable for such misconduct as happened prior to the giving the new bond.

§ 29. If such person fail to give such additional bond and security, within ten days after making such order, his letters shall thenceforth be deemed to be revoked and his authority from that time cease.

§ 30. If any executor or administrator, publish for eight weeks in some newspaper in this state, a notice of his intention to apply to the county court, to resign his letters, and the court, on proof of such publication, shall believe that he should be permitted to resign, it shall so order.

§ 31. Such person shall then surrender his letters, his powers from that time shall cease, and he shall pay the expense of publication, and all the proceedings on the application.

§ 32. If there be more than one executor or administrator of an estate, and the letters of part of them be revoked, or surrendered, or a part die, those who remain shall discharge all the duties required by law respecting the estate.

§ 33. If all the executors or administrators of an intestate, die or resign, or their letters be revoked, in cases not otherwise provided for, letters of administration of the goods remaining unadministered, shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them, had renounced the administration, and the administrator shall perform the like duties, and incur the like liabilities as the former executors or administrators.

§ 34. If any executor or administrator, die, resign, or his letters be revoked, he or his legal representatives shall account for, pay and deliver to his successor, or to the surviving or remaining executor, or administrator, all money, real and personal property of every kind, and all rights, credits, deeds, evidences of debt and papers of every kind, of the deceased, at such times, and in such manner as the court shall order on final settlement.

§ 35. The succeeding administrator or the remaining executor or administrator may proceed at law against the delinquent and his securities, or either of them, or against any other person possessed of any part of the estate.]

§ 36. All such suits against securities, shall be commenced within seven years after the revocation or surrender of the letters, or the death of the principal.

§ 37. If any executor or administrator fail to make settlement, as required by law, and do not show good cause for such failure, after citation, the county court may revoke his letters.

ARTICLE II.

Of their duties respecting money and property.

1. Executors and administrators to collect and take charge of estate.
2. To make and return inventory.
3. Affidavit to be annexed to the inventory.
4. Inventory and affidavit, where and when to be made.
5. Additional inventories, when to be made.
6. Witnesses appointed, and how, to assist in making inventory.
7. Their compensation.
8. To open or examine effects of deceased without witnesses, penalty for.
9. Affidavit filed against persons concealing or embezzling effects, citation to issue.
10. Refusing to answer interrogatories, may be committed to jail.
11. Delivery of effects, enforced by attachment.
12. Estate to be appraised, by whom.
13. Affidavit of appraisers.
14. Duty of appraisers.
15. Appraisement and affidavit, when and where to be filed.
16. Compensation to appraisers.
17. Additional appraisements, when to be made.
18. Inventories and appraisements, how far evidence.
19. When and how, notice to creditors shall be published.
20. When and how to advertise, where there are no known heirs.
21. May collect debts, give receipts, prosecute and defend actions.
22. What actions, executors and administrators shall prosecute and defend.
23. Competent witness in certain cases.
24. What actions may be maintained by and against, executors and administrators.
25. Shall not extend to certain actions.
26. Debtor appointed executor, his debt considered assets.
27. Articles allowed the widow in addition to dower.
28. May take other property not to exceed one hundred and fifty dollars.
29. To be deducted from her dower, not liable for debts.
30. Property not taken, proceeds to be paid to the widow.
31. Sale of perishable articles, how made.
32. Other personal estate may be sold to pay debts and legacies.
33. Bonds and notes may be assigned, to creditors, legatees and distributees.
34. Notice of sale, how and when given.
35. Estate of testator, when not to be sold.
36. All the personal estate to be sold, where there are no heirs.
37. Personal estate may be sold at private sale, when.
38. Clerk to be employed at public sale.
39. His duties.
40. Sale bill, where and when filed.
41. Real estate leased, and slaves hired out by order of court.
42. Repairs of real estate made by order of court.
43. Inventories, appraisements, and sale bills filed, when to be examined by court.
44. A assistance in taking care of estate, when to be procured.

- § 45. Further assistance, when authorized, expenses, how paid.
- 46. Interest on debts, when assets, when to be paid by executor or administrator.
- 47. To be accounted for under the equitable control of the court.
- 48. Statement on oath of money on hand, when to be rendered.
- 49. Disposition of money on hand, when and how made.
- 50. Orders for the speedy collection of debts, sale or distribution of property, when made.
- 51. Executors and administrators may give receipts, and discharges, effect of.
- 52. Courts may continue proceedings before them for good cause.

§ 1. Every executor and administrator immediately after receiving letters, shall collect and take into possession the goods, chattels, money, books, papers, and evidences of debt, or of title to any real or personal estate, except the property reserved as the absolute property of the widow.

§ 2. He shall make an inventory of all the real and personal estate of the deceased, describing the quantity, situation and title of the real estate, also the books and papers, the debts due or to become due to the deceased, the names of the debtors, the date of the contract, the amount of the interest then due thereon, the rate of interest, and such further description as will render it a perfect inventory of the estate.

§ 3. He shall annex to the inventory, an affidavit, stating that it is a full inventory and description of all the money, goods, chattels and estate, real and personal, books, papers, and evidences of debt, and of title of the deceased, and of all debts due or becoming due, so far as he can ascertain them, except the property reserved as the absolute property of the widow, and that he was not indebted, or bound in any contract to the deceased at the time of his death, except as stated in the inventory.

§ 4. The inventory, with the affidavit, shall be filed in the office of the clerk of the county court, within sixty days after the letters are granted.

§ 5. If after making the first inventory, any other real or personal estate of the deceased come to his possession or knowledge, he shall file a similar additional inventory thereof.

§ 6. At the time of appointing an administrator, the court or clerk in vacation, shall name two respectable householders of the vicinity, of the last abode of the deceased, who are disinterested and of no kin to the administrator, as witnesses to accompany and aid the administrator in opening and examining the papers and money of the deceased, and in making an inventory of them, and if they fail to attend, the court or clerk shall appoint others in their stead, so that two such witnesses shall be present to attend the proceeding, before it shall be lawful for any administrator to open or examine such papers or money by virtue of his appointment.

§ 7. The county court shall allow such witnesses, a compensation for such duties, not exceeding that allowed to appraisers.

§ 8. If any administrator open or examine the papers or money of the deceased, without the publicity and attestation provided in this act, he shall forfeit and pay to the persons entitled to the estate, a sum not exceeding five thousand dollars to be recovered before the county court.

§ 9. If the executor, administrator or other person interested in any estate, file

an affidavit in the county court, stating that the affiant has good cause to believe that any person has concealed or embezzled any goods, chattels, money, books, paper or evidences of debt of the deceased, the court may cite such person to appear before them and examine him on oath for the discovery of the same.

§ 10. If such person refuse to answer proper interrogatories, the court may commit him to jail, until he answer or be discharged by law.

§ 11. If any person be convicted of unlawfully detaining such goods, chattels, money, or effects, books, papers or evidences of debt, the court may compel the delivery thereof, by attachment.

§ 12. After having collected personal estate, the executor or administrator shall cause the same to be appraised, by three disinterested householders of the county:

§ 13. Before entering on their duties, the appraisers shall make an affidavit, stating, that they are not interested, nor of kin to any person interested in the estate as heir or devisee, and that they will, to the best of their ability, view and appraise the slaves and other personal estate to them produced.

§ 14. The appraisers shall view and appraise such property, and make a list specifying each article appraised, its value, and total amount of the appraisement, which shall be signed by the appraisers, or two of them.

§ 15. The appraisement and affidavits shall be filed in the office of the clerk of the county court, within sixty days after letters are granted.

§ 16. Each appraiser shall receive from the estate, one dollar per day for his attendance.

§ 17. Every executor or administrator, shall cause similar appraisements to be filed of all personal estate which shall come to his possession after the first appraisement.

§ 18. Inventories and appraisements may be given in evidence, but shall not be conclusive for or against any executor or administrator, but other evidence may be introduced to vary the effect thereof.

§ 19. Within thirty days after letters are granted, the executor or administrator, shall publish in some newspaper in this state, for three weeks, a notice, that letters testamentary or of administration have been granted him, stating the date, and requiring all persons having claims against the estate, to exhibit them for allowance to the executor or administrator, within one year after the date of the letters, or they may be precluded from any benefit of such estate, and that if such claims be not exhibited within three years from the date of the letters, they shall be forever barred.

§ 20. Where an intestate has left no known heirs, the administrator shall also publish a notice for six weeks in some newspaper, containing the name of the intestate, a description of his person, the time and place of his death, the place of his nativity, if known, and the appraised amount of the estate.

§ 21. Executors and administrators shall collect all money, and debts of every kind due to the deceased, and give receipts and discharges therefor, and shall commence and prosecute all actions which may be maintained and are necessary in the course of his administration, and defend all such as are brought against him.

§ 22. They shall prosecute and defend all actions commenced by or against the deceased, at the time of his death, and which might have been prosecuted or maintained by or against such executor or administrator.

§ 23. In all actions prosecuted or defended by or against any executor or administrator, he shall not be disqualified from being a witness, as to facts occurring anterior to his qualification, on account of being executor or administrator.

§ 24. For wrongs done to the property, rights or interest of another, for which an action might be maintained against the wrong doer, such action may be brought by the person injured, or after his death, by his executor or administrator against such wrong doer, and after his death, against his executors or administrators, in the same manner and with the like effect, in all respects as actions founded upon contracts.

§ 25. The preceding section shall not extend to actions for slander, libel, assault and battery, or false imprisonment, nor to actions on the case for injuries to the person of the plaintiff, or to the person of the testator or intestate of any executor or administrator.

§ 26. If any person appoint his debtor, executor of his will, such appointment shall not discharge the debt, but it shall be assets in his hands.

§ 27. In addition to dower, a widow shall be allowed to keep, as her absolute property, all the wearing apparel of the family, her wheels, looms and other implements of industry, all yarn, cloth and clothing made up in the family for their own use, all grain, meat, vegetables, groceries and other provisions on hand, and provided and necessary for the subsistence of the widow and her family, for twelve months, and as many beds with bedding as shall be necessary for herself and the family of the deceased residing with her and under her control.

§ 28. In addition to the above, the widow may take such personal property as she may choose, not to exceed the appraised value of one hundred and fifty dollars, for which she shall give a receipt.

§ 29. The widow shall apply for such property named in the preceding section, before the same be distributed or sold, and it shall be deducted from her dower in the personal estate, if there be any, but the property so delivered, shall in no case, be liable for the payment of the debts of the deceased.

§ 30. If the widow do not receive the property thus allowed to her, and the same be sold by the executor or administrator, the county court shall order the money to be paid to the widow, at any time before the same be paid out for debt, or be distributed.

§ 31. Every executor or administrator after the appraisement, shall sell at public sale, all goods and chattels of the deceased that are liable to perish, be consumed, or rendered worse by the keeping, giving such credit as he may think best, and take bonds or notes with good security of the purchasers.

§ 32. If the perishable goods be not sufficient to pay the debts, the executor or administrator shall, in the same manner, sell the other personal estate, disposing of slaves last, until the debts and legacies be all paid, but specific legacies shall not be sold in any case, unless it be necessary for the payment of debts.

§ 33. Executors and administrators may assign the notes and bonds of the estate to creditors, legatees and distributees, in discharge of such an amount of their claims equal to the amount of such bond or note.

§ 34. They shall give notice of the time and place of sale for three weeks in some newspaper in this State, or by hand bills put up in eight public places of the county, where the sale is made.

§ 35. If any testator direct his estate not to be sold, the same shall be reserved, unless such sale be necessary for the payment of debts.

§ 36. When there are no known heirs or legal representatives, the administrator shall sell all the personal estate of the deceased within one year after administration is granted.

§ 37. If any executor or administrator apply to the county court for permission to sell the personal estate of the deceased, or any part thereof, at private sale, and the court be satisfied that such sale would not be prejudicial to the persons interested in the estate, it may order such sale and prescribe the terms thereof.

§ 38. In every public sale, the executor or administrator shall employ a competent clerk, not interested, nor of kin to any heir or devisee of the estate.

§ 39. Such clerk shall keep a true account of the sales made, make a list of sales specifying each article sold, the price, and the name of the purchaser, and shall annex his affidavit to such list, stating that the same is a true account of the sales made by such administrator or executor at the time specified.

§ 40. Such sale bill shall be filed by the executor and administrator in the office of the clerk of the county court, within thirty days after the sale.

§ 41. Executors and administrators under the direction of the county court, shall lease the real estate, and hire out slaves, for any period not more than one year at a time, and shall receive and recover such rents, hire and wages. Slaves shall be hired to the highest bidder at the court house door, unless the court order otherwise.

§ 42. When any house, out buildings, fences or other improvements, on the real estate require repairs, the county court may, on the application of any person interested, order the executor or administrator to cause the necessary repairs to be made without prejudicing creditors.

§ 43. At every term of the county court, they shall examine all inventories, appraisements and sale bills, filed since their last term, to see if they have been made and filed according to law, and shall issue citations to compel all delinquents to comply with the law.

§ 44. If a person die, leaving horses or other stock that required attention, crops ungathered, property so exposed as to be in danger of loss in value, or work in an unfinished state, so that the estate would suffer material loss, from the want of care and additional labor, the executor or administrator may, until the meeting of the county court, procure such indispensable labor to be performed on the most reasonable terms that he can.

§ 45. The county court, on application of any person interested, may in such cases authorize further labor to be performed, as the interest of the estate requires,

and all sums thus paid, if approved by the court, shall be allowed as expenses of administration.

§ 46. All interest received by administrators and executors, on debts due to the deceased, shall be assets in their hands, and if they lend the money of the deceased, or use it for their private purposes, they shall pay interest thereon to the estate.

§ 47. The county court shall exercise an equitable control in making administrators and executors account for interest accruing to the estate, on account of money loaned by him belonging to the estate, or otherwise, and for that purpose may take testimony or examine the executor or administrator on oath.

§ 48. Every executor and administrator at the second term after the end at which he is required to make settlement, shall render to the county court a statement on oath of the amount of money of the estate actually on hand.

§ 49. If on the return of the inventory, or at any other time, it appears to the satisfaction of the county court, that there is surplus of money in his hands, that will not be shortly required for the expenses of administration, or payment of debts, they shall have discretionary power to order the executor or administrator to lend out the money, on such terms and for such time, as they may judge best, or at his option, to retain it in his hands until it be needed for distribution, or the payment of debts, and account for interest thereon.

§ 50. The county court may, at any time, make such orders as the interest of the estate requires, for the speedy collection of debts, or the sale or distribution of personal property.

§ 51. All executors and administrators may give receipts and discharges for money received by them on account of the deceased, but if there be more than one executor or administrator, a majority shall join in such receipts or discharges, or they shall be void.

§ 52. For good cause shown, the county court may continue any matter or proceeding arising before them under this act, on such terms as it may consider just.

ARTICLE III.

Of their duties respecting the sale of real estate.

- § 1. Power by will to sell lands, to be executed by whom.
2. Contracts for the purchase of lands: may be carried into effect by order of court, if assets sufficient.
3. Interest of testator, or intestate, to be sold if the assets are not sufficient to fill contract.
4. Court may order lands to be relinquished, if purchased from individuals.
5. If purchased from commissioner of school lands it may be relinquished in a certain case.
6. Court may order redemption of mortgaged property.
7. Court may order the equity of redemption to be sold.
8. If personal estate insufficient to pay debts, petition to sell real estate to be filed by executor or administrator.
9. Petition to be accompanied with true account, &c.
10. In case of neglect of executor or administrator, creditor may file petition for sale of real estate by giving twenty days notice.
11. Executor or administrator to render true account to court.
12. When account has been filed, court shall order all interested to be notified—notice how given.
13. Upon proof of notification, court to hear testimony, and, if necessary, order sale.
14. Personal estate may be reserved and real estate sold.
15. Real estate to be appraised before sale.

- § 16. Appraisers to be sworn.
17. Notice of sales of real estate to be given.
18. Where sales of real estate shall be made, and how conducted.
19. Not to be sold at private sale for less than $\frac{2}{3}$ of appraised value. Executor or administrator not to purchase at less than $\frac{2}{3}$ of value.
20. Return of sale.
21. If report not approved by the court, new-order to be made.
22. If report be affirmed deed to be made.
23. Effect of deed.
24. Contract for the conveyance of real estate by testator or intestate, how enforced.
25. Affidavit to be annexed to petition.
26. Notice to be served on executor or administrator.
27. Order to be given, except &c.
28. Deed, in what case, and by whom, made.
29. Effect of such deed.
30. In what court petition may be brought.
31. Circuit courts, in such cases, to proceed according to the practice of courts of chancery.
32. The bond or other instrument of writing held by executor or administrator, how collected.
33. In what case real estate to be sold.
34. Commencement of suits, &c.

§ 1. The sale and conveyance of real estate under a will, shall be made by the acting executor or administrator with the will annexed, if no other person be appointed for that purpose by the will, or if such person fail to perform the trust.

§ 2. If any person die, having purchased real estate, and shall not have completed the payment, nor devised such estate, nor provided for the payment by will, and the completion of such payment, would be beneficial to the estate, and not injurious to creditors, the executor or administrator may, by order of the county court, complete such payment out of the assets in his hands, and such estate shall be disposed of as other real estate.

§ 3. If the court believe, that after the payment of the debts, there will not be sufficient assets to pay for such real estate, the court may order the executor or administrator to sell all the right, title and interest of the deceased therein.

§ 4. If such real estate has been purchased from individuals, the court may, if they believe it advantageous to the estate, order the same to be relinquished to such individuals, on the most advantageous terms that can be agreed upon.

§ 5. If such real estate, shall have been purchased from any commissioner of school lands, the court may order the same to be relinquished, with the consent of the commissioner, and in such cases the commissioner shall be authorized to accept of such relinquishment, and surrender the obligation to the deceased.

§ 6. If any person die, having mortgaged any real estate, or pledged any personal property, or owning any equity of redemption, and shall not have devised the same, or provided for the redemption of the same, by will, the county court, upon the application of any person interested, may order the executor or administrator, to redeem such estate out of the personal assets, if it would be beneficial to the estate and not injurious to the creditors.

§ 7. If such redemption would injure the estate or creditors, or there would not be assets to redeem such estate, after paying the debts, the court shall order all the right, title and interest, of the estate to such property, to be sold at public sale.

§ 8. If any person die, and not leave personal estate sufficient to pay his debts, the executor or administrator shall file a petition to the county court, stating the facts, and praying for the sale of such estate or so much thereof, as will pay the debts.

§ 9. Such petition shall be accompanied by a true account of his administration, a list of the debts due to, and by the deceased, and remaining unpaid, and an inventory of the real estate, and of the remaining personal estate, with its appraised value, and all other assets in his hands, the whole verified by an affidavit of the executor or administrator.

§ 10. If such executor or administrator do not make such application, any creditor or other person interested in the estate, may make such application, giving twenty days notice to the executor or administrator.

§ 11. Every such executor or administrator, on or before the first day of the term of the court, at which he is notified that such application will be made, shall file with the clerk of the court, perfect accounts, lists, and inventories, made out and verified as those required to accompany a petition by himself. If such executor or administrator fail to comply with this section, the court shall compel him to do so by attachment.

§ 12. When such petition and such accounts, lists, and inventories shall be filed, the court shall order, that all persons interested in the estate, be notified thereof and that unless the contrary be shewn on the first day of the next term of the court, an order will be made for the sale of the whole, or so much of such real estate, as will pay the debts of the deceased. Such notice shall be published for six weeks in some newspaper in this state.

§ 13. Upon proof of publication, the court shall hear the testimony, and may, if necessary, examine all parties on oath touching the application, and make an order for the sale of such real estate, or any part thereof in this state, at public or private sale.

§ 14. If any executor or administrator, or other person interested in any estate, file a petition, setting forth the facts, and describing the real and personal estate, and praying that the personal estate be reserved, and real estate be sold, for the payment of debts, the same steps shall be taken, and the same proceedings, and publication had, as above directed, upon a petition to sell real estate for the payment of debts, and the court may order, that the whole or any part of the personal estate be reserved, and the real estate, or any part of it, may be sold, at public or private sale.

§ 15. Before any executor or administrator shall sell any real estate, or any interest therein by order of any court, he shall have it appraised by three disinterested house holders of the county in which it lies.

§ 16. Such appraisers shall make an affidavit, that they will according to the best of their abilities, view and appraise the estate, to them shown, and they shall view and appraise the same, and deliver to the executor or administrator a certificate thereof, under their hands.

§ 17. In all sales of real estate, made by any executor or administrator, he shall

cause a notice, containing a particular description of the estate to be sold, and stating the time, place and terms of sale, to be published in some newspaper in this state for four weeks, and shall put up a copy of such notice, in ten public places in the county in which the sale is to be made, twenty days before the sale.

§ 18. All public sales of real estate, made by order of any court for the payment of debts, shall be made at the court house door of the county in which such estate is situated, on some day while the circuit or county court is in session, and shall be conducted openly by auction.

§ 19. No real estate sold for the payment of debts, shall be sold at private sale, for less than three fourths of its appraised value, nor shall such executor or administrator, directly or indirectly, become the purchaser of any such real estate at public sale, at less than three fourths of its appraised value.

§ 20. At the next term of the county court, after such sales, the executor or administrator shall make a full report of his proceedings, with the certificate of appraisal and a copy of the advertisement, which report shall be verified by affidavit, stating, that he did not directly or indirectly purchase such real estate, or any part thereof, or any interest therein, and that he is not interested in the property sold, except as stated in the report.

§ 21. If such report and proceedings of the executor or administrator, be not approved by the court, his proceedings shall be void, and the court may order a new sale, upon which the same proceedings shall be had, as upon the original order.

§ 22. If such report be approved by the county court, such sale shall be valid, and the executor or administrator, (or if he be the purchaser, the clerk of the county court) as soon as full payment shall be made of the purchase money, shall execute, acknowledge and deliver to the purchaser a deed, stating the date of the order of sale, and the court by which it was made, and the consideration, and conveying to the purchaser all the right, title and interest which the deceased had in the same.

§ 23. Such deed shall convey to the purchaser, all right, title and interest, which the deceased had to such real estate, at the time of his death, discharged from all liability for his debts.

§ 24. If any testator or intestate, shall have entered into a contract in writing, for the conveyance of any real estate, and shall not have executed the same in his life time, nor given power by will to execute the same, the other party wishing a specific execution of such contract, may file a petition to the county court, setting forth the facts, and praying that an order may be made that the executor or administrator, execute such contract specifically, by executing to him a deed for the same.

§ 25. Such petitioner shall annex to such petition, an affidavit to the truth thereof, and stating that no part of such contract has been satisfied, except as stated in the petition.

§ 26. A notice of such application, and a copy of the petition, shall be served on

the executor or administrator, twenty days before the first day of the term at which it is to be made.

§ 27. If the court, after hearing all parties, believe that specific execution of such contract ought to be made, it shall make an order, that the executor or administrator, execute such contract specifically, saving to infants, married women, persons of unsound mind, and persons absent from the United States, the term of five years after their disabilities are removed, to appear and file their bill in chancery, to set aside such order for fraud or other cause.

§ 28. When any order for the specific execution of a contract shall be made, the executor or administrator, shall execute and deliver to the petitioner a deed, and acknowledge it in open court, conveying the estate, according to the order, and expressing therein the saving of the rights above named, according to the order, and stating the date of the order, and the court at which it was made.

§ 29. Such deed shall be as effectual, as if it had been executed by the deceased.

§ 30. The party entitled to such specific performance of a contract, may bring his petition in the circuit court of the county, in the first instance, and if it be brought in the first instance in the county court, the executor, administrator, widow, or any heir or devisee of the estate, may appear and allege, that he is unwilling to have the same tried in the county court, the court shall order the same to be certified to said circuit court.

§ 31. If any such petition be thus filed or certified to the circuit court, it shall proceed thereon, according to the practice of courts of chancery, and if it appear that such specific execution ought to be made, it shall make a decree for that purpose in the same manner and with the same reservations, as above required in cases of orders by the county court.

§ 32. If any executor or administrator, hold a bond or any other instrument of writing on the testator or intestate, for the conveyance of any real estate, which shall not have been complied with in the life time of such testator or intestate, nor power by will given to execute the same, the executor or administrator shall proceed against his co-executor or co-administrator in the same manner as prescribed by this article in other cases; but if there be no such co-executor or co-administrator, he shall file his petition as herein provided, and the court shall appoint some suitable person, to appear and manage the defence on the part of those interested, who shall have all the powers, and perform the same duties, required of executors or administrators, in such case by this article.

§ 33. If upon the settlement of the accounts of any executor or administrator, it appear, that the personal estate is not sufficient to satisfy all demands established against such estate, it may make such order as it may think necessary, for the sale of real estate for that purpose.

§ 34. If any person commence a suit of any kind, against an estate, within one year from the date of administration, he may recover judgment, but shall pay all the costs.

ARTICLE IV.

Of the allowances of demands against estates.

- § 1. Demands against estates classed.
2. After three years, demands barred, saving to persons under disability
 3. Suit pending against deceased at his death, when and how classed as demands.
 4. From what time other demands considered as exhibited against estates.
 5. Proceeding to establish demands, and from what time considered legally exhibited.
 6. Duty of the Executor and Administrator in keeping list of demands exhibited.
 7. Demands may be established in a court of record, copy of judgment exhibited to county court.
 8. Jurisdiction and duty of county court in allowing demands against estates.
 9. Before demands shall be allowed, claimant to make oath or affidavit, extent and effect of.
 10. Written notice containing a copy of the instrument or account sued on to be given.
 11. Notice, when, how and by whom served.
 12. Notice may be waived in open court.
 13. Demands to be determined by the court in a summary way.
 14. Depositions in support of demands, how and when taken.
 15. If the claim do not exceed twenty dollars, or neither party require a jury, court may determine.
 16. If the demand exceed twenty dollars, in what manner, and by whom determined.
 17. Proceedings when Executor or Administrator claims as creditor of the estate.
 18. Clerk to keep an abstract of judgments filed, and demands established.
 19. Demands to be classed, and satisfied according to such classification.
 20. Amount and class to be endorsed on claim and delivered to demandant.
 21. In what order debts of deceased to be paid.

§ 1. All the demands against the estate of any deceased person, shall be divided into the following classes: First, funeral expenses. Second, expenses of the last sickness, wages of servants, and demands for medicine and medical attendance, during the last sickness of the deceased. Third, debts due to the State. Fourth, judgments rendered against the deceased. Fifth, all demands without regard to quality, which shall be legally exhibited, for allowance against the estate within one year after granting the first letters on the estate. Sixth, all such demands thus exhibited, after the end of one year, and within two years after letters granted. Seventh, all such demands thus exhibited, after the expiration of two years, and within three years after the grant of such letters.

§ 2. All demands, not thus exhibited within three years, shall be forever barred, saving to infants, married women, persons of unsound mind, imprisoned, or absent from the United States, three years after the removal of their disabilities.

§ 3. All actions pending against any person at the time of his death, which by law survive against the executor or administrator, shall be considered demands legally exhibited against such estate, from the time such action shall be revived, and classed accordingly.

§ 4. All other actions commenced against such executor or administrator, after the death of the deceased, shall be considered demands legally exhibited against such estate, from the time of serving the original process on such executor or administrator.

§ 5. Any person may exhibit his demand against such estate, by serving upon the executor or administrator, a notice in writing, stating the nature and amount of his claim, with a copy of the instrument of writing, or account upon which the claim is founded, and that he will present the same for allowance at the next term

of the court, and shall be considered legally exhibited from the time of serving such notice.

§ 6. Every executor and administrator, shall keep a list of all demands, thus exhibited, classing them, and make return thereof to the county court, every year, at the term at which he is to make settlement.

§ 7. Any person having any demands against an estate, may establish the same by the judgment or decree of some court of record, in the ordinary course of proceedings, and exhibit a copy of such judgment, whether rendered before or after the death of the deceased, to the county court:

§ 8. The county court shall have jurisdiction, to hear and determine all demands against any estate, and a concise entry of the order of allowance shall be made on the record of the court, which shall have the force and effect of a judgment.

§ 9. No county court shall allow any demand against any estate, unless the claimant first make oath in open court, or file an affidavit with such claim, stating to the best of his knowledge and belief, he has given credit to the estate for all payments and of offsets to which it is entitled, and that the balance claimed is justly due, and such affidavit shall not be received as any evidence of the demand, but the same shall be established by competent legal testimony before it is allowed.

§ 10. Any person desiring to establish a demand against any estate, shall give to the administrator or executor, a written notice containing a copy of the instrument of writing or account, on which it is founded, and stating that he will present the same for allowance at the next term of the county court.

§ 11. Such notice shall be served on the executor or administrator, ten days before the beginning of such term of the court, and may be served by any sheriff or constable, or by any competent witness, who shall make affidavit to such service.

§ 12. The executor or administrator may appear in court, and waive the service of any such notice.

§ 13. The county court, shall hear and determine all demands in a summary way, without the form of pleading, and shall take the evidence of competent witnesses or other legal evidence.

§ 14. Any person may take depositions in support of his demand at his own expense, if he first procure the written consent of the executor or administrator, and such depositions may be taken in the ordinary manner, at such time and place as may be agreed upon, and read in evidence in support of such demand.

§ 15. If the demand do not exceed twenty dollars, or if neither party require a jury, the court may decide on the validity of such demand.

§ 16. If the demand exceed twenty dollars, and either party require a jury, one shall be immediately summoned, and the trial shall be conducted in a summary manner, without the form of pleading, and when the demand is not due at the time of trial, the court or jury may adjust the same, by rebating therefrom at the rate of six per cent per annum from the time of trial until due.

§ 17. Any executor or administrator may establish any demand, against his testator or intestate, by proceeding against his co-executor or co-administrator in the manner prescribed for other persons. But if there be no co-executor or co-ad-

ministrator, he shall file his claim and other papers, and the court shall appoint some suitable person to appear and manage the defence on the part of the estate.

§ 18. The clerk of the county court shall keep an abstract of all judgments of other courts, filed, and of all demands established in the county court against such estate, which shall show their amount, class, date and to whom payable.

§ 19. If any judgment of a court of record be filed in the county court, and when accounts are allowed against any estate in the county court, such court shall determine its class, and the clerk shall make an entry thereof in his abstract, and when thus classed, the executor or administrator may satisfy such demand according to such classification.

§ 20. When any such demand has been allowed, the clerk shall endorse on the back thereof the amount allowed thereon, and the class to which it belongs, and deliver the same to the demandant.

§ 21. All demands against any estate, shall be paid by the executor or administrator, as far as he has assets, in the order in which they are classed, and no demand of one class shall be paid until all previous classes be satisfied, and if there be not sufficient to pay the whole of any one class, such demands shall be paid in proportion to their amounts.

ARTICLE V.

Of the settlement of their accounts.

- § 1. Accounts and settlements, in what manner to be recorded by the clerk.
2. Annual settlements to be made, until administration be completed.
3. Clerk to keep a docket of executors and administrators, date of their letters and term of settlement.
4. List to be put up by the clerk, when and where.
5. Proceedings in case of neglect to make settlement at the proper time.
6. Proceedings in case the citation is not served.
7. Proceedings of the court after service or publication.
8. Letters may be revoked, proceedings thereon.
9. Accounts to be settled, what charges, expenses, and disbursements to be allowed.
10. What claims against the estate to be allowed on settlement.
11. On settlement, expenses to be paid, balance on hand to be apportioned among creditors.
12. On every settlement, how to proceed, till debts are paid or assets exhausted.
13. Execution for demands allowed against estates, when, and against whom issued.
14. Execution not satisfied, scire facias may issue against securities.
15. Scire facias returned, served, proceedings thereon.
16. Notice of final settlement, when, and how published.
17. Final settlements, how to be conducted.
18. On final settlement, what debts charged in the inventory as due to the estate to be credited.

§ 1. The clerk of each county court shall provide well bound books, and enter therein the accounts and settlements of all administrators and executors made in the court, in such manner as to form a complete record of all such accounts settled in that court.

§ 2. Every executor and administrator shall exhibit a statement of the accounts of his administration for settlement, with proper vouchers, to the county court at its first term after the end of one year from the date of his letters, and at the cor-

responding term of such court, every year thereafter, until the administration be completed.

§ 3. The clerk of the county court shall keep a docket and enter therein a list of all executors and administrators who have not made final settlement of their accounts, the date of their letters, and the terms at which they are required to make settlement.

§ 4. The clerk shall put up in some conspicuous place in his office, thirty days before each term, a list of the executors and administrators, whose settlements are required to be made at that term.

§ 5. If any such executor or administrator fail to present such settlement, the clerk shall immediately issue a citation to any county in the state, requiring him to present his accounts for settlement at the next term of the court, and show cause why an attachment should not issue against him for not exhibiting his accounts at the term at which he was required to settle.

§ 6. If such citation be not served, the clerk shall, under the direction of the court, issue an alias citation, which may be served or may be published in some newspaper in this state, one month before the return thereof.

§ 7. If after such service or publication, no cause to the contrary be shown, such executor or administrator may be fined by the county court, not exceeding one hundred dollars, to the use of the county, and such executor or administrator shall be liable upon his bond for failing to settle.

§ 8. The county court may revoke the letters of such delinquent, and may issue attachments and other process to compel such settlements, directed to any county in this state, and in all such cases such delinquents shall pay all costs.

§ 9. When any executor or administrator shall present his account for settlement, the county court shall settle the same according to law; allow all reasonable charges for the expenses of administration, funeral expenses and all disbursements and appropriations made by the order of the court, and a reasonable compensation for the trouble and expenses of the executor or administrator.

§ 10. Upon every settlement, the executor or administrator shall show that every claim for which disbursements have been made, has been allowed by the court as required by law, or shall produce such proof of the demands as would enable the claimant to recover it in a suit at law.

§ 11. At every settlement the court shall ascertain the amount of money of the estate which has come to the hands of such executor or administrator, from all sources, and the amount of debts allowed against such estate, and if there be not sufficient to pay the whole of the debts and expenses of administration, the money remaining, after paying the expenses of administration, shall be apportioned among the creditors, according to this act; and the court shall order that such executor or administrator, pay the claims allowed by the court, according to such apportionment, reserving apportionments made on claims which remain undecided, until decision be had thereon.

§ 12. The county court, upon every settlement shall proceed in like manner, till all the debts be paid, or the assets exhausted, and if, upon such settlement, there

shall be money enough to satisfy all demands of any one class legally exhibited against such estate, the court shall order the whole to be paid.

§ 13. If any executor or administrator fail to pay any claim thus ordered to be paid, according to the two preceding sections when demanded, the clerk of the county court, on application of such creditor, and being satisfied that such demand has been made, shall issue execution for the amount ordered to be paid and costs, against the body, or against the property, goods, chattels and real estate of such executor or administrator, or both.

§ 14. If any such execution be returned unsatisfied, the creditor may sue out of the county court a scire facias, against any one or more of the securities of such executor or administrator, referring to their bond, the order for payment, the execution and return, and requiring such security to show cause why judgment should not be rendered against him, for the amount ordered to be paid, and still unsatisfied.

§ 15. Such scire facias may be directed to, and served in any county in this state, and if upon the return thereof, good cause to the contrary be not shown, the court shall render judgment against such security for the amount unpaid and costs, and award execution therefor.

§ 16. If any executor or administrator, wish to make final settlement, he shall publish for four weeks in some newspaper in this state, a notice to all creditors, and others interested in the estate, that he intends to make final settlement at the next term of the court.

§ 17. If it appear to the court, that such notice was duly published, and that the estate of the deceased has been fully administered, the court shall make final settlement, which shall be conducted as annual settlements.

§ 18. At his final settlement, the court shall give credit to the executor or administrator for debts which have been charged in the inventory as due to the estate, if the court be satisfied that such debt was not really due to the estate, or that it has been balanced or reduced by offsets in any court of competent jurisdiction, or the debtor was insolvent, or that from any other cause, it was impossible for the executor or administrator to have collected such claim by the exercise of due diligence.

ARTICLE VI.

Of distribution of the estate.

- § 1. Distribution or payment of legacies, when to be made within one year after date of letters.
2. Legacies when to be paid, bond to refund, when and by whom given.
3. Payment of legacies and distribution of shares, when and how made.
4. If distribution cannot be made in kind, sale may be ordered, and money distributed.
5. Notice of application to sell for purpose of distribution, how and when to be given.
6. When sale is ordered for purpose of distribution, claims of distributees to be adjusted.
7. If distributee become purchaser, his receipt good for amount of his share.
8. Distribution how made, when real estate sold to pay debts, and personal estate reserved.
9. Legatees and distributees compelled to refund, when and how.
10. Proceedings on failing or refusing to refund, notice to be given.
11. Court may order appropriations for the support of minor children, when.

- § 12. Appropriation for the widow until dower is assigned, out of what fund to be made.
- 13. Court, in its discretion, may order the estate to be delivered up to the widow, when.
- 14. On final settlement, money of distributee or legatee, when to be loaned out.
- 15. Compensation of executors and administrators.

§ 1. Executors and administrators shall not be compelled to make distribution, or pay legacies, until one year after the date of the letters, unless the legacies specified, would be perishable or subject to injury if retained one year.

§ 2. No executor or administrator shall be compelled to pay legacies within three years, after the date of his letters, unless ordered to do so by the court, until bond and security be given by the distributee or legatee, to refund his due proportion of any debt which may afterwards be established against the estate, and the costs attending the recovery thereof. But the widow shall not be required to give such bond, before she receive the property selected by her under this act.

§ 3. If upon any settlement it appear that there is sufficient money to satisfy all demands against the estate, the court shall order the payment of legacies and distribution of shares, as in the case of debts, except, that specific legacies shall be first satisfied.

§ 4. If slaves or other personal property descend, and an equal division thereof, cannot be made in kind, the county court may order the sale of slaves, or other personal property, and cause the money to be distributed, according to the rights of those entitled to distribution.

§ 5. Each person entitled to distribution, not applying therefor, shall be notified in writing of such application ten days before such order shall be made, or if such person do not reside in this state, a notice of such application shall be published in some newspaper in this state, eight weeks before such order shall be made.

§ 6. When such order for the sale of slaves or personal estate shall be made by the court, it shall settle the claims of the distributees and order the person selling such property to distribute the money arising therefrom, according to the rights of each person.

§ 7. If any distributee become a purchaser of such property, his receipt for the amount of his share, shall be received in payment of an equal amount of the purchase money, and the court shall allow the amount of such receipt, as so much distributed under the order of the court.

§ 8. If real estate be sold for the payment of debts, in lieu of the personal estate under this act, the court in making distribution of the personal estate reserved, shall cause the same to be appraised, by three disinterested persons, sworn for that purpose, and shall allow to the widow only such amount as she would have been entitled to, had the amount of debts paid by money made by the sale of real estate, been paid out of the personal estate.

§ 9. If after the payment of legacies, or distributions, it becomes necessary, that the same or any part thereof, be refunded for the payment of debts, the court, on application, shall apportion the same among the legatees or distributees, according to the amount received by them, except that specific legacies shall not be required to be refunded, unless the residue be not sufficient to satisfy such debts.

§ 10. If any legatee or distributee fail to refund according to such order, the court shall, on motion of the executor or administrator, ten days notice in writing having been given to the legatee or distributee, enter judgment for the amount apportioned to him.

§ 11. The county court, as occasion may require, may order such appropriations for the support of minor children of the deceased, not otherwise provided for, as will not prejudice the rights of creditors.

§ 12. Until the widow's dower be assigned, the court shall order such sum to be paid to her out of the hire of slaves and rent of real estate, as shall be in proportion to her interest in the slaves and real estate.

§ 13. If upon the return of the inventory and appraisement, it appears to the court, that the whole amount of the estate is not more than that, to which the widow is by law entitled, without being subject to the payment of debts, and that there are no debts due the estate, or so small that they would not defray the expenses of collecting, and of administration, the county court in its discretion may make an order, that such estate be delivered to the widow, and that all further advertisements, settlements and other proceedings, under said administration, be dispensed with, unless further estate be discovered, or the court order the administration to be proceeded with.

§ 14. If upon final settlement, it appear that any distributee or legatee is a non-resident, or from any other cause is not in a situation to receive his share, and give a discharge therefor, or does not appear by himself or agent, to receive the same, the county court may in their discretion, order the executor or administrator, to lend out the money on good security, for such limited time as the court may direct, or at his option to retain it, subject to the call of such distributee or legatee, and pay interest therefor at the rate of six per cent. per annum.

§ 15. Executors and administrators shall be allowed for their trouble, not exceeding six per cent. on the whole amount of personal estate, and on the money arising from the sale of lands, with such additional allowance for hiring out slaves, leasing real estate, and collecting and preserving the estate, as the county court shall deem reasonable.

ARTICLE VII.

Of proceedings against executors, administrators and their securities.

- § 1. Any creditor may suggest a devastavit, when.
2. Upon such application, court to direct an issue.
3. Judgment in favor of the applicant if waste be found, effect of, if no waste, cost to be paid, by whom.
4. Double the amount wasted to be recovered, when.
5. Action of waste or suit on administration bond after final settlement, when brought, and effect of the judgment.
6. Execution on the judgment, against whom, and what estate to issue.
7. Proceeds of executions on judgments thus recovered, how to be applied.
8. The bond of any executor or administrator may be sued on, suit how brought and by whom.
9. Securities not liable beyond assets, in what cases.
10. Court, how to proceed, for disobedience of any order made in pursuance of this act.

§ 1. If upon the settlement of any executor or administrator, there be not sufficient assets to pay all the demands against the estate, any creditor may suggest

that he has not made a just account of the assets in his hands and apply for an enquiry into the same.

§ 2. Upon such application, the court shall direct an issue to be made up, whether there be waste or not, which shall be tried as demands against an estate.

§ 3. If no waste be found, the applicant shall pay the costs: But if waste be found, judgment shall be rendered in favor of the applicant, against such executor or administrator of his own proper estate, for the amount wasted and costs, and the money collected shall be applied to the payment of the debt due to the applicant and the residue shall be apportioned among the creditors.

§ 4. If it appear that such waste was committed wilfully, and fraudulently, the applicant shall recover double the amount wasted, to be apportioned as aforesaid, with costs.

§ 5. If after final settlement of any estate found to be insolvent, any creditor or other person interested therein, may bring an action of waste or a suit on the administration bond, and assign and prove as a breach of the condition, any waste or mismanagement of the estate, he shall have judgment against the executor or administrator for the whole value of the assets wasted, or mismanaged, as he could have done if they had been regularly accounted for, with costs.

§ 6. Upon such judgment, execution may issue against the private estate of such executor or administrator, and his settlement shall only be conclusive so far as he has applied the assets pursuant to the apportionment made by the court, for the payment of debts.

§ 7. The proceeds of all executions on any judgment thus recovered, shall be applied, first, to the payment of the debt due to the person suing, and the residue shall be apportioned among the other creditors.

§ 8. The bond of any executor or administrator may be sued on, at the instance of any party injured, in the name of the state to the use of such party, for the waste or mismanagement of the estate, or other breach of the condition of such bond, and the damages shall be assessed thereon as on bonds with collateral conditions.

§ 9. No security shall be charged beyond the assets of the testator or intestate, by reason of any omission or mistake in pleading, or false pleading, of any executor or administrator.

§ 10. The county court for disobedience to any order made in pursuance of this act, may issue attachments, imprison the body, or proceed by sequestration of land and goods, as fully as a court of chancery may do, and may issue their process for that purpose, directed to any county, and cause it to be served therein.

ARTICLE VIII.

Of appeals.

- § 1. Appeals from the county to the circuit court, in what cases allowed.
2. Appeals when to be taken. In what cases decision of the county court to be final.
3. Application for appeal, affidavit to be filed, and by whom.
4. Applicant for appeal to file bond, condition of the bond.
5. Affidavit and bond filed, appeal to be granted, how far a supercedens.
6. When, how, and for what cause, bills of exception may be taken.

7. When appeal taken, duty of the clerk to transmit copy of the record and original papers to circuit court,
8. Appeals, how to be proceeded on in the circuit court.
9. Proceedings and original papers to be certified to the court whence the appeal was taken, how proceeded on.

§ 1. Appeals shall be allowed from the decision of the county court, to the circuit court, in the following cases:

First, On all demands against an estate exceeding twenty dollars.

Second, On all settlements of executors and administrators.

Third, On apportionments among creditors, legatees, or distributees.

Fourth, On orders directing the payment of legacies, making distribution, or making allowances to the widow.

Fifth, On orders for the sale of personal estate, because equal distribution cannot be made in kind.

Sixth, On orders for the sale of slaves or real estate.

Seventh, On judgments for waste.

Eighth, On proceedings to recover balances, escheated to the state.

Ninth, On orders revoking letters testamentary or of administration.

Tenth, On orders making allowances for the expenses of administration.

Eleventh, On orders for the specific execution of contracts.

Twelfth, On orders compelling legatees or distributees to refund.

§ 2. All such appeals shall be taken during the term at which the decision complained of is made, and in all proceedings under this act not above enumerated, the order or decision of the county court shall be final.

§ 3. The applicant for such appeal, his agent or attorney, shall file an affidavit, that the appeal is not taken for the purpose of vexation or delay, but because the affiant believes that the appellant is aggrieved by the decision of the court.

§ 4. Every such appellant shall file in the court the bond of himself or some other person, in a sum and with security approved by the court, conditioned, that he will prosecute the appeal and pay all the debt, damages and costs that may be adjudged against him.

§ 5. After such affidavit and bond have been filed, the appeal shall be granted, but shall not be a supersedeas in any other matter relating to the administration of the estate, except that, from which the appeal is specially taken.

§ 6. In all the cases above enumerated, any party may tender to the court during the term at which the appeal is taken, a bill of exceptions, specially setting forth each item, the allowance or rejection of which was objected to, and the decision of the court, and if such statements be true, the justices of the court shall sign the same, and upon failure to do so, the like proceedings shall be had as upon bills of exception in the circuit court.

§ 7. When such appeal shall be taken, the clerk shall transmit to the clerk of the circuit court a certified transcript of the record and proceedings, relating to the matter appealed from, with the original papers in his office, relating to the items or decisions excepted to, but shall not send up any part of the record or papers, unconnected with the matter in dispute.

§ 8. On every such appeal the circuit court shall determine the points or de-

cisions excepted to; and if it be of opinion that the county court erred on any material question of law or fact, a new trial shall be granted, which shall be had in the circuit court in the same manner, and the same order or decision shall be made, as the county court ought to have made.

§ 9. The clerk of the circuit court, shall certify a transcript of the record and proceedings, and the original papers, to the court, whence the appeal was taken, who shall proceed according to the decision of the circuit court.

Approved, March 21st, 1835.

PUBLIC ADMINISTRATORS.

An act respecting public administrators.

- § 1 By whom appointed, and how, and the tenure of his office.
2. Oath of office to be taken, bond to be executed, condition of the bond.
3. Certificate of appointment, official oath and bond, where filed and recorded.
4. Who may sue upon such bond.
5. How to be removed from office.
6. Compensation for services to be allowed.
7. When he may be indicted and fined.
8. What estates in his county he shall take into his possession.
9. Shall make an inventory of such estate, and account for the same, how &c.
10. Letters regularly granted to any other person, public administrator to account, &c.
11. Duty of civil officers to inform public administrator of property, &c.
12. What suits and prosecutions may be instituted by public administrator.
- 13, 14, 15 & 16. Proceedings against persons unlawfully possessed of property, which ought to be committed to the public administrator.
17. When to account and deliver MONEY, &c., to heirs, &c.

Be it enacted by the general assembly of the state of Missouri as follows:

§ 1. Each county court may appoint a public administrator for its county, who shall have been a resident citizen of the county for one year previous to his appointment, and shall hold his office for two years; and until his successor be qualified.

§ 2. Before entering on the duties of his office, he shall take the oaths required by the constitution, and enter into bond to the state in a sum not less than ten thousand dollars, with two or more securities approved by the court, and conditioned that he will faithfully discharge all the duties of his office, and the court may from time to time as occasion shall require, demand additional security of such administrator, and in default of giving the same within a reasonable time, may remove the administrator and appoint another.

§ 3. His certificate of appointment, official oath, and bond, shall be filed and recorded in the office of the clerk of the county court.

§ 4. Any person injured by the breach of such bond may sue upon the same, in the name of the state, for his own use.

§ 5. Such public administrator may be removed from office in the same manner and for the same causes as justices of the county courts.

§ 6. He shall receive the same compensation for his services as may be allowed by law, to executors and administrators, unless the court for special reasons, allow a higher compensation.

§ 7. For any wilful misdemeanor in office, he may be indicted and fined, not exceeding two hundred dollars.

§ 8. It shall be the duty of the public administrator to take into his charge and custody, the estate of every kind of deceased persons in his county, in the following cases; first, when a stranger dies intestate in the county without relations or confidential friends, or dies leaving a will, and the executor named is absent or fails to qualify; second, when persons die intestate, without any known heirs, and administration is not undertaken by some other responsible person; third, where persons unknown die, or are found dead in the county; fourth, where money, property, papers, or other estate, are left in a situation, exposed to loss or damage, and no other person administers on the same; fifth, when any estate of any person who has died elsewhere, is left in the county liable to be wasted, injured, or lost, or is not in the lawful custody of some responsible person; sixth, where from any other good cause, the county court shall order him to take possession of any estate to prevent its being injured, wasted, purloined or lost.

§ 9. He shall make a perfect inventory of all such estates taken into his possession, and administer and account for the same, as near as circumstances will permit, according to the law prescribing the duties of administrators, subject to the control and direction of the county court.

§ 10. If at any time letters testamentary, or of administration, be regularly granted on such estate to any other person, he shall, under the order of the county court, account for, pay, and deliver to the executor or administrator, thus appointed, all the money, property, and estate of every kind in his possession.

§ 11. It shall be the duty of all civil officers, to inform the public administrator, of all property, and estate known to them, which is liable to loss, waste, or injury, and which by law ought to be in the possession of the public administrator.

§ 12. The public administrators, shall institute all manner of suits and prosecutions that may be necessary, to recover the property, debts, papers, or other estate of the person deceased.

§ 13. If any person makes oath before a justice of the peace, that he has reason to believe, that any other person is unlawfully possessed of property, which ought to be committed to the care of the public administrator, he shall issue a warrant to bring such person before him forthwith.

§ 14. When such person shall be brought before the justice, the matter shall be tried in a summary way, and if the complaint be found true, the justice shall render judgment, that the property be delivered to the public administrator to be administered.

§ 15. Such judgment may be enforced by execution or attachment.

§ 16. If such person cannot be found, or the judgment be not complied with, the justice may issue his warrant to seize the property or other estate and deliver it to the public administrator.

§ 17. The county court may at any time, order the public administrator, to account for, and deliver, all the money and property of any estate in his hands, to the heirs, or to an executor or administrator regularly appointed.

Approved, March 19th, 1835.

ALIENS.

An act respecting aliens.

§ 1. Aliens enabled to hold and transmit land.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. All aliens residing in the United States, who shall have made a declaration of their intention to become citizens of the United States, by taking the oath required by law, and aliens resident in this state, shall be capable of acquiring real estate in this state by descent, or purchase, and of alienating the same, and shall incur the like duties and liabilities in relation thereto, as if they were citizens of the United States.

Approved, February 17th, 1835.

APPRENTICES.

An act concerning apprentices.

- § 1. What indentures shall be valid and binding.
2. How minors may bind themselves, having no parent or guardian.
3. Person to whom apprentice is bound to make an affidavit.
4. In case of incapacity of the father, mother may bind.
5. Incapacity how established.
6. Who may be bound out by the county court.
7. Guardians to bind out orphans without estate by consent of court, &c.
8. Indentures to contain certain covenants.
9. Courts to require execution of covenants, and redress grievances.
10. Negro or mulatto apprentice not to be educated, allowance in lieu thereof.
11. Age of apprentice to be inserted in the indenture.
12. When indentures are void, as to the apprentice.
13. Causes for which apprentices may complain to court, proceedings of the court.
14. Court may dissolve contract, proceedings thereon.
15. Masters may complain against apprentices, proceedings of the court thereon.
16. & 17. How to proceed against apprentice for desertion and other misconduct.
18. Persons enticing apprentice to desert, rebel, &c., penalty.
19. To harbor, entertain or conceal apprentices, &c., penalty.
20. Executor may bind apprentice when authorized by will.
21. & 22. Before whom and how to proceed against the master who is about to remove, &c., apprentice out of the state.
23. Proceedings in case the master wish to remove out of the state, or quit his trade.
24. Two or more masters, one dies, contract to survive; death of all, how apprentice disposed of.
25. When and how to proceed against apprentices for deserting the services of their master.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Every person bound by indenture of his free will, with the consent of his

father, or if he be dead, of the mother or guardian, expressed in such indenture, and signified by such parent or guardian signing the same, or by the county court, as herein after directed, to serve as clerk or apprentice, in any profession, trade or employment, until the age of twenty-one years, or for any shorter term; although such apprentice shall be under the age of twenty-one years, at the making of such indenture, he shall be bound to serve the time specified in such indenture.

§ 2. Any infant having no parent or guardian, may, with the approbation of the county court, endorsed on the indenture, bind himself an apprentice until he arrives at the age of twenty-one years, or if a female, to the age of sixteen years.

§ 3. Upon the execution of every indenture of apprenticeship, the person to whom the apprentice is bound, shall make an affidavit, that he will faithfully perform the duties required by the indenture and enjoined on him by law, which affidavit shall be endorsed on the indenture.

§ 4. When the father has not legal capacity to give consent, or when he shall have wilfully abandoned his family for six months, without making suitable provisions for their support, or has become an habitual drunkard, the mother shall have the same power to give such consent, as if the father were dead.

§ 5. Facts of incapacity, desertion or drunkenness, shall be decided in the county court by a jury, before the indentures shall take effect; and an endorsement on the indentures under the seal of the court, that the same are approved, shall be sufficient evidence of the mother's power to give such consent, but if the jury do not find the charge of incapacity, drunkenness or desertion to be true, the person at whose instance such proceedings may have been had, shall pay all costs attending the same.

§ 6. When any poor child is or may be chargeable to the county, or shall beg for alms, or whose parents are or may be chargeable to the county, or shall beg for alms, or where the parents of such child are poor, and the father an habitual drunkard, or if there be no father, where the mother is of bad character, or suffers her children to grow up in habits of idleness, without any visible means of obtaining an honest livelihood, it shall be lawful for the county court to bind such child an apprentice until, (if a male) he arrives to the age of twenty-one years, and if a female to the age of sixteen years.

§ 7. Every orphan or minor, who has not estate sufficient for maintenance, may be bound by his guardian, under the order and direction of the court, and the indentures for binding such infant, shall be as effectual, as if such infant were of full age; and the counterpart of such indenture, shall, for the benefit of the child so bound, be deposited with the clerk of the county [court], in which such binding shall take place, for safe keeping.

§ 8. It shall not be lawful, for any master to remove an apprentice out of this state, and in all indentures by the county court, for the binding out any orphan, or poor child as an apprentice, there shall be inserted among other covenants, a clause to the following effect: that every master, to whom such child shall be bound, shall cause such child, to be taught to read and write, and the ground rules

of arithmetic, the compound rules, and the rule of three, and at the expiration of his term of service, shall give him a new Bible, and two new suits of clothes, if a male to be worth forty dollars, and if a female to be worth twenty dollars, and ten dollars in current money of the United States.

§ 9. The county courts shall see that the terms of the indentures and the covenants therein contained, be fulfilled, and that such child be not ill used, and the said court is hereby required, to enquire into and redress any grievances which may occur in the premises, in such manner as is prescribed by law.

§ 10. When an apprentice is a negro or mulatto, it shall not be the duty of the master to cause such coloured apprentice to be taught to read or write or a knowledge of arithmetic; but he shall be allowed, at the expiration of his term of service, a sum of money in lieu of education, to be assessed by the county court.

§ 11. The age of every apprentice shall be inserted in the indenture.

§ 12. All indentures entered into otherwise than according to law, shall be utterly void, so far as it concerns the apprentice therein bound.

§ 13. The county courts, shall receive the complaints of apprentices who reside within the county, against their masters, alledging undeserved or immoderate correction, insufficient allowance of food, raiment or lodging, want of instruction in their trade or profession, or that they are in danger of being removed out of this state, or the violation of the indentures of apprenticeship, and may hear and determine such cases, by a jury, and make such order thereon, as will relieve the party injured in future.

§ 14. The county court shall have power, when circumstances require it, to discharge an apprentice from his apprenticeship, and in case any money or other thing has been paid, or contracted to be paid, by either party, in relation to said apprenticeship, the court shall make such order concerning the same, as shall seem just and reasonable. If the apprentice so discharged, shall have been bound originally by the county court, it shall be the duty of the court, if they judge necessary, again to bind such apprentice.

§ 15. The court shall, in like manner, hear and determine the complaints of masters against their apprentices; for desertion without good cause, for any misdemeanor, miscarriage or ill behaviour, and may punish such apprentice, according to the nature and aggravation of his offence, the court may order the apprentice guilty thereof, to make restitution, by the payment of a sum not exceeding ten dollars, for each month he may be so absent; to be collected as other debts, after such apprentice shall become of full age. The awarding of costs on proceedings under this section, shall be in the discretion of the court.

§ 16. If any apprentice shall abscond, or depart from the service of his master without leave, or shall rebel against, or assault his master, any judge or justice of the peace, on complaint made, and sufficient cause shown on oath by the master, or any one on his behalf, shall issue a warrant, directed to any sheriff or constable within this state, or to any discreet or responsible person to be named in said warrant, commanding him to apprehend said apprentice, wherever he may be

found in this state, and to bring him before the court of the proper county, to be dealt with according to law. The said warrant shall be an authority to any sheriff or constable within this state, or other person named in the warrant, to execute the same in any part of the state.

§ 17. If upon the return of any such warrant, the county court shall not be in session, it shall be the duty of the person serving the same, to carry the apprentice before some judge or justice of the peace, of the said county, who shall take bail for the appearance of the apprentice at the next term of the court, to answer to the complaint of the master, or for want of bail, commit him or her to prison, until the sitting of the next court, unless the said master or mistress shall consent to his discharge, the costs of the process, service and commitment, shall be paid, in the first instance by the master, but the court upon final hearing, may order such apprentice to make retribution of such costs, by future services after the expiration of the term for which he shall have been bound.

§ 18. Every person who shall counsel, persuade, entice, aid or assist any apprentice to run away or absent himself, from the service of his master, or to rebel against, or assault his master, shall forfeit not less than twenty, nor more than five hundred dollars; to be sued for and recovered by action on the case with costs, by such master, in any court having jurisdiction thereof.

§ 19. Every person who shall entertain, harbor or conceal any apprentice, knowing such apprentice to be runaway, or to have absented himself from the service of his master without leave, shall forfeit one dollar for every day's entertainment, harboring or concealing, to be sued for and recovered by action of debt with costs, by such master, in any court having jurisdiction thereof.

§ 20. The executor, who by the last will of a father, is directed to bring up his child to some trade or calling, shall have power to bind such child by indenture, in like manner as the father if living might have done, or shall raise such child according to such direction.

§ 21. If it shall appear to any judge or justice of the peace, upon the oath of any competent person, that any master is about to remove, or cause to be removed, any apprentice out of this state, such judge or justice shall issue his warrant, and cause such master to be brought before him, and if, upon examination it appears, that such apprentice is in danger of being removed without this state, the judge or justice, may require the master to enter into recognizance with sufficient security, in the sum of one thousand dollars, conditioned that such apprentice shall not be removed without the state, and the said master will appear with the apprentice, before the county court at the next term thereof, and abide the decision of the court therein; which recognizance shall be returned to the county court, and the court shall proceed therein in a summary manner, and may discharge or continue the recognizance, or may require a new recognizance, and otherwise proceed according to law and justice.

§ 22. If the master, when brought before any judge or justice, fail to enter into a recognizance, when required so to do, such judge or justice shall commit the custody of such apprentice to some other proper person, who will enter into recognizance.

§ 23. Whenever any master of an apprentice, shall wish to remove out of this state, or to quit his trade or business, he shall appear with his apprentice before the county court of the proper county, and if the court be satisfied, the master has done justice to said apprentice for the time he has had charge of the same, such court shall have power to discharge such apprentice, from the service of such master, and again bind him, if necessary, to some other person.

§ 24. When any person shall become bound as an apprentice, to two or more persons, and one or more of them die before the expiration of the term of service, the indentures shall survive to and against such survivor, and in case of the death of all the masters in any such indenture, before the expiration of the term of service, the executor or administrator shall bring the indenture, and apprentice therein named, before the county court of the proper county, and such court shall, if necessary, again bind such apprentice, to some other person.

§ 25. If any apprentice shall absent himself from the service of his master without leave, or shall runaway, so that the master shall be deprived of his service, during the remainder of the time, or any part thereof, for which he was bound to serve, the master of such apprentice, may have an action on the case in any court of competent jurisdiction, against such apprentice, after he arrives at full age, for the damages that such master may have sustained, by reason of the absence of such apprentice; such action shall be brought within two years after such apprentice arrive at full age.

Approved, March 17th, 1835.

ARBITRATIONS.

An act concerning arbitrations and references.

- § 1. Who may submit; what matters; how.
2. Arbitrators to appoint time, &c. for hearing; to notify parties; may adjourn, &c.
3. Oath of arbitrators.
4. Attendance of witnesses how compelled; power of arbitrators during the hearing of the cause.
5. All the arbitrators to meet; when majority may award.
6. Award how to be authenticated.
- 7 & 8. How award to be confirmed; proceedings of the court thereon.
9. Grounds on which parties may move to vacate award.
10. When motion may be made to modify or correct award.
11. Motions to vacate or modify award, when made, &c.
12. Powers of court; when to direct a new hearing.
13. Judgment when and how to be rendered.
- 14 & 15. Costs, when and how taxed and collected.
16. Effect and extent of the judgment.
17. Record of judgment to be made, its form.
18. Writ of error or appeal on judgment, proceedings thereon.
19. Costs on vacating award, payment how enforced.
20. Error or appeal on order vacating award, return and proceedings.
21. Proceedings of court on reversing order.
22. Powers of chancery and certain actions, not to be affected by this act.
23. When submission cannot be revoked; action on bond, &c.
24. Proceedings in action; damages to be recovered.

25. No other than the damages specified to be recovered.
26. Referees appointed in pursuance of any order of reference, shall proceed, &c.
27. Referees to appoint time, &c. for hearing; may adjourn, &c.
28. Oath of referees.
29. Referees same authority as arbitrators, by the 4th section of this act.
30. All the referees to meet; majority may report, &c.
31. Power of the court over the referees.
32. If the report of the referees be confirmed, judgment thereon.
33. Fees of witnesses and other officers to be paid, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. All persons except infants, married women and persons of unsound mind, may, by an instrument in writing, submit to the decision of one or more arbitrators, any controversy existing between them, which might be the subject of an action at law, or a suit in equity, and may in such submission, agree that a judgment of any circuit court, to be designated in such submission, shall be rendered upon the award made, pursuant to such submission.

§ 2. The arbitrators thus selected, shall appoint a time and place for the hearing, and notify the parties thereof, and shall adjourn the hearing from time to time as may be necessary, and on the application of either party, and for good cause, may postpone the hearing to a time, not extending beyond the day fixed in the submission for rendering the award.

§ 3. Before proceeding to hear any testimony, the arbitrators shall be sworn, faithfully and fairly to hear and examine the matter in controversy, and to make a just award according to the best of their understanding.

§ 4. The arbitrators shall have the same authority to issue subpoenas for witnesses, and to compel their attendance by attachment, to administer oaths and punish contempts, committed in their presence, during the hearing of the cause, that shall be given by law to justices of the peace.

§ 5. All the arbitrators must meet together and hear all the proofs and allegations of the parties, pertinent or material to the cause; but an award made, and every other act done by a majority of them shall be valid, unless the concurrence of all the arbitrators, or of a certain number of them to such award or act, be expressly required in the submission.

§ 6. To entitle an award to be enforced, according to the provisions of this act, it must be in writing, subscribed by the arbitrators making the same, and attested by a subscribing witness thereto.

§ 7. Upon such submission, and the award made in pursuance thereof being proved, the court designated in the submission, shall, upon motion, by an order in open court, confirm the award, unless the same be vacated or modified, or a decision thereon be postponed as herein provided.

§ 8. No award shall be so confirmed, unless a copy thereof, together with a notice in writing of such motion, shall have been served on the adverse party, at least fifteen days before the making of the same, if such party be found, or if not, left at his usual place of abode, with some free white member of the family above the age of fifteen years; and no such motion shall be entertained after the expiration of one year from the publication of the award.

§ 9. Any party complaining of such award, may move the court designated in such submission, to vacate the same, upon either of the following grounds:

First, That such award was procured by corruption, fraud, or other undue means.

Second, That there was evident partiality or corruption, in the arbitrators, or either of them.

Third, That the arbitrators were guilty of misconduct, in refusing to postpone the hearing upon sufficient cause shewn, or in refusing to hear any evidence pertinent or material to the controversy, or any other misbehaviour, by which the rights of any party, shall have been prejudiced.

Fourth, That the arbitrators exceeded their powers, or that they so imperfectly executed them, that a mutual, final and definite award, on the subject matter submitted, was not made.

§ 10. Any party to such submission, may also move the court designated therein, to modify or correct such award, in the following cases:

First, Where there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing, or property, referred to in such award.

Second, Where the arbitrators shall have awarded upon some matter, not submitted to them, not affecting the merits of the decision upon the matter submitted.

Third, Where the award shall be imperfect in some matter of form, not affecting the merits of the controversy; and where, if it had been a verdict, such defect could have been amended, or disregarded by the court, according to the provisions of law.

§ 11. Every such application to vacate or modify an award, shall be made to the circuit court designated in the submission, at the next term after the publication of such award, upon at least ten days previous notice in writing to the adverse party, if there be time for that purpose, and if there be not time, such court or any judge thereof, may upon good cause shewn, order a stay of proceedings on such award, either absolutely, or upon such terms as shall appear just, until the term of the court, next after such first term.

§ 12. On such application, the court may vacate such award, in any of the cases herein before specified; and if the time within which such award shall have been required to be made by the submission, has not expired, may in their discretion, direct a rehearing by the arbitrators, and in the cases herein before specified, the court may modify and correct such award, so as to affect the intent thereof, and to promote justice between the parties.

§ 13. Upon such award being confirmed or modified, the court shall render judgment in favor of any person, to whom any sum of money shall have been awarded, that he recover the same, and if the award, shall have ordered any act to be done, by either party, judgment shall be rendered that such act be done according to such order.

§ 14. The costs of the proceedings, after an application to the circuit court for its action upon the award, and the fee allowed by law to the arbitrators, (where no provision for the payment of such fees is made in the award) shall be taxed and collected as in suits at law; but no costs shall be taxed for any other services or expenses, prior to such application.

§ 15. The arbitrators may ascertain the costs incurred in the proceedings before them, and make such order in their award, touching the payment thereof, as to them shall seem just.

§ 16. Such judgment shall have the same force and effect, in all respects, as the judgment of the same court, in actions, and shall be subject to all the provisions of law applicable to the judgments of such court in actions.

§ 17. The record of such judgment, when drawn up in form, shall recite the submission, state the hearing before the arbitrators, their award, the proceedings of the court thereon in modifying or confirming such award, and the judgment of the court for the recovery of the money awarded, and that the parties perform the acts ordered by the award, and for the recovery of the costs allowed.

§ 18. When any writ of error or appeal shall be taken to such judgment, copies of the original affidavits upon which any application in relation to such award was founded, and of all other affidavits and papers relating to such application, shall be annexed to form a part of, and be returned with, the record of the judgment; and the court to which such writ of error or appeal shall be taken, shall reverse, modify or amend, or affirm such judgment, or any part thereof, according to justice.

§ 19. If upon any application made pursuant to the provisions of this act, the court shall vacate any award of arbitrators, costs shall be awarded to the prevailing party, and be collected as in other similar cases.

§ 20. Upon every such order vacating an award, the party aggrieved may take a writ of error, or an appeal, as upon any other judgment of such court, and thereupon copies of such order and of all affidavits and papers used on such application, shall be certified to the court, to which such appeal or writ of error is taken, and such court shall affirm or reverse such order, as shall be just.

§ 21. If such order be reversed, the proceedings shall be remitted to the court from which they were removed, to proceed thereon, or the court to which such proceedings may have been returned may proceed thereon, after due notice to the party complaining of such award, to modify or confirm the same in the same manner and with the like effect, as if the application for that purpose had been originally made to such court.

§ 22. Nothing contained in this act shall impair, diminish, or in any way affect, the authority of a court of equity over arbitrators' awards, or the parties thereto; nor to impair or affect any action upon any award, or upon any bond or other engagement, to abide by any award.

§ 23. Whenever any submission to arbitration shall be revoked by a party thereto, before the publication of the award, the party so revoking, shall be liable to an action by the adverse party, to recover all the costs, expenses and damages, in preparing for such arbitration. But neither party shall have power to revoke

the powers of the arbitrators, after the cause shall have been submitted to them, upon a hearing of the parties, for their decision.

§ 24. If the submission so revoked was contained in the condition of any bond, the obligee in such bond shall be entitled to prosecute the same, in the same manner as other bonds with conditions, other than for the payment of money, and to assign such revocation as a breach thereof, and for such breach he shall recover as damages, the costs and expenses incurred, and the damages sustained by him, in preparing for such arbitration.

§ 25. No other sum, penalty, forfeiture or damages, shall be recovered for any revocation of a submission to arbitration, than such as are prescribed in the two last sections, notwithstanding any stipulated damages, penalty or forfeiture, contained in such submission, or in any other instrument, or agreement collateral thereto.

§ 26. The referees appointed in pursuance of any order of reference, shall proceed, with diligence, to hear and determine the matter in controversy.

§ 27. They shall appoint a time and place for the hearing and notify the parties thereof, and shall adjourn the hearing from time to time, as may be necessary, and for good cause, they may postpone such hearing to a time not extending beyond the next term of the court in which the suit is pending, or where a longer time is given by the order of the court within which to report, not extending beyond such time.

§ 28. Before proceeding to hear any testimony in the cause, they shall be sworn faithfully and fairly to hear and examine the cause, and to make a just and true report, according to the best of their understanding.

§ 29. The referees shall have the same authority that is conferred by the fourth section of this act upon arbitrators.

§ 30. All the referees must meet together and hear all the proofs and allegations of the parties, but a report made, and every other act done by a majority of them shall be valid.

§ 31. The referees may be compelled, by the order of the court in which the case is pending, to proceed to the hearing, and to make report, and the court may require them to report their decision in admitting or rejecting any witness, or the deposition of any witness, in allowing or overruling any question to any witness, or the answer thereto, and all other proceedings by them, together with the testimony before them, and their reasons for allowing or disallowing any claim of either party.

§ 32. If the report of the referees be confirmed by the court, judgment shall be rendered thereon, in the same manner, and with the like effect, as upon the verdict of a jury.

§ 33. Witnesses shall receive the same fees for attending before arbitrators and referees, that shall be allowed them for attending before the circuit court, and sheriffs and all other officers, shall be entitled to the same fees for services performed in relation to arbitrations and references, that shall be allowed them in their respective courts.

Approved, March 10th, 1835.

A T T A C H M E N T S .

An act to provide for the recovery of debts by attachment.

ARTICLE I. Of attachment in the circuit court.

ART. II. Of attachments before justices of the peace.

A R T I C L E I .

Of attachment in the circuit court.

Sec. 1. When property of a debtor may be attached.

2. Proceedings to obtain attachment; declaration and affidavit filed, &c.
3. Original writs, form and effect of.
4. When separate writs may be issued to different counties.
5. Writs, how issued and returned, proceedings thereon.
6. Writs, how to be served.
7. Who shall be summoned as garnishees.
8. Defendant not summoned, how to proceed, &c. publication to be made.
9. Notice, when and how given; expense of, how paid.
10. If defendant fail to appear, judgment by default, &c.
11. Extent, operation and effect of the judgment.
12. Property or effects of one defendant attached, &c. how plaintiff may proceed.
13. Property of one defendant seized, &c. when cause shall not be delayed.
14. Property attached in any other persons hands than the defendant, may be retained, bond, &c. given.
15. Capias may issue against garnishee, how obtained.
16. What to be endorsed on the writ; service extent and effect of.
17. Return of the writ and proceedings, how made.
18. Liability of the officer on failing to return good and sufficient bond.
19. Plaintiff may exhibit interrogatories, &c. against garnishees.
20. Interrogatories, &c. when filed.
21. Interrogatories, &c. when and how served upon garnishee.
22. Garnishee notified, failing to answer, judgment by default.
23. Judgment by default, how rendered final, extent and effect of, against garnishee.
24. Answer of garnishee excepted to, adjudged insufficient, proceedings thereon.
25. Answer of garnishee denied, &c., proceedings.
26. When the answer of garnishee shall be taken as true and sufficient.
27. On answer of garnishee, when judgment may be rendered; allowance to garnishee.
28. Costs, how settled between plaintiff and garnishee.
29. When garnishee may discharge himself by delivery of effects, &c.
30. Debts not yet due the defendant may be attached, &c.
31. Debt on bond note, &c. attached, assignee of, when and how notified, &c.
32. When and how persons may interplead; proceedings thereon.
33. Costs in case of interpleader, how adjudged.
34. Power of the court to prescribe rules of proceeding in attachment causes.
35. Proceedings to obtain attachment in aid of the ordinary process, &c.
36. Defendant not to be held to bail; when defendant may appear and plead to the merits.
37. In what cases attachments may be dissolved before final judgment.
38. In what cases and when bond and security to be given by plaintiff.
39. Failing to give bond attachment dissolved, proceeding thereon.
40. Perishable property may be sold, when.
41. Proceeds of sale to remain with the officer, how to be disposed of.
42. Order of sale, proceedings of the clerk and officer thereon.
43. In what cases plaintiff to give bond before execution can issue, &c.
44. Within what time and how judgment on constructive notice may be resisted.
- 45 to 50. Proceedings on petition of defendant to set aside judgment by default.
51. On judgments in attachment, how executions may be awarded.
52. Compensation to officer, &c. keeping property attached.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1 Creditors whose demands amount to fifty dollars, or more, may sue their debtors in the circuit court, by attachment, in the following cases:

First, Where the debtor is not a resident of, nor residing in this state.

Second, Where the debtor has absconded or concealed himself, or so absented himself from his place of abode, that the ordinary process of law cannot be served upon him.

Third, Where the debtor is about to remove his property out of the state, so as to hinder or delay his creditors.

Fourth, Where there is good reason to believe that the debtor is about fraudulently to remove, convey or dispose of his property or effects, so as to hinder or delay his creditors.

§ 2. Any creditor wishing to sue his debtor by attachment, may file in the clerk's office of the circuit court of any county in the state, a declaration, or other lawful statement of his cause of action, and also an affidavit of himself, or some other credible person, stating that the defendant is justly indebted to the plaintiff, after allowing all just credits and set-offs, in a sum (above fifty dollars,) to be specified in the affidavit, and also stating the belief of the affiant, of the existence of one or more of the facts, which under the provisions of the first section, would entitle the plaintiff to sue by attachment, and thereupon such creditor may sue out an original attachment against the lands, tenements, goods, monies, effects, and credits of the debtor, in whosesoever hands they may be.

§ 3. Original writs of attachment shall be in the form now used, and allowed in the courts of this state, with the addition of a clause of the nature and to the effect of an ordinary summons, to answer the action of the plaintiff.

§ 4. When there are several defendants who reside or have property in different counties, and when a single defendant in any such action, has property or effects, in different counties, separate writs may be issued to every such county, and every such suit shall be endorsed upon or annexed to a copy of the declaration.

§ 5. Original writs of attachment shall be issued and returned in like time and manner as ordinary writs of summons, and when the defendant is summoned to answer the action, the like proceedings shall be had between him and the plaintiff, as in ordinary actions on contracts, and a general judgment may be rendered for or against the defendant.

§ 6. The manner of serving writs of attachment, shall be as follows:

First, The writ and declaration, shall be served upon the defendant as an ordinary summons.

Second, Garnishees shall be summoned by the sheriff or other officer having charge of the service of the writ, declaring to them, that he does summon them to appear at the return day of the writ, to answer the interrogatories which may be exhibited by the plaintiff, and by reading the writ to them, if required.

Third, When lands or tenements are to be attached, the officer shall briefly describe the same in his return, stating the quantity and situation,

and declare that he has attached all the right, title and interest, of the defendant in the same, or so much thereof as may be sufficient to satisfy the debt, interests and costs, and shall moreover give notice to the actual tenants, if any, at least ten days before the return of the writ, and state the fact of such notice and the names of the tenants, in his return.

Fourth, When goods and chattels, money, or evidences of debt, are to be attached, the officer shall seize the same and keep them in his custody, if accessible, and if not accesible, he shall declare to the person in possession thereof, that he attaches the same in his hands, and summon such person as a garnishee.

When the credits of the defendant are to be attached, the officer shall declare to the debtor of the defendant, that he attaches in his hands, all debts due from him to the defendant, or so much thereof as shall be sufficient to satisfy the debt, interests and costs, and summon such debtor as a garnishee.

§ 7. All persons shall be summoned as garnishees, who are named as such in the writ, and such others as the officer shall find in possession of goods, money or effects of the defendant, not actually seized by the officer, and debtors of the defendant, and also such as the plaintiff or his attorney, shall direct.

§ 8. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear and answer the action at the return term of the writ, and within the first six days thereof, the court shall order a publication to be made, stating the nature and amount of the plaintiff's demand, and notifying the defendant that his property has been attached, and that unless he appear at the next term and on or before the third day thereof, judgment will be rendered against him, and his property sold to satisfy the same.

§ 9. The notice required in the last section shall be published four weeks in some newspaper printed in this state, in such time as the court may appoint; the necessary expense of which shall be taxed as other costs.

§ 10. When the defendant shall be notified as aforesaid, and shall not appear and answer the action, judgment by default may be entered, which may be proceeded on to final judgment, in like manner as in ordinary actions.

§ 11. Such judgment shall bind only the property and effects attached, and no execution shall issue against any other property of the defendant, nor against his body, nor shall such judgment be any evidence of debt against the defendant in any subsequent suit.

§ 12. When two or more shall be defendants in any attachment cause, and the property or effects, if part of them shall be attached in the hands of the garnishees, but not actually seized nor secured by bond, the plaintiff may, at his option, proceed against those whose property has been attached, or continue the cause, and sue out new process against the other defendants.

§ 13. But when the property of one or more of the defendants has been actually seized or secured by bond, the cause shall not be delayed for the purpose of suing out new process against the other defendants, unless upon good cause shewn, the court shall so order.

§ 14. The property of the defendant, found in the hands of any person other than the defendant, shall be attached, such person may retain the possession by giving bond and security to the satisfaction of the officer executing the writ, to the sheriff, his successor or assigns, in double the value of the property attached, conditioned that the same shall be forthcoming when and where the court shall direct, and shall abide the judgment of the court.

§ 15. When any plaintiff in attachment shall, in addition to the affidavit herein before required, file in the clerk's office, his own affidavit, or that of some other credible person, stating that any person in the county, other than the defendant, has in his hands or possession, or under his control, any property or effects of the defendant, and showing the kind, quantity and value thereof, or stating that such person is indebted to the defendant in a sum above fifty dollars, the amount to be specified in the affidavit, and stating moreover such circumstances as shall satisfy the clerk, that the debt of the plaintiff will be endangered by reason that such person is about to remove or secrete the property or effects, or if a debtor of the defendant, that he is about to abscond or leave the state not to return, the clerk shall make an order for the insertion of a clause of *capias* in the writ of attachment, and shall insert it accordingly.

§ 16. The clerk shall endorse on the writ the amount of the bond to be taken of the garnishee, and the like proceedings shall be had and the like bond (as near as may be) may be taken, as on ordinary writs of *capias ad respondendum*. The arrest of the garnishee shall be an attachment of the property, effects and credit, of the defendant in his hands, or owing by him; and shall operate as a summons to answer interrogatories as herein after provided for.

§ 17. The officer executing any writ of attachment shall return with the writ all bonds taken by him in virtue thereof, and a schedule of all property and effects attached, and the names of all the garnishees, with the times and places when and where respectively arrested or summoned.

§ 18. If the officer fail to return a good and sufficient bond, in any case where bond is required or allowed by this article, the court may, upon motion of the plaintiff, rule the officer to file a good and sufficient bond to be judged of, by the court, on or before the first day of the next term, and in default thereof, such officer shall be held and considered as security for the performance of all acts and the payment of all monies, to secure the performance and payment of which such bond ought to have been taken; and he and his securities shall be liable therefor on his official bond. But no such motions shall be made unless at the return term and within the first six days thereof.

§ 19. The plaintiff may exhibit in the cause, written allegations and interrogatories, touching the property, effects, and credits attached in the hands of any garnishee owing by him, and require such garnishee to make full, direct and true answers to the same, upon oath.

§ 20. The allegations and interrogatories shall be filed at the return term of the writ and within the first three days thereof, and not afterward, unless upon good cause shewn, the court shall order otherwise.

§ 21. The plaintiff shall cause every garnishee to be served with a copy of the allegations and interrogatories, which he is required to answer, within thirty days after the end of the return term, if such garnishee can be found in the county, in which he was arrested or summoned, and if not found in that county, the plaintiff shall cause a copy thereof to be stuck up at the court house door of the county in which the suit is pending, within thirty days after the end of the return term, which shall be equivalent to actual service. Such copies may be served and proved as other notices are required by law to be served and proved.

§ 22. Every garnishee being notified as aforesaid, shall exhibit and file his answer on oath at the next term, and on or before the third day thereof, and in default thereof, the plaintiff may take judgment by default against him, or the court, upon motion, may compel him to answer by attachment of his body.

§ 23. Such judgment by default may be proceeded on to final judgment, in like manner as in case of defendants in actions upon contracts, but no final judgment shall be rendered against the garnishee, until there shall be final judgment against the defendant, and in no case for a greater amount than the demand of the plaintiff, with interest and costs; nor for a greater amount than the garnishee shall appear to be liable for to the defendant.

§ 24. The plaintiff may except to the answer of any garnishee for insufficiency, and if the same shall be adjudged insufficient, the court may allow the garnishee to amend his answer in such time and on such terms as shall be just, or the plaintiff may take judgment by default, or move the court to attach the body of the garnishee to compel a sufficient answer.

§ 25. The plaintiff may deny the answer of the garnishee, in whole or in part, and the issues shall be tried as ordinary issues between plaintiffs and defendants. And if on such trial, property or effects of the defendant be found in the hands of the garnishee, the value thereof shall be assessed and the judgment shall be for the proper amount in money.

§ 26. If the answer of the garnishee be not excepted to, nor denied in proper time, it shall be taken to be true and sufficient.

§ 27. If by the answer not excepted to, nor denied, it shall appear, that the garnishee is possessed of property or effects of the defendant, or is indebted to the defendant, the value of the property or effects, or of the debt being ascertained, judgment may be rendered against the garnishee; and in such case, the court may make him a reasonable allowance for his trouble in answering, to be paid out of the fund confessed in his hands.

§ 28. In all cases of controversy between the plaintiff and garnishee, said parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

§ 29. Whenever any property, effects, money, or debts, belonging or owing to the defendant, shall be confessed or found by the court or jury against the garnishee, he may, at any time before final judgment, discharge himself by delivering the same to the sheriff.

§ 30. Debts not yet due to the defendant may be attached, but no execution shall be awarded against the garnishee for debts, until they shall become due.

§ 31. Whenever any debt accruing upon bond, note, or other assignable security, shall be attached in the hands of the debtor, such garnishee may give a written notice of the attachment to any person who may claim an interest in such debt by assignment, if within the state, fifteen days, and if without the state, sixty days before the hearing or trial of the garnishment, and the person so notified may interplead in the cause, and if written proof of the service of the notice be made to the satisfaction of the court and noted of record before the trial, such person shall be bound by the judgment.

§ 32. Any person claiming property, money, effects, or credits attached, may interplead in the cause, and issues may be made upon such interpleader, and shall be tried as like issues between plaintiff and defendant, and without any unnecessary delay, and no judgment shall be rendered against the garnishee, in whose hands the same may be, until the interpleader shall be determined.

§ 33. In all cases of interpleader, cost may be adjudged, for or against either party, as in ordinary actions.

§ 34. The circuit court may, by rule, prescribe the time and manner of excepting to and denying the answers of garnishees, of interpleading, of exhibiting or filing any papers, or taking any needful step in any attachment cause, when the time and manner of doing the same are not prescribed in this article.

§ 35. Any creditor having sued his debtor in any action of debt, covenant or trespass on the case on promises, by summons, and with original attachment, may, at any time pending such suit, and before final judgment therein, file in the office of the clerk of the court in which the suit is pending, such affidavit as is required by the second section of this article, for any original attachment, and sue out a writ or writs of attachment against the property, effects and credits, of the defendant, which writ shall be entitled in the cause pending, and be in aid thereof. The form of such writ shall, as well as may be, conform to that of original attachments; they shall be served and returned in the same manner, and the like proceedings shall be had thereon, as are required or allowed on original attachments, in all things as near as may be.

§ 36. No defendant in attachment shall be arrested or held to bail, and every defendant, not served with a summons, may, at any time before final judgment against him, appear and plead to the merits of the action, on such terms as the court may direct.

§ 37. Attachments may be dissolved, on motion made in behalf of the defendant, at any time before final judgment, in the following cases:

First, Where the affidavits on which the same were founded shall be adjudged by the court insufficient. But no attachment shall be dissolved in such case, if the plaintiff shall file a good and sufficient affidavit to be approved by the court, in such time and manner as the court shall direct.

Second, Where the defendant shall appear and plead to the action, and give bond to the plaintiff, with good and sufficient security, to be approved by the court, in double the amount of the property, effects and credits attached, conditioned that such property, effects and credits shall be forthcoming, and abide the judgment which shall be rendered in the cause, when and where the court shall direct; and

Third, Where the defendant shall appear and plead to the action, and give like bond and security, in a sum sufficient to satisfy the debt sworn to in behalf of the plaintiff, with interests and costs of suit, conditioned that the defendant will pay to the plaintiff the amount which may be adjudged in favor of the plaintiff, interest, and all costs of suit, on or before the first day of the term next after that at which judgment shall be rendered.

§ 38. At any time after the return of a writ of attachment, the court may, upon motion of the defendant, or any garnishee, and for good cause, rule the plaintiff to give bond and security to the sheriff, or other officer serving the writ, the amount of the bond and the solvency of the obligors to be judged of and approved by the court, conditioned that the plaintiff shall prosecute his suit with effect and without delay, and that he will pay all damages which may accrue to the defendant or any garnishee, in consequence of the attachment.

§ 39. If the plaintiff fail to give such bond in the time required by the rule, the attachment shall be dissolved, and he shall pay all costs occasioned thereby; and if the defendant has been summoned, or appeared to the action, the same shall proceed as if the original process had been a summons only.

§ 40. When property shall be actually seized, which is likely to perish or depreciate in value before the probable termination of the suit, or the keeping of which would be attended with much loss or expense, the court, or the judge in vacation, may order the same to be sold by the sheriff or other officer having charge of the property, and the sale shall be conducted in like manner, as near as may be, as sales of goods under writs of *feri facias*.

§ 41. The proceeds of such sales shall remain in the hands of the officer, subject to be disposed of as the property would have been subject, if it had remained in specie.

§ 42. The order of sale, when made in vacation, shall be delivered to the clerk of the court and filed in the cause; and the clerk shall deliver to the officer having charge of the property, a copy of every order of sale, whether made in term or vacation, and such officer shall make return thereof to the court, at such time as shall be expressed in the order showing how he has executed the same, and what funds remain in his hands.

§ 43. In cases where the judgment is rendered against the defendant, upon publication of notice without service of a summons, or his appearance to the action, no execution shall be awarded, until the plaintiff, or some person for him, shall give a bond in favor of the defendant, to be approved of by the court, in double the amount of the judgment, conditioned, that if the defendant shall, within three years from the

date of the bond, appear in such court, disprove or avoid the debt or damages adjudged against him, or any part thereof, the plaintiff shall pay and refund to the defendant all such moneys as shall appear to have been received and collected by, and not justly due to him, together with such damages as may be assessed.

§ 44. In order to disprove or avoid the debt or damages, as mentioned in the preceding section, the defendant may petition the circuit court in which the judgment was rendered, at any time within three years from the date of the bond, and not afterwards, setting forth the grounds on which he resist the demand of the plaintiff, and furnish the plaintiff with a copy of the petition fifteen days before the same shall be presented, with a written notice, endorsed on the copy, of the day and place when and where the petition will be presented.

§ 45. If the petition deny the cause of action on which the judgment was rendered, and be verified by the oath of the petitioner, the plaintiff shall be required to prove the same; and, in default thereof, it shall be adjudged that the debt and damages are disproved and avoided.

§ 46. If the petition denying cause of action be not verified by oath, or if the petition allege a set off, or other collateral avoidance of the original cause of action, the petitioner shall be required to prove his allegations, and on his failure to do so, his petition shall be dismissed and the original judgment shall stand absolute; and if any part thereof remain unpaid, a general judgment shall be rendered against him for the balance remaining unpaid.

§ 47. When any such petition shall be exhibited, the plaintiff, being served with a copy and notice as aforesaid, shall appear and answer the same, and on his failure to do so, the petition shall be taken to be true, and judgment rendered accordingly.

§ 48. When the petition alleges a set off, or other collateral avoidance of the cause of action, the plaintiff may answer or plead to the same as in ordinary actions, and in default of such answer or plea, judgment may be taken in like manner and with like effect, as in ordinary actions on contracts.

§ 49. All issues joined by, or under such petitions, shall be tried as like issues joined in ordinary actions on contracts.

§ 50. The costs in proceedings on such petitions shall be the same as in ordinary actions, and the same judgment shall be rendered for them. And if the judgment be against the original plaintiff, he shall be adjudged also to pay all costs in the original proceedings.

§ 51. Executions may be awarded, and issues on judgments in attachment causes, according to the circumstances of each case, as follows:

First, Where there is a general judgment against the defendant, the execution shall be a common *feri facias*, which may be levied upon all the property of the defendant (subject to execution,) whether attached in the cause or not.

Second, Where there is a special judgment against the property, money, or effects, attached, the execution shall be a special *feri facias* against such property, money or effects, only, and may be levied upon the

same, whether in the hands of the officer, or secured by bond, as provided in this article.

Third, Where the judgment is against a garnishee the execution shall be such as may be used and allowed in the same court, on general judgment, in common actions on contracts.

§ 52. When property shall be seized on attachment, the court may allow to the officer having charge thereof, such compensation for his trouble and expenses in keeping the same, as shall be reasonable and just.

ARTICLE II.

Of attachment before justices of the peace.

- Sec. 1. In what cases attachments may be sued out.
2. Proceedings to obtain attachment, affidavit, &c. to be filed.
 3. Form of writ of attachment.
 4. Writs of attachment, how issued and returned.
 5. Writs of attachment, how served, &c.
 6. Property attached in the hands of any person other than defendant, may be retained, bond, &c.
 7. Property seized, bond may be given by whom; condition of the bond.
 8. Property liable to perish may be sold; proceedings of the justice.
 9. Defendant not summoned nor appearing, &c., how justice to proceed.
 10. Notice to defendant of attachment, when and how given, proof of, how made.
 11. Defendant failing to appear, judgment by default, how made final.
 12. Extent and effect of the judgment and execution thereon.
 13. How, and when attachments may be dissolved.
 14. Effect of dissolving attachment, proceedings thereafter.
 15. What interrogatories shall be answered by the garnishee.
 16. Answer of garnishee to be taken down, filed, &c.
 17. Judgment by default against garnishee when, or may be attached.
 18. Final judgment against garnishee, when rendered.
 19. Plaintiff may deny answer of garnishee, &c., denial reduced to writing, filed, &c.
 20. Issues between plaintiff and garnishee how tried, proceedings thereon.
 21. When and how garnishee may be discharged, by surrendering effects, &c.
 22. When warrant may issue against garnishee, how obtained.
 23. Service of warrant, extent and effect of.
 24. May give bond for his appearance, &c., condition of the bond.
 25. If garnishee refuse to give bond, how justice to proceed.
 26. If on trial, garnishee has effects of defendant, to give bond, condition of the bond.
 27. In default of such bond, how justice to proceed.
 28. Proceedings of the justice, when no effects found in hands of garnishee.
 29. In what cases plaintiff to give bond, &c., before execution can issue.
 - 30, 31 & 32. Proceedings by petition of defendant to disprove or avoid the debt.
 33. Executions to be issued, effect and extent of.
 34. Compensation to officers, &c. for keeping property attached.

§ 1. Creditors whose demands, due upon bonds or notes, for the direct payment of money, amount to not more than one hundred and fifty dollars, and not less than five dollars; and creditors whose demands, due upon contracts other than bonds and notes, amount to not more than ninety dollars, and not less than five dollars, may sue their debtors by attachment, before a justice of the peace, in the following cases:

First, where the debtor is not a resident of, nor residing within, the state.

Second, where the debtor has absconded or concealed himself, or so absented himself from his place of abode, that the ordinary process of law cannot be served upon him.

Third, where the debtor is about to remove his property out of the state, so as to hinder and delay his creditors.

Fourth, where there is good reason to believe that the debtor is about fraudulently to remove, convey or dispose of his property or effects, so as to hinder or delay his creditors.

§ 2. Any such creditor wishing to sue his debtor by attachment, may apply to any justice of the peace, who would have jurisdiction of the debt if the suit were brought in the common form, and if the cause of action be a bond or note, shall file the same with the justice; and if it be any other kind of contract, shall file with the justice, a plain, intelligible account, or statement thereof, together with the affidavit of himself, or some other credible person, stating that the defendant is justly indebted to him, after allowing all just offsets and credits, in a sum above five dollars, shewing the amount in the affidavit, and also stating the belief of the affiant of the existence of one or more of the facts, which, under the first section of the article, would entitle the plaintiff to sue by attachment: and thereupon, the justice shall issue a writ of attachment against the property and effects of the defendant.

§ 3. The writ of attachment shall be in the form, or the effect following: "The state of Missouri, to the constable of the township of —, in the county of —, greeting: you are hereby commanded to attach C. D. by (all and singular) his goods, chattels, moneys, effects and credits, or so much thereof as shall be sufficient to satisfy the sum of —, (the sum sworn to) with interest and costs of suit, in whosoever hands or possession the same may be found in your township, so that he be, and appear before me, P. F., a justice of the peace, within and for the said township and county, at my office in said township, on the — day of —, A. D., 183 —, to answer A. B. of a plea of —, (state the nature of the action:) And that you summon the said C. D. to appear before me, the said justice, at the time and place aforesaid, to answer the action of the plaintiff; and also, that you summon as garnishees, all such persons, found in your township, as may be directed by the plaintiff or his agent, to appear before the said justice, at the time and place aforesaid, to answer such interrogatories as the justice may propound, and have you then there this writ. Witness my hand and seal, this — day of — A. D. 183 —. P. F., J. P. [SEAL.]

§ 4. Writs of attachment shall be issued and returned, in like time and manner as ordinary writs of summons: and when the defendant is summoned to answer, the like proceedings shall be had between him and the plaintiff, as in ordinary actions on contracts, and a general judgment may be rendered for or against the defendant.

§ 5. The manner of serving writs of attachment shall be as follows:

First, The writ shall be served upon the defendant as an ordinary summons.

Second, Garnishees shall be summoned by the constable, declaring to them that he does summon them to appear before the justice, at the return day of the writ, to answer the interrogatories which may be put to them by the justice, and by reading the writ of attachment to them, if required.

Third, When goods and chattels, money or evidences of debt, are to be

attached, the constable shall seize the same and keep them in his custody, if accessible, and if not accessible, he shall declare to the person in possession thereof, that he attaches the same in his hands, and summon such person as garnishee.

Fourth, When credits are to be attached, the constable shall declare to the debtor of the defendant, that he attaches in his hands all debts due from him to the defendant, or so much thereof as may be sufficient to satisfy the debt sued for, with interest and costs, and summon the debtor as garnishee.

§ 6. When property of the defendant, found in the hands or possession of any person, other than the defendant, shall be attached, such person may retain the possession thereof, by giving bond and security, to the satisfaction of the officer executing the writ, to the constable, his successors or assigns, in double the value of the property, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice.

§ 7. When property of the defendant shall be actually seized on attachment, the defendant, or any person for him, may obtain possession thereof, without dissolving the attachment, by giving to the constable a bond with good and sufficient security, in double the amount of property, conditioned that the property shall be forthcoming, when and where the justice shall direct, to abide the judgment which may be rendered in the cause.

§ 8. When property shall be seized on attachment, which is likely to perish, or depreciate in value before the probable end of the suit, or the keeping of which would be attended with much loss or expense, the justice may order the same to be sold by the constable, in the same manner, and on the same notice as goods are required to be sold on *feri facias*; and the proceeds of such sale shall remain in the hands of the constable, subject to be disposed of as the property would have been subject, if it had remained in specie.

§ 9. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order on his docket, requiring the plaintiff to give notice to the defendant, by four written or printed advertisements, set up at six of the most public places in the county, that a writ has been issued against him and his property, attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at his next law day, (stating the time and place) judgment will be rendered against him, and his property sold to pay the debt.

§ 10. Such notices shall be set up at least twenty days before the next law day of the justice; and the setting [up] thereof may be proved either by the return of the constable upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the cause.

§ 11. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, judgment by default may be entered, which may be proceeded on to final judgment, in like manner as in ordinary actions.

§ 12. Such judgments shall bind only the property and effects attached, and no

execution shall issue thereon against any other property of the defendant, nor against his body, nor shall any action be brought thereon.

§ 13. All attachments before justices of the peace may be dissolved on motion made in behalf of the defendant, in like cases and for the like causes as are provided in regard to attachment in the circuit court, by the thirty-seventh section of the first article of this act, and in no other cases.

§ 14. When any attachment shall be dissolved, all proceedings touching the property and effects attached, and the garnishees arrested, or summons, shall be vacated, and the suit proceed as if it had been commenced by a summons only.

§ 15. When any garnishee shall appear before the justice to answer the following interrogatories, and none other shall be propounded to him to be answered on oath:

First, At the time of the commencement of this suit, had you in your possession, or under your control, any goods, monies or effects, of the defendant? If so, state what property, how much, and of what value, and what money, or effects?

Second, At the time of the commencement of this suit, did you owe the defendant any money, or do you owe him any now? If so, how much, on what account, and when did it become due; and if not yet due, when will it become due? And any garnishee being summoned, may, at his option, appear and answer the interrogatories before the return day of the attachment.

§ 16. The justice shall write the answer of the garnishee to each interrogatory, separately, and file the answer as a paper in the cause.

§ 17. If any garnishee, being duly summoned, fail to appear at the proper time, or appearing, fail to make full and direct answers upon oath to the interrogatories, the plaintiff may take judgment against him by default, which may be proceeded on to final judgment, in like manner as in cases between plaintiff and defendant; or, at the option of the plaintiff, the justice shall attach the body of the garnishee until he shall make full and direct answers to the interrogatories.

§ 18. No final judgment shall be rendered against the garnishee, until there shall be final judgment against the defendant.

§ 19. The plaintiff may deny the answer of the garnishee, or any part thereof, on the same day on which the answer is made, if it be a regular law day, and if not, in such time as the justice shall direct; and the justice shall reduce to writing the denial, shewing what part is denied and what not denied, and file it as a paper in the cause.

§ 20. All issues between a plaintiff and a garnishee shall be tried as ordinary issues between plaintiff and defendant, and costs may be adjudged for or against either party, as in ordinary cases; and if upon the trial of any such issue, property or effects, shall be found in the hands of the garnishee, the justice or jury shall assess the value thereof, and the judgment shall be for the proper amount in money.

§ 21. Any garnishee having in his possession property, money or effects, of the defendant, may discharge himself by surrendering and paying the same, or so

much thereof as shall be sufficient to cover the debt, interest and costs, to the constable, and taking his receipt therefor, at any time before the final judgment against him.

§ 22. When any plaintiff, at the time he applies for an attachment, shall, in addition to the affidavit required by the second section of this article, file the affidavit of himself, or of some credible person, stating that any particular person in the township, other than the defendant, has in his hands any property, money or effects of the defendant, or is indebted to the defendant, shewing the kinds, quantity and value of the property, or the amount of the debt, (being above five dollars, and under ninety dollars,) and stating such circumstances as shall satisfy the justice that the debt of the plaintiff will be endangered, by reason that such person is about to remove or secrete the property, or, if a debtor of the defendant, that he is about to abscond or leave the state, not to return, the justice shall issue his warrant, commanding the constable to arrest such person, and bring him forthwith before the justice.

§ 23. Such arrest shall be an attachment of the property and effects, money and credits, of the defendant, in his hands, or due from him, and he shall be considered as a garnishee summoned to answer.

§ 24. Such garnishee, on being brought before the justice, may, at his option, enter into bond with good security, to be approved of by the justice, in favor of the plaintiff, and in such sum as the justice shall consider reasonable, conditioned that he will appear at the return of the attachment, and, upon oath, make full and direct answers to the interrogatories which may be propounded to him; that he will abide the final judgment in the cause, and pay whatever may be adjudged against him.

§ 25. But if such garnishee refuse or fail to give such bond, the justice shall require him to answer the interrogatories, and shall proceed, without delay, to determine the matter in controversy between the plaintiff and that garnishee.

§ 26. If it shall appear, either by the answer of the garnishee, or by the finding of the justice or a jury, that the garnishee has in his hands property or effects of the defendant, or is indebted to the defendant, the justice shall require him to give bond and security in favor of the plaintiff, in such sum as the justice shall direct, conditioned that the property and effects so confessed, or found in his hands, and the debt so due from him, or the value thereof, shall abide the final judgment in the cause, and shall be produced and delivered when, where, and to whom, the justice shall appoint.

§ 27. In default of such bond, the justice shall commit the garnishee to the common jail, until discharged by due course of law; nevertheless, the garnishee may be discharged by delivering and paying the property and money, according to the provisions of the twenty-first section of this article.

§ 28. If at the hearing before the justice, it shall not be found that such garnishee has in his hands property or effects of the defendant, or is indebted to the defendant to the amount of five dollars, the garnishee shall be discharged, and judgment shall be rendered in his favor against the plaintiff, for five dollars, and all the costs consequent upon the warrant, and execution to issue therefor without delay.

§ 29. In cases where the judgment is rendered against the defendant upon publication of notice, without service of a summons, or his appearance to the action, no execution shall be awarded, either against the defendant or garnishee, or property attached, until the plaintiff, or some person for him, shall give bond and security in favor of the defendant, to be approved of by the justice, in double the amount of the judgment, conditioned that if the defendant shall, within one year from the date of the bond, appear and disprove, or avoid the debt or damages adjudged against him, or any part thereof, the plaintiff will pay and refund to the defendant all such money as shall have been received by, and not justly due to him, together with all such damages as shall be assessed.

§ 30. The manner of disproving, or avoiding the debt, shall be by petition to the justice who gave the judgment, or his successor, or to the court, into which the record and papers may have been removed, stating the grounds on which he resists the claim of the plaintiff, giving to the plaintiff ten days notice of the time and place, when and where the petition will be presented.

§ 31. If the petition deny the original cause of action, and be supported by the oath of the petitioner, the plaintiff shall be required to prove his demand; and in default thereof, it shall be adjudged to be disproved and avoided, and the plaintiff shall pay costs of the petition, and of the original suit.

§ 32. If the petition allege a set off, or other collateral avoidance, the petitioner shall be required to prove the same; and in default thereof, shall be adjudged to pay costs, and a general judgment may be rendered against him for any balance remaining unpaid on the original judgment and the costs.

§ 33. Executions may be issued by the justices of the peace, in the same manner and with like effect, as is provided in the fifty-first section of the first article of this law, in regard to executions issued out of the circuit court.

§ 34. When property is seized on attachment, the justice may allow to the officer, having charge thereof, such compensation for his trouble and expenses, in keeping and maintaining the same, as shall be reasonable and just.

Approved, March 20th, 1835.

ATTORNEY GENERAL AND CIRCUIT ATTORNEY.

An act respecting attorney general and circuit attorney.

SEC. 1. Attorney general where to reside and keep his office.

2. Duties of attorney general.

3. Shall act as circuit attorney in the circuit where he resides.

4. Supreme court, or majority of judges in vacation, to appoint circuit attorney.

5. His residence and duties.

6. Shall give his opinion without fee to certain officers where the state or county is concerned.

7. In what cases he may be indicted and removed, or fined.

8. In case of the absence, sickness, &c. of attorney general or circuit attorney, circuit court may appoint some person to prosecute, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The attorney general shall reside and keep his office at the seat of government.

§ 2. When directed by the governor, he shall aid any circuit attorney in the discharge of his duties. When required, he shall give his opinion in writing, without fee, to the general assembly, or either house, upon any question of law, and to the governor, secretary of state, auditor, treasurer, and any circuit attorney, upon any question of law relating to their respective offices.

§ 3. He shall act as circuit attorney for the circuit in which the seat of government is, and in said circuit shall perform the duties required by law, of circuit attorneys.

§ 4. The supreme court, or a majority of the judges thereof, in vacation, shall appoint in each circuit, except that in which the seat of government is, a suitable circuit attorney, who shall be commissioned by the governor, and hold his office four years.

§ 5. He shall reside in his circuit; shall commence and prosecute all civil and criminal actions, in which the state, or any county in his circuit, may be concerned; defend all suits brought against the state, prosecute forfeited recognizances, and actions for the recovery of debts, fines, penalties and forfeitures, accruing to the state or any county in his circuit.

§ 6. He shall, without fee, give his opinion to any justice of the peace, and to any county court, or any justice thereof, in his circuit, if required, on any question of law, in any criminal case, or other case in which the state or any county is concerned, pending before such court or officer.

§ 7. Any circuit attorney may be indicted for misdemeanor in office, or neglect of duty, and punished by removal from office, or a fine not exceeding one thousand dollars, for the use of the county in which he is convicted, or both.

§ 8. If the attorney general, or circuit attorney, be interested, or shall have been employed as counsel in any cause, which it shall be his duty to prosecute or defend, the circuit court may appoint some other person to prosecute or defend the cause; and if the attorney general, or any circuit attorney, be sick or absent, the circuit court shall appoint some person to discharge the duties of the office, until the proper officer resume the discharge of his duties. The person thus appointed, shall possess the same power, and receive the same fees, as the proper officer would, if he were present.

Approved, January 5th, 1835.

ATTORNIES AT LAW.

An act concerning attornies at law.

- SEC. 1. No person to practice without license.
 2. Applicants for license to produce testimonials of good moral character, &c.; to be examined by one of the judges.
 3. Attornies to take an oath.

- Szc.** 4. Clerk to keep roll of attornies.
5. Practising without license, &c., punishable as for contempt.
6. May be stricken from the roll for certain causes.
7. Charges may be exhibited, and proceeding thereon before the supreme court.
8. Court to fix a day for hearing, &c., clerk to issue citation, &c.
9. Copy of charges and citation to be served, manner of service.
10. Failing to appear, may be enforced by attachment; or court may proceed ex parte.
11. When court may remove or suspend without trial.
12. When court shall suspend until the charges be enquired into.
13. When and in what cases the court shall discontinue the suspension.
14. What shall be conclusive of the fact charged; how the court to proceed.
15. When trial of the facts to be by a jury, when by the court.
16. Judgment of the court.
17. Bill of exceptions, appeals, and writs of error allowed, &c.
18. Extent and effect of judgment of removal or suspensions.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. No person shall practice as an attorney or counsellor at law, or solicitor in chancery in any court of record, unless he be a free white male, and obtain a license from the supreme court, or one of the judges thereof in vacation.

§ 2. Every applicant to practice law, shall produce satisfactory testimonials of good moral character, and undergo a strict examination as to his qualifications, by one of the judges.

§ 3. Every person obtaining license, shall take an oath, or affirmation, that he will support the constitution of the United States, and of this State, and faithfully demean himself in his practice to the best of his knowledge and ability. The oath shall be filed in the office of any clerk of the supreme court, and a certificate thereof shall be endorsed on his license.

§ 4. Each clerk shall keep a roll of attornies, which shall be a record of the court.

§ 5. If any person shall practice law in any court of record without being licensed, sworn and enrolled, [he] shall be considered guilty of a contempt of court, and punished as in other cases of contempt.

§ 6. Any attorney or counsellor at law, who shall be guilty of any felony, or infamous crime, or of improperly retaining his client's money, or of any mal-practice, deceit, or misdemeanor in his professional capacity, may be removed or suspended from practice upon charges exhibited, and proceedings thereon had as hereinafter provided.

§ 7. Such charges may be exhibited and proceedings thereon had, in the supreme court of the district, or the circuit court of the county in which the offence shall have been committed, or the accused resides.

§ 8. The court in which such charges shall be exhibited, shall fix the day for the hearing, allowing a reasonable time; and the clerk shall issue a citation accordingly, with a copy of the charges annexed, which may be served in any county in the state.

§ 9. The copy of the charges, and citation, shall be served in the same manner as a declaration and summons in civil action, a reasonable time before the return day thereof.

§ 10. If the party served with a citation, shall fail to appear according to the command thereof, obedience may be enforced by attachment, or the court may proceed *ex parte*.

§ 11. If the charges allege a conviction for an indictable offence, the court shall, on the production of the record of conviction, remove the person so convicted, or suspend him from practice, for a limited time, according to the nature of the offence, without further trial.

§ 12. Upon charges, other than as in the last section specified, the court shall have power only to suspend the accused from practice until the facts shall be ascertained in the manner hereinafter prescribed.

§ 13. If the charge be for an indictable offence, and no indictment be found, or being found, shall not be prosecuted to trial, within six months, the suspension shall be discontinued, unless the delay be produced by the absence or procurement of the accused, in which case the suspension may be continued until a final decision.

§ 14. The record of conviction or acquittal of any indictable offence, shall in all cases be conclusive of the facts, and the court shall proceed thereon accordingly.

§ 15. When the matter charged, is not indictable, a trial of the facts alleged shall be had in the court in which the charges are pending, which trial shall be by a jury; or, if the accused, being served with process, fails to appear, or appearing does not require a jury, by the court.

§ 16. In all cases of conviction, the court shall pronounce judgment of removal, or suspension, according to the nature of the facts found.

§ 17. In all cases of a trial of charges in the circuit court, the defendant may except to any decision of the court, and may prosecute an appeal or writ of error, in all respects as in actions at law.

§ 18. Every judgment or order of removal, or suspension, made in pursuance of this act, by the supreme court, or by any circuit court, shall operate while it continues in force as a removal or suspension from practice, in all the courts of this state.

Approved, February 18th, 1835.

AUCTIONS.

An act to license auctioneers, and impose a tax on licenses and sales.

- SEC. 1. No person to exercise the trade of a public auctioneer without license.
2. Penalty for selling, &c. without license.
 3. Clerk of the county court, at each term, to issue blank license.
 4. License to be under seal of county court, &c.; extent of license.
 5. Blank license to be delivered to the collector, to be charged with same.
 6. County court at every term to settle with the collectors for licenses delivered, &c.
 7. Collector to grant license on applications, when, &c.
 8. Rate of charges to be paid for licenses.
 9. Before license granted, applicant to give bond to the state; condition of the bond.
 10. Auctioneer may retail goods at his auction room, without license, as a vender of merchandize, &c.

- Exc. 11.** Tax to the state to be levied on sales at auction in certain cases.
12. Same duty to be paid where owner or auctioneer is the purchaser, as if sold to another person.
 13. Duties to be paid on the whole lot of goods, where part only is sold to fix the price.
 14. In what cases sales of property at auction shall be free of duty.
 15. Auctioneer to pay over the duties to collector, may retain same out of goods sold, &c.
 16. Auctioneers to render, on oath, accounts according to the condition of their bond, to the clerk of the county court of their respective counties.
 17. On account rendered, clerk to give auctioneer certificate, who shall pay the amount to the collector, &c.
 18. Clerk to charge the collector with amount received, to be certified to the auditor, &c.
 19. When the clerk shall endorse on bond of auctioneer, that the conditions have been fulfilled.
 20. When and by whom auctioneer to be prosecuted on his bond; effect of, &c.
 21. Duty of collectors under this law, to collect duties, prosecute, &c.
 22. License money and duties to be included in the annual statement of the collector of monies received on licenses.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. No person shall exercise the trade or business of a public auctioneer, by selling any goods or other property subject to duty under this law, without a license, to be issued according to law.

§ 2. Every person who shall exercise the trade or business of an auctioneer, without a license, shall forfeit, for every sale, five hundred dollars, together with the amount of the duty payable by law upon the property sold.

§ 3. The clerks of the respective county courts shall issue, at each term, as many blank auctioneer licenses for one, three and six months respectively, as the county courts shall direct.

§ 4. The licenses shall be under the seals of the respective county courts, and signed by the clerks, and shall authorize the persons to whom granted, to exercise the trade and business of auctioneer, by selling any property, real or personal, by auction, within the county, for the period of one, three or six months, as the court may direct.

§ 5. The clerk shall deliver the blank licenses so issued, to the collector of the counties respectively, and charge them with the amount thereof in a book to be kept for that purpose.

§ 6. The county court shall, at every term, settle with the collector for all blank licenses delivered to him, and not before accounted for, and give him credit for all blank licenses returned, and shall stand charged with all not returned; and, as soon as may be, he shall, under the direction of the county court, certify to the auditor of public accounts, the amount with which each collector stands charged, who shall charge such collector therewith.

§ 7. Each collector shall grant to any person, upon application, and upon compliance with the requirements of this law, an auctioneer license, for one, three or six months, and for that purpose shall fill up and countersign one of the blank licenses received from the clerk.

§ 8. There shall be levied upon every license, to be paid to the collector, before the delivery thereof, as follows:

First, on each license for one month, twenty-five dollars.

Second, on each license for three months, fifty dollars; and

Third, on each license for six months, one hundred dollars; and in each case

fifty cents as a fee to the clerk; but no person shall be permitted to sell goods of any kind at auction, unless he shall have resided in this state six months next preceding the time of making application.

§ 9. Before any license shall be granted, the applicant shall give bond to the state in a sum of not more than three thousand, nor less than five hundred dollars, with one or more sufficient sureties, (the amount of the bond and the sufficiency of the sureties to be determined by the collector,) with condition that he will, on the first Monday of February, May, August and November, in each year, while he shall continue the business of auctioneer, render to the clerk of the county court a true and particular account, in writing, of the aggregate amount in money, of all property subject to duty by this law, sold by him at auction, or sold at his auction store or rooms, at private sale: That is to say, first, from the date of the bond until such of the aforesaid days as shall ensue next thereafter, and thenceforth from the day to which an account shall last have been rendered, until such of the said days as shall next thereafter ensue, and so in succession from one of the said days to another, so long as he shall continue to exercise the business of an auctioneer; and also, shall pay all such sums of money, as shall be due to the state upon such sales, to the collector of the proper county; and the bond shall be filed in the office of the clerk of the county court.

§ 10. Any licensed auctioneer may sell or retail goods, at his auction store or rooms, so long as he continues the business of an auctioneer, without a license as vender of merchandise, so that he render true accounts of the sales, and pay the like duty thereon, as if such sales were made at auction.

§ 11. There shall be levied and paid upon all sales of property at auction, (except as hereinafter excepted,) a tax or duty to the state, at the following rates, in proportion to the prices for which the property shall be sold. First, on all sales of personal property, three per cent. Second, on all sales of real estates, or lease-hold interest in lands, one and a half per cent.

§ 12. In all cases where the auctioneer, or owner of the property sold, or any person employed by them, or either of them, shall become the purchaser, such sales shall be subject to the same duties as if any other person had become the purchaser.

§ 13. All sales at auction of any part or parcel of any merchandise or other property, with a design to ascertain and fix a price for the whole or any part thereof, without exposing the whole, or such other part to public sale, shall be deemed a sale at auction of the whole, or such part of the property, the price of which was designed to be fixed by such public sale of the part; and duties shall be paid thereon accordingly.

§ 14. Sales of property at auction, shall be free of duty in the following cases:

First, When directed by any statute of this state, or the United States.

Second, In execution of any order, judgment or decree of any court, or justice of the peace of this state, or court of the United States.

Third, In cases of bankruptcy, or insolvency, pursuant to any law of this state, or the United States.

Fourth, In consequence of any general assignment of property and effects, by any debtor, for the benefit of his creditors.

Fifth, Property of deceased persons, sold by authority of executors or administrators.

Sixth, Boats, vessels, rafts, lumber, and other property wrecked, stranded or found adrift, on any of the waters of, or adjoining, this state.

Seventh, Slaves, live stock, agricultural productions, farming utensils, and household and kitchen furniture, sold at the residence of the owner.

Eighth, Land or lease-hold interest therein, sold on the premises.

§ 15. The auctioneer shall pay over to the collectors of the proper counties, all the duties imposed by this law, and for that purpose may retain the amount thereof out of the proceeds of the property sold, and shall be allowed a commission of one per cent., on the amount so paid.

§ 16. Auctioneers shall render their accounts, according to the condition of their bonds, to the clerks of the county courts of the respective counties in which they carry on their business, and shall make oath or affirmation, before such clerks, to the best of their knowledge and belief, to the truth of every such account rendered; in default of which, such accounts shall not be deemed truly rendered, according to the condition of the bond.

§ 17. Upon such account being rendered, the clerk shall ascertain the amount of duties to be paid by the auctioneer, and give him a certificate thereof, and the auctioneer shall pay the same to the collector, within twenty days thereafter; and upon producing to the clerk the receipt of the collector for the amount, the clerk shall grant him a quietus therefor.

§ 18. The clerk shall charge the collector with the amount received, and certify the same to the auditor of public accounts, without delay, and the auditor shall charge the collector accordingly.

§ 19. When it shall appear to the satisfaction of the clerk of the proper county court, that any auctioneer has fulfilled the condition of his bond, and the requirements of this law, he shall endorse a certificate thereof upon the bond, which shall be *prima facie* evidence of the performance of the condition, down to that time.

§ 20. When any auctioneer shall fail to fulfil the condition of his bond, or the requirements of this law, the proper clerk shall cause him to be prosecuted on his bond; and if judgment shall be rendered against him, his license shall be thereby vacated, and he shall be incapable to receive a new license, unless by the express direction of the county court.

§ 21. It shall be the duty of the collectors in the several counties, to collect the duties imposed by this law, and to prosecute for all fines and forfeitures which may be incurred under it.

§ 22. The license money and duties accruing under this law, shall be included in the annual statement, required to be published by every collector, of monies received on licenses.

Approved, February 26th, 1835.

ADVERTISEMENTS.

An act concerning advertisements.

- Sec. 1. Publication of notices and advertisements to be proven by affidavit of publisher, with advertisement annexed.
2. Publication of advertisement to be paid for by the party having it done, and to be taxed as other costs. Advertisements made by public officer authorized by law, to be paid for out of county treasury.
3. Penalty for defacing, obliterating, tearing down, or destroying certain advertisements.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Where any notice or advertisement, be required by, or the order of, any court, to be published in any newspaper, the affidavit of the printer, or publisher, with a copy of such advertisement annexed, stating the number and date of the papers in which the same was published, shall be sufficient evidence of the publication therein set forth.

§ 2. Where any notice or advertisement, relating to any cause, matter or thing, in any court of record, shall have been duly published, the same shall be paid for by the party at whose instance the same was published, who shall exhibit his account therefor to the proper court, which, or so much thereof, as shall be deemed reasonable, may be taxed as other costs, or otherwise allowed in the course of the proceeding to which such advertisement relates; and when any such advertisement shall be made by a public officer thereunto authorized by law, the reasonable expense thereof shall be allowed, and paid out of the county treasury, as other demands and charges of the like nature.

§ 3. If any person shall intentionally deface, obliterate, tear down or destroy, before the expiration of the time for which the same shall have been set up, any copy, transcript or extract from any law of the United States, or of this state, or any proclamation, advertisement, or notification, set up at any place in this state, by authority of any law of the United States, or of this state, or by the order of any court, such person shall, on conviction thereof, by indictment, be fined in a sum not exceeding one hundred dollars, nor less than five dollars, to the use of the county in which the offence is committed, and may be imprisoned for any time, not exceeding thirty days, in the discretion of the court.

Approved, December 22d, 1834.

NOTE.—The above law should have immediately followed the law respecting "Arbitrations," &c.

BANKS PRIVATE.

An act to suppress private bank notes.

- Sec. 1. No person, without authority of law, to issue notes, &c., as a circulating medium.
2. Punishment by fine and imprisonment.
3. Fifty dollars forfeiture for passing, &c. unlawful notes; how recovered.
4. Preceding section not to affect notes in certain cases.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. No person, unauthorized by law, shall intentionally create, or put in circulation, as a circulating medium, any note, bill, check or ticket, purporting that any money will be paid to the receiver or holder thereof, or that it will be received in payment of debts, or to be used as a currency, or medium of trade, in lieu of money.

§ 2. If any person issue, put into circulation, sign, countersign or endorse, any such note, bill, check or ticket, he shall be indicted, and fined not less than one hundred, nor more than three hundred dollars, and be imprisoned not less than twelve months.

§ 3. If any person, or company, vend, pass, receive or offer, in payment, any such note, bill or other currency, he shall forfeit fifty dollars, to be recovered by action of debt, with costs, to the use of any person who will sue for the same, before any justice of the peace of the county.

§ 4. The preceding section shall not effect any note issued by any bank, authorized by law, in this state, or the United States, except notes for a less sum than five dollars.

Approved, March 19th, 1835.

BILLIARD TABLES.

An act taxing billiard tables.

- Sec. 1. County courts to issue licenses for keeping, &c., delivered to the collector.
2. Collectors to grant license; tax on the same.
3. Collectors to be charged with licenses delivered; to settle with county court.
4. Courts to settle with collectors, and certify to the auditor.
5. Penalty for keeping without license.
6. Penalty for permitting minors to play on billiard tables, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The county courts shall have power to license keepers of billiard tables; and, at each term, the clerks of said courts shall prepare and deliver to the collectors of their respective counties, as many blank licenses for keepers of billiard tables as the respective courts shall direct; which blank licenses shall be signed by the clerk and attested by the seal of the court.

§ 2. The collectors shall grant, to any person who may apply for the same, a license to keep a billiard table in their respective counties, for six months, upon the payment by the applicant of one hundred dollars, as a state tax, and one dollar as a fee to the clerk who issued the same; and the collectors shall countersign all such licenses before delivering them to the applicants.

§ 3. The county courts shall charge the collectors with all such blank licenses delivered to them as aforesaid; and, at every regular term, shall settle with the collectors for all such licenses delivered to him, [them] and credit him [them] with all the blank licenses which he [they] may return. And at the same time, the collectors

shall pay to the clerks, respectively, one dollar for every such blank license not returned.

§ 4. The collectors shall stand chargeable with the amount of all licenses not returned, and the county courts, at each regular term, shall cause their clerks to certify to the auditor of public accounts, the amount with which the collectors stand chargeable, who shall charge the respective collectors accordingly.

§ 5. Every person who shall keep, or permit to be used or kept, any billiard table, without having a license therefor as aforesaid, shall forfeit and pay four hundred dollars, for the use of the state.

§ 6. Every licensed keeper of a billiard table, who shall suffer any person under the age of twenty-one years to play on his table, without the permission of the father, master, or guardian of such minor, first granted, shall forfeit and pay to the father, master, or guardian of such minor, for every such offence, fifty dollars.

Approved, December 18, 1834.

BILLS OF EXCHANGE.

An act concerning bills of exchange.

- SEC. 1. Acceptances of bills of exchange to be in writing and signed.
2. If acceptance be on separate paper, when, &c. to bind acceptors.
 3. When unconditional promise to accept, to be deemed acceptance.
 4. Refusal to accept on bill when required, deemed refusal to accept.
 5. Rights of drawers of bills on previous promise to accept, not affected.
 6. When destruction of bill or refusal to return it, deemed acceptance.
 7. Rate of damages on bills negotiated in this state and protested, &c.
 8. Rate of damages on bills drawn on persons in this state and accepted, but not paid.
 9. Notice of non-acceptance or non-payment, required by the two preceding sections, to be as at common law.
 10. The damages allowed by this act, shall be by the holder of the bill.
 11. When damages shall be recovered.
 12. Damages in lieu of interest, &c. to time of notice of non-payment.
 13. If bill payable in money of United States, rate of exchange not to be regarded.
 14. If payable in foreign currency, amount due to depend on rate of exchange.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. No person within this state shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself, or his lawful agent.

§ 2. If such acceptance be written on a paper, other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, in faith thereof, shall have received the bill for a valuable consideration.

§ 3. An unconditional promise in writing to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of every person to whom such written promise shall have been shewn, and who, upon the faith thereof, shall have received the bill for a valuable consideration.

§ 4. Every holder of a bill, presenting the same for acceptance, may require that

the acceptance be written on the bill, and a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

§ 5. The preceding sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, or his refusal to accept such bill.

§ 6. Every person upon whom a bill of exchange may be drawn, and to whom the same shall be delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such period as the holder may allow, to return the bill accepted, or non-accepted, to the holder, shall be deemed to have accepted the same.

§ 7. When any bill of exchange, expressed to be for value received, drawn or negotiated within this state, shall be duly presented for acceptance, or payment, and protested for non-acceptance, or non-payment, there shall be allowed and paid to the holder by the drawer and endorser, having due notice of the dishonor of the bill, damages in the following cases:

First, If the bill shall have been drawn on any person or persons, at any place within this state, at the rate of four per centum on the principal sum specified in the bill.

Second, If the bill shall have been drawn on any person, or persons, at any place out of this state, but within the United States, or the territories thereof, at the rate of ten per centum on the principal sum specified in the bill.

Third, If the bill shall have been drawn upon any person or persons, at any port or place without the United States and their territories, at the rate of twenty per centum on the principal sum specified in the bill.

§ 8. If any bill of exchange, expressed to be for value received, shall be drawn on any person at any place within this state, and accepted, and payment shall not be duly made by the acceptor, there shall be allowed and paid to the holder, by the acceptor, damages in the following cases:

First, If the bill be drawn by any person, at any place within this state, at the rate of four per centum on the principal sum therein specified.

Second, If the bill be drawn by any person, at any place without this state, but within the United States or their territories, at the rate of ten per centum on the principal sum specified in the bill.

Third, If the bill be drawn by any person, at a place without the United States and their territories, at the rate of twenty per centum, on the principal sum.

§ 9. The two preceding sections shall not be construed to require notice of non-acceptance, or non-payment, in any case where such notice is not required to be given at common law.

§ 10. The damages allowed by this act shall be recovered only by the holder of a bill, who shall have purchased or acquired the same, or some interest therein, for valuable consideration.

§ 11. In cases of non-acceptance or non-payment of a bill, drawn at any place

within this state, on any person at a place within the same, no damages shall be recovered if payment of the principal sum, with the interest and charges of protest, be paid within twenty days after demand or notice of the dishonor of the bill.

§ 12. The damages allowed by this act shall be in lieu of interest, charges of protest, and other charges incurred previous to, and at the time of giving notice, or the time when the principal sum shall become payable, when no notice of the dishonor is required to be given; but the holder of such bill shall be entitled to demand and receive lawful interest on the aggregate amount of the principal sum specified in the bill, and of the damages thereon, from the time notice shall have been given, and payment of the principal sum demanded.

§ 13. If the contents of a bill be expressed in the money of account of the United States, the amount due and the damages thereon shall be ascertained and determined without any reference to the rate of exchange existing between this state and the place on which the bill shall have been drawn, at the time of demand of payment, or notice of the dishonor of the bill.

§ 14. If the contents of such bill be expressed in the money of account or currency of any foreign country, then the amount due, exclusive of the damages, shall be ascertained and determined by the rate of exchange, or the value of such foreign currency, at the time of payment.

Approved, January 24th, 1835.

BOATMEN.

An act concerning Boatmen.

- Sec. 1. Contracts to be specifically performed.
2. Contracts may be in writing, and acknowledged, &c.; memorandum of the time of rendering on board to be made.
 3. How to proceed when boatman in any way violates his engagement.
 4. Power and duty of the justice on proceedings against boatmen.
 5. Crew responsible in certain cases for injury to vessel and cargo.
 - 6 & 7. Remedy against the master for ill-treatment, &c.; justice how to proceed.
 3. Commander, &c. not to sell flour, &c., to boatmen while on the voyage, beyond a limited amount.
 9. Boatman committed to jail, commander to pay charges in advance.
 10. Penalty for harboring or secreting boatmen.
 11. Debts above five dollars contracted by boatmen, not recoverable until voyage ended; notes antedated, wholly void; penalty on persons taking them.
 12. Proceedings before the justice, under this act, to be summary; proceed as in civil cases
 13. On examination of complaint against boatman, when and under what circumstances the justice shall not send them on board.
 14. Either party may appeal; effect of appeal.
 15. This act to extend to certain contracts made out of this state.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. All contracts and agreements entered into by any person, for the rowing or navigating of any boat or vessel of any description, on the navigable waters within the jurisdiction of this state, shall be specially performed according to the intent and meaning thereof.

§ 2. The owner, master or commander, of any boat or vessel, bound on a voyage-

from any place within this state, may, before the boat or vessel proceeds on such voyage, make an agreement in writing with any boatmen engaged on board such boat or vessel, in the navigation thereof, declaring the voyage, the term of time, and the wages for which such boatmen shall be engaged; which contract shall be acknowledged by the parties, before some justice of the peace or notary public, and filed by said officer in his office; and the original, or a copy thereof, duly certified under the hand of such officer, shall be received in evidence in any court of this state; and at the foot of every such contract there shall be a memorandum of the day and hour on which such boatmen shall render himself on board the boat or vessel, for which he has engaged, and for every hour he neglect to render himself on board, he shall forfeit one day's pay.

§ 3. If any boatmen, as aforesaid, shall wholly neglect or refuse to render himself on board of such boat or vessel, or having rendered himself, shall afterwards desert, or shall misbehave himself, neglect or refuse to do his duty, quit the boat or vessel, or otherwise violate his engagement, any justice of the peace shall, on complaint of the owner, master, or commander, or other competent person, on oath or affirmation, issue his warrant, directed to any constable, commanding him to bring the delinquent forthwith before such justice.

§ 4. The justice shall hear and determine the complaint, in a summary manner, and shall have power and authority to discharge the delinquent, or cause him to be sent on board and placed in the custody of the master, or commander, and may render judgment against him for any sum not exceeding ninety dollars, or commit him to the common jail of the county for thirty days, unless he will enter into a bond to the master or commander, with sufficient securities, to be approved of by the justice, in a sum of at least two hundred dollars, conditioned that he will, during the remainder of the voyage, do his duty according to his contract.

§ 5. If any boat or vessel, or part of her cargo, tackle, apparel or furniture, shall be lost, injured or destroyed, during any voyage, or while in port, through the neglect or fault of the crew, or any part of them, the master or commander may have an action against such crew, or so many of them as can be found, and recover the value of the property so lost, injured or destroyed.

§ 6. If any boatmen shall make complaint before any justice of the peace, that any master or commander of any boat or vessel, in the navigation of which such boatmen is engaged, has failed to supply him with necessary provisions, or treated him with unusual severity or cruelty, or has failed otherwise to perform his contract, it shall be the duty of such justice, to issue a summons, directed to the constable or other person by him specially directed to serve the same, requiring such master or commander to appear before him and answer the complaint.

§ 7. If he finds it just, he may discharge the complainant, and such boatmen may recover against such master or commander, the wages justly due him, according to the services rendered, notwithstanding the contract may be entire, in any court having competent jurisdiction, and may also have his action for any injury which he may have sustained by reason of the conduct or fault of the master, or commander.

§ 8. It shall not be lawful for the commander or owner of any boat or vessel, to sell or barter any flour, biscuit or other provisions, to any boatmen, whilst said boatman is in his service, and during the voyage; nor shall any charge made against such boatman for spirituous liquors, while employed, or during his engagement, be recoverable or allowed, but at a reasonable rate, nor for any sum exceeding one-tenth part of his wages, for the time in which the charges shall be made.

§ 9. When any boatman shall be committed to jail under this act, the master or owner shall pay weekly, in advance, an allowance for keeping and maintaining such boatman, at the rate of twenty-five cents per day, and in default of payment, the boatman shall be discharged.

§ 10. If any person shall harbor or secrete any boatman belonging to any boat or vessel, knowing him to belong thereto, every such person shall pay ten dollars for every day he shall secrete or harbor such boatman, to be recovered by the master or commander, in an action of debt.

§ 11. No sum exceeding five dollars shall be recovered from any boatman, by any person, for any debt contracted during the time such boatman shall actually belong to any boat, or vessel, until the voyage for which such boatman engaged shall be ended; and if any person shall take any note, or other security in writing, from any boatman, after he has entered into a contract as aforesaid, and the same be antedated, with intent thereby to stop the boatman from proceeding on his voyage, such note, or other security, shall be null, and the person taking the same, his aiders and abettors, shall pay to the use of the person prosecuting the same, double the sum specified in such note or security, to be recovered by action of debt, in any court of competent jurisdiction.

§ 12. The proceedings to be had before a justice of the peace, under this act, shall be conformed, as near as circumstances will admit, to the course of proceedings prescribed by law in matters of a civil nature before justices of the peace; and where the sum in controversy exceeds twenty dollars, either party may require a jury, as in other cases; but in all cases under this act, proceedings shall be summary, and the justices shall proceed to the hearing, determination and execution, in the most speedy manner that the nature of the case, and justice, will permit.

§ 13. If, upon the examination of any complaint made against a boatman, it shall appear that any part of the wages of such boatman is due and unpaid, no warrant to apprehend such boatman and send him on board, or subject him to the authority of the master or commander, shall be issued, until such arrearages are paid or tendered.

§ 14. Either party may appeal to the circuit court, as in other cases of appeals, from justices of the peace; but no such appeal shall operate to defeat or delay the execution of any warrant, for placing the boatman in the custody of the master or commander, where such boatman is adjudged to an immediate performance of his contract.

§ 15. The provisions of this act shall extend to all written contracts, made without the limits of this state, for rowing or navigating boats, upon navigable waters,

within this state, or bounding thereupon, whensoever any boat concerning which such contract hath been made, and the hands thereof are found within the jurisdiction of this state.

Approved, February 20th, 1835.

BOATS AND VESSELS.

An act to provide for the collection of demands against boats and vessels.

- SEC. 1. What debts master, owner, &c. of boat or vessel liable for.
2. Against whom, person having demands, &c. may institute suit.
 3. Complaint against boat, &c. to be filed with clerk of the circuit court.
 4. Complaint to specify demand, to be verified by affidavit, to stand in lieu of declaration.
 5. Clerk to issue a warrant to the sheriff; manner of service.
 6. Upon return of warrant, circuit court to proceed against the boat, &c.
 7. Master, owner, &c. may appear on behalf of the boat and plead to the action.
 8. Court may prescribe manner of pleading, &c. under this act.
 9. Master, owner, &c. giving bond and security, to abide the event of the suit, boat to be released.
 10. If judgment obtained against boat, &c. same to be sold as under execution.
 11. If bond and security has been given, and judgment for plaintiff, execution how to issue.
 12. Justices of the peace to have cognizance for demands not exceeding ninety dollars.
 13. How justices to proceed under this act.
 14. Warrants issued by the justice to be returned forthwith; complaint to be determined in a summary way.
 15. Warrants to be served and returned as writs of attachment.
 16. Sufficient only of boat, &c. to be sold to pay demand and costs.
 17. Continuances may be granted the owner, &c.; effect of.
 18. No continuance shall be granted to the plaintiff.
 19. Sheriffs, constables, &c. allowed same fees as in cases of attachment.
 20. Appeal or writ of error allowed owners, &c. on judgments against them.
 21. Time of commencing suit under this act.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Every boat or vessel used in navigating the waters of this state, shall be liable, 1st. For all debts contracted by the master, owner, agent, or consignee thereof, on account of supplies furnished for the use of such boat or vessel; on account of work done, or services rendered on board such boat or vessel; on account of labor done, or materials furnished, by mechanics, tradesmen or others, in and for the building, repairing, fitting out, furnishing or equipping such boat or vessel. 2d. For all sums due for the wharfage or anchorage of such boat or vessel, within this state. 3d. For all demands or damages accruing from the non-performance, or mal-performance, of any contract of affreightment, or of any contract touching the transportation of persons or property, entered into by the master, owner, agent or consignee of the boat or vessel, on which such contract is to be performed; and, 4th. For all injuries done to persons or property by such boat or vessel.

§ 2. Any person having a demand as aforesaid, instead of proceeding for the recovery thereof against the master, owner, agent or consignee of a boat or vessel, may, at his option, institute suit against such boat or vessel, by name.

§ 3. Any plaintiff wishing to institute suit against a boat or vessel, shall file his

complaint against such boat or vessel, by name, with the clerk of the circuit court of the county, in which such boat or vessel may lie.

§ 4. The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued; it shall be verified by the affidavit of the plaintiff, or of some credible person or persons for him, and shall stand in lieu of a declaration.

§ 5. Whenever any complaint, as aforesaid, shall be filed in the office of the clerk of the circuit court, it shall be his duty to issue a warrant, returnable as a summons, directing and authorizing the sheriff to seize the boat or vessel mentioned in the complaint, and detain the same in his custody, together with its tackle, apparel and furniture, until discharged from such custody by due course of law.

§ 6. Upon the return of any warrant issued by virtue of the preceding section, proceedings shall be had in the circuit court against the boat or vessel sued, in the same manner as if suit had been instituted against the person on whose account the demand accrued.

§ 7. The master, owner, agent or consignee of the boat or vessel, may appear in behalf of such boat or vessel, and plead to the action.

§ 8. The circuit court may, by rule, prescribe the time and manner of pleading, of exhibiting or filing any papers, or taking any needful step in any suit commenced under this act, where the time and manner of doing the same are not prescribed by this law.

§ 9. If the master, owner, agent or consignee, shall, before final judgment in any suit instituted by virtue of this act, give bond to the plaintiff, with sufficient security, to be approved of by the court, or the judge, or clerk thereof, in vacation, conditioned to satisfy the amount which shall be adjudged to be owing and due to the plaintiff, in the determination of the suit, together with all costs accruing, such boat or vessel, with the tackle, apparel and furniture belonging thereto, shall thereupon be discharged from further detention, by the sheriff.

§ 10. If judgment shall be rendered against any boat or vessel, in favor of the plaintiff, the court shall make an order, directed to the sheriff, commanding him to sell such boat or vessel, together with its tackle, apparel and furniture, to satisfy the judgment, and all costs which may have accrued in the cause; which order shall be executed and returned in the same manner as executions.

§ 11. If bond and security shall have been entered into, according to the provisions of the ninth section of this act, and judgment shall have been rendered in favor of the plaintiff, executions shall be issued for the amount of judgment and costs in favor of the plaintiff, against the principal and security in such bond.

§ 12. Justices of the peace, within their respective township, shall have cognizance of all cases arising under this act, wherein the demand claimed shall not exceed ninety dollars.

§ 13. In all their proceedings, justices of the peace shall conform to the provisions of the law governing justices courts, and, as near as may be, to the provisions of this act as applying to the circuit court.

§ 14. Each warrant issued by a justice of the peace, under this act, shall be

returnable forthwith, and, upon the return of such warrant, it shall be the duty of the justice of the peace to hear and determine the complaint of the plaintiff in a summary manner.

§ 15. All warrants issued by this act, shall be served and returned as writs of attachment are served and returned.

§ 16. Whenever an order of sale shall be made for the sale of a boat or vessel, with its tackel, apparel, and furniture, the sheriff or constable shall have power to sell such part thereof, or such interest therein, as shall be necessary to satisfy the amount of the judgment rendered in favor of the plaintiff, and all the costs that have accrued.

§ 17. Upon good and sufficient cause shewn by the master, owner, agent or consignee of any boat or vessel, sued under this act, the court, or justice of the peace, may grant continuance of the cause; but no such continuance shall operate as a discharge of such boat or vessel from the custody of the sheriff or constable.

§ 18. No continuance of a cause, under this act, shall be granted to the plaintiff.

§ 19. Sheriffs, constables, and other officers, shall receive the same fees and compensation for their services under this act, as are allowed them in cases of suits by attachment.

§ 20. In all cases arising under this act, if judgment shall have been rendered in favor of a plaintiff, the master, owner, agent or consignee of the boat or vessel, or other person interested, may appeal from the judgment, or sue out a writ of error, as if they, or either of them, had been sued.

§ 21. All actions against a boat or vessel, under the provisions of this act, shall be commenced and sued within six months after the cause of such actions shall have accrued.

Approved, March 19th, 1835.

BONDS AND NOTES.

An act concerning bonds and notes.

- Sec. 1. Bonds and notes signed by the party shall import a consideration.
2. Bonds and notes assignable, assignee may sue in his own name.
3. Nature of defence not to be changed by assignment.
4. When the maker of the bond or note allowed to set off, or discount.
5. Assignor, after assignment, shall not release; assignee gets no greater interest in the bond or note than his assignor.
6. Notes for money, when negotiable in like manner as inland bills of exchange.
7. Payees and indorsees, when they may sue the makers and indorsers.
8. Notes payable to the order of the maker, or a fictitious, if negotiated, its effects, &c.
9. In what cases the assignee may maintain an action against the assignor.

Be it enacted by the general assembly, of the state of Missouri, as follows:

§ 1. All notes in writing, made and signed by any person or his agent, whereby he shall promise to pay to any other person or his order, or unto bearer, any sum of money or property therein mentioned, shall import a consideration, and be due and payable as therein specified.

§ 2. All bonds and promissory notes, for money or property, shall be assignable, and the assignee may maintain an action thereon, in his own name, against the obligor or maker, for the recovery of the money, or property, specified in such bond or note, or so much thereof as shall appear to have been due at the time of the assignment, in like manner as the obligee or payee might have done.

§ 3. The nature of the defence of the obligor, or maker, shall not be changed by the assignment, but he may make the same defence against the bond or note, in the hands of the assignee, that he might have made against the assignor.

§ 4. The obligor, or maker, shall be allowed every just set-off and discount against the assignee, or the assignor, before judgment, unless it shall be expressed in the bond or note, that the sum therein specified shall be paid without defalcation or discount.

§ 5. It shall not be in the power of the assignor, after assignment, to release any part of the demand; nor shall any assignee ever obtain any greater title to, or interest in, any bond or note, than the person had from whom he acquired it.

§ 6. Every promissory note for the payment of money, expressed on the face thereof to be for "value received," negotiable and payable "without defalcation," shall be due and payable as therein expressed, and shall have the same effect, and be negotiable in like manner, as inland bills of exchange.

§ 7. The payees and endorsees of every negotiable note, payable to them or order, and the holder of every such note, payable to bearer, may maintain actions for the sums of money therein mentioned, against the makers and endorsers of them respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

§ 8. Such negotiable promissory notes, made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect, and be of the same validity, as against the maker, and all persons having knowledge of the facts, as if payable to bearer.

§ 9. The assignee of a bond or note, (other than a negotiable note, as defined by the sixth section of this act,) may maintain an action against the assignor, upon failure to obtain payment from the obligor or maker, only in one of the following cases:

First, If he use due diligence in the institution and prosecution of a suit at law, against the obligor or maker, for the recovery of the money or property due, or damages in lieu thereof.

Second, If the obligor or maker is insolvent, or is not a resident of, or residing within, this state, so that a writ would be unavailing, or could not be instituted.

Approved, February 4th, 1835.

BRIDGES.

An act to provide for building bridges.

SEC. 1. County court to determine when they shall be built at public expense.

2. Expense to exceed \$25, county to build bridge.

Sec. 3. Bridge may be attached to road district, and kept in repair by such district.

4. Erected by the county, plan, &c. to be determined on; commissioner to be appointed.
5. Oath of commissioner.
6. Time of letting the bridge, to be advertised; when, and how.
7. To be let publicly to lowest bidder. Bond and security to be taken.
8. Building bridge to be paid out of county treasury; additional levy of tax, when to be made.
9. When one half expense is raised by individuals, court may, if it be of public utility, order bridge to be built.
10. How courts to proceed when water course divides the counties.
11. Half the expense raised by subscription, courts of each county to order bridge to be built.
12. Appropriation may be made to repair bridges.
13. Undertakers, &c., to repair bridges when notified by the commissioner.
14. If not made in reasonable time, commissioner to employ same to be done; how paid for.
15. No commissioner shall be an undertaker or security.
16. Commissioner allowed one dollar per day, to be paid out of the county treasury.
17. Materials may be taken from adjoining lands.
18. When and how court may allow compensation for the same.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Each county court shall determine what bridges shall be built and maintained at the expense of the county, and what by the road districts.

§ 2. Where the estimated expense of a bridge shall exceed twenty-five dollars, it shall be built by the county.

§ 3. The county court may order any bridge built by the county, to be attached to a road district, for the purpose of being kept in repair by such road district.

§ 4. If the county court be of opinion that a bridge is necessary, and that it shall be built at the expense of the county, they shall determine in what manner and of what materials the same shall be built, and shall appoint some fit person commissioner to contract for building such bridge, and for keeping the same in repair, not less than two, nor more than four years.

§ 5. Said commissioner shall take an oath, faithfully to perform the duties enjoined on him by this act.

§ 6. He shall advertise the time and place for letting the bridge, at three public places in the township where such bridge is to be built, twenty days prior to letting the same.

§ 7. He shall let the same by public out-cry, to the lowest bidder, and shall take bond to the county, with two sufficient householders as securities, in such penalty as he shall deem sufficient to cover all damages which may accrue from the breach of such contract.

§ 8. The court may order the expenses of building such bridge to be paid out of any money in the county treasury; and when there shall not be money enough in the treasury to defray the expense of building such bridge, it may levy an additional county tax, to be called a bridge tax, not to exceed fifty per cent upon the county tax, in any one year, which tax shall be levied in the summer as other county levies.

§ 9. When one moiety of the estimated expense of building any bridge upon any county road, shall have been raised by individual subscription, and such subscription exhibited to the county court, with a petition from forty resident householders of the county in which such bridge is intended to be built, praying the erection thereof, the court shall take such petition into consideration; and if, in

their opinion, the bridge prayed for will be of public utility, they shall make an order for building the same, and for the payment of the residue of the estimated expense of building said bridge, out of the county revenue.

§ 10. If a bridge be necessary over any water course which divides one county from another, the county courts of both counties shall unite in appointing a commissioner for building said bridge; and the expenses shall be defrayed by both counties, in proportion to the amount of the tax of each, to be ascertained by the tax list taken next before the contract for building such bridge shall be made.

§ 11. Where one moiety of the estimated expense of building such bridge shall be raised by subscription, both county courts shall forthwith unite to cause such bridge to be built, and shall pay the residue of the expense of the bridge, in the proportion herein before directed.

§ 12. The county court may, at any time, make an appropriation to repair any public bridge in the county.

§ 13. If any public bridge require repairing, which by contract is to be kept in repair, the commissioner of such bridge shall give notice in writing to one of the undertakers, or of their securities, stating the repairs necessary to be made, and requiring the same to be done within a reasonable time, to be set forth in such notice.

§ 14. If the repairs shall not be made within such time, the commissioner shall employ some other person, forthwith, to make the same, allowing therefor a reasonable price, and may immediately collect the amount paid, with costs, before any court of competent jurisdiction, by action of debt.

§ 15. No commissioner shall be an undertaker for building a bridge of which he is commissioner, nor be security for any undertaker.

§ 16. He shall be allowed one dollar for each day necessarily spent in the discharge of the duties of his office, to be paid out of the county treasury.

§ 17. He may take, or order to be taken, from the adjoining or most convenient lands, such quantity of rock and timber as may be necessary for the building of such bridge.

§ 18. Where timber or rock shall be taken from the lands of any individual, the county court may allow compensation for the same, upon the return of a writ of *ad quod damnum* for that purpose, if the jury assess damages.

Approved, February 26th, 1835.

BUILDINGS.

An act for securing liens to mechanics and others.

- Sec. 1.** Mechanics and others, who furnish materials, to have liens.
- 2.** Accounts to be filed with clerk of the circuit court; in what time, &c.; to be verified by affidavit; description of the property to be given.
- 3.** Duty of the clerk; his fee.
- 4.** Property how subject to execution on suits commenced in the ordinary way, &c.
- 5.** No execution to issue against property charged, except under certain circumstances.

- Sec. 6. Proceedings under this act may be had by *scire facias*; effect of judgment on, &c.
7. Manner of service of *scire facias*.
 8. Length of lien, except where suit has been commenced.
 9. Debt which is a lien paid, creditor to acknowledge satisfaction, &c.
 10. Satisfaction certified, &c., to be filed with the clerk; satisfaction to be entered as in case of mortgages; fees of clerk.
 11. Creditor failing to acknowledge satisfaction of lien, &c., to forfeit amount of lien.
 12. Land on which house is built, subject also to lien.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. That artizans, builders, mechanics, and those who furnish materials for buildings, under contract with the proprietor thereof, shall have a lien upon such materials furnished, and to work and labor done on houses and other edifices, by them hereafter erected, in whole or in part; each artizan, builder, mechanic and laborer, for his own work and materials furnished.

§ 2. It shall be the duty of every person who wishes to avail himself of the benefit of this act, to file with the clerk of the circuit court of the county in which the building or buildings to be charged with the lien, is or are situated, and within six months after such demand shall have accrued, a just and true account of the demand justly due him, after all just credits given, which is to be a lien upon such building or buildings; and shall verify the said account by his own, or by the oath of some other person, and shall also file, at the same time, a correct description of the property to be charged with the said lien.

§ 3. It shall be the duty of the clerk to make an abstract thereof, in a book to be by him kept for that purpose, containing the name of the person laying or imposing the lien, and of him against whom, or upon whose contract it is imposed, the amount of the said lien, and a description of the property to be charged, for which the clerk shall be allowed to receive sixty-two and a half cents, and shall also receive the further sum of fifty cents, as a tax, to be accounted for as other tax upon process.

§ 4. Whenever any person shall wish to proceed against any property, upon which he shall have a lien by virtue of this act, he may commence his suit in the ordinary form, and shall have judgment against the original debtor for the amount that shall be found due to him, and shall have the liberty of taking his execution against such a proportionable part of the property charged with said lien, as his demand bears to the whole amount of the liens that are charged upon the said property under this act, which proportionable part shall be decided by the court, and also against other property of the defendant.

§ 5. No execution shall issue against the property charged with such lien, unless the defendant shall have owned or possessed the said property at the time the contract was made for said work and labor, or materials, or unless a *scire facias* shall first have issued and served upon the owner or possessor of such property, requiring him to appear and shew cause why judgment should not be entered up and execution had against such property.

§ 6. In all cases under this act, it shall be lawful for the plaintiff to proceed by *scire facias* against the original debtor, and against all and every person or persons owning or possessing the property against which he wishes to proceed; but no

judgment to be rendered on the said *scire facias* shall authorize the issuing of any execution, except against the property charged with said lien, or such part thereof as the court shall direct.

§ 7. The service of the *scire facias* shall be in the same manner as the service of a summons, except upon those defendants who cannot be found in the county where the proceedings are had, and are not residents of such county; and upon such defendants the service shall be by affixing a copy of the *scire facias* upon the door of the building upon which the lien is charged, for six weeks at least before the return of the said *scire facias*.

§ 8. No lien shall bind any building for a longer time than twelve months after the said building is finished, by virtue of this act, unless a suit shall have been brought on such lien, in the manner provided by this act.

§ 9. Whenever any debt, which is a lien upon any building, shall be paid and satisfied, it shall be the duty of the creditor to go before some officer in the county, authorized to take the acknowledgement of deeds, and acknowledge satisfaction of the said lien.

§ 10. Such satisfaction being acknowledged and certified, shall be filed with the clerk of the circuit court, who shall thereupon enter satisfaction of such lien upon his record, in the same manner as he is directed by law to enter satisfaction of mortgages, and shall be allowed the same fees therefor as on mortgages, to be paid by the creditor at the time.

§ 11. If any creditor refuse or neglect to acknowledge such satisfaction, within ten days after payment and request, he shall forfeit the amount of the lien which he claimed, to be recovered in an action of debt.

§ 12. The land upon which any building shall be erected, together with a convenient space round the same, not exceeding five hundred square feet clear of the building, shall be also subject to the liens which are to be had under and by virtue of this act, if the said land shall have been, at the time of erecting the said building, the property of the person who shall have caused the same to have been erected.

Approved, March 2d, 1835.

C E N S U S .

An act for taking the census.

- SEC. 1. Enumeration of inhabitants to be made by the sheriff; how.
2. When to be commenced; return to be made to secretary of state; his duty.
 3. Number of inhabitants in each township and corporate town to be specified.
 - 4 & 5. One dollar per day compensation; forty days allowed the sheriff.
 6. Sheriff failing to perform as required by this act, to forfeit \$500.
 7. Compensation to the sheriff allowed by the court, and certified to the auditor.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The sheriff of each county shall take an enumeration of the inhabitants resident in the county, distinguishing the free white males from the females, and

the free persons of color from the slaves; and shall designate, in separate columns, those under ten years of age, those of ten and under eighteen, those of eighteen and under twenty-one years, those of twenty-one and under forty-five years, and those of forty-five years and upwards, together with the aggregate amount of all free white persons, male and female, between the ages of five and sixteen.

§ 2. The sheriffs shall commence enumeration on the first day of September, in the year one thousand eight hundred and thirty-six, and on the first day of September in every fourth year thereafter, and make return to the secretary of state, before the first Monday in November of the same year, who shall cause the abstract of the enumeration to be laid before the general assembly, the first week of the succeeding session.

§ 3. The sheriff shall specify the number of inhabitants in each township and corporate town.

§ 4. The sheriffs shall be allowed, out of the state treasury, one dollar for every day he or his deputy shall have been employed in taking the enumeration; the time shall be settled by the county court.

§ 5. No sheriff shall be allowed more than forty days to complete his enumeration.

§ 6. Any sheriff failing to perform the duties prescribed by this act, shall forfeit the sum of five hundred dollars, to be recovered by action of debt, in the circuit court of the county in which the neglect shall take place, in the name and for the use of such county.

§ 7. The sheriff shall obtain a certificate from the clerk of the county court, stating the amount allowed by said court, which the auditor of public accounts shall audit and allow.

Approved, March 19th, 1835.

CIVIL OR MILITARY OFFICERS.

An act to provide for the collection of compensation from officers, for services rendered under illegal orders.

Sec. 1. Services performed under illegal orders of officers; compensation for.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. If any civil or military officer of this state shall, by any official act, cause any person or persons, subject to his order or control, to render services, or expend time or money, in the performance of any service not authorized by the laws of the land, such officer directing, ordering or compelling the performance of such unauthorized service, shall be liable to the person, or persons performing, or who when directed to perform such service, for the amount of all expenses they may incur, or time lost, in the performance of the same; and shall also be liable to any person or persons, body politic or corporate, for any damages or injury which may be sustained in consequence of such unlawful or unauthorized procedure; and the same

shall be recoverable before any justice of the peace, or other court, having competent jurisdiction.

Approved, March 19th, 1835.

CLERKS.

An act regulating clerks.

- Sec. 1** Clerks of the circuit court to be *ex-officio* clerk of the supreme court.
2. Clerks of circuit, and county court, to be elected by the qualified voters of their counties.
 3. When to enter upon the discharge of their duties.
 4. In case of vacancy, court to appoint, until clerk can be elected, qualified, &c.
 5. Order of court for election to fill vacancy.
 6. When vacancy to be filled at the regular election.
 7. Elections, how conducted; in case of a tie or contested election, how determined.
 8. Who not eligible to be elected.
 9. To give bond before entering on the duties of his office; condition of the bond.
 10. Certificate of election and bond, where to be deposited.
 11. Certificate of election, with oath of office endorsed thereon, to be recorded in recorder's office.
 12. Security insufficient, new bond may be required; failing to give such bond, may be removed and new clerk appointed, &c.
 13. Bonds to be recorded by secretary of state; certified copies evidence.
 14. Seal, books, stationary, &c., to be provided by the clerks; accounts how settled and paid.
 15. Where his office shall be kept.
 16. Clerks may, in case of invasion, &c., remove records, papers, &c.
 17. Duty of clerk in certain cases.
 18. Clerks may appoint one or more deputies; their oath qualifications, &c.
 19. Knowingly or willingly refusing to discharge duties of his office, or do any act contrary thereto, may be removed.
 20. Clerks guilty of misdemeanor in office may be suspended; trial, how conducted, &c.
 21. Attorney general, &c., to make out charges, copy to be served; notice, &c., to be given.
 22. Notice and copy of charges to be served 15 days before the day appointed; clerk to appear and plead at first term, unless time be given; witnesses to be summoned, &c.
 23. If he resign, be removed from office, &c., records, books, &c. to be delivered to his successor.
 24. Clerks who resign, &c., or die, account, on oath, of money received to be rendered, &c., account and payment of balance may be enforced by attachment.
 25. Shall reside in the county where he is clerk.
 26. May be punished and removed from office by indictment.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The clerks of the circuit court, in each county where the supreme court may sit, shall be *ex-officio* clerk of the supreme court, and discharge all the duties as clerk of said court.

§ 2. The qualified voters of each county shall meet in their respective counties on the first Monday of August, eighteen hundred and thirty-five, and elect a clerk of the circuit court, and a clerk of the county court for their county.

§ 3. The clerks of the circuit and county courts shall enter upon the discharge of their duties on the first day of January, in the year one thousand eight hundred and thirty-six.

§ 4. If from any cause, a vacancy occur in the office of clerk of the circuit or county court, the court, or judges thereof, in vacation, shall appoint some person to fill the vacancy, until a successor be elected and qualified.

§ 5. At their next term after such vacancy occurs, the court shall order a special election to be advertised and held, not more than sixty days thereafter, to elect a clerk to fill the vacancy, until the expiration of the term for which the clerk was formerly elected, and until his successor be elected and qualified.

§ 6. If such vacancy occur within six months before any regular election, the election for clerk shall be held at the regular election next after the happening of the vacancies.

§ 7. Elections for clerks shall be conducted as other elections are; but the returns of elections held for the election of clerks of the circuit and county court clerks, shall be made to the presiding justice of the county court; and if there be a tie, or contested election, it shall be determined by the court to which the office appertains.

§ 8. No person shall be elected clerk unless he be a free white citizen of the United States, above the age of twenty-one years, and shall have resided within the state one whole year, and within the district or county, for which he is elected, three months before the election.

§ 9. Every clerk, before he enters on the duties of his office, shall enter into bond, with good security, in any sum not less than five thousand dollars; the amount to be fixed, and the bond to be approved by the court of which he is clerk, or by a majority of the judges of such court, in vacation; the bond shall be conditioned, that he will faithfully perform the duties of his office, and pay over all monies which may come to his hands, by virtue of his office, and that he, his executors or administrators, will deliver to his successor, safe and undefaced, all books, records, papers, seals, apparatus and furniture, appertaining to his office.

§ 10. The certificate of the election of each clerk of the circuit and county courts, signed by the presiding justice of the county court, and his bond, shall be deposited in the office of the secretary of state, with the approval of the judges thereon endorsed.

§ 11. A certificate of his election shall be delivered by the presiding justice of the county court, to each clerk of the circuit or county court, which, with the oath of office endorsed thereon, shall be recorded in the office of the recorder of the county, before he enters on the duties of his office.

§ 12. If at any time any court shall be satisfied, that any security in any bond of their clerk is insufficient, or in any danger of becoming insufficient, or that the penalty of such bond is not large enough, it shall cause the clerk to enter into a new bond, with sufficient security, which shall be deposited in the office of the secretary of state. If any clerk shall fail to give such bond within thirty days after he is required by the court, his office shall be vacated, and a successor appointed by the court, who shall hold his office until a successor be elected and qualified.

§ 13. All bonds of clerks deposited in the office of the secretary of state, shall be by him recorded in a book kept for that purpose, and a copy of any such bond, or of the record thereof, certified by the secretary of state, shall be received in evidence as the original in any court, without proof of execution.

§ 14. Each clerk shall preserve the seal and other property belonging to his office,

and shall provide and preserve suitable books, stationary, furniture, and other necessities for the office, and keep correct account thereof; and each court shall settle such accounts, and allow such sums as shall be reasonable. All such allowances made to the clerks of the supreme court, shall be paid by the state, and those made to other clerks, by the county.

§ 15. Each clerk shall keep his office at such place as the court shall direct, not to be more than two hundred yards from the court house, or permanent place of holding the court of which he is clerk, and shall there keep the records, papers, seals, and property, belonging to his office, and transact his official business.

§ 16. In case of danger from an invading enemy, any clerk may remove the records, papers, and other things appertaining to his office, to some secure place, until the danger cease.

§ 17. Every clerk shall seasonably record the judgments, rules, orders, and other proceedings of the court; make a complete alphabetical index thereto; issue and attest all process when required by law, and affix the seal of his office thereto (or, if none be provided, then his private seal;) keep a perfect account of all money coming to his hands, and accruing to the county or state, on account of taxes, fines, or otherwise; make settlement with the court, at each stated term, and pay over all balances.

§ 18. Every clerk may appoint one or more deputies, to be approved of by the court, who shall possess the same qualifications, and take the like oaths as their principals, and may, in the name of their principals, perform the duties required of their principals; but all clerks shall be responsible for the conduct of their deputies.

§ 19. If any clerk shall knowingly and willingly do any act contrary to the duties of his office, or shall knowingly or willingly fail to perform any act or duty required of him by law, he shall be deemed guilty of a misdemeanor in office, and shall be removed from office for the same.

§ 20. When any court, or a majority of its judges, in vacation, shall believe, from their own knowledge, or information of others, on oath or affirmation, that their clerk has been guilty of a misdemeanor in office, they shall give notice thereof to the attorney general, or circuit attorney, prosecuting for the district, stating the charges against such clerk, and requiring him to prosecute the same; and they may suspend such clerk from office until a trial can be had, and appoint a temporary clerk, who shall possess the same qualifications, take oath and give bond as are required of clerks; possess the same power, perform the duties, and receive the same fees as clerks, and continue in office till the clerk resume his office, or a successor shall be elected.

§ 21. Whenever the attorney general, or any circuit attorney, shall be required to prosecute charges against any clerk, he shall make out charges, and cause a copy to be served on the clerk, with a notice requiring him to appear before the circuit court of the county where such clerk resides, on some specified day in term, and answer the charges.

§ 22. The said notice and a copy of the charges, shall be delivered to such clerk

fifteen days before the day appointed; and the attorney general, or circuit attorney, shall file such charges, and cause such witnesses to be summoned to support the same, and shall prosecute such charges with speed; and such clerk shall appear and plead at the next term, unless further time be given them [him] to plead.

§ 23. If any clerk resign, or be removed from office, or die, he or his executors or administrators, shall deliver all records, books, papers, files, seals and other things belonging to his office, to his successor, as soon as appointed, who shall take charge of the same.

§ 24. Any clerk who shall resign, or be removed from office; or the executors or administrators of any clerk who may die, shall render to the court of which he was clerk, at the next term after such death, resignation or removal, a perfect account, on oath, of all money by him received by virtue of his office, not before accounted for, and shall settle with such court as if the clerk was still in office; and for that purpose they shall have free access to said office, and the records, books, papers, and files therein; and the court may compel such settlements, and enforce the payment of any balance by attachment.

§ 25. Every clerk shall reside in the county of which he is clerk.

§ 26. In addition to the mode herein before provided, any clerk may be punished, and removed from office, by indictment.

Approved, February 20th, 1835.

COMMISSIONER OF PENITENTIARY AND SEAT OF GOVERNMENT.

An act concerning commissioner of penitentiary and seat of government.

- Sec. 1.** Warden of penitentiary to be commissioner of seat of government and penitentiary.
2. To superintend completion of penitentiary, &c.
 - 3, 4 & 5. His duty as commissioner of the seat of government.
 6. Shall prosecute and defend suits for injuries done to public buildings, and other property.
 7. Shall call upon the attorney general for his counsel, &c.
 8. Shall provide fuel, furniture, &c., for the legislature.
 9. Shall contract for and superintend construction of public buildings, &c.
 10. Shall keep accurate accounts between himself and the state, &c., and settle with the auditor, quarterly.
 11. Penalty on failing to comply with the provisions of this act.
 12. Shall make an inventory of, and deliver to his successor, property and papers belonging to the state, and take his receipt therefor.
 13. Shall report his official acts to the general assembly; when.
 14. When to enter on the discharge of his duties; his compensation.
 15. This act to take effect from its passage.

Be it enacted by the general assembly of the state of Missouri; as follows:

§ 1. The warden of the penitentiary shall be, by virtue of his office, commissioner of the penitentiary and commissioner of the seat of government.

§ 2. He shall superintend the completion of the penitentiary, and contract for, and superintend the erection of, all buildings and improvements hereafter to be added to the same, unless otherwise provided for.

§ 3. As commissioner of the seat of government, he shall guard the public buildings, lots and out lots, land, and all other public property at, or attached to, the seat of government, which are not in the lawful custody of some other officer; and he shall take all necessary measures to preserve the same from waste, trespass and injury of every kind.

§ 4. He shall deposit in a place of safety, all public property of a moveable or perishable nature, and preserve the same from decay and loss.

§ 5. He shall take special care of all the furniture and other property of every kind, procured for the use of the senate and house of representatives, and prevent the same from being purloined, injured or lost.

§ 6. He shall prosecute, in the name of the state, for all trespasses and injuries of every kind done to public buildings and other property, and to attend to the conducting of all suits relating to the same.

§ 7. He shall call upon the attorney general for his counsel and services in any matter relating to his duties, involving legal questions, or requiring legal proceedings.

§ 8. He shall provide fuel, candles, and the essential furniture for the legislature, previous to their meeting, on the most advantageous terms that can be obtained, and deposite the same in such manner as to render it safe.

§ 9. He shall contract for, and superintend the repair and construction of, any public buildings and improvements that may be ordered at the seat of government, not otherwise provided for.

§ 10. He shall keep accurate accounts between himself and the state, and himself as commissioner and other persons, and shall produce his vouchers and make settlement with the auditor, at the end of every three months.

§ 11. If he wilfully violate or fail to comply with any part of this act, he shall forfeit to the state any sum not less than ten dollars, to be recovered by indictment, or suit, on his official bond as warden.

§ 12. He shall deliver to his successor in office all property and papers, of every kind, in his possession, belonging to the state; make an inventory thereof, upon which he shall take the receipt of his successor, and deliver the same to the secretary of state.

§ 13. He shall make a report of all his official acts and proceedings to the general assembly, during the first week of each regular session thereof.

§ 14. He shall enter on the discharge of his duties as commissioner of the penitentiary, and commissioner of the seat of government, at the end of the present session of the general assembly; and shall receive, as a compensation for his services, at the rate of five hundred dollars per annum, from that time until he shall, by law, enter on the discharge of his duties as warden.

§ 15. This act to take effect and be in force from and after its passage.

Approved, March 14th, 1835.

CONSTABLES.

An act respecting constables.

- Sec. 1.** Constables, by whom elected; contested election, or a tie, by whom determined.
2. Shall give bond; condition of the bond; bond to be approved.
3. How vacancies to be filled; bond to be given, &c.
4. Bond to be filed with the clerk; suits for breach of, by whom brought; certified copies evidence; limitation of suits on the bond.
5. May appoint deputies; liable for their conduct.
6. Withholding money collected, may be removed from office; when and how.
7. May serve criminal process, warrants and subpœnas, throughout their counties.
8. Penalty on failing to pay money collected, or return execution; how and where to proceed.
9. By whom and how notice to be served on the constable, and returned.
10. On division of townships, shall continue to be the constable where his residence is.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. At each general election, the qualified electors of every township shall elect a resident of the township as constable, who shall hold his office two years, and until his successor be elected and qualified; the judges and clerks of election shall certify the same to the clerk of the county court, and, in case of a tie, or contested election, it shall be determined by the county court.

§ 2. Every constable, within ten days after his election, or appointment, shall give bond to the state, and give good security, for not less than four hundred, nor more than ten thousand dollars, conditioned, that he will execute all process to him directed and delivered, and pay all money received by him upon the same, and, in every respect, discharge all the duties of constable according to law. The said bond shall be approved of by the court, or clerk in vacation, and, if taken by the clerk in vacation, shall be approved of or rejected by the court at the next term.

§ 3. If any vacancy occur in the office of constable, a majority of the justices of the peace in the township may appoint a constable, who shall continue in office until the next general election, and until a successor be qualified; and the constable appointed shall give bond according to the preceding section.

§ 4. The constable's bond shall be filed with the clerk of the county, and may be sued upon at the instance of any person injured by its breach; (a certified copy of the bond shall be evidence in any suit; if a verdict be given for the defendant, or the suit be discontinued, the person at whose instance the suit was brought shall pay all costs.) No suit shall be instituted on such bond after two years from the expiration of the time for which the constable was appointed.

§ 5. Every constable may appoint deputies, for whose conduct he shall be answerable, which appointment shall be filed in the office of the clerk of the county court.

§ 6. If any constable shall detain from any person, any money collected by him by virtue of his office, after being required to pay the same, he shall be removed from office by the county court, on motion founded on charges exhibited; a notice of the motion, and a copy of the charges, shall be served on the constable ten days before the day on which the motion is made.

§ 7. Constables may serve criminal process, warrants and subpœnas, throughout their respective counties, and all other process throughout their respective townships.

§ 8. If any constable fail to pay to the proper person, any money collected by him, by virtue of his office, within five days after demanded, he shall forfeit to such person double the amount collected; and if he fail to return any execution, he shall forfeit and pay to the plaintiff in such execution, double the amount of the same, to be recovered by motion before any justice of the peace of his township, giving five days notice thereof in writing to said constable.

§ 9. Said notice may be served on said constable by any person competent as a witness in the cause, and shall be returned with his affidavit attached thereto.

§ 10. If any township be divided, the constable in office, at the time of the division, shall continue to be the constable of the township in which his residence is; and another constables hall be appointed for the other township, as in case of vacancy.

Approved, March 17th, 1835.

CONTRACTS AND PROMISES.

An act concerning contracts and promises.

- Sec. 1.** What agreements, &c. must be in writing.
2. Contracts for the sale of goods, &c., when not valid, unless part be delivered, or earnest given.
 3. Scrawl equivalent to seal.
 4. Joint contracts declared joint and several.
 5. When and against whom a joint debt or contract shall survive.
 6. When all the obligors, &c., shall die, against whom the debt shall survive.
 7. In case of joint obligations, &c., suits may be brought against any one of them.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. No action shall be brought,

First, To charge any executor or administrator, upon any special promise, to answer for any debt, or damages out of his own estate; or,

Second, To charge any person upon any special promise to answer for the debt, default or miscarriage of another person; or,

Third, To charge any person upon any agreement made in consideration of marriage; or,

Fourth, Upon any contract for the sale of lands, tenements, hereditaments, or any interest in, or concerning them, or any lease thereof for a longer time than one year; or,

Fifth, Upon any agreement that is not to be performed within one year from the making thereof, unless the agreement upon which the action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person by him thereto lawfully authorized.

§ 2. No contract for the sale of goods, wares, and merchandize, for the price of thirty dollars, or upwards, shall be allowed to be good; except,

First, The buyer shall accept part of the goods so sold, and actually receive the same; or,

Second, Give something in earnest to bind the bargain, or in part payment; or,

Third, That some note, or memorandum in writing, be made of the bargain, and signed by the parties to be charged with such contract, or their agents, lawfully authorized.

§ 3. Every instrument of writing, expressed on the face thereof to be sealed, and to which the person executing the same shall affix a scrawl, by way of seal, shall be deemed and adjudged to be sealed.

§ 4. All contracts, which, by the common law, are joint only, shall be construed to be joint and several.

§ 5. In case of the death of one or more of the joint obligors, or promisors, the joint debt or contract shall and may survive against the heirs, executors and administrators of the deceased obligor, or promisor, as well as against the survivors.

§ 6. When all the obligors, or promisors, shall die, the debt or contract shall survive against the heirs, executors and administrators of all the deceased joint obligors or promisors.

§ 7. In all cases of joint obligations, and joint assumptions of co-partners, or others, suits may be brought and prosecuted against any one or more of those who are so liable.

Approved, March 3d, 1835.

CONVEYANCES.

An act regulating conveyances.

SEC. 1. Operation of conveyances to use, &c.

2. The term "heirs," not necessary to create a fee-simple estate, in all conveyances of real estate, what estate shall pass, &c.
3. Title acquired by the grantor after conveyance by him, enures to grantee.
4. Deeds valid notwithstanding adverse possession.
5. Entails not allowed, the remainder in fee-simple, to whom it shall pass.
6. Tenancy in common when, joint tenancy can only exist in certain cases.
7. The words "grant, bargain and sell," how to be construed; their operation.
8. By whom proof or acknowledgment of instruments, &c. to be taken.
9. Certificate of proof or acknowledgment to be endorsed on such instrument or conveyance.
10. Certificate, how made.
11. Acknowledgment, not to be taken, unless grantor be personally known or identified.
12. What facts the certificate of acknowledgment shall state.
13. What proof shall be required of the execution of instruments that convey real estate.
14. When proof by subscribing witness shall be taken.
15. What facts the subscribing witness shall prove, before certificate shall be granted.
16. What facts the certificate of such proof shall set forth.
17. Proof where the grantor and witnesses are dead; when it may be taken.
18. Certificate of such proof, when it shall be granted, and upon what proof.
19. What facts the certificate of such proof shall set forth.
20. Subscribing witnesses residing in the county, when and how summoned to prove the execution of the instrument.
21. Married woman may relinquish her dower, &c.; to be acknowledged and certified.
22. Before whom such relinquishment shall be taken.
23. Married woman, if not personally known, identity to be ascertained, &c.; relinquishment, how taken.
24. What facts the certificate of such relinquishment shall set forth.
25. Married woman and her husband may convey real estate of the wife, &c.

- Sec. 26. Effect and extent of the covenant in such deeds, against the married woman and her heirs.
27. What tribunal may take and certify such acknowledgment.
 28. Acknowledgment not to be taken, unless she be personally known or identified, &c.
 29. What facts the certificate of such acknowledgment shall set forth.
 30. Deeds, &c., to be recorded.
 31. Shall impart notice to all persons, &c., from time of delivery for record.
 32. No such instrument shall be valid until delivered to the recorder, except in certain cases.
 33. Powers of attorney, how to be acknowledged, proved and recorded.
 34. When such power shall be deemed to be revoked.
 35. Instruments acknowledged, proved and certified, &c., may be read in evidence.
 36. When a certified copy of the instrument may be read in evidence.
 37. The certificate, acknowledgment, record, &c., of such instrument, shall not be conclusive evidence.
 38. When such instrument shall not be received in evidence, until established by other proof.
 39. The extent, and construction of the term "real estate."
 40. This act not to embrace in its provisions last wills and testaments.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. When any person becomes seized of any real estate to the use, confidence, or trust of any other person, civil or natural, the person who has such use, confidence, or trust in fee-simple, for term of life, or of years or otherwise, or in remainder or reversion, shall be deemed forthwith in lawful seizen estate, and possession of the same real estate, remainders or reversions, in such like estates, and after the same quality, manner, form, and condition, as he is in the use, confidence or trust.

§ 2. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee-simple; and every conveyance of any real estate hereafter executed, shall pass all the estate of the grantor, unless the interest to pass a less estate shall appear by express terms, or be necessarily implied in the term of the grant.

§ 3. If any person shall convey any real estate by a conveyance, purporting to convey the same in fee-simple absolute, and shall not at the time of such conveyance have the legal estate in such real estate, but shall afterwards acquire the same, the legal estate, subsequently acquired, shall immediately pass to the grantee, and such conveyance shall be as valid as if such legal estate had been in the grantor at the time of the conveyance.

§ 4. Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner, and with like effect, as if he was in the actual possession thereof.

§ 5. Any person who would, by common law, become seized in fee-tail of any real estate, shall become seized thereof for his natural life only, and the remainder shall pass in fee-simple absolute to the person to whom the estate tail would on the death of the first donee, or devisee in tail, first pass according to the common law, by virtue of the grant or devise.

§ 6. Every interest in real estate, granted or devised to two or more persons, (other than to executors and trustees as such,) shall be a tenancy in common, unless expressly declared in such grant, or devise, to be in joint tenancy.

§ 7. The words grant, bargain, and sell, in all conveyances, in which any state of inheritance in fee-simple is limited, shall, unless restrained by express terms, con-

tained in such conveyance, be construed to be the following express covenants on the part of the grantor for himself and his heirs, to the grantee his heirs and assigns:

First, That the grantor was, at the time of the execution of such conveyance, seized of an indefeasible estate in fee-simple in the real estate thereby granted.

Second, That such real estate was, at the time of the execution of such conveyance, free from incumbrances done or suffered by the grantor, or any person claiming under him.

Third, For further assurance of such real estate, to be made by the grantor and his heirs, to the grantee, his heirs and assigns; and may be sued upon in the same manner as if such covenants were expressly inserted in the conveyance.

Fourth, Every instrument in writing that conveys any real estate, or whereby any real estate may be effected in law or equity, shall be acknowledged or proved, and certified in the manner herein prescribed.

§ 8. The proof, or acknowledgment, of every such instrument, shall be taken by some one of the following courts or officers:

First, If acknowledged or proved within this state, by some court having a seal, or some judge, justice, or clerk thereof, or some justice of the peace of the county in which the real estate conveyed, or effected, is situated.

Second, If acknowledged or proved without this state, and within the United States, by any court of the United States, or of any state or territory, having a seal, or the clerk of any such court.

Third, If acknowledged or proved without the United States, by any court of any state, kingdom or empire, having a seal, or the mayor of any city having an official seal.

§ 9. Every court or officer that shall take the proof, or acknowledgment, of any such instrument in writing, or the relinquishment of the dower of a married woman, on any conveyance of the real estate of her husband, shall grant a certificate thereof, and cause such certificate to be endorsed on such instrument or conveyance.

§ 10. Such certificate shall be.

First, When granted by a court, under the seal of the court.

Second, When granted by the clerk of a court, under the hand of the clerk, and seal of the court of which he is clerk.

Third, When granted by an officer who has a seal of office, under the hand and official seal of such officer.

Fourth, When granted by an officer who has no seal of office, under the hand of such officer.

§ 11. No acknowledgment of any instrument in writing, that conveys any real estate, or whereby any real estate may be effected in law or equity, shall be taken, unless the person offering to make such acknowledgment shall be personally known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such instrument as a party thereto, or shall be proved to be such, by at least two credible witnesses.

§ 12. The certificate of such acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such, by at least two witnesses, whose name shall be inserted in the certificate.

§ 13. The proof of the execution of any instrument in writing, that conveys any real estate, or whereby any real estate may be effected in law or equity, shall be,

First, By the testimony of a subscribing witness; or,

Second, When all the subscribing witnesses are dead, or cannot be had, by evidence of the hand writing of the party, and of at least one subscribing witness, given by at least two credible witnesses to each signature.

§ 14. No proof by a subscribing witness shall be taken, unless such witness shall be personally known to at least one judge of the court, or to the officer taking the proof, to be the person whose name is subscribed to the instrument as a witness thereto, or shall be proved to be such by at least two credible witnesses.

§ 15. No certificate of such proof shall be granted, unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party, is the person who executed the same; that such person executed the instrument, and that such witness subscribed his name thereto as a witness thereof.

§ 16. The certificate of such proof shall set forth the following matters:

First, The fact that such subscribing witness was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to such instrument as a witness thereto, or was proved to be such by at least two witnesses, whose names shall be inserted in the certificate.

Second, The proof given by such witnesses of the execution of such instrument, and of the facts that the person whose name is subscribed to such instrument as a party thereto is the person who executed the same, and that such witness subscribed his name to such instrument as a witness thereof.

§ 17. No proof, by evidence of the handwriting of the party, and of a subscribing witness, shall be taken, unless the court, or officer taking the same, shall be satisfied that all the subscribing witnesses to such instrument are dead, or cannot be had, to prove the execution thereof.

§ 18. No certificate of any such proof shall be granted, unless at least two credible witnesses shall state, on oath or affirmation, that they personally knew the person whose name is subscribed thereto as a party, well know his signature, (stating their means of knowledge,) and believe the name of the person subscribed thereto as a party, was subscribed by such person; nor unless at least two credible witnesses shall, in like manner, state, that they personally knew the person whose name is subscribed to such instrument as a witness, well know his signature, (stating their means of knowledge,) and believe the name subscribed thereto as a witness, was thereto subscribed by such person.

§ 19. The certificate of such proof shall set forth the names of the witnesses examined, the fact that such witnesses were sworn, and the evidence required by the last preceding section to be by them given.

§ 20. Upon the application of any grantee, in any instrument in writing required by this act to be recorded, or of any person claiming under such grantee, verified by the oath of the applicant, that any witness to such instrument, residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such instrument cannot be proved without his evidence, any court, or officer authorized to take the proof of the instrument, may issue a subpoena, requiring such witness to appear before such court, or officer, and testify touching the execution thereof.

§ 21. A married woman may relinquish her dower in any of the real estate of her husband, by any conveyance thereof, executed by herself and husband, and acknowledged and certified in the manner hereinafter prescribed.

§ 22. Such relinquishment shall be taken before some court, or officer authorized by this act to take the proof or acknowledgment of instruments in writing, conveying real estate or effecting the same.

§ 23. No such relinquishment shall be taken, unless such married woman shall be personally known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such, by at least two credible witnesses; nor unless she shall be made acquainted with the contents of such conveyance, and shall acknowledge, on an examination apart from her husband, that she executed the same, and relinquishes her dower in the real estate therein mentioned, freely and without compulsion or undue influence of her husband.

§ 24. The certificate of such relinquishment shall set forth, that such married woman was personally known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such conveyance, or was proved to be such, by at least two witnesses, whose names shall be inserted in the certificate, that she was made acquainted with the contents of such conveyance, and acknowledged, on an examination apart from her husband, that she executed the same, and relinquishes her dower in the real estate therein mentioned, freely, and without compulsion or undue influence of her husband.

§ 25. A married woman may convey any of her real estate, by any conveyance thereof, executed by herself, and husband, and acknowledged by such married woman, and certified in the manner hereinafter prescribed, by some court authorized by this act to take and certify such acknowledgment.

§ 26. No covenant, expressed or implied, in any such conveyance, shall bind such married woman, or her heirs, except so far as may be necessary effectually to convey from such married woman and her heirs, all her right and interest, expressed to be conveyed in such conveyance.

§ 27. Any court authorized by this act to take the proof or acknowledgment, of any instrument in writing, that conveys any real estate, or whereby any real

estate may be effected in law, or equity, may take and certify the acknowledgment of a married woman, to any such conveyance of her real estate.

§ 28. No such acknowledgment shall be taken, unless such married woman shall be personally known, to at least one judge of the court, taking the same, to be the person whose name is subscribed to such conveyance as a party thereto, or shall be proved to be such by at least two credible witnesses, nor unless such married woman shall be made acquainted with the contents of such conveyance, and shall acknowledge, on an examination apart from her husband, that she executed the same, freely, and without compulsion or undue influence of her husband.

§ 29. The certificate of such acknowledgment shall set forth, that such married woman was personally known, to at least one judge of the court granting the same, to be the person whose name is subscribed to such conveyance as a party thereto, or was proved to be such, by at least two witnesses, (whose names shall be inserted in the certificate,) and that she was made acquainted with the contents of such conveyance, and acknowledged, on an examination apart from her husband, that she executed the same, freely, and without compulsion or undue influence of her husband.

§ 30. Every instrument in writing, that conveys any real estate, or whereby any real estate may be effected in law, or equity, proved or acknowledged and certified in the manner above prescribed, shall be recorded in the office of the recorder of the county in which such real estate is situated.

§ 31. Every such instrument in writing, certified and recorded in the manner herein above prescribed, shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof; and all subsequent purchasers, and mortgages, shall be deemed, in law and equity, to purchase with notice.

§ 32. No such instrument in writing shall be valid, except between the parties thereto, and such as have actual notice thereof, until the same shall be deposited with the recorder for record.

§ 33. Every letter of attorney, or other instrument in writing, containing a power to convey any real estate, as agent or attorney for the owner thereof, or to execute, as agent or attorney for another, any instrument in writing that conveys any real estate, or whereby any real estate may be effected in law or equity, shall be acknowledged or proved, and certified and recorded, as other instruments in writing, conveying or effecting real estate, are required to be acknowledged or proved, and certified and recorded.

§ 34. No such letter of attorney, or other instrument, certified and recorded in the manner prescribed in the preceding section, shall be deemed to be revoked by any act of the party by whom it was executed, until the instrument containing such revocation shall be deposited for record in the same office in which the instrument containing the power is recorded.

§ 35. Every instrument in writing, conveying or effecting real estate, which shall be acknowledged or proved, and certified as hereinbefore prescribed, may, together with the certificate of acknowledgment, proof, or relinquishment, be read in evidence without further proof.

§ 36. Where any such instrument is acknowledged or proved, and certified, and recorded in the manner hereinbefore prescribed, and it shall be shown to the court that such instrument is lost, or not within the power of the party wishing to use the same, the record thereof, or a transcript of such record, certified by the recorder under the seal of his office, may be read in evidence without further proof.

§ 37. Neither the certificate of the acknowledgment, or of the proof of any such instrument in writing, nor the record, or transcript of the record of such instrument, shall be conclusive, but the same may be rebutted.

§ 38. If the party contesting the proof of any such instrument shall make it appear, that such proof was taken upon the oath of an incompetent witness, neither such instrument nor the record thereof shall be received in evidence, until established by other competent proof.

§ 39. The term, real estate, as used in this act, shall be construed as co-extensive in meaning with lands, tenements and hereditaments, and as embracing all chattels real.

§ 40. This act shall not be so construed as to embrace within its provisions, last wills and testaments.

Approved, February 3, 1835.

CORONERS.

An act concerning coroners.

SEC. 1. Duties of coroner; to take oath and give bond.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The coroner shall serve all process, and discharge all the other duties pertaining to the office of sheriff, in all cases where the sheriff shall be a party in the suit, and where it shall be proved to the court, out of which such process shall issue, or to the clerk thereof in vacation, that the sheriff is interested in the suit, related to either party, or prejudiced against any party to such suit. It shall be his duty to take inquest of violent and casual deaths happening in his county, or where the body of any person coming to such death, shall be discovered in his county; and shall make returns of such inquest to the circuit court. He shall be a conservator of the peace within his county, and shall, before he enters upon the duties of his office, take the oaths required by the constitution, and give bond in a sum of at least one thousand dollars, with sufficient security, to the state of Missouri, conditioned as like bonds are, which bond shall be recorded in the same manner as the bonds required by law in the case of sheriffs, and with the like effect.

Approved, December 16th, 1834.

CORPORATIONS.

An act to regulate proceedings against corporations.

- Sec. 1. Process against corporations to be a summons.
2. How process shall be served.
 3. Return on process how to be made.
 4. Notices, orders, rules, &c., shall be served in like manner.
 - 5 & 6. Process not served, order of publication to be made; copy or order, how published.
 7. Execution on judgment to be *feri facias*; upon what to be levied, &c.
 8. In default of goods and chattels, lands and tenements, attachment to issue.
 9. Attachment, how to be executed.
 10. Upon such service, what goods, effects, &c. of the corporation, bound for the judgment.
 11. Proceedings against garnishee.
 12. Credit to garnishee for payments.
 13. If judgment be not satisfied, other writs of attachment may issue.
 14. Surplus how disposed of.
 15. Upon dissolution of corporation, affairs to be settled by trustees.
 16. This act not to extend to public corporations.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. In all actions which may be instituted, in law or equity, against any private corporation, or incorporated company, it shall be sufficient to issue a summons, commanding the corporation, by their corporate name, to appear and answer the action or bill, which summons shall be returnable in like manner, and subject to the same rules and regulations, as the like process in case of individuals.

§ 2. When any such summons shall be issued against any banking, turnpike, or other incorporated company, service on the president, or other chief officer, or, in his absence, on the cashier or chief clerk, treasurer or secretary, or in absence of these officers, then on any director or manager of such company, such president or other officer being at the time of service within the county in which he usually resides, or the banking-house or office of such corporation is situate, shall be deemed sufficient service of such summons.

§ 3. On the return of such summons, served as aforesaid, the officer serving the same shall express in his return, distinctly, on whom and where the same hath been executed; and if on any other than the chief officer, he shall express the absence of such officer, or that he could not be found; whereupon, the same proceedings to final judgment, or decree, shall be had against said corporation, as in other cases.

§ 4. All notices, orders and rules, required to be served in the progress of any cause, shall be served in like manner.

§ 5. In case the sheriff or other officer shall return any summons as aforesaid not served, and it shall be made appear to the court that process cannot be served, the court shall make an order, directing the defendants to cause their appearance to be entered to said action, on or before the first day of the next term of the said court.

§ 6. A copy of such order shall be inserted in some news-paper printed in this state, for at least six weeks; and the publication of such order, in manner aforesaid, being duly proved, shall have the like effect, and the cause be proceeded in as in cases of summons duly served.

§ 7. The first process upon a judgment against any private corporation shall be a *feri facias*, which the sheriff or other officer shall levy on the monies, goods and chattels, lands and tenements, of such corporation, and proceed thereon as in other cases.

§ 8. In case the sheriff or other officer shall return upon any such writ of *feri facias*, that no goods and chattels, lands and tenements, can be found whereon to levy, or if the property taken shall not be sufficient to satisfy the judgment, interest and costs, it shall be the duty of the circuit court, on the application of the plaintiff or his attorney, to issue a writ of attachment against the rights and credits of such corporation, reciting the judgment, execution and return, and directed to the sheriff of the county.

§ 9. Such attachment shall be executed by summoning, as garnishee, any person having any monies or effects belonging to such corporation, and any debtor to such corporation who may be found within his county, to appear before the circuit court, at the return of the writ, and then and there answer, touching any monies or effects of such corporation in his hands, or any debt he may owe to the same.

§ 10. From the time of making such service, all monies and effects due and owing, payable or belonging to such corporation, shall be bound until the judgment is satisfied; and no payment made thereafter to such corporation, or other disposition of any debts, monies or effects, so attached, shall be credited to the garnishee making the same, nor shall the stock owned by such person in such corporation be allowed as a set-off.

§ 11. Proceedings against garnishees, under the provisions of this act, shall be the same as against the garnishee summoned in the case of an absent or absconding debtor; but no judgment shall be rendered against him for any debt to become due at a future day, until after the same shall become due.

§ 12. For all monies paid by any garnishee, under this act, he shall have credit against the corporation to whom it was due.

§ 13. If a sufficient sum be not made to satisfy such judgment and costs, other writs of attachment may be issued as aforesaid, from time to time, until the whole is satisfied.

§ 14. If any money remain in the hands of the officer, after satisfying the judgment and all costs, he shall pay the same to the corporation, or its order.

§ 15. Upon the dissolution of any corporation already created, or which may hereafter be created by the laws of this state, the president and directors, or managers, of the affairs of said corporation, at the time of its dissolution, by whatever name they may be known in law, shall be trustees of such corporation, with full power,

First, To settle the affairs, collect the outstanding debts, and divide the monies and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution, as far as such monies and property will enable them.

Second, To sue for and recover such debts and property, by the name of the trustees of such corporation, describing it by its corporate name, and may be sued by the same name.

§ 16. Nothing herein contained shall be construed to extend to any corporation of any county or township, city, borough, town or village, or other public or municipal corporation, or to any public university, academy, seminary or school, incorporated by the laws of this state.

Approved, February 6th, 1835.

C O S T S .

An act concerning costs.

- SEC. 1. Security for costs, in what cases required before action commenced.
2. In what cases security to be given after suit commenced; on failure, court may dismiss, &c.
3. Who may sue as a poor person; counsel to be assigned him by the court.
4. In what cases the clerk shall issue original writ, without tax fee for the same.
5. If any person suing, recover judgment, he shall have judgment for costs.
6. When defendant shall recover costs.
7. In actions of replevin, damages and costs how adjudged against the plaintiff.
8. Costs on judgment on demurrer.
9. Several pleas, some adjudged bad, &c., costs, how awarded.
10. Several counts, some insufficient or found for defendants.
11. Several defendants in tort, some acquitted, costs how adjudged.
12. Suits of *scire facias* or prohibition, when defendant shall recover costs.
13. In actions of trespass, and other actions, when costs may be recovered, &c.
14. Suits in justices jurisdiction brought in circuit court, costs how paid.
15. On certiorari prosecuted, the successful party shall recover costs, &c.
16. How costs shall be adjudged on appeals from county court or justice of the peace.
17. If judgment be in favor of the appellant, costs how adjudged.
18. Where the appellant does not prosecute his appeal, judgment to be affirmed with costs.
19. How costs to be adjudged on appeals, or writ of error.
20. In chancery causes, how adjudged.
21. Suits upon obligations, bonds, &c., made to, or with the state, &c., if the plaintiff recover debt or damages, he shall recover costs; when defendant shall recover costs.
22. How costs to be paid on application for partition of land.
23. Who liable for costs, where suit is brought in the name of one person to the use of another.
24. Bill of cost to be taxed up by the clerk.
25. Cost to be paid by the plaintiff, where suit brought after tender made and payment offered.
26. Costs may be re-taxed; how.
27. Bill of costs from the inferior court, when the supreme court may re-tax the same.
28. Costs attending such correction to be paid by the clerk of the inferior court.
29. Where costs are given by this act, either party may have execution therefor.
30. Either party adjudged to pay costs before final judgment, how to be collected.
31. How collected from security, attorney who is liable, &c., or person for whose use suit is brought.
32. Attorney may be made liable for costs, for neglect of duty, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. In all actions on office bonds for the use of any person, actions on the bonds of executors, administrators or guardians, *quitam* actions, actions on penal statutes, and in all cases in law or equity, where the plaintiff or person for whose use the action is to be commenced, shall not be a resident of this state, the plaintiff,

or person for whose use the action is to be commenced, shall, before he institutes such suit, file with the clerk of the circuit court in which the action is to be commenced, the obligation of some person, being a resident of this state, whereby he shall acknowledge himself bound to pay all costs which may accrue in such action; and if any such action shall be commenced without filing such obligation, the court, on motion, may dismiss the same, and the attorney of the plaintiff shall be ruled to pay all costs accruing thereon.

§ 2. If at any time after the commencement of any suit by a resident of this state, he shall become non-resident, or in any case the court shall be satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the court with respect to their legal demands, the court shall, on motion of the defendant, or any officer of the court, rule the plaintiff, on or before a day in such ruled named, to give security for the payment of the costs in such suit; and if such plaintiff shall fail, on or before the day in such rule named, to file the obligation of some responsible person, being a resident of this state, whereby he shall bind himself to pay all costs which have accrued, or may accrue, in such action, the court may, on motion, dismiss the suit.

§ 3. If any court shall, before or after the commencement of any suit pending before it, be satisfied that the plaintiff is a poor person, and unable to prosecute his or her suit, and pay the costs and expenses thereof, such court may, in its discretion, permit him or her to commence and prosecute his or her action as a poor person; and, thereupon, such person shall have all necessary process, and proceedings, as in other cases, without fees, tax or charge; and the court may assign to such person, counsel, who, as well as all other officers of the court, shall perform their duties in such suit, without fee or reward; provided, that when judgment is entered for the plaintiff, there shall be judgment for his costs, which shall be collected for the use of the officers of the court.

§ 4. If any person file, before any clerk in vacation, an affidavit, that he has a just and subsisting cause of action, on which he proposes to bring a suit, and that he is unable to pay the costs, the clerk shall issue an original writ, without paying any tax or fees for the same.

§ 5. If any person shall sue in any action, and shall recover judgment, then the plaintiff shall have judgment for costs against the defendant.

§ 6. If any person shall sue in any action, wherein the plaintiff might have costs in case of judgment in his favor, and he be non-pressed, or suffer a discontinuance, or be non-suited after appearance of the defendant, or a verdict pass against him, then the defendant shall have judgment against the plaintiff to recover his costs.

§ 7. Any person making avowry, justification or cognizance in replevin, if the same be found for him, or the plaintiff be non-suited, non-pressed, or suffer a discontinuance, or be otherwise bound, then such person shall recover his damages and costs against the plaintiff, in like manner as the plaintiff would have done if the same had been found against the defendant.

§ 8. If in any action, judgment, upon demurrer by either party to the action, shall be given against the plaintiff, the defendant shall recover costs against the plain-

iff; and if judgment upon demurrer be given for the plaintiff, or demandant, he shall recover costs against the defendant.

§ 9. When any defendant in any action, or plaintiff in replevin, shall plead several matters, any whereof shall, upon demurrer joined, be adjudged insufficient, or if a verdict shall be found on any issue in the case for the plaintiff, costs shall be given at the discretion of the court.

§ 10. Where there are several counts in any declaration, and any one of them shall be adjudged insufficient, or a verdict on any issue joined thereon shall be found for the defendant, costs shall be awarded in the discretion of the court.

§ 11. Where several persons are made defendants to any action of trespass, assault, false imprisonment, detinue, replevin, trover or ejectment, and one or more of them shall be acquitted, every person so acquitted shall recover his costs in like manner as if such verdict of acquittal had been given in favor of all the defendants, unless it shall appear to the court, that there was reasonable cause for making such person defendant to such action.

§ 12. In all suits upon writs of *scire facias*, or upon prohibition, the plaintiff obtaining judgment, or an award of execution after plea pleaded, or demurrer joined therein, shall recover his costs of suit; and if the plaintiff shall be nonsuited, or non-prossed, or suffer a discontinuance, or a verdict shall pass against him, the defendant shall recover his costs.

§ 13. In all actions of trespass, if upon the trial of the issue or enquiry of damages, any damage be found for the plaintiff, he shall recover his costs; and in all other actions which shall be prosecuted in any court, the subject matter of which is cognizable before such court, but the amount of damages recovered shall be below the jurisdiction of the court, the plaintiff or defendant shall recover costs in the discretion of the court.

§ 14. If a suit is commenced in the circuit court, which is properly cognizable before a justice of the peace, the plaintiff may recover judgment, but the cost shall be adjudged against him.

§ 15. In all cases where either party shall sue out a certiorari upon any judgment, where the same shall be allowed by law, the successful party, in the superior court, shall recover costs in both courts.

§ 16. When an appeal shall be taken from a judgment of a county court, or justice of the peace, against the appellant, the costs shall be adjudged in the following cases, as follows:

First, If the judgment be affirmed, or the appellee, on a trial *de novo*, shall recover as much or more than the amount of the judgment below, the appellant shall pay costs in both courts.

Second, If the judgment be reversed, and the judgment of the circuit court be in favor of the appellant, the appellee shall pay costs in both courts.

Third, If the appellant shall, at any time before his appeal is perfected, tender and offer to pay to the appellee any portion of the judgment, which shall not be accepted in satisfaction, and the appellee shall not, in

the appellate court, recover more than the amount so tendered and refused, he shall pay costs in the appellate court.

Fourth, If no such tender shall have been made, and the appellee recover any sum in the appellate court, or if, after such tender and refusal, the appellee shall recover more than the amount tendered, the appellant shall pay costs in both courts.

§ 17. If such appeal shall be from a judgment in favor of the appellant, cost shall be adjudged in the following cases, as follows:

First, If the judgment appealed from shall be affirmed, or upon a trial *de novo*, the appellant shall not recover more than the judgment below, he shall pay the cost in the appellate court.

Second, If on the appeal, the appellant recover nothing, or the judgment be against him, he shall pay costs in both courts.

Third, If the appellant recover more than the judgment below, he shall recover costs in both courts.

§ 18. In all cases where an appeal from a judgment of the county court, or a justice of the peace, shall not be prosecuted by the appellant according to law, the judgment shall be affirmed, and the costs adjudged accordingly.

§ 19. If any person shall sue out a writ of error, or take an appeal, to review the judgment of a circuit court, and the judgment shall be affirmed, or the writ of error or appeal discontinued or quashed, or the plaintiff in error or appellant non-suited, the defendant in error, or appellee, shall recover his costs; and if the judgment be reversed, the appellant or plaintiff in error, shall recover his costs.

§ 20. Upon complainant dismissing his bill in equity, or defendant dismissing the same for want of prosecution, defendant shall recover against complainant full costs; and in all other cases in equity (not otherwise directed by law,) it shall be in the discretion of the court to award costs or not.

§ 21. In suits upon obligations, bonds or other specialties, or on contracts, express or implied, made to or with the state, or the governor thereof, or any other person to the use of the state, or of a county, if the plaintiff shall recover any debt or damages, he shall also recover costs, as in other cases; but if such plaintiff suffer a discontinuance, or be non-suited or non-prossed, or a verdict pass against him, the defendant shall recover his costs.

§ 22. In all cases founded on the statute concerning the partition of land, the party petitioning shall pay all costs, in the first instance, but shall be entitled to judgment against each of the parties interested in the partition, for such part of the whole costs attending the proceeding, as shall be proportionate to the amount of his interest, unless the lands shall have been sold in order to make partition, in which case the court shall apportion the costs amongst the several parties, and cause the same to be paid out of the money arising from such sale.

§ 23. Where a suit shall be commenced in the name of one person to the use of another, the person to whose use the action is brought, shall be held liable for the payment of all costs which the plaintiff may be adjudged to pay.

§ 24. The clerk shall tax and subscribe all bills of costs arising in any cause or

proceedings, instituted or adjudged in the court of which he is the clerk, agreeably to fees which shall, for the time being, be allowed by law, and shall in no case allow any item or charge, unless the service for which it was made was actually performed in the cause.

§ 25. In all actions where tender shall be made, and full payment offered, by discount or otherwise, in such specie as the party by contract or agreement ought to do, and the party to whom such tender shall be made, doth refuse the same, and yet afterwards will sue for the debt or goods so tendered, the plaintiff shall not recover any costs in such suit; but the defendant shall recover costs as if judgment in the cause had gone in his favor upon the merits.

§ 26. Any person aggrieved by the taxation of a bill of costs, may, upon application, have the same re-taxed by the court in which the action or proceeding was had, and, in such re-taxation, all errors shall be corrected by the court; and if the party aggrieved shall have paid any unlawful charge, by reason of the first taxation, the clerk shall forfeit all fees which were allowed to him by law for taxing the costs in the case, and shall also pay the party aggrieved the whole amount which he may have paid by reason of the allowing of such unlawful charge.

§ 27. In all cases of appeal and writs of error in the supreme court, that court shall, whenever the transcript of a record shall contain any unnecessary matter had before the inferior court, re-tax the bill of costs of the clerk of the inferior court; and where the fees for such unnecessary matter, contained in the transcript of the record, shall have been paid to the clerk of the inferior court, the supreme court shall order the same to be refunded, and upon refusal by the clerk to refund, (a copy of the order having been first served upon him,) enforce the order by attachment.

§ 28. Costs attending the correction of every bill of costs, and enforcing the order to refund, as provided in the preceding section, shall be paid by the clerk improperly charging fees, and the costs of re-taxing shall be at the rate of ten cents on every dollar improperly taxed.

§ 29. In all cases where costs are given by this act, the party to whom the same are adjudged may have execution therefor.

§ 30. In all cases where either party shall be adjudged to pay cost before final judgment, the party in whose favor such costs are adjudged, may have execution therefor immediately, as upon final judgment.

§ 31. In all cases where there is security for costs, or where the attorney is liable for the costs, or where an action is brought to the use of another, in which the plaintiff shall be adjudged to pay costs, judgment may be rendered against such security, attorney, or person for whose use the action was brought, on motion of the party entitled; notice of such motion having been first served on such security, attorney or person.

§ 32. If any attorney or counsellor at law shall commence any action and fail to prosecute the same, or if any action so commenced shall be dismissed for want of his attention; or if he shall bring the action wrong, and it be necessary to enter a non-suit; or if it shall be made to appear to the court that the action was erro-

neously brought, dismissed, or non-suit entered in consequence, the court shall enter up judgment against any such attorney or counsellor at law, for the full amount of the costs thereby incurred, and all damage in consequence thereof.

Approved, February 20, 1835.

COUNTY BOUNDARIES.

An act defining the limits of the several counties in this state.

1. County of Barry	26. County of Montgomery
2. " Benton	27. " Morgan
3. " Boone	28. " New Madrid
4. " Callaway	29. " Perry
5. " Cape Girardeau	30. " Pettis
6. " Carroll	31. " Pike
7. " Chariton	32. " Polk
8. " Clay	33. " Pulaski
9. " Clinton	34. " Randolph
10. " Cole	35. " Ralls
11. " Cooper	36. " Ray
12. " Crawford	37. " Ripley
13. " Franklin	38. " Rives
14. " Gasconade	39. " St. Francois
15. " Green	40. " Ste. Genevieve
16. " Howard	41. " St. Charles
17. " Jackson	42. " St. Louis
18. " Jefferson	43. " Saline
19. " Johnson	44. " Scott
20. " Lafayette	45. " Shelby
21. " Lewis	46. " Stoddard
22. " Lincoln	47. " Van Buren
23. " Madison	48. " Warren
24. " Marion	49. " Washington
25. " Monroe	50. " Wayne

51. Territory attached for civil and military purposes, as heretofore.

52. Counties bounded by a water course, how construed; range lines, &c. how understood.

53. Adjoining county, to be notified; surveyor of said county to join in running said line.

54. The surveyors shall survey and mark the lines designated; surveys to be returned to county and recorded; evidence of the line.

55. Accounts of surveyors, how paid; if one fails to attend, how the other to proceed.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The county of Barry shall be bounded as follows: beginning on range line between ranges twenty-three and twenty-four, two miles south of the township line, between townships thirty-one and thirty-two; thence south to the state line; thence west with said line to the south-west corner of the state; thence north with the state line to the township line between townships thirty-four and thirty-five; thence east with said line to the western boundary of Polk county; thence south to the south-west corner of Polk county, thence east to the beginning.

§ 2. Benton: beginning at the south-west corner of Pettis county; thence east to the line between ranges nineteen and twenty; thence south to the township line dividing townships thirty-six and thirty-seven; thence west with said township

line to the range line dividing ranges twenty-three and twenty-four, and thence north with said range line to the beginning.

§ 3. Boone: beginning in the middle of the main channel of the Missouri river, at the south-east corner of Howard county, and running thence with the eastern boundary of said county to the north-east corner of township fifty-one, range fourteen west; thence due east with the township line between townships fifty-one and fifty-two to the main dividing ridge between the waters of the river Mississippi and Missouri; thence along said dividing ridge to the sectional line, one mile west of the east boundary line of range eleven west, in township fifty-one north; thence south, with said sectional line, to the south boundary line of township fifty; thence west with said township line one and a half miles to the middle of the main fork of Cedar creek; thence down Cedar creek, in the middle of the main channel thereof, to where the range line between eleven and twelve crosses said creek the second time; thence with said line to the middle of the main channel of the Missouri river; thence up said river, in the middle of the main channel thereof, to the beginning.

§ 4. Callaway: beginning at a point in the middle of the main channel of the Missouri river, to which a projection of the range line between ranges six and seven west would lead; thence north with the said range line to the north-west corner of township forty-nine north, in range six west; thence west with the line between townships forty-nine and fifty, to the main fork of Cedar creek, which is the line of Boone county; thence southwardly with the same creek until it strikes the range line between ranges eleven and twelve; thence south with the said range line to the middle of the main channel of the Missouri river, and down the same, in the middle of the main channel thereof, to the beginning.

§ 5. Cape Girardeau: beginning in the Mississippi river, opposite the mouth of Apple Creek; thence up said creek, pursuing the west or principal fork thereof, to the line between townships thirty-three and thirty-four north; thence west to the dividing ridge between the rivers Castor and White-water; thence in a direct line to the dividing ridge between Castor and Crooked creek; thence southwardly with said dividing ridge until it strikes the edge of the Big Swamp, between Jenkins' creek and Castor; thence west to the river Castor; thence down the same to the line of Stoddart county, and with the same to the line of Scott county; thence with the same to the Mississippi river, and up the same to the beginning.

§ 6. Carroll: beginning in the middle of the main channel of the Missouri river, opposite the range line dividing ranges twenty-five and twenty-six; thence down said river to the mouth of Grand river; thence up said river, in the middle of the main channel thereof, to the township line dividing townships fifty-five and fifty-six; thence west with said line to the line dividing ranges twenty-five and twenty-six; thence south with said range line to the place of beginning.

§ 7. Chariton: beginning in the Missouri river, where the western line of Howard county strikes the same; thence to and with said line to the north-west corner of Howard county; thence east to the sectional line which divides ranges sixteen into

equal parts; thence north to the line between townships fifty-six and fifty-seven; thence with said line west to Grand river; thence down the same to the beginning.

§ 8. Clay: beginning in the Missouri river; thence north to the division line between ranges twenty-nine and thirty, and with said line to the north-east corner of section thirty-six, of township fifty-four, range thirty; thence west to the state line; thence south to the Missouri river, and down the same to the beginning.

§ 9. Clinton: beginning at the north-west corner of Clay county; thence north to the middle of township fifty-seven; thence east to a point due north of the north-east corner of Clay county; thence south to the northern line of said county, and with said line to the beginning.

§ 10. Cole: beginning at a point where the range line between ranges fourteen and fifteen west, extending north, will intersect the middle of the main channel of the Missouri river; thence in a direct line to the corner of townships number forty-five and forty-six, of ranges number fifteen and sixteen west; thence due south with said range line to the middle of the main channel of the Osage river; thence down the same to the Missouri river; thence up the middle of the main channel thereof to the beginning.

§ 11. Cooper: beginning in the Missouri river, at a point where the line between ranges fourteen and fifteen would intersect the same; thence in a direct line to the south-east corner of township forty-six, range sixteen; thence south with the range line between ranges fifteen and sixteen, one mile, to the south-east corner of section one, range sixteen, township forty-five; thence west to the south-west corner of section six, range nineteen, township forty-five; thence north with the dividing line between ranges nineteen and twenty, to the north-west corner of township forty-eight, range nineteen; thence in a direct line to a point on the southern bank of the Missouri river, where the range line between ranges eighteen and nineteen terminates; thence north to the middle of the main channel of said river; thence down the same to the beginning.

§ 12. Crawford: beginning at the south-west corner of Washington county; thence west to the line between ranges eight and nine; thence northwardly with the line of Pulaski county to the southern boundary of Gasconade county; thence along the same to the point of intersection between the counties of Franklin and Washington; thence with the western boundary line of Washington to the beginning.

§ 13. Franklin: beginning at the north-west of St. Louis county; thence south to the line between townships forty-two and forty-three; thence direct to the north-east corner of Washington county; thence west to the middle of range four west; thence north to the Missouri river; thence down said river to the beginning.

§ 14. Gasconade: beginning at the north-west corner of Franklin county; thence south to the line between townships thirty-nine and forty; thence west to the line between ranges eleven and twelve; thence north to the Osage river; thence down the same to the Missouri river; thence down the same to the beginning.

§ 15. Green: beginning where the line dividing townships twenty-six and twenty-seven crosses the line dividing ranges seventeen and eighteen; thence west with said township line to its intersection with the eastern boundary of Barry county;

thence along said line to the southern boundary line of Polk county; thence with said line to the south-east corner thereof; thence south to the beginning.

§ 16. Howard: beginning in the Missouri river, opposite the mouth of Moniteau creek; thence up said creek to the line between townships forty-eight and forty-nine; thence in a direct line to the north-east corner of township fifty-one, range fourteen west; thence in a direct line to a point one and a half miles due west of the north-east corner of township fifty-two, range seventeen west; thence on a direct line to a point in the middle of the Missouri river, where the line between sections seventeen and twenty, township fifty-one, range seventeen west, intersects the same, and down the same to the beginning.

§ 17. Jackson: beginning in the Missouri river, at the place where the western line of the state crosses it; thence south to the line between townships forty-six and forty-seven; thence east with the said township line to the middle of range twenty-nine; thence north to the Missouri river; thence up the same to the beginning.

§ 18. Jefferson: beginning at the south-east corner of St. Louis county; thence with the southern boundary thereof to the line between two and three east; thence south to the north-west corner of township forty-two, range three east; thence direct to the north-east corner of Washington county; thence with the Washington county line to the southern corner of section fifteen, township thirty-eight north, range four east; thence direct to the south-east corner of township thirty-nine north, range five east; thence direct to the south-east corner of section twenty-three, township thirty-eight, range six, till it intersects the north fork of the Isle au Bois creek; thence down said creek to the Mississippi river; thence up the same to the beginning.

§ 19. Johnson: beginning at the south east corner of Lafayette county; thence westwardly with the southern boundary of Lafayette to the Jackson county line; thence south, through the middle of range twenty-nine, to the south west corner of section twenty-seven, township forty-four; thence east to the range line between twenty-three and twenty-four; thence north to the beginning.

§ 20. Lafayette: beginning in the Missouri river, opposite the termination of the line between ranges twenty-three and twenty-four; thence south to the south-east corner of section twenty-four, township forty-eight, range twenty-four; thence west to the line between ranges twenty-six and twenty-seven; thence south to the corner between townships forty-seven and forty-eight; thence west to the middle of range twenty-nine; thence north to the Missouri river, and down the same to the beginning.

§ 21. Lewis: beginning at the north-east corner of Marion county, in the middle of the main channel of the Mississippi river, at a point due east of the eastern termination of the township line between townships numbered fifty-nine and sixty; thence with the north boundary line of the county of Marion, on the line between townships fifty-nine and sixty, to the range line between ranges nine and ten west; thence north with the last mentioned range line to the corner of sections eighteen and nineteen, on the range line last named, in township sixty-three north; thence east

with the line of the sections between eighteen and nineteen, through the middle of the township numbered sixty-three, to the Mississippi river; thence due east to the middle of the main channel of the said river; thence down the same, in the middle of the main channel of said river, to the beginning.

§ 22. Lincoln: beginning in the Mississippi river, opposite the mouth of Cuivre; thence with the northern boundary of St. Charles county to the fifth principal meridian line; thence south to the township line between townships forty-seven and forty-eight north; thence west to the line dividing ranges two and three west; thence with the line dividing townships fifty-one and fifty-two north; thence east to the Mississippi river, and down the same to the beginning.

§ 23. Madison: beginning at the north-west corner of section nineteen, township thirty-four, range four east; thence east to the dividing ridge between the rivers Castor and White Water; thence in a direct line to the dividing ridge between Castor and Crooked creek; thence southwardly with said dividing ridge to a point where a west line will strike a place known and called the Cedar Cabin, on the west side of the river St. François; thence west to Black river, and up the same to the old Washington county line; thence northwardly with the said line to the beginning.

§ 24. Marion: beginning in the middle of the main channel of the Mississippi river, at a point due east of the eastern termination of the line between townships numbered fifty-six and fifty-seven; thence west to the said termination of the said line; thence west with the last mentioned line to the range line between ranges numbered eight and nine; thence north with the last named range line to the township line between townships numbered fifty-nine and sixty; thence east with the township line last mentioned to its termination on the Mississippi river; thence due east to the middle of the main channel of said river; thence down the same, in the middle of the main channel of the said river, to the place of beginning.

§ 25. Monroe: beginning on the township line between townships fifty two and fifty-three, at the first sectional line east of the range line between ranges seven and eight; thence with said sectional line, on a parallel with said range north, to the southern boundary of the county of Marion; thence west along the Marion county line with the township line between townships fifty-six and fifty-seven to the range line between ranges twelve and thirteen, it being the eastern boundary line of Randolph county; thence south with said range line to the township line between townships fifty-two and fifty-three; thence east with said township line to the place of beginning.

§ 26. Montgomery: beginning at the south-west corner of Warren county and following the western line thereof to Lincoln county; thence with the lines of Lincoln, Pike, Audrain and Callaway, to the Missouri river, and down the same to the beginning.

§ 27. Morgan: beginning on the range line between ranges fifteen and sixteen, at the north-east corner of section twelve, township forty-five, range sixteen; thence west to the north-west corner of section seven, township forty-five, range nineteen; thence south with the range line to the centre of the main channel of the

Osage river; thence down said river, in the middle of the main channel thereof, to the point where the range line between ranges fifteen and sixteen crosses said river, within township forty, and near the line between thirty-nine and forty; thence north with said line to the beginning.

§ 28. New Madrid: beginning in the middle of the main channel of the river Mississippi, opposite the mouth of James' bayou, or creek; thence in a direct line to the mouth of said creek, or bayou; thence in a north-westwardly course to a point in the swamp, two miles due east of the northern boundary line of a tract of land situate in the upper end of the big prairie, originally granted and confirmed to Moses Henley; thence west to the White Water; thence with the Stoddard county line to the state line; thence east to the river Mississippi; thence up the same, following the middle of the main channel thereof, to the beginning.

§ 29. Perry: beginning in the Mississippi river, opposite the mouth of Apple creek; thence up the same, pursuing the west or principal fork thereof, to the division line between township thirty-three and thirty-four; thence west to the eastern boundary of Madison county; thence north to the north-east corner of the same; thence eastwardly to the south-west corner of section one, township thirty-four north, range eight east; thence in a direct line to the intersection of the principal forks of Saline creek; thence in a direct line to the mouth of St. Laurent creek; thence to the Mississippi, and down the same to the beginning.

§ 30. Pettis: beginning at the south-west corner of Saline county; thence east to the range line between nineteen and twenty; thence south to the line between townships forty-three and forty-four; thence west to the range line between twenty-three and twenty-four; thence north to the beginning.

§ 31. Pike: beginning at the north east corner of Lincoln county, and running thence west with the northern boundary of Lincoln county to the range line between ranges two and three west; thence south with said line to the township line between townships fifty and fifty-one north; thence west to the range line between ranges four and five west; thence in a direct line to the south-east corner of section sixteen, in township fifty-four, range five, west of the fifth principal meridian; thence in a direct line to the point on the Mississippi river, where the township line between townships fifty-five and fifty-six strikes the said Mississippi river; thence due east to the middle of the main channel of said river; thence down said river, in the main channel thereof, to the place of beginning.

§ 32. Polk: beginning on the line between ranges seventeen and eighteen, two miles south of the township line between townships thirty-one and thirty-two; thence west to the rangeline between ranges twenty-six and twenty-seven; thence north to the township line between townships thirty-six and thirty-seven; thence east to the range line between ranges seventeen and eighteen; thence south along the same to the beginning.

§ 33. Pulaski: beginning at the mouth of Niangua river, where the same empties into the Osage river; thence north to the middle of the main channel of Osage river; thence up said river to the point where the range line between ranges seventeen and eighteen crosses said river; thence south with said line to the township line

between townships twenty-seven and twenty-eight; thence east with said township line to range line between ranges eight and nine west; thence north with said range line to the township line between townships thirty-three and thirty-four north; thence northwardly with the dividing ridge between the waters of Big Piney and Little Piney to the Gasconade river; thence down said river to the middle of range ten west; thence north, through the middle of range ten west, to the township line between townships thirty-nine and forty, being the southern boundary of Gasconade county; thence west with said township line to the centre of the main channel of Osage river; thence up said river to the point of beginning.

§ 34. Randolph: beginning at the north-east corner of Howard county; thence with the northern boundary of Howard to the middle of range sixteen; thence north to the line dividing townships fifty-five and fifty-six; thence east to the line dividing ranges twelve and thirteen; thence south to the line of Boone county, and with said line to the beginning.

§ 35. Ralls: beginning in the Mississippi river, east of the termination of the line between townships fifty-six and fifty-seven; thence west to the first sectional line east of the range line between ranges seven and eight; thence south to the township line between townships fifty and fifty-one; thence east to the line between ranges four and five west; thence on a direct line to the south-east corner of section sixteen, township fifty-four, range five west; thence on a direct line to a point in the Mississippi, opposite to the line between townships fifty-five and fifty-six, and thence to the beginning.

§ 36. Ray: beginning in the Missouri river, opposite the termination of the line between ranges twenty-five and twenty-six; thence north to the division line between townships fifty-three and fifty-four; thence west to the division line between ranges twenty-nine and thirty; thence south to the Missouri river, and down the same to the beginning.

§ 37. Ripley: beginning in Cane creek, where the southern boundary line of the state crosses the same, in range five east; thence with the state line to a point where the same crosses the north fork of White river; thence running a northwardly direction on the dividing ridge between the head waters of Spring, Eleven Point and Current rivers, and the waters of the Osage and Gasconade rivers, to the south-west corner of Washington county; thence east along the township line between townships thirty-three and thirty-four to the Madison county line; thence south with said line to Black river; thence with said river, along the middle of the main channel thereof, to a point due west of the Cedar Cabin; thence with the south-west bounds of Wayne county to the beginning.

§ 38. Rives: beginning at the south-west corner of section thirty, township forty-four, range twenty-eight; thence south to the line between townships thirty-nine and forty; thence east to the line between ranges twenty-three and twenty-four; thence north to the south-east corner of Johnson county; thence west to the beginning.

§ 39. St. Francois: beginning at the south-west corner of section one, range eight, township thirty-four; thence north-westwardly to the north-west corner of

section thirty-six, range five, township thirty-seven; thence on a direct line to the south-east corner of section twenty-three, in range six, township thirty-eight; thence on a direct line to the south-east corner of township thirty-nine, range five; thence on a direct line to the south-west corner of section fifteen, in range four, township thirty-eight; thence in a direct line to the south-west corner of section thirty-four, in range four, township thirty-six; thence to the south-west corner of township thirty-six, range four; thence due south to the south-east corner of township thirty-five north, range three east; thence south, forty-five degrees west, to the middle of township thirty-four; thence west fifteen miles to the fifth principal meridian; thence south to the line between townships thirty-three and thirty-four; thence east with said line to the line between ranges three and four; thence north three miles to the north-west corner of Madison county; thence due east with the north boundary line of Madison county to the south-west corner of section fifteen, in range eight, township thirty-four; thence in a direct line to the beginning.

§ 40. Ste. Genevieve: beginning in the Mississippi river, opposite the mouth of St. Laurent creek; thence in a direct line to the point of intersection of the principal forks of Saline creek; thence in a direct line to the south-west corner of section one, township thirty-four north, range eight east; thence in a direct line to the north-west corner of section thirty-six, in range five east, township thirty-seven north; thence on a direct line to the south-east corner of section twenty-three, township thirty-eight north, range six east; thence on a direct line toward the south-east corner of township thirty-nine north, range five east, so far as to intersect the northern or principal fork of Isle au Bois creek; thence down the same to the Mississippi to the beginning.

§ 41. St. Charles: beginning in the Mississippi river, opposite the mouth of the river Cuivre; thence up the same to a point opposite the mouth of the Eagle fork; thence up the same to the fifth principal meridian; thence south to the Missouri river; thence down the same to the Mississippi river, and up the same to the beginning.

§ 42. St. Louis: beginning in the middle of the main channel of the Mississippi river, due east of the mouth of the river Meremeck; thence due west to the middle of the main channel of the Meremeck river, at the mouth thereof; thence up the Meremeck river, and with the middle of the main channel thereof, to a point where the township line between the townships forty-three and forty-four north, crosses the same; thence west with said line to the main channel of the Meremeck river, where the said township line again crosses the same; thence up the Meremeck river, and with the middle of the main channel thereof, to a point where the range line between ranges two and three east crosses the same; thence north with said line to the middle of the main channel of the Missouri river; thence down the Missouri river, and with the middle of the main channel of said river, to the mouth thereof; thence due east to the middle of the main channel of the Mississippi river; thence down the Mississippi river, and with the middle of the main channel thereof, to the place of beginning.

§ 43. Saline: beginning in the centre of the main channel of Missouri river, where the range line dividing ranges twenty-three and twenty-four crosses said river, at the north-east corner of Lafayette county; thence due south with said range line to the north-west corner of section nineteen, township forty-eight; thence due east with said section line to the county line dividing Cooper and Saline counties; thence north with said county line to the middle of the main channel of the Missouri river; thence up said river, in the middle of the main channel thereof, to the beginning.

§ 44. Scott: beginning in the river Mississippi, opposite the mouth of James' Bayou, or creek; thence with the northern boundary line of New Madrid county to White Water; thence up the same, with the line of Stoddard county, to the line dividing townships twenty-eight and twenty-nine; thence to, and following, the main channel of the Big Swamp, to where the same strikes the Cape La Cruse creek; thence down said creek to the mouth of the same; thence due east to the middle of the main channel of the river Mississippi; thence down the same, in the middle of the main channel, to the beginning.

§ 45. Shelby: beginning at the south-east corner of township numbered fifty-seven, of range numbered nine west; thence west with the township line, between townships numbered fifty-six and fifty-seven, to the range line between ranges twelve and thirteen; thence with the last named range line north to the line between townships numbered fifty-nine and sixty; thence with the last named township line east to the north-west corner of Marion county, at the range line between ranges eight and nine; thence south with the line last mentioned to the point of beginning.

§ 46. Stoddard: beginning in the main channel of the St. François river, at the mouth of Black Mingo; thence up the same until it strikes the main channel of the Swamp; thence along the main channel to Castor river; thence up the same to the mouth of Cane creek; thence up the same to the main channel of the Swamp; thence with said main channel of the Swamp to White Water; thence down the same to the line dividing the counties of New Madrid and Scott; thence west until it strikes the western edge of Castor and Little river Swamp; thence down the western side of said Swamp to the parallel of latitude of thirty-six degrees; thence along the said line to the St. François river, and up the same to the beginning.

§ 47. Van Buren: beginning at the south-west corner of Jackson county; thence east to the south-east corner of the same; thence south to the south-west corner of Johnson county; thence east to the line between ranges twenty-eight and twenty-nine; thence south to the line between townships thirty-nine and forty; thence west to the western boundary line of the state; thence north to the beginning.

§ 48. Warren: beginning at the south-west corner of St. Charles county; thence north with the western line thereof to the southern line of Lincoln county; thence west therewith to the south-west corner thereof; thence north with the west line thereof to the north-east corner of section one, in township forty-nine north, range three west; thence west to the north-west corner of section four, in said township; thence south to the south-west corner of section nine, township forty-seven north,

and range three west; thence west to the north-west corner of section eighteen, township forty-seven north, range four west; thence south to the Missouri river, and down the same to the beginning.

§ 49. Washington: beginning in the middle of Grand river, opposite the mouth of Mineral fork; thence in a north-westwardly direction to the north-east corner of Washington county, as established by the surveyors of the counties of Washington and Franklin; thence due west to the middle of the Meremeck river, and up the same to a point where the line between townships thirty-nine and forty crosses said river; thence due south to a point where the line between townships thirty-three and thirty-four north, extended, would intersect the same; thence due east to the meridian line; thence due north three miles; thence east to the middle of the township thirty-four, in range three east; thence in a direct line to the south-east corner of township thirty-five north, range three east; thence north to the south-west corner of township thirty-six, range four east; thence east with the line between townships thirty-five and thirty-six, to the south-west corner of section thirty-four, township thirty-six, range four east; thence north, through the middle of range four east, to the south-west corner of section fifteen, in township thirty-eight, range four; thence to the middle of the main channel of Grand river, at its nearest point; thence down said river, in the middle of the main channel thereof, to the beginning.

§ 50. Wayne: beginning where the southern boundary line of the state crosses Cane creek, in range five east; thence running in a straight line to the mouth of Big creek, where the line between ranges two and three strikes Black river; thence up the same to a point due west of the Cedar Cabin; thence east to the south-west corner of Madison county, and with the bounds of Madison to Cape Girardeau and Stoddard, to the state line; thence to the beginning.

§ 51. The remaining portions of territory within the state, shall remain attached for civil and military purposes as heretofore.

§ 52. Whenever a county is bounded by a water course, it shall be construed to be the middle of the main channel thereof; and range, township, and sectional lines, shall be understood as conforming to the established surveys.

§ 53. Whenever it shall appear to the satisfaction of any county court, that the boundaries thereof are not sufficiently special and well ascertained, the county court shall issue an order to the county surveyor, requiring him, on a certain day, to ascertain, survey and mark such part thereof as they may designate.

§ 54. It shall be the duty of the court making such order, to give notice thereof, at least ten days prior to running and marking said line, to the court of the adjacent county; whereupon, the court receiving such notice, shall issue an order to the county surveyor, ordering him to proceed with the surveyor of the county, to survey and mark such line or lines as may be designated therein.

§ 55. The surveyors shall proceed to ascertain, mark and survey the line or lines designated in said order, and make a return of their proceedings to their respective courts, which, if approved by the court, shall be recorded as evidence of the line in controversy.

§ 56. The accounts of said surveyors shall be paid by the counties respectively; and

in case either of the surveyors shall fail to attend, the one in attendance may proceed alone to survey and mark said line, in which case he shall make two copies or plats of the line or lines he may run, one whereof he shall return to the county court of each county, which being approved of as aforesaid, shall be recorded in evidence of the line in controversy, and the expenses paid as hereinbefore provided.

Approved, March 20th, 1835.

C O U N T I E S .

CONVEYANCES—CONTRACTS—ACTIONS.

An act to enable counties to make contracts and hold and convey real estate.

- Sec. 1.** Conveyances to counties, or their use, effect of.
2. Court may appoint commissioner to convey real estate; effect of conveyance.
3. Contracts with counties, binding.
4. Suits on such contracts, how commenced and prosecuted.
5. Court may appoint an agent to contract for county buildings, &c.
6. Suits against the county, where commenced and prosecuted.
7. Suits in favor of the county, where commenced and prosecuted.
8. In actions against a county, how the process shall be served.
9. Inhabitants may be jurors or witnesses.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. All deeds, grants and conveyances, made, acknowledged and recorded as other deeds, conveying lands, tenements or hereditaments, to any county, or the inhabitants of any county, and their successors, or to the governor, or any person or persons, by whatever form of conveyance, for the use and benefit of any county, shall vest in such county, in fee simple, all the right, title, interest and estate, which the grantor in such deed had at the time of the execution thereof, in the lands thereby conveyed.

§ 2. The county court may, by their order, appoint a commissioner to sell and dispose of any real estate of their county, and the deed of such commissioner, under his proper hand and seal, for and in behalf of such county, duly acknowledged and recorded, shall be sufficient to convey to the purchaser all the right, title, interest and estate, which the county may then have in or to the premises so conveyed.

§ 3. All notes, bonds, bills, contracts, covenants, agreements, or writings made, whereby any person or persons is, or shall be, bound to any county, or the inhabitants thereof; or to the governor, or any other person, in whatever form, for the payment of money; or any debt or duty, or the performance of any matter or things to the use of any county, shall be as valid and effectual to vest in such county, all the rights, interest and actions, which would be vested in any individual, on any such contract made directly to him.

§ 4. Suits may be commenced and prosecuted thereon, in the name of such county, or in the name of the persons to whom they are made, to the use of the county, as

fully and effectually as any person may or can upon like notes, bills, bonds, contracts, agreements or writings, made to him.

§ 5. The county court may appoint an agent to make any contract on behalf of such county, for erecting any county building, or for any other purpose authorized by law, and the contract of such agent, duly executed, and on behalf of such county, shall bind such county.

§ 6. All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment and execution, in the circuit court of the county against which the action is brought.

§ 7. Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant in such action resides.

§ 8. When any action shall be commenced against any county, a copy of the original summons shall be left with the clerk of the county court, fifteen days at least before the return day thereof.

§ 9. In all actions brought by, or against, any county, the inhabitants of the county so suing, or being sued, may be jurors or witnesses, if otherwise competent or qualified.

Approved, February 20th, 1835.

COUNTIES.

REMOVAL OF SEATS OF JUSTICE.

An act to provide for the removal of seats of justice.

- SEC. 1. On petition of three-fifths of the inhabitants, commissioners to be appointed.
2. Qualification of commissioners
3. Certificate of their appointment, notice of time and place of meeting, and, to the inhabitants, how given.
4. Commissioners to assemble; may adjourn until a majority meet.
5. Commissioners to take an oath, &c.
6. To select a site, most suitable for public buildings.
7. Commissioners may purchase, or receive by donation, lands, &c.
8. Deeds, and abstract of titles, to be made and delivered.
9. Proceeding of purchase, &c., to be reported to the circuit court; proceedings of the circuit court and county court thereon; election to be held.
- 10 Notice of election; when and how to be given.
- 11, & 12. Election, how held and conducted.
13. Votes to be cast up by the court; when the selection shall be permanent.
14. Purchase money for land to be paid out of first sale of lots.
15. If title is not approved, new selection to be made.
16. Duty of commissioners, when a place is selected already laid out into town lots.
17. Vacancies of commissioners, how filled.
18. Compensation of commissioner.
19. Commissioner of seat of justice to be appointed; how to be governed.
20. Courts to be held at new seat of justice when buildings are provided.
21. Owners of lots at old seat of justice, may re-convey by deed of relinquishment.
22. Attorney general, &c., to examine deed of relinquishment, &c.
23. If he be satisfied of the right of the person to relinquish, he shall so certify.
- 24, & 25. On presentation of his certificate to the court, how they shall proceed, &c.

- Sec. 26.** If the owner of a lot at the old seat of justice be a minor, who to act for them.
27. Improvements may be removed from lots relinquished.
 28. Relinquished lots to be conveyed to donor in certain cases.
 29. Lots purchased to the use of the county, which have been relinquished, to be sold, &c.
 30. No seat of justice fixed under this act, to be removed after certain time, except, &c.
 31. In the event of petition for removal, how the county court to proceed.
 32. Lots relinquished to the county may be sold.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Whenever three-fifths of the taxable inhabitants of any county, as ascertained by the tax list made and returned last preceding the application, shall petition the county court, praying a removal of the seat of justice thereof to a designated place, the court shall appoint five commissioners to select a site whereon to locate the seat of justice.

§ 2. Each commissioner shall be at least twenty-one years of age, and have resided within the state one year previous to his appointment, and not be a resident of, own or claim, any real estate in the county.

§ 3. The county court shall grant to each person so appointed, a certificate thereof under the seal of the court, appoint a time and place when and where the commissioners shall assemble, cause a notice thereof to be served on each commissioner, and cause advertisements to be put up by the sheriff in ten of the most public places of the county, one month before such meeting, notifying the inhabitants of the county of the time, place and purport of the meeting.

§ 4. It shall be the duty of the commissioners to assemble accordingly, and if a majority do not appear according to such notice, those appearing shall publicly adjourn to some other day, and so on as often as may be necessary, until a majority shall assemble; but no such adjournment shall be for a longer period than ten days at one time.

§ 5. It shall be the duty of each commissioner, before assembling and entering upon the duties hereinafter assigned them, to take an oath before some judge or justice of the peace of such county, that he will faithfully perform the duties of commissioner, a certificate of which oath shall be endorsed on the certificate of his appointment.

§ 6. When the commissioners, or a majority of them, shall be assembled and duly qualified, they shall examine and select the most suitable place in said county, within one mile of the place so designated, whereon to erect the public buildings.

§ 7. The commissioners, or a majority of them, may purchase not less than fifty nor more than one hundred and sixty acres of land, and may receive as a donation such parcels of land or town lots, including the place selected as a seat of justice for said county, as they shall judge most expedient.

§ 8. The vendor or donor shall execute and deliver to the commissioners a good and sufficient deed or deeds, conveying to the county the land or lands so sold or given, in fee-simple, without reservation or condition, and also deliver an abstract of the title papers, deeds, conveyances and assurances, by or through which the title thereto is derived.

§ 9. The commissioners shall make report of their proceedings, accompanied by the deed, abstract and evidences of title to said land, to the circuit court, at the next session thereof. If the judge approves the same, he shall certify the decision of the court thereon to the county court, who shall thereupon order an election to be held, to determine such selection, appointing a day for that purpose, which shall not be less than one month from the time of making the order.

§ 10. The sheriff shall cause notices to be set up in ten of the most public places in the county, at least twenty days before holding the same, particularly describing the place selected, and notifying the inhabitants of the time, place and purport of the election.

§ 11. The election shall be held in the same places, and conducted in the same manner, as general elections for civil officers; but no person shall be permitted to vote, who shall not be a taxable land or householder inhabitant of said county.

§ 12. The votes shall be taken for or against the selection, and so expressed on the poll-books, which the clerk shall lay before the county court at the next term thereof.

§ 13. The court shall cast up and arrange the votes, and if it shall appear that a majority of all the taxable land or householding inhabitants of the county have voted for the selection, the place so selected shall be the permanent seat of justice of the county, and the title so conveyed vested therein.

§ 14. If the land, or any part thereof, was purchased, the county court shall make an order, that the consideration money be paid out of the first proceeds of the sale of the lots to be laid out on such lands, and the clerk shall grant to the vender a certificate accordingly.

§ 15. If the title to such lands be not approved, the deed given shall be of no effect, and shall be returned, together with other title papers, to the donor or vender, and the commissioners shall proceed to make some other selection within the designated limits, proceeding in all things as herein-before provided, except that no notice shall be required of their meeting for that purpose.

§ 16. If the commissioners shall, in any case, select a place already laid out into town lots, they may accept a donation in money or public buildings in lieu of lands or town lots.

§ 17. If any of the commissioners die, resign, refuse or neglect to act, the county court may appoint others in their stead, who shall take the same oath, possess the same powers, and perform the like duties as if originally appointed.

§ 18. Each commissioner shall be entitled to receive one dollar for each day he shall be employed in discharging any of the duties enjoined by this act.

§ 19. Whenever any seat of justice shall be removed, the county court shall appoint a commissioner thereof, who shall take the oath, give the bond, perform the duties, and be entitled to compensation in like manner as the commissioner of a seat of justice in a new county, and like proceedings shall be had in all other respects as is provided by "an act to provide for organizing counties hereafter established."

§ 20. As soon as convenient buildings for the holding of courts, together with a

good and sufficient jail, can be had at such new seat of justice, the county court shall notify the judges of the several courts holden in the county at the next term thereof, who shall cause the sheriff to make proclamation at the court house door, in term time, that such court will thereafter be held at the place so selected.

§ 21. When any seat of justice shall be removed, the owner of any lot or lots at the old seat of justice, the purchase of which was made from the county or its agent, may reconvey the same to the county by deed of relinquishment, in that behalf duly executed, acknowledged and recorded.

§ 22. It shall be the duty of the attorney general, or circuit attorney, prosecuting for the district, to examine the deed of relinquishment, together with the records of the recorder's office of the county, and of all courts whose judgments or decrees might be a lien on such lot or lots.

§ 23. If he shall be satisfied that the persons so proposing to relinquish any lot, hath all the title in the same originally conveyed by the county or its agent, and that the deed executed by the person offering to make the relinquishment is sufficient to reconvey all the title which the county originally held in the same, he shall so certify.

§ 24. Upon such certificate being presented to the county court, if they shall be of opinion that the person making the application is the owner of the lot proposed to be relinquished, they shall grant him a certificate, entitling him or his assigns to a credit in the purchase of any lot or lots at the new seat of justice, for the sum originally paid to the county, or its agent, for the lot relinquished.

§ 25. The certificate shall be signed by the president of the court, and countersigned by the clerk; but no person shall be entitled to the benefit of this act, unless he produce the certificate of the attorney general or circuit attorney, as hereinbefore required, within six months after the removal of the seat of justice shall be finally determined.

§ 26. If the owner of any lot at the old seat of justice, be a minor or minors, his, her or their guardian or guardians may act in their behalf, for the relinquishment of such lot or lots in like manner as the owners of lots who are of full age.

§ 27. Any person taking the benefit of the preceding sections, may, at any time within twelve months after relinquishing any lot or lots to the county, remove any buildings or other improvements which may have been erected thereon, after the sale thereof by the county or its agent, whether the same originally accrued to the county by purchase or donation.

§ 28. In all cases where the lot or lots relinquished, are within any donation made to the county, it shall be the duty of the county court to cause the same to be reconveyed to the person or persons who made such donation, or their heirs, on demand.

§ 29. If any lot or lots relinquished shall have been purchased to the use of the county, they shall be sold in like manner, and for the same purposes as lots at the new seat of justice; saving, however, to all persons making such relinquishment, the right of removing buildings and other improvements within the time hereinbefore prescribed for that purpose.

§ 30. When two years shall have elapsed, after the seat of justice shall be fixed under the provisions of this act, without a petition for the purpose of removing the same being again filed, the same shall not thereafter be removed, unless the county court shall cause a sufficient tax to be assessed on all taxable property within the county, to pay the lot holders for their lots and improvements thereon.

§ 31. In that event, the county court shall appoint three disinterested persons, not residents of the county, to value all lots and improvements in the seat of justice so fixed, and report the valuation thereof to the county court, who shall thereupon cause the taxes so assessed to be levied and collected, and pay to each lot holder the value of his lot and improvements.

§ 32. All such lots, and improvements thereon, shall then be considered as belonging to the county, and may be sold for the use thereof, by order of the county court, and conveyed to the purchaser by the person thereto authorized.

Approved, February 6, 1835.

COUNTY BUILDINGS.

An act to provide for erecting county buildings.

- Exc. 1.** Court house and jail to be erected.
2. Fire proof clerk's office, when to be built.
 3. Building, when to be erected on order of court, superintendent to be appointed.
 4. Vacancy in the office of superintendent, to be filled.
 5. Place of erecting buildings to be designated.
 6. Ground may be purchased by the superintendent; when, &c.; proceeding of purchase to be reported to the circuit court.
 7. Court to examine title, and certify their decision to county court.
 8. If the title be approved, how the purchase money to be paid.
 9. Plan of the building, with an estimate of the cost, to be prepared and submitted.
 10. Advertisement for receiving proposals, how made.
 11. Bond and security to be taken from the undertaker.
 12. Superintendent to inspect the work, materials, &c.
 13. Payments, how to be made.
 14. Payments to be made only on certificate of superintendent.
 15. Compensation of superintendent.
 16. Courts have power to make alterations, repairs, &c.
 17. Persons committing trespass, waste, &c., liable to four-fold damages.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. There shall be erected in each county, at the established seat of justice thereof, a good and sufficient court-house and jail.

§ 2. As soon as the court-house and jail shall be erected, and the circumstances of the county will permit, there shall also be erected one or more fire proof buildings, at some convenient place or places, near the court-house, in which shall be kept the offices of the recorder, and of the clerks of the several courts of such county.

§ 3. Whenever the county court of any county shall think it expedient to erect any of the buildings aforesaid, (the building of which shall not be otherwise provi-

ded for,) and there shall be sufficient funds in the county treasury appropriated to the erection of county buildings, or not otherwise appropriated, or the circumstances of the county will otherwise permit, they shall make an order for the building thereof, stating, in such order, the amount to be appropriated for that purpose, and shall appoint some suitable person to superintend the erection of such building, who shall take an oath, or affirmation, faithfully and impartially to discharge the duties enjoined on him by this act.

§ 4. The county court shall, from time to time, fill any vacancy which may happen in the office or appointment of such superintendant.

§ 5. The county court shall designate the place whereon to erect any county building, on any land belonging to such county, at the established seat of justice thereof.

§ 6. If there is no suitable ground for that purpose belonging to the county, the superintendant shall select a proper piece of ground at the seat of justice, and may purchase, or receive by donation, a lot, or lots of ground, for that purpose, and shall take a good and sufficient deed, in fee-simple, for the same, to the county, and shall make report of his proceedings to the circuit court, at its next sitting.

§ 7. Such court shall examine the title, and certify its decision thereon to the county court.

§ 8. If the title to the land so purchased or secured be approved, the county court, if they approve the selection, shall make an order for the payment of the purchase money, (if any,) out of the county treasury.

§ 9. When the ground for erecting any public building shall be designated as aforesaid, the superintendant shall prepare and submit to the county court, a plan of the building to be erected, the dimensions thereof, and the materials of which it is to be composed, with an estimate of the probable cost thereof.

§ 10. When any plan shall be approved by the county court, the superintendant shall immediately advertise for receiving proposals for erecting such building, stating, in his advertisement, a description of such building, and shall contract with the person who will agree to do the work on the lowest and best terms, not exceeding the amount appropriated.

§ 11. The superintendant shall take from the undertaker, a bond to the county, with sufficient security, for the performance of the work, at such time and in such manner as shall be agreed on, according to the plan, (a copy of which shall be annexed,) under a penalty of at least double the amount to be given for erecting the building.

§ 12. It shall be the duty of the superintendant to superintend and direct the execution of the work, and to see that the materials employed are good, and the work executed according to contract; and shall make report of the progress and condition thereof, from time to time, to the county court.

§ 13. When any instalment shall become due to the undertaker, according to contract, the county court shall make an order that the same be paid out of the county treasury.

§ 14. No such order shall be made, unless the superintendant certify that a due proportion of the work has been completed and executed according to contract.

§ 15. The superintendant of the county buildings shall receive such compensation for his services as the county court shall deem reasonable, to be paid out of the county treasury.

§ 16. The county court of each county shall have power, from time to time, to alter, repair or rebuild any county buildings as aforesaid, which has been or may be erected hereafter in their county, and may cause a pillory, and necessary out-houses to be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage.

§ 17. If any person shall commit any trespass, waste, or injury, in or upon any county buildings as aforesaid, or other property, belonging to any county, he or she shall forfeit and pay to the use of the county, four-fold damages, to be recovered in the name of the county, [by] such form of action as individuals may maintain for like injuries to their property.

Approved, January 29th, 1835.

COUNTY TREASURIES.

An act to establish and regulate county treasuries.

ART. I. Of the appointment, qualification and duties of the treasurer.

ART. II. Of the duties of collectors, clerks and other officers.

ART. III. Of the power and duties of the court.

ART. IV. Miscellaneous provisions.

ARTICLE I.

Of the appointment, qualification and duties, of the treasurer.

- SEC. 1. Each county court to appoint a treasurer.
2. To give bond to the court; condition of the bond.
3. His residence, duties, &c.
4. Shall keep account of monies received and disbursed, &c.
5. Duplicate receipts to be given for all money paid into the treasury; books, papers, &c., pertaining to his office, subject to inspection.
6. Receipts and expenditures of the county; when to be furnished.
7. Annual settlement of his accounts to be made.
8. To file and register all warrants on the treasury; the name of the owner, &c.
9. Penalty for neglecting to pay warrants, if he has the money.
10. How the penalty may be recovered.

ARTICLE II.

Of the duties of collectors, clerks and other officers.

- SEC. 1. Collectors, clerks, &c., to make settlement at each stated term of the court.
2. Refusing to settle, courts may adjust the accounts.
3. Court may refuse to allow commissions to delinquents.
4. Delinquent failing to pay the amount found to be due, to pay 10 per cent., &c.
5. At the next term after settlement, court to enter judgment, with 30 per cent., unless, &c.
6. If good cause be shown for setting aside settlements, courts may re-examine accounts, &c.
7. Amount due on settlement, to be a lien on real estate of delinquent.
8. Duty of the clerk of the court in certain cases, in keeping accounts, &c.

ARTICLE III.

Of the power and duties of the court.

- SEC. 1.** Shall have power to audit, adjust and settle accounts, where the county is a party; to order suits to be brought, to enforce collections, &c.
2. Form of a warrant for money to be drawn by the clerk.
 3. Warrant by whom signed and tested, to be numbered, &c.
 4. Compensation to the clerk and treasurer.

ARTICLE IV.

Miscellaneous provisions.

- SEC. 1.** Clerks of courts to keep accounts of monies accruing to the county.
2. Clerks to settle their accounts at each term; amount to be certified.
 3. Courts of record to settle with sheriff at each term for money due the county, and certify the same, &c.
 5. Justices of the peace to report fines imposed by them, to each court; duty of the clerk.
 4. Certified copy of settlement to be transmitted to clerk of the county court.
 6. Who shall not be eligible to be treasurer.
 7. For what county warrants may be received in payment.

Be it enacted by the general assembly of the state of Missouri, as follows: .

ARTICLE I.

Of the appointment, qualifications and duties of the treasurer.

§ 1. The county court of each county shall appoint a treasurer therefor, and supply the vacancies which may happen in that office.

§ 2. Immediately after his appointment, the treasurer shall enter into bond to the county, in such sum, and with such securities, as shall be approved by the court, conditioned for the faithful performance of the duties of his office.

§ 3. He shall reside within one mile of the place of holding the courts of the county, receive all monies payable into the treasury thereof, and disburse the same on warrants drawn by the order of the county court.

§ 4. He shall keep a just account of all monies received and disbursed, and regular abstracts of all warrants drawn on the treasury and paid.

§ 5. He shall make duplicate receipts, in favor of the proper person, for all monies paid into the treasury, and keep the books, papers and money pertaining to his office, at all times ready for the inspection of the court or any judge thereof.

§ 6. As often, and in such manner, as may be required by the court, he shall furnish an account of the receipts and expenditures of the county

§ 7. He shall, once in every year, settle his accounts with the court; and, if he resign, be removed from office, or die, he, or his executor or administrators, shall immediately make such settlement, and deliver to his successor in office all things pertaining thereto, together with all money belonging to the county.

§ 8. He shall file all warrants on the treasury, make a register of the number and date thereof, the name of the person in whose favor drawn, and the amount of each.

§ 9. If he shall neglect or refuse to pay any warrant drawn by order of the county court, according to law, having in his hands money applicable thereto, he shall forfeit and pay to the holder four-fold the amount thereof.

§ 10. The same may be recovered by action of debt, to the use of the aggrieved party, against such treasurer and his securities on his official bond. He shall, moreover, be deemed guilty of a misdemeanor in office, and proceeded against accordingly, as in case of a clerk.

ARTICLE II.

Of the duties of collectors, clerks, and other officers.

§ 1. All collectors, sheriffs, clerks, constables, and other persons, chargeable with monies belonging to any courts, shall render their accounts to, and settle with, the county court, at each stated term thereof; pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county court, within five days thereafter.

§ 2. If any person thus chargeable, shall neglect or refuse to render true accounts, or settle as aforesaid, the court shall adjust the accounts of such delinquent according to the best information they can obtain, and ascertain the balance due to the county.

§ 3. In such case the court may refuse to allow any commission to such delinquent; and he shall, moreover, without delay, pay into the county treasury, the balance found due as aforesaid.

§ 4. If he shall not pay the amount thereof, and produce to the clerk of the county court the treasurer's receipt therefor, within ten days after such balance is ascertained, the clerk shall charge such delinquent ten per centum on the amount then due.

§ 5. Unless the delinquent appear on the first day of the next succeeding term, and shew good cause for setting aside such settlement, the court shall enter up judgment for the amount due, with thirty per centum per annum until paid, and issue execution therefor. Such delinquent shall, moreover, be deemed guilty of a misdemeanor in office, and proceeded against accordingly.

§ 6. If good cause be shewn for setting aside said settlement, the court may re-examine the accounts, settle and adjust the same according to law, and, in their discretion, remit the penalties, previously imposed.

§ 7. The amount, or balance, of every account settled agreeably to this act, shall be a lien, from the date of such settlement, on all the real estate of the delinquent within the county.

§ 8. It shall be the duty of the clerk of the county courts,

First, To keep regular accounts between the treasurer and the county, charging him therein with all monies paid into the treasury, and crediting him with the amount he may have disbursed, between the period of his respective settlements with the court.

Second, To keep just accounts between the county, and all persons, bodies politic or corporate, chargeable with monies payable into the county treasury, or who may become entitled to receive monies therefrom.

Third, To file and preserve in his office all accounts, vouchers, and other

papers pertaining to the settlement of any account to which the county shall be a party, copies whereof, certified under the hand and official seal of said clerk, shall be admitted to be read in evidence in courts of law and elsewhere.

Fourth, To issue warrants on the treasury for all monies ordered to be paid by the court, keep an abstract thereof, present the same to the county court, at every regular term, balance and exhibit the accounts kept by him, as often as required by the court, and keep his books and papers at all times ready for the inspection of the same, or any judge thereof.

ARTICLE III.

Of the power and duties of the court.

§ 1. Each county court shall have power to audit, adjust and settle all accounts to which the county shall be a party; to order the payment, out of the county treasury, of any sum of money found due by the county; to enforce the collection of all money due the county; to order suit to be brought on the bond of any delinquent, and require the attorney general, or circuit attorney for the district, to commence and prosecute the same; to issue all necessary process to secure the attendance of any person, whether party or witness, whom, or the exhibition of any accounts, books, documents or papers, which they may deem necessary to examine, in the investigation of any account or settlement; to examine all parties and witnesses on oath, touching the investigation of any matter arising under this act, and to fine or commit to jail any person guilty of contempt in their presence, or who shall refuse to answer any lawful question.

§ 2. When the court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor, in the form following:—Treasurer of the county of —, pay to —, (the person to whom due) — dollars, out of any money in the treasury appropriated for county expenditures, (or express the particular fund, as the case may require.) Given at —, this —day of —, 183 .

By order of the county court, D. R. D., President. Test, J. B. C., Clerk.

§ 3. Every such warrant shall be signed by the president of the court, attested by the clerk, numbered progressively throughout each year, and when presented at the treasury by the holder thereof, shall be paid by the treasurer; if there be no money in the treasury applicable thereto, the treasurer shall so certify on the back of the warrant, date and subscribe the same.

§ 4. The court shall allow to the clerk and treasurer of the county, for their respective services, under this act, such compensation as they may deem just and reasonable.

ARTICLE IV.

Miscellaneous provisions.

§ 1. It shall be the duty of all clerks of courts of record, to keep just accounts of all fines, penalties, forfeitures, judgments and fees, rendered, imposed or accru-

ing in favor of any county, ready at all times for the inspection of the judges of their respective courts; to render to them, at each term thereof, verified by oath or affirmation, an account of all money which he hath or ought to have received to the use of any county, not before accounted for:

§ 2. It shall be the duty of the judges aforesaid, to audit and adjust the same, according to the records, dockets and papers of their respective courts; to make two separate bills of the several sums wherewith their clerks shall be chargeable, specifying on what account the same is payable, and certify a copy thereof to the clerk of the county court, who shall file and charge the same accordingly; the other shall be certified and delivered to the treasurer.

§ 3. It shall be the duty of all courts of record, at each term thereof, to settle with the sheriff of every county within their jurisdiction, for all monies by him received, or which he ought to have collected for the use of any county, and has not before accounted for; they shall cause their clerk to make out two separate lists of all sums chargeable to any sheriff, and payable to any county, specifying on what account, and causing the same to be certified under the seal of the court.

§ 4. One copy so certified shall be immediately transmitted to the clerk of the county court of the county to which such monies are payable, who shall immediately charge the same accordingly.

§ 5. It shall be the duty of each justice of the peace, at each term of the county court, to make out duplicate lists of all fines by him imposed to the use of his county, stating therein the name of the officer who hath or ought to have collected the same, one of which lists he shall certify and deliver to the clerk of the county court, who shall charge the same accordingly; the other list shall be delivered to the treasurer.

§ 6. No sheriff, clerk or collector, or the deputy of either, shall be eligible to the office of treasurer.

§ 7. All county warrants shall be received in payment of taxes, fines, penalties and forfeitures accruing to the county.

Approved, February 14th, 1835.

COURTS.

JUDICIAL POWER.

An act to establish courts of record and prescribe their powers and duties:

- Sec. 1. Supreme, circuit, and county courts established.
2. Qualification of judge and justice of the courts.
3. Oath of office to be taken.
4. Certificate of such oath to be indorsed upon the commission.
5. Statement of judge under oath, of his age, to be filed.
6. Such statement conclusive evidence of the fact.
7. Supreme court shall direct the form of writs and process, &c.
8. Power and jurisdiction of circuit courts.
9. The county court shall be composed of three judges, to be styled, &c.

10. Justices of the county court, how elected.
11. Their term of service.
12. Elections, how certified; in case of a tie, how decided.
13. Vacancies, how to be filled.
14. Clerks to certify names of persons elected to the governor, who shall commission them.
15. Jurisdiction and power of county courts.
16. Majority of justices constitute a quorum, but a less number may adjourn.
17. President to be chosen.
18. Each court hereby established shall procure a seal, &c.
19. Where sealing is required, what shall be considered a sufficient sealing.
20. Where no official seal provided, private seal may be used.
21. Courts established by this act, to be courts of record; record of proceedings to be kept.
22. Records of proceeding at law and equity, to be kept separate.
23. Full entries of the records and proceedings, &c., when to be made up and read.
24. Duties to be performed by the clerks of each court; after the adjournment thereof, papers to be attached.
25. What memorandum to be made on the margin of the papers so attached.
26. Papers attached, &c., to be preserved, as the roll of the judgments, &c.
27. Bill of exceptions to be written out, and attached to the roll.
28. Execution issued and returned, to be attached also to the roll.
29. When bills of exceptions may be omitted in making out transcripts.
30. Courts shall, by rule, direct the filing of papers, pleadings, &c.
31. Courts to keep records in the English language.
32. The sitting of courts shall be public.
33. Power of courts in issuing writs necessary to the exercise of their jurisdiction.
34. When the court may appoint a person to discharge the duties of sheriff; his fees, &c.
35. Courts may appoint interpreters and translators.
36. To be sworn; their compensation.
37. Courts may compel return of writs and payment of money by attachment.
38. Judge of the supreme court, interested, or related to either party, not to sit.
39. Judge of the circuit court, or justice of the county court, interested, &c., not to sit.
40. Judge interested, &c., venue may be changed.
41. Majority of the county court interested, &c., papers to be certified to the circuit court.
42. Judges not appearing first day, court to stand adjourned until third day.
43. Judges not appearing by that time, &c., court to stand adjourned till next term.
44. Failing to sit after commencement of term, to stand adjourned, &c.; or cannot attend a regular term, how to proceed; special adjourned term may be held.
45. If the judges hold such term, there shall be no discontinuance.
46. If the court do not sit at that time, to stand adjourned to the regular term.
47. Adjourned terms, may be held in continuation of the regular term.
48. Special terms of the circuit court may be held for the trial of persons charged with crime.
49. Notice thereof to be served on attorney general, &c., and the persons to be tried.
50. Who may serve such notice.
51. Adjourned, or special terms, not to interfere with regular terms.
52. No process, &c., discontinued or abated, by adjournment of court, or lapse of term.
53. Justices of the county court to be conservators of the peace throughout their counties.
54. No judge shall practice as counsellor, or attorney, &c.
55. No judge or justice shall have a partner in the practice, &c., nor be interested in the costs, &c.
56. Courts not to sit or transact business on Sunday, except, &c.
57. For what acts, courts may punish as for a criminal contempt.
58. Manner and extent of punishment for contempts.
59. When summary punishment for contempt to be inflicted; when time allowed to make defence.
60. Circumstances of offence to be set forth in order of commitment for contempt.
61. Construction of the preceding section, for contempt.
62. Liable to be indicted for contempt, &c.
63. Sheriffs to attend court, to furnish stationary, fuel, &c.
64. Courts to audit and adjust accounts of sheriffs made under this act.
65. Such accounts accruing in the supreme court, to be paid out of state treasury.
66. The auditor to draw his warrant accordingly.
67. Accounts accruing in the circuit and county courts, paid out of the county treasury.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. There shall be a supreme court, circuit courts and county courts, to be held at such times and places as shall be prescribed by law.

§ 2. Every judge and justice shall, previous to his appointment, have resided one year in this state, and be commissioned by the governor.

§ 3. Each judge or justice shall, within thirty days after the receipt of his commission, and before entering upon the duties of his office, take an oath to support the constitution of the United States, and of this state, and faithfully demean himself in office.

§ 4. A certificate of taking such oath shall be endorsed upon his commission.

§ 5. Within sixty days after the receipt of his commission, each judge shall file in the office of the secretary of state, a true statement, under oath, of his age.

§ 6. Such statement shall be received as conclusive evidence of the facts therein stated, in all courts and places where the same may be brought into question.

§ 7. The supreme court, in addition to the powers conferred by the constitution, shall have power to direct the form of writs and process, not being contrary to, or inconsistent with, the laws in force for the time being.

§ 8. The circuit courts, in the respective counties in which they may be held, shall have power and jurisdiction as follows:

First, As courts of law, in all criminal cases which shall not be otherwise provided for by law.

Second, Exclusive original jurisdiction in all civil cases, which shall not be cognizable before county courts and justices of the peace.

Third, Concurrent original jurisdiction with justices of the peace, in actions of tort, and in all cases which, by law, are not exclusively cognizable before justices the peace, where the matter in controversy shall be of the value of fifty dollars, or the titles or boundaries to lands are drawn in question, or lands or slaves are subject of controversy.

Fourth, Appellate jurisdiction from the judgments and orders of county courts and justices of the peace, in all cases not expressly prohibited by law, and shall possess a superintending control over them.

Fifth, Exclusive original jurisdiction in each county in which they may be held as courts of equity, in all cases where adequate relief cannot be had by the ordinary course of proceedings at law.

Sixth, A general control over executors, administrators, guardians, minors, idiots, lunatics, and persons of unsound mind, and shall proceed therein according to the rules, usages and practice of courts of equity.

§ 9. The county courts shall be composed of three judges, to be styled, "the justices of the county court."

§ 10. The justices of the county courts shall be elected by the qualified electors in the several counties in this state.

§ 11. They shall hold their offices for the term of four years, and until their successors are duly elected and qualified.

§ 12. The election shall be certified by the judges and clerks of the elections, to the clerks of the county courts of the counties wherein such election shall be held; and in case of a tie between two or more persons, the same shall be determined by the sheriff of the proper county.

§ 13. When a vacancy shall happen in the office of justice of the county court, the remaining justice or justices shall nominate some person or persons, householders in the county, to the governor, to fill such vacancy, who shall hold their office until the next general election: provided, that when the remaining judges of the county court shall disagree in the nomination of a fit person to fill the said vacancy, the said judges shall each recommend one fit person to the governor for such vacancy, one of whom the governor shall commission to fill said vacancy.

§ 14. The clerks of the county court shall certify to the governor the names of the persons elected or nominated under this act, who shall thereupon commission all such persons, as justices of the county court for the term for which he or they may have been elected or nominated.

§ 15. The county courts, in their counties, shall have and possess the following powers:

First, Exclusive original jurisdiction in all cases relative to the probate of last wills and testaments, the granting letters testamentary, and of administration, and repealing the same.

Second, The appointing or displacing guardians of orphans, minors, and persons of unsound mind, and the binding out apprentices.

Third, In the settlement and allowance of accounts of executors, administrators and guardians.

Fourth, To hear and determine all disputes and controversies respecting wills, the right of executorship, administration, or guardianship, or respecting the duties or accounts of executors, administrators or guardians.

Fifth, To hear and determine all disputes and controversies between masters and their apprentices.

Sixth, To hear and determine all suits and other proceedings instituted against executors and administrators, upon any demand against the estate of their testator or intestate, where such demand shall not exceed one hundred dollars.

Seventh, Concurrent jurisdiction with the circuit court, in all such cases where the demand shall exceed that sum, subject to an appeal in all cases to the circuit court, in such manner as may be provided by law.

Eighth, To award process, and cause to come before them, all and every person or persons whom they may deem it necessary to examine, whether parties or witnesses, or who, as executors, administrators or guardians, or otherwise, shall be interested, or in anywise accountable for any lands, tenements, goods or chattels belonging to any minor, orphan, or person of unsound mind, or the estate of any deceased.

person; and may examine every person, on oath or affirmation, touching any matter of controversy before them.

Ninth, To have the control and management of the property, real and personal, belonging to the county.

Tenth, To have full power and authority to purchase, or receive by donation, any property, real and personal, for the use and benefit of their county.

Eleventh, To sell and cause to be conveyed, any real estate, goods or chattels belonging to their county, appropriating the proceeds of such sale to the use of the same.

Twelfth, To audit and settle all demands against their county.

§ 16. A majority of the justices of the county shall constitute a quorum to do business; but a smaller number may adjourn, from day to day, and require the attendance of absent members.

§ 17. The justices of the county court, or a majority of them, shall choose one of their number to be president of the court, and in case of his absence may appoint a president *pro tempore*.

§ 18. Each of the courts hereby established, shall procure and keep a seal, with such emblems and devices as the court shall think proper.

§ 19. The impression of the seal of any court, by stamp, shall be a sufficient sealing in all cases where sealing is required.

§ 20. When no official seal is provided, the clerk may use his private seal for the authentication of any record, process or proceeding, required by law to be authenticated by the seal of his court; and the attestation of the clerk, stating that he has no seal of office, and that he has affixed his private seal, shall be received as sufficient authentication, without requiring any proof of such private seal, or that it was affixed by the clerk.

§ 21. All courts established by this act, shall be courts of record, and shall keep just and faithful records of their proceedings.

§ 22. The records of proceedings at law, shall be kept separate and distinct from the records of proceedings in equity.

§ 23. Full entries of the orders and proceedings of all courts of record, of each day, shall be read in open court on the morning of the succeeding day, except on the last day of the term, when the minutes shall be read and signed by the judge at the rise of the court.

§ 24. The clerks of the several courts of record shall, within thirty days after the expiration of each term of their respective courts, attach together the pleadings and other papers forming the record in every cause in which a final judgment or decree shall have been rendered at such term.

§ 25. The clerks shall make, on the margin of each pleading and paper so attached, a memorandum of all orders and entries in relation thereto, with a reference to the book and page in which such order shall have been entered; and, at the end of the documents, attach a memorandum of the judgment or decree,

stating the substance thereof, with a reference to the book and page in which the entry thereof is made.

§ 26. The papers so attached, with the memorandas required by the preceding section, shall be carefully preserved as the roll of the judgment or decrees.

§ 27. When any bill of exceptions shall have been allowed and signed, the clerk of the court shall, within the same period, cause the same to be written out at full length, unless previously done, and attach such bill of exceptions to the roll as part thereof.

§ 28. When an execution shall be issued and returned, the same shall, in like manner, be attached to the roll in the cause to which it appertains and form part thereof.

§ 29. In making out transcripts of records (except on writs of error and appeal,) the bills of exception shall not be inserted, unless specially requested by the applicant thereof.

§ 30. The courts respectively shall, by rule, direct the filing, pleading and other papers, in such form as to admit their being conveniently attached together, as required by the preceding provisions, and to direct their clerks in making up rolls of the judgments and decrees rendered.

§ 31. All writs, process, proceedings and records in any court, shall be in the English language (except that the proper and known names of process and technical words may be expressed in the language heretofore and now commonly used,) and shall be made out on paper, or parchment, in a fair, legible character, in words at length, and not abbreviated; but such abbreviations as are now commonly used in the English language may be used, and numbers may be expressed by Arabic figures, or Roman numerals, in the customary way.

§ 32. The sittings of every court shall be public, and every citizen may freely attend the same.

§ 33. The courts established by this act, shall have power to issue all writs which may be necessary in the exercise of their respective jurisdictions, according to the principles and usages of law.

§ 34. Where there is no sheriff or coroner, and neither of them qualified to act, or both interested or prejudiced, the courts may appoint one or more persons to execute their process, and perform any other duty of the sheriff; who shall be entitled to such fees for his services as are allowed by law to sheriffs in like cases.

§ 35. The courts may, from time to time, appoint interpreters and translators to interpret the testimony of witnesses, and to translate any writing necessary to be translated in such court, or any cause therein.

§ 36. Translators, or interpreters, shall be sworn, and shall receive such compensation for their services, in each cause, as the courts shall deem reasonable, to be allowed, taxed and collected as other costs.

§ 37. Each court may enforce, by attachment, the return of any writ or process sent out of the same court, and the payment of any monies had and received by

any sheriff, coroner, constable, attorney, collector or solicitor, in his official capacity, and the delivery of papers intrusted to him officially, and unlawfully withheld.

§ 38. No judge of the supreme court, who is interested in any suit, or related to either party, or who shall have been of counsel in any suit or action, which now is, or may be brought, shall sit on the determination thereof.

§ 39. No judge of the circuit court, nor justice of the county court, shall sit on the determination of any cause or proceeding in which he is interested, or related to either party, or shall have been of counsel.

§ 40. Such cause or proceeding, if pending in the circuit court, shall be removed to some county where such objections do not exist, according to law.

§ 41. If a majority of the justices of the county court shall be interested in any cause or proceeding pending before them, or related to either party, the same shall be certified, with the original papers, to the circuit court of the county, who shall proceed thereon to final judgment and determination, the same as the county court might have done.

§ 42. If any court shall not be held on the first day of the term, such court shall stand adjourned from day to day, until the evening of the third day.

§ 43. If at that time a sufficient number of judges shall not have appeared and opened court, the same shall stand adjourned until the next regular term.

§ 44. If at any time after the commencement of a term, it happen that the court shall not be held according to its adjournment, it shall stand adjourned from day to day, until the evening of the third day; or if the judge of any circuit court cannot attend any regular term, he may notify the sheriff of the county, where such court should have been held, previous to the first day of such term, and it shall be the duty of such sheriff, by proclamation, at the court house door, to adjourn such court to the next regular term, or to such special or adjourned term as the judge shall direct.

§ 45. If the judges appear and hold court within that time, there shall be no discontinuance or lapse of the term, and the court may proceed as if it had been held according to its adjournment.

§ 46. If the court do not sit within that time, it shall stand adjourned until the next regular term.

§ 47. Special adjourned sessions of any court may be held in continuation of the regular term, upon its being so ordered by the court, or judge in term time, and entered by the clerk on the records of the court.

§ 48. The judge of any circuit court may, at any time, hold a special term for the trial of persons charged with crime and confined in jail, by making out a written order to that effect, and transmitting it to the clerk, who shall enter the same upon the records of the court.

§ 49. Where a special term shall be ordered under the preceding section, the judge ordering the same shall cause a notice thereof to be served on the attorney general, or circuit attorney, and the persons about to be tried, ten days before the commencement of such term.

§ 50. The sheriff of the proper county, or any other person to be appointed by the judge, may serve such notice.

§ 51. No such adjourned session, or special term, shall interfere with any other court to be held by the same judge.

§ 52. No writ, process, plea or proceeding whatsoever, civil or criminal, shall be deemed discontinued or abated, by reason of the failure of any term or session of any court, nor by reason of any adjournment, in the cases mentioned in this act, or otherwise, before the business pending in such court is disposed of; but the same shall be continued and proceeded upon as if no such failure or adjournment had happened.

§ 53. Each of the justices of the county court shall be conservators of the peace throughout their counties.

§ 54. No judge shall practice, or act as counsellor, solicitor, or attorney, in any court within this state.

§ 55. No judge or justice of the county court shall have any partner practising in the court of which he is judge; nor shall any judge be directly or indirectly interested in the cost of any suit that shall be brought in the court of which he is judge, except those suits in which he shall be a party, or interested, as above provided.

§ 56. No court shall be opened, or transact business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury; and every adjournment of a court on Saturday, shall always be to some other day than Sunday, except such adjournment as may be made, after a cause has been committed to a jury; but this section shall not prevent the exercise of the jurisdiction of any magistrate, when it shall be necessary in criminal cases, to preserve the peace or arrest the offender.

§ 57. Every court of record shall have power to punish, as for a criminal contempt, persons guilty of either of the following acts, and no others:

First, Disorderly, contemptuous or insolent behavior, committed during its sitting, in immediate view and presence, and directly tending to interrupt its proceedings, or to impair the respect due to its authority.

Second, Any breach of the peace, noise or other disturbance, directly tending to interrupt its proceedings.

Third, Wilful disobedience of any process or order, lawfully issued or made by it.

Fourth, Resistance wilfully offered by any person to the lawful order or process of the court.

Fifth, The contumacious and unlawful refusal of any person to be sworn as a witness, and, when so sworn, the like refusal to answer any legal and proper interrogatory.

§ 58. Punishments for contempts may be by fine or imprisonment in the jail of the county where the court may be sitting, or both, in the discretion of the court; but the fine in no case [to] exceed the sum of fifty dollars, nor the imprisonment ten days; and where any person shall be committed to prison for the non-payment of any such fine, he shall be discharged at the expiration of thirty days.

§ 59. Contempts committed in the immediate view and presence of the court, may be punished summarily; in other cases the party charged shall be notified of the accusation, and have a reasonable time to make his defence.

§ 60. Whenever any person shall be committed for any contempt specified in this act, the particular circumstances of his offence shall be set forth in the order or warrant of commitment.

§ 61. Nothing contained in the preceding sections shall be construed to extend to any proceeding against parties or officers, as for contempt, for the purpose of enforcing any civil right or remedy.

§ 62. Persons punished for contempt under the preceding provisions, shall, notwithstanding, be liable to indictment for such contempt, if the same be an indictable offence; but the court before which a conviction shall be had on such indictment, shall, in forming its sentence, take into consideration the punishment before inflicted.

§ 63. The several sheriffs shall attend each court held in their counties; they are authorized and required to furnish all blank books, stationary, fuel, and other things which may be necessary for the use of the courts held in their counties, whenever ordered by the court.

§ 64. The courts shall audit and adjust the accounts of the sheriff for all expenditures made pursuant to this act, and certify the balance accordingly.

§ 65. All such expenditures accruing in the supreme court, shall be paid out of the state treasury.

§ 66. The auditor shall draw his warrants accordingly, for which the certificate of the courts shall be a sufficient voucher.

§ 67. All expenditures accruing in the circuit courts, and county courts, shall be paid out of the treasury of the county in which the court is held, in the same manner as other demands.

Approved, March 7th, 1835.

COURTS.

DISTRICTS—CIRCUITS—TERMS.

An act to establish judicial districts and circuits, and prescribe the times and places of holding courts.

- Sec. 1. State divided into districts and circuits.
2. Judge for 7th circuit to be appointed.
 3. What counties shall compose the first judicial district.
 4. What counties compose the second.
 5. What counties compose the third.
 6. What counties compose the fourth.
 7. When, and where the supreme court shall be held.
 8. What counties compose the first judicial circuit.
 9. What counties compose the second.
 10. What counties compose the third.
 11. What counties compose the fourth.
 12. What counties compose the fifth.
 13. What counties compose the sixth.
 14. What counties compose the seventh.

- SEC. 15. Three terms of the circuit court to be held in each year.
16. Time of holding courts in the first judicial circuit.
 17. Time of holding courts in the second.
 18. Time of holding courts in the third.
 19. Three additional terms for the county of St. Louis for criminal cases; when to be held.
 20. Time of holding courts in the fourth judicial circuit.
 21. Time of holding courts in the fifth.
 22. Time of holding courts in the sixth.
 23. Time of holding courts in the seventh.
 24. Four terms of the county court to be held annually; time of holding.
 25. County courts may alter the time of holding their stated terms; notice to be given.
 26. Adjourned terms may be held.
 27. President, or any two justices of the court, may order special terms.
 28. To whom, and how notice of special term to be given.
 29. Writs and process to what courts returnable, &c.
 30. Sales of property to be made at the first court under this act, when, and under what circumstances.
 31. Sales of property advertised under the former law, when to be made at the first court under this act.
 32. When this act to take effect.

Be it enacted by the general assembly of the state of Missouri, as follows:

- § 1. That this state is divided into four judicial districts and seven judicial circuits.
- § 2. There shall be appointed, during the present session of the general assembly, one judge for the seventh judicial circuit.
- § 3. The first judicial district shall be composed of the counties of Clay, Clinton, Ray, Carroll, Chariton, Saline, Lafayette, Johnson, Jackson, Morgan, Cooper, Howard, Randolph, Monroe, Callaway, Cole, Boone, Rives, Pettis, Benton, Polk, Greene, Barry, and Van Buren.
- § 4. The second judicial district shall be composed of the counties of Montgomery, Warren, Lincoln, Pike, Ralls, Marion, Lewis, and Shelby.
- § 5. The third judicial district shall be composed of the counties of St. Charles, St. Louis, Jefferson, Washington, Franklin, Gasconade, Crawford, and Pulaski.
- § 6. The fourth judicial district shall be composed of the counties of New Madrid, Scott, Cape Girardeau, Perry, Ste. Genevieve, St. François, Ripley, Stoddart, Wayne, and Madison.
- § 7. The supreme court shall be held at the times and places following: For the first judicial district, at the town of Fayette, in the county of Howard, on the first Mondays after the fourth Mondays of April and August in each year. For the second judicial district, in the town of Bowling-green, in the county of Pike, on the third Mondays of April and August in each year. For the third judicial district, in the city of St. Louis, in the county of St. Louis, on the third Mondays of June and October in each year. For the fourth judicial district, in the town of Jackson, in the county of Cape Girardeau, on the fourth Mondays of May and September in each year.
- § 8. The first judicial circuit shall consist of the counties of Howard, Boone, Callaway, Randolph, Monroe, Cole, Saline, and Cooper.
- § 9. The second judicial circuit shall consist of the counties of Montgomery, Warren, Lincoln, Pike, Ralls, Marion, Lewis, and Shelby.

§ 10. The third judicial circuit shall consist of the counties of St. Charles, and St. Louis.

§ 11. The fourth judicial circuit shall consist of the counties of New Madrid, Scott, Cape Girardeau, Perry, Madison, Ripley, Wayne, and Stoddard.

§ 12. The fifth judicial circuit shall be composed of the counties of Clay, Clinton, Ray, Carroll, Chariton, Lafayette, Johnson, Jackson, and Van Buren.

§ 13. The sixth judicial circuit shall be composed of the counties of Rives, Pettis, Benton, Polk, Greene, Barry, and Morgan.

§ 14. The seventh judicial circuit shall be composed of the counties of Ste. Genevieve, St. Francois, Washington, Franklin, Gasconade, Crawford, Pulaski, and Jefferson.

§ 15. Three terms of the circuit court shall be held in each county, in every year, at the places appointed for holding courts therein.

§ 16. The circuit courts in the first judicial circuit shall be held as follows: For the county of Boone, on the first Mondays of February, June and October. For the county of Callaway, on the second Mondays of February, June and October. For the county of Cole, on the third Mondays of February, June and October. For the county of Cooper, on the fourth Mondays of February, June and October. For the county of Saline, on the first Mondays of March, July and November. For the county of Howard, on the second Mondays of March, July and November. For the county of Randolph, on the fourth Mondays of March, July and November. For the county of Monroe, on the first Mondays after the fourth Mondays of March, July, and November.

§ 17. The circuit courts in the second judicial circuit shall be held at the following times: For the county of Montgomery, on the fourth Mondays in February, June and October. For the county of Warren, on the first Thursdays after the fourth Mondays of February, June and October. For the county of Lincoln, on the first Mondays of March, July and November. For the county of Pike, on the second Mondays of March, July and November. For the county of Ralls, on the third Mondays of March, July and November. For the county of Lewis, on the fourth Mondays of March, July and November. For the county of Shelby, on the first Thursdays after the fourth Mondays of March, July and November. For the county of Marion, on the first Mondays after the fourth Mondays of March, July and November.

§ 18. The circuit courts in the third judicial circuit shall be held at the following times: For the county of St Charles, on the second Mondays in February, June and October. For the county of St Louis, on the second Mondays of March, July and November.

§ 19. The county of St Louis is allowed three terms, annually, for the transaction of criminal business, in addition to those allowed in the preceding section, to be held on the third Mondays of January, May and September.

§ 20. The circuit courts in the fourth judicial circuit shall be held at the following times: For the county of Cape Girardeau, on the first Mondays of February, June and October. For the county of Scott, on the third Mondays of February, June and

October. For the county of New Madrid, on the fourth Mondays of February, June and October. For the county of Stoddard, on the third Mondays of March, July and November. For the county [of] Wayne, on the first Thursdays after the third Mondays in March, July and November. For the county of Ripley, on the fourth Mondays of March, July and November. For the county of Madison, on the first Mondays after the fourth Mondays of March, July and November. For the county of Perry, on the second Mondays of April, August and December.

§ 21. The circuit courts in the fifth judicial circuit shall be held at the following times: For the county of Chariton, on the fourth Mondays of February, June and October. For the county of Carroll, on the first Thursdays after the fourth Mondays of February, June and October. For the county of Ray, on the first Mondays of March, July and November. For the county of Clinton, on the second Mondays of March, July and November. For the county of Clay, on the third Mondays of March, July and November. For the county of Jackson, on the fourth Mondays of March, July and November. For the county of Van Buren, on the first Mondays of April, August and December. For the county of Johnson, on the first Thursdays after the first Mondays of April, August and December. For the county of Lafayette, on the second Mondays of April, August and December.

§ 22. The circuit courts for the sixth judicial circuit shall be held at the times following: For the county of Greene, on the fourth Mondays of April, August and December. For the county of Polk, on the first Mondays of May, September and January. For the county of Benton, on the first Thursdays after the first Mondays of May, September and January. For the county of Morgan, on the second Mondays in May, September and January. For the county of Pettis, on the first Thursdays after the second Mondays of May, September and January. For the county of Rives, on the third Mondays of May, September and January. For the county of Barry, on the fourth Mondays of May, September and January.

§ 23. The circuit courts for the seventh judicial circuit shall be held at the times following: For the county of Jefferson, on the first Mondays of March, July and November. For the county of Ste. Genevieve, on the second Mondays of March, July and November. For the county of St. Francois, on the third Mondays of March, July and November. For the county of Washington, on the fourth Mondays of March, July and November. For the county of Franklin, on the first Mondays of April, August and December. For the county of Gasconade, on the second Mondays of April, August and December. For the county of Crawford, on the first Thursdays after the second Mondays of April, August and December. For the county of Pulaski, on the third Mondays of April, August and December.

§ 24. Four terms of the county court shall be held in each county, annually, at the place of holding courts therein, commencing on the first Mondays of February, May, August and November.

§ 25. The county courts may alter the times of holding their stated terms, giving notice thereof in such manner as to them shall seem expedient.

§ 26. Each county court may hold adjourned terms at any time.

§ 27. The president, or any two justices of the county court, may order a special term whenever the business of the court may require it.

§ 28. Notice of such special term shall be given to the justices who were absent when the same was ordered, and by advertisements stuck up in five public places in the county, at least five days before the commencement of such term.

§ 29. All writs and process made, or to be made, returnable to the next term of the several courts, as heretofore established, shall be returnable to the first term to be held under this act.

§ 30. Sales of property which would have been made at the first terms, as heretofore established, shall be made at the first terms to be held under this act.

§ 31. In cases where the sale of property may have been advertised to be made on any day of the term, as heretofore established, to satisfy any execution returnable to such term, the sale shall be made on the same day of the term to be held under this act.

§ 32. This act shall take effect and be in force from and after the first day of June next; except the second section, which shall take effect from and after its passage.

Approved, March 17th, 1835.

CRIMES AND PUNISHMENTS.

An act concerning crimes and their punishments.

- ART. I. Of offences against the government and the supremacy of the laws.
 ART. II. Of offences affecting the lives and persons of individuals.
 ART. III. Of offences against property, public and private.
 ART. IV. Of offences affecting records, currency, instruments or securities, public and private.
 ART. V. Of offences affecting the administration or execution of justice.
 ART. VI. Of offences by persons in office, or affecting public trusts and public rights.
 ART. VII. Of offences against the public peace, or affecting the security of persons and property, and not before enumerated.
 ART. VIII. Of offences against public morals and decency, or the public police, and other miscellaneous offences.
 ART. IX. General provisions concerning crimes and punishments.

ARTICLE I.

Of offences against the government and the supremacy of the laws.

- SEC. 1. Acts constituting treason against this state; punishment for.
 2. Misprison of treason; punishment for.
 3. To attempt or endeavor to give aid, &c., to the enemies of this state, &c.; punishment for.
 4. Two or more combining by force to usurp the government of the state; punishment for.
 5. Twelve or more persons combining, &c., to remove people from their habitations, &c.; punishment for.
 6. Persons convicted of raising a rebellion or insurrection of slaves, &c.; punishment for.
 7. Slaves who rebel or make insurrection, &c.; punishment for.
 8. Free persons who shall aid or assist in such rebellion or insurrection; how punished.
 9. Persons, bond or free, convicted of consulting, &c., or attempting to raise rebellion, &c.; punishment for.
 10. A white person sentenced to the penitentiary under this article, disqualified from voting, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

ARTICLE I.

Of offences against the government and the supremacy of the laws.

§ 1. Every person who shall commit treason against the state, by levying war against the same, or by adhering to the enemies thereof, by giving them aid and comfort, shall, upon conviction, suffer death, or be sentenced to imprisonment in the penitentiary for a period not less than ten years.

§ 2. Every person who shall have knowledge that any other person has committed, or is about to commit, treason against this state, and who shall conceal the same, shall be deemed guilty of misprison of treason, and, on conviction, shall be punished by imprisonment in the penitentiary for a period not exceeding seven years, or by imprisonment in the county jail for a period not exceeding six months, and by fine not less than one thousand dollars.

§ 3. Any person who, while this state shall be engaged in war, in cases authorized by the constitution of the United States, shall attempt or endeavor to join or give aid or comfort to the enemies of the state, or shall counsel, advise, persuade or induce any other person to join, or give aid or comfort to them, in this state or elsewhere, shall, upon conviction, be punished by imprisonment in the penitentiary for a period not less than two, nor more than ten years.

§ 4. If two or more persons shall combine, by force, to usurp the government of this state, or overturn the same, or interfere forcibly in the administration of the government, or any department thereof, evidenced by forcible attempt made within the state, to accomplish such purpose, the person so offending shall be punished by imprisonment in the penitentiary for a period not exceeding five years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail for a period not exceeding six months.

§ 5. If twelve or more persons shall combine to levy war against any part of the people of this state, or to remove forcibly out of the state, or from their habitations, evidenced by taking arms and assembling to accomplish such purpose, every person so offending shall be punished as declared in the preceding section.

§ 6. Every person, bond or free, who shall be convicted of actually raising a rebellion or insurrection of slaves, free negroes or mulattoes, in this state, shall suffer death.

§ 7. Every slave who shall, at any time, rebel or make insurrection, or shall enter into any agreement to rebel or make insurrection, or shall plot or conspire the death of any person, or to commit arson in furtherance of such conspiracy, and shall, by any overt act, attempt to accomplish such purpose, shall suffer death, or be punished by imprisonment in the penitentiary during life.

§ 8. Every free person who shall aid or assist in any such rebellion or insurrection, or shall furnish arms, or do any other overt act, in furtherance of such rebellion or insurrection, shall be punished as in the next preceding section is prescribed.

§ 9. Every person, bond or free, who shall be convicted of consulting, plotting, conspiring, or attempting to raise any rebellion or insurrection of negroes or

mulattoes, bond or free, or to commit any crime in furtherance thereof, within this state, although no overt act be done to accomplish such purpose, shall be punished by imprisonment in the penitentiary for a period not less than ten years.

§ 10 Every white person who shall be convicted of any of the offences punishable by the provisions of this article, and sentenced to imprisonment in the penitentiary, shall, thereafter, be incompetent to be a juror in any cause, and shall be forever disqualified from voting at any election, or holding any office of honor, profit or trust, within this state.

ARTICLE II.

Of offences affecting the lives and persons of individuals.

- Sec. 1. Acts constituting murder in the first degree.
2. What acts deemed murder in the second degree.
3. Punishment for murder in the first and second degree.
4. In what cases homicide deemed justifiable.
5. In what cases homicide deemed excusable, when committed by accident or misfortune.
6. In what cases the jury to render a general verdict of not guilty, on indictment for murder, &c.
- 7, 8, & 9. Acts constituting manslaughter in the first degree.
- 10, 11, & 12. Acts constituting manslaughter in the second degree.
- 13, 14, 15, 16, 17 & 18. Cases of manslaughter in the third degree.
- 19, & 20. Cases of manslaughter in the fourth degree.
21. Punishment of manslaughter in first, second and third degrees.
22. Punishment of manslaughter in fourth degree.
23. Punishment of rape.
24. Carnally knowing a woman without her consent, &c.
25. Compelling a woman to marry, &c.
26. Taking a woman with the intent to compel her to marry, &c.
27. Taking females under eighteen from their parents, &c., for certain purposes.
28. Punishment of rape, &c., committed by a slave or mulatto.
29. Punishment, &c., for aiding in commission of offence specified in last section.
30. Cases of mayhem; punishment for.
31. Punishment for assaults with deadly weapons.
32. Causing poison to be taken with intent to kill; punishment for.
33. Punishment for poisoning food, &c., or spring, &c., of water.
34. Assaults to commit felonies, how punished.
35. Persons by whose act, procurement or negligence, mayhem is committed; how punished
36. Medicine administered, or instruments used, &c., to produce abortion, &c.; how punished.
37. & 38. Punishment for inveigling and kidnapping.
39. Place of trial for offences specified in the two last sections.
40. Decoying child under twelve years, with intent to conceal, &c.
41. Exposing child under six years, with intent to abandon it, &c.
42. For what offences, under this article, disqualified from voting, holding office of honor, &c.

§ 1. Every murder which shall be committed by means of poisons, or by laying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration or attempt to perpetuate any arson, rape, robbery, burglary, or other felony, shall be deemed murder in the first degree.

§ 2. All other kinds of murder at common law, not herein declared to be manslaughter, or justifiable or excusable homicide, shall be deemed murder in the second degree.

§ 3. Persons convicted of murder in the first degree, shall suffer death; those convicted of murder in the second degree, shall be punished by imprisonment in the penitentiary not less than ten years.

§ 4. Homicide shall be deemed justifiable, when committed by any person in either of the following cases:

First, In resisting any attempt to murder such person, or to commit any felony upon him or her, or in any dwelling-house in which such person shall be; or,

Second, When committed in the lawful defence of such person, or of his or her husband or wife, parent, child, master, mistress, apprentice or servant, when there shall be reasonable cause to apprehend a design to commit a felony, or to do some great personal injury, and there shall be imminent danger of such design being accomplished; or

Third, When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot or insurrection, or in lawfully keeping or preserving the peace.

§ 5. Homicide shall be deemed excusable when committed by accident or misfortune, in either of the following cases:

First, In lawfully correcting a child, apprentice, servant or slave, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without unlawful intent; or,

Second, In the heat of passion, upon any sudden and sufficient provocation, or upon sudden combat without any undue advantage being taken, and without any dangerous weapon being used, and not done in a cruel and unusual manner.

§ 6. Whenever it shall appear to any jury upon the trial of any person indicted for murder or manslaughter, that the alleged homicide was committed under circumstances, or in a case whereby any statute or the common law, such homicide was justifiable or excusable, the jury shall render a general verdict of not guilty.

§ 7. The killing of a human being, without a design to effect death by the act, procurement, or culpable negligence of another, while such other is engaged in the perpetration or attempt to perpetuate any crime or misdemeanor, not amounting to a felony, in cases when such killing would be murder at the common law, shall be deemed manslaughter in the first degree.

§ 8. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of man-slaughter in the first degree.

§ 9. The wilful killing of any unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed man-slaughter in the first degree.

§ 10. Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatsoever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have

been advised by a physician to be necessary for that purpose, shall be deemed guilty of manslaughter in the second degree.

§ 11. The killing of a human being, without a design to effect death, in a heat of passion, but in a cruel and unusual manner, unless it be committed under such circumstances as to constitute excusable or justifiable homicide, shall be deemed manslaughter in the second degree.

§ 12. Every person who shall unnecessarily kill another, either while resisting an attempt by such other person to commit any felony, or do any other unlawful act, after such attempt shall have failed, shall be deemed guilty of manslaughter in the second degree.

§ 13. The killing of another in the heat of passion, without a design to effect death, by a dangerous weapon, in any case except such wherein the killing of another is justifiable or excusable, shall be deemed manslaughter in the third degree.

§ 14. The involuntary killing of a human being by the act, procurement or culpable negligence of another, while such other person is engaged in the commission of a trespass or other injury to private rights or property, or engaged in any attempt to commit such injury, shall be deemed manslaughter in the third degree.

§ 15. If the owner of a mischievous animal, knowing its propensities, unlawfully suffer it to go at large, or shall keep it without ordinary care, and such animal, while so at large or not confined, kill any human being, who shall have taken the precautions which the circumstances may permit, to avoid such animal, such owner shall be deemed guilty of manslaughter in the third degree.

§ 16. Any person navigating any boat or vessel for gain, who shall wilfully or negligently receive so many passengers, or such quantity of other lading, that, by means thereof, such boat or vessel shall sink or overset, and thereby any human being shall be drowned or otherwise killed, such person shall be deemed guilty of manslaughter in the third degree.

§ 17. If any captain or other person, having charge of any steam boat, used for the conveyance of passengers, or if the engineer or other person having charge of the boiler of such boat, or of any apparatus for the generation of steam, shall, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, create, or allow to be created, such an undue quantity of steam, as to break or burst the boiler or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking, any person shall be killed, every such captain, engineer, or other person, shall be deemed guilty of manslaughter in the third degree.

§ 18. If any physician, while in a state of intoxication, shall, without a design to effect death, administer any poison, drug, or medicine, or do any other act to another person which shall produce the death of such other, he shall be deemed guilty of manslaughter in the third degree.

§ 19. The involuntary killing of another by a weapon, or by means neither cruel or unusual, in the heat of passion, in any cases other than justifiable homicide, shall be deemed manslaughter in the fourth degree.

§ 20. Every other killing of a human being by the act, procurement or culpable

negligence of another, which would be manslaughter at the common law, and which is not excusable or justifiable, or is not declared in this article to be manslaughter in some other degree, shall be deemed manslaughter in the fourth degree.

§ 21. Persons convicted of manslaughter in the first, second and third degrees, shall be punished by imprisonment in the penitentiary as follows:

First, If in the first degree, for a term not less than five years.

Second, If in the second degree, for a term not less than three years, nor more than five years.

Third, If in the third degree, for a term not more than three years.

§ 22. Every person convicted of manslaughter in the fourth degree, shall be punished by imprisonment in the penitentiary for two years, or by imprisonment in a county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 23 Every person who shall be convicted of rape, either by carnally and unlawfully knowing any female child, under the age of ten years, or by forcibly ravishing any woman of the age of ten years or upwards, shall be punished by imprisonment in the penitentiary not less than five years.

§ 24. Every person who shall have carnal knowledge of any woman above the age of ten years, without her consent, by administering to her any substance or liquid, which shall produce such stupor or such imbecility of mind, or weakness of body, as to prevent effectual resistance, shall, upon conviction, be adjudged guilty of a rape, and be punished by imprisonment in the penitentiary for a term not less than five years.

§ 25. Every person who shall take any woman unlawfully against her will, and by force, menace or duress, compel her to marry him, or to marry any other person, or to be defiled, shall, on conviction, be punished by imprisonment in the penitentiary not less than three years, nor exceeding ten years.

§ 26. Every person who shall take any woman unlawfully against her will, with intent to compel her by force, menace or duress, to marry him, or to marry any other person, or to be defiled, upon conviction thereof, shall be punished by imprisonment in the penitentiary not exceeding five years.

§ 27. Every person who shall take away any female, under the age of eighteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of prostitution or concubinage, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not exceeding five years.

§ 28. If any negro or mulatto shall either,

First, Commit, or attempt to commit, a rape on a white female, as herein-before declared, or,

Second, By force, menace or duress, compel or attempt to compel any white female to marry him or any negro or mulatto, or to be defiled by him or another negro or mulatto, or,

Third, Marry or defile, or attempt to defile, any white female who shall have

been compelled thereto by force, menace or duress, employed or used by him or any other, or,

Fourth, Take away any white female under the age of eighteen years, as specified in the last preceding section, for the purpose of prostitution, concubinage or marriage, with him or any other negro or mulatto, he shall, on conviction, instead of the punishment declared in the preceding sections, be sentenced to castration, to be performed under the direction of the sheriff, by some skilful person, and the expense shall be adjusted, taxed and paid as other costs.

§ 29. If any person, other than a negro or mulatto, shall aid or assist any negro or mulatto in the commission of any of the offences specified in the last section, he shall, on conviction, be punished in the same manner, and to the same extent, as declared in the twenty-third section of this article.

§ 30. Every person who shall, on purpose, and of malice aforethought, cut or bite off the ear, or cut out or disable the tongue, put out an eye, or slit, cut or bite off the nose or lip, or shall cut off or disable any limb or member of any person, with intent to kill, maim or disfigure such person, shall, on conviction, be imprisoned in the penitentiary, for a term not less than five years nor exceeding ten years.

§ 31. Every person who shall, on purpose, and of malice aforethought, shoot at or stab another, or assault or beat another with a deadly weapon, or by any other means or force, likely to produce death or great bodily harm, with intent to kill, maim, ravish, or rob such person, or in the attempt to commit any burglary, or other felony, or in resisting the execution of any legal process, shall be punished by imprisonment in the penitentiary not exceeding ten years.

§ 32. Every person who shall administer to another, directly or indirectly, any poison, or any poisonous substance or liquid, or shall mingle poison with any food, drink or medicine, with intent to kill such person, which shall be actually taken by such person or another, whereof death shall not ensue, shall be punished by imprisonment in the penitentiary not less than five nor more than ten years.

§ 33. Every person who shall mingle any poison with any food, drink or medicine, with intent to kill or injure any human being, or who shall wilfully poison any spring, well, or reservoir of water, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 34. Every person who shall be convicted of an assault, with intent to commit any robbery, burglary, rape, manslaughter, or any other felony, the punishment for which assault is not hereinbefore prescribed, shall be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 35. If any person shall be maimed, wounded or disfigured, or receive great bodily harm, or his life be endangered by the act, procurement, or culpable negligence of another, in cases and under circumstances which would constitute

murder, or manslaughter, if death had ensued, the person by whose act, procurement or negligence, such injury or danger of life shall be occasioned, shall, in case not otherwise provided for, be punished by imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 36. Every physician, or other person, who shall wilfully administer to any pregnant woman, any medicine, drug, substance or thing whatsoever, or shall use, or employ any instrument or means whatsoever, with intent thereby to procure abortion, or the miscarriage of any such woman, unless the same shall have been necessary to preserve the life of such woman, or shall have been advised by a physician to be necessary for that purpose, shall, upon conviction, be adjudged guilty of a misdemeanor, and be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 37. Every person who shall, without lawful authority, forcibly seize and confine, or shall inveigle, decoy or kidnap any other person with intent either,

First, To cause such person to be sent or taken out of the state, or to be secretly confined within the same, against his will, or,

Second, To cause such person to be sold as a slave, or in any way held to service against his will, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding ten years.

§ 38. Every person who shall kidnap, or forcibly or fraudulently carry or decoy out of this state, or shall sell, or in any manner transfer as a slave or servant, any free person or persons entitled to freedom, so taken, decoyed or kidnapped, knowing such person to be free or entitled to freedom, shall, upon conviction, be punished by imprisonment in the penitentiary not more than ten years.

§ 39. Every offence prohibited in either of the two last sections, may be tried in the county in which the crime may have been committed, or in any county through which the person so seized, inveigled, decoyed, kidnapped or sold, shall have been taken, carried or brought.

§ 40. Every person who shall maliciously, forcibly or fraudulently, lead, take or carry away, or decoy or entice away, any child under the age of twelve years, with intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 41. If any father or mother of any child under the age of six years, or any other person to whom such child have been confided, shall expose such child, in a street, field or other place, with intent wholly to abandon it, he or she shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not more than one year.

§ 42. Every person who shall be convicted of murder, or rape, or of manslaughter in the first degree, or who shall be sentenced to imprisonment in the peni-

tentiary for any of the offences specified in the twenty-fifth, twenty-sixth, twenty-seventh, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-seventh and thirty-eighth sections of this article, shall be forever disqualified from voting at any election, or holding any office of honor, profit or trust, within this state, and shall, moreover, be rendered incompetent to be a juror in any case.

ARTICLE III.

Of offences against property, public and private.

- Sec. 1. Arson of the first degree declared.
2. What houses, &c., shall be considered dwelling-houses, within the meaning of this or the preceding section.
- 3, 4, & 5. Arson in the second degree declared.
- 6, 7, 8, & 9. Arson in the third degree declared.
- 10, & 11. Arson in the fourth degree declared.
12. Punishment of arson in the first, second, third and fourth degrees.
13. Burglary in the first degree declared.
- 14, 15, 16, 17, & 18. Burglary in second degree declared.
19. What buildings shall be deemed a dwelling-house, within the foregoing provisions.
20. Other offences which constitute burglary in the second degree.
21. Burglary in the third degree declared.
22. Breaking out of a dwelling-house, or breaking an inner door, when deemed burglary.
23. Punishment for different degrees of burglary.
24. Burglary and larceny, both committed at the same time; how punished.
25. Definition of robbery in the first degree.
26. Definition of robbery in the second degree.
27. Definition of robbery in the third degree.
28. Punishment for robbery in the first, second and third degrees.
29. Attempt to rob by threatening letters, &c.; punishment for.
30. Grand larceny defined.
31. Punishment for grand larceny.
32. Petty larceny defined; punishment for.
33. Larceny committed in a dwelling-house, or boat or vessel, &c.; punishment for.
34. What shall be deemed the value of certain articles stolen.
35. To mark or brand, or alter the mark or brand, or wilfully kill the animal of another, with intent, &c., deemed larceny; how punished.
36. Stealing or embezzling will, deed, &c., effecting real or personal property, grand larceny; how punished.
37. Stealing or embezzling record, &c.; how punished.
38. Officers having the custody of records, papers, &c., who fraudently withdraws or destroys the same; how punished.
39. Severing from the soil, &c., larceny in certain cases.
- 40, & 41. Embezzlement by clerks, servants, &c.; how punished.
42. Carriers, &c., embezzling property; how punished.
43. Tenant, or lodger, embezzling or purloining, &c.; how punished.
44. Buying or receiving stolen property; how punished.
45. Conviction of principal not necessary for offences under the last section.
46. Obtaining signature, or property, by false token or false pretence; how punished.
47. Punishment increased for certain false pretences.
48. On trial for offences in the two last sections, may be convicted and punished for larceny.
49. Receiving money, &c., in false character, to be punished as stealing.
50. Parties and privies to fraudulent conveyances; how punished.
51. Persons violating the provisions of the preceding section, to pay double damages.
52. Wilfully or maliciously destroying boat or vessel, with intent to injure the owner; how punished.
53. Administering or exposing poison to cattle &c.; how punished.
54. Maliciously to kill, maim or wound, the cattle of another; how punished.

- Sec. 53.* Malicious trespass, and severing from the soil, a misdemeanor.
56. Maliciously to destroy or injure a pile or raft of wood, or set adrift a boat, &c., misdemeanor.
57. Maliciously destroying bridges, mill dams, &c., misdemeanor.
58. Removing, altering, &c., monuments, &c., in boundaries, misdemeanor.
59. Destroying, defacing, &c., mile stones, guide boards, &c., a misdemeanor.
60. Offences prohibited by either of the eight preceding sections; construction as to malice.
61. Misdemeanor under this article, how punished, where not before prescribed.
62. For what offences under this article, rendered incompetent to be a witness, juror, or vote at election, &c.

§ 1. Every person who shall set fire to, or burn, in the night-time, any dwelling-house, in which there shall be at the time, some human being, or who shall wilfully set fire to, or burn, in the night-time, any boat or vessel, in which there shall be at the time, some human being, shall, upon conviction, be adjudged guilty of arson of [in] the first degree.

§ 2. Every house, prison, jail, or other edifice, which shall have been usually occupied by persons lodging therein at night, shall be deemed a dwelling-house of any person having charge thereof, or so lodging therein; but no ware-house, barn, shed, or other out-house, shall be deemed a dwelling-house or part of a dwelling-house, within the meaning of this or the last section, unless the same be joined to, or immediately connected with, and part of a dwelling-house.

§ 3. Every person who shall wilfully set fire to, or burn, in the daytime, any inhabited dwelling-house, boat or vessel, which, if done in the night-time, would be arson of the first degree, shall, upon conviction, be adjudged guilty of arson in the second degree.

§ 4. Every person who shall wilfully set fire to, or burn, in the night-time, any shop, ware-house, office, store-house, or other building, not being the subject of arson in the first degree, but adjoining to, or within the curtilage of, any inhabited dwelling-house, so that such dwelling-house shall be endangered by such firing, shall, upon conviction, be adjudged guilty of arson in the second degree.

§ 5. Every person who shall wilfully set fire to, or burn, in the night-time, any building in which shall be kept or deposited at the time, any public records, or the papers of any public officer, shall, on conviction, be adjudged guilty of arson in the second degree.

§ 6. Every person who shall wilfully set fire to, or burn, in the daytime, any shop, ware-house, or other building, which, if done in the night-time, would be arson in the second degree, shall, on conviction, be adjudged guilty of arson in the third degree.

§ 7. Every person who shall wilfully set fire to, or burn, in the night-time, any house, building, barn, stable, boat or vessel of another, or any house of public worship, college, academy, or school-house, or building used as such, or any public building belonging to the United States or this state, or to any county, city, town or village, not the subject of arson in the first or second degree, shall, on conviction, be adjudged guilty of arson in the third degree.

§ 8. Every person who shall wilfully set fire to, or burn, in the night-time, any brewery, distillery, grist-mill, paper-mill, fulling-mill, saw-mill, carding machine, or other machinery for manufacturing purposes, or any building containing the

same, or erected or used as a manufactory, shall, on conviction, be adjudged guilty of arson of [in] the third degree.

§ 9. Every person who shall burn any building, boat, or vessel, or any goods, wares or merchandize, or other chattels, which shall, at the time, be insured against loss or damage by fire, with intent to defraud or prejudice the insurer, whether the same be the property of such person or any other, shall be, upon conviction, adjudged guilty of arson in the third degree.

§ 10. Every person who shall, in the daytime, wilfully set fire to, or burn any dwelling-house or other building, or any machine, or any boat or vessel, which, if done in the night-time would be arson in the third degree, shall, upon conviction, be adjudged guilty of arson in the fourth degree.

§ 11. Every person who shall, in the day or night-time, wilfully set fire to or burn any goods, wares, merchandize, or other chattels of another, not the subject of arson in the third degree, or any stack of grain of any kind, belonging to another, or any grain, grass or herbage, growing or standing in the field, or any nursery or orchard of fruit trees, or any fence belonging to another, or any toll-bridge or other public bridge, shall, on conviction, be adjudged guilty of arson in the fourth degree.

§ 12. Every person who shall be convicted of any degree of arson, shall be punished by imprisonment as follows:

First, In the first degree, in the penitentiary not less than ten years.

Second, In the second degree, in the penitentiary not less than seven years, nor exceeding ten years.

Third, In the third degree, in the penitentiary not less than five, nor exceeding seven years.

Fourth, In the fourth degree, in the penitentiary not less than two, nor more than four years, or by imprisonment in the county jail not exceeding six months.

§ 13. Every person who shall be convicted of breaking into, and entering in the night-time, the dwelling-house of another, in which there shall be at the time some human being, with intent to commit some crime therein, either,

First, By forcibly bursting or breaking the wall, or any outer door, window, or shutter of a window of such house, or the lock or bolt of such door, or the fastening of such window or shutter, or,

Second, By breaking in in any other manner, being armed with some dangerous weapon, or with the assistance and aid of one or more confederates, then actually present, aiding and assisting, or,

Third, By unlocking an outer door by means of false keys, or by picking the lock thereof, shall be adjudged guilty of burglary in the first degree.

§ 14. Every person who shall be convicted of breaking into a dwelling-house in the daytime, under such circumstances as would have constituted the crime of burglary in the first degree, if committed in the night-time, shall be deemed [guilty of] burglary in the second degree.

§ 15. Every person who shall be convicted of breaking into a dwelling-house in

the night-time, with intent to commit a crime, but under such circumstances as shall not constitute the offence of burglary in the first degree, shall be deemed guilty of burglary in the second degree.

§ 16. Every person who shall enter into the dwelling-house of another, by day or night, in such manner as not to constitute any burglary, as hereinbefore specified, with intent to commit a crime, or being in the dwelling-house of another, shall commit a crime, and shall, in the night-time, break any outer door, window, or shutter of a window, or any other part of said house, to get out of the same, shall be adjudged guilty of burglary in the second degree.

§ 17. Every person who, having entered the dwelling-house of another in the night-time, through an open outer door, or window, or other aperture not made by such person, shall break an inner door of the same house, with intent to commit any crime, shall be adjudged guilty of burglary in the second degree.

§ 18. Every person who being admitted into any dwelling-house with the consent of the occupant thereof, or who being lawfully in such house, shall, in the night-time, break an inner door with intent to commit a crime, shall be adjudged guilty of burglary in the second degree.

§ 19. No building shall be deemed a dwelling-house, or any part of a dwelling-house, within the meaning of the foregoing provisions, unless the same be joined to, immediately connected with, and a part of a dwelling-house.

§ 20. Every person who shall be convicted of breaking [into] and entering in the night-time,

First, Any building within the curtilage of a dwelling-house, but not forming a part thereof, or,

Second, Any shop, store, booth, tent, ware-house, or other building, or any boat or vessel, in which there shall be at the time some human being, or any goods, wares, or merchandize, or other valuable thing kept or deposited, with intent to steal, or commit any felony therein, shall, on conviction, be adjudged guilty of burglary in the second degree.

§ 21. Every person who shall be convicted of breaking [into] and entering in the daytime, any dwelling-house or other building, or any shop, store, booth, tent, boat or vessel, under such circumstances as would have constituted the offence of burglary in the second degree, if committed in the night-time, shall be deemed guilty of burglary in the third degree.

§ 22. The breaking out of any dwelling-house, or the breaking of the inner door thereof, by any person being therein, shall not be deemed such breaking a dwelling-house as to constitute burglary in any case, other than such as are herein particularly specified.

§ 23. Every person who shall be convicted of burglary, shall be punished by imprisonment in the penitentiary, if in the first degree, not less than ten years; if in the second degree, not less than five, nor more than ten years; if in the third degree, not exceeding five years.

§ 24. If any person in committing burglary, shall also commit a larceny, he may be prosecuted for both offences in the same court, or in separate counts of the

same indictment, and, on conviction of such burglary and larceny, shall be punished by imprisonment in the penitentiary, in addition to the punishment hereinbefore prescribed for the burglary, not exceeding five years.

§ 25. Every person who shall be convicted of feloniously taking the property of another from his person, or in his presence, and against his will, by violence to his person, or by putting him in fear of some immediate injury to his person, shall be adjudged guilty of robbery in the first degree.

§ 26. Every person who shall be convicted of feloniously taking the personal property of another in his presence, or from his person, which shall have been delivered, or suffered to be taken, through fear of some injury to his person or property, or to the person of any relative or member of his family, threatened to be inflicted at some different time, which fear shall have been produced by the threats of the person so receiving or taking such property, shall be adjudged guilty of robbery in the second degree.

§ 27. If any person shall, either verbally, or [by] a written or printed communication, accuse or threaten to accuse another of any felony, or threaten to do any injury to the person or property of any one, with a view or intent to extort or gain any money or property of any description belonging to another, and shall, by intimidating him with said accusation or threat, extort or gain from him any money or property, every such offender shall be deemed guilty of robbery in the third degree.

§ 28. Every person convicted of robbery shall be punished by imprisonment in the penitentiary; if in the first degree, not less than ten years; if in the second degree, not exceeding ten years and not less than five years; if in the third degree, not exceeding five years.

§ 29. Every person who shall knowingly send or deliver, or shall make, and for the purpose of being delivered or sent, shall part with the possession of any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, or with any letter, mark or other designation, threatening therein to accuse any person of a crime, or to do any injury to the person or property of any one, with a view or intent to extort or gain any money or property of any description belonging to another, shall, on conviction, be adjudged guilty of an attempt to rob, and shall be punished by imprisonment in the penitentiary not exceeding five years.

§ 30. Every person who shall be convicted of feloniously stealing, taking and carrying away, any money, goods, right in action, or other personal property, or valuable thing whatsoever, of the value of ten dollars or more, or any slave, horse, mare, gelding, colt, filly, mule, ass, neat cattle, sheep or hog, belonging to another, shall be deemed guilty of grand larceny.

§ 31. Persons convicted of grand larceny shall be punished in the following cases, as follows:

First, For stealing a slave, by imprisonment in the penitentiary, not less than seven years.

Second, For stealing a horse, mare, gelding, colt, filly, mule, or ass, by like imprisonment not exceeding seven years.

Third, In all other cases of grand larceny, by like imprisonment not exceeding five years.

§ 32. Every [person] who shall steal, take and carry away, any money or personal property, or effects of another, under the value of ten dollars (not being the subject of grand larceny, without regard to value) shall be deemed guilty of petty larceny, and, on conviction, shall be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment.

§ 33. If any larceny be committed in a dwelling-house, or in any boat or vessel, or by stealing from the person in the night-time, the offender may be punished by imprisonment in the penitentiary not exceeding seven years.

§ 34. If the property stolen, consists of any bond, covenant, note, bill of exchange, draft, order or receipt, or any other evidence of debt, or of any public security, issued by the United States, or by this state, or of any instrument, whereby any demand, right, or obligation shall be assigned, transferred, created, increased, released, extinguished or diminished, the money due thereon, or secured thereby and remaining unsatisfied, or which in any event or contingency might be collected thereon, or the value of the property transferred or affected, as the case may be, shall be deemed the value of the article so stolen.

§ 35. If any person shall mark or brand, or alter the mark or brand of any animal, the subject of larceny, being the property of another, with intent to steal or convert the same to his own use, or shall wilfully kill any such animal, with intent to steal or convert to his own use the carcass or skin, or any part of the animal so killed, he shall be adjudged guilty of larceny, and punished in the same manner as if he had feloniously stolen such animal.

§ 36. If any person steal or embezzle any will of real or personal property, or any deed or other instrument of writing, being or purporting to be the act of another, by which any right or interest in real or personal property shall be or purport to be, assured, transferred or conveyed, or in any way changed or affected, shall be adjudged guilty of grand larceny, without reference to the value of the instrument so stolen or embezzled, and shall be punished by imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding six months, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 37. Whoever shall be convicted of having stolen and carried away, or embezzled, any record, paper or proceeding of a court of justice, filed or deposited with any clerk or officer of such court, or any paper, document or record filed or deposited in any public office, or with any judicial officer, shall be adjudged guilty of grand larceny, without reference to the value of the record, paper, document or proceeding, so stolen or embezzled, and shall be punished by imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding six

months, or by fine not exceeding one thousand dollars, or both such fine and imprisonment.

§ 38. Every officer or other person having the custody of any record, paper, document or proceeding, or any will, deed or other writing specified in either of the two last sections, who shall fraudulently take away, withdraw or destroy any such record, paper, document, proceeding, will, deed or instrument of writing, filed or deposited with him, or left in his custody, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years.

§ 39. If any person shall sever from the soil of another, any produce growing thereon, of the value of more than five dollars, or shall sever from any building, or from any gate, fence or other railing, or enclosure, or any part thereof, or any material of which it is composed, of the like value, and shall take and convert the same to his own use, with the intent to steal the same, he shall be deemed guilty of larceny in the same manner and of the same degree as if the articles so taken had been severed at some different and previous time.

§ 40. If any clerk, apprentice, or servant of any private person, or of any co-partnership (except clerks, apprentices and servants within the age of sixteen years,) or if any officer, agent, clerk or servant of any incorporated company, or any person employed in any such capacity, shall embezzle or convert to his own use, or shall take, make way with, or secrete, with intent to embezzle or convert to his own use, without the assent of his master or employer, any money, goods, rights in action, or valuable security or effects whatsoever, belonging to any other person, which shall have come into his possession or under his care, by virtue of such employment or office, he shall, upon conviction, be punished in the manner prescribed by law for feloniously stealing property of the kind, or value of the articles so embezzled, taken or secreted.

§ 41. Every embezzlement of any evidence of debt, negotiable by delivery only, and actually executed by the master or employer of such clerk, agent, officer or servant, but not delivered or issued as a valid instrument, shall be deemed an offence within the meaning of the last preceding section, and punished accordingly.

§ 42. If any carrier, or other bailee, shall embezzle or convert to his own use, or make way with, or secrete with intent to embezzle, or to convert to his own use, any money, goods, rights in action, property or valuable security, or other effects, which shall have been delivered to him, or shall have come into his possession or under his care, as such bailee, although he shall not break any trunk, package, box or other thing, in which he received them, he shall, on conviction, be adjudged guilty of larceny, and punished in the manner prescribed by law for feloniously stealing property of the nature or value of the articles so embezzled, taken or secreted.

§ 43. If any tenant or lodger shall take away, with intent to embezzle, steal or purloin, any bedding, furniture, goods or chattels, or fixture, which, by contract, was let to him, to be used by him in or with any house, apartment, room or lodging, whether the contract for letting shall have been made by such person, or

by any person on his behalf, he shall be adjudged guilty of larceny, and punished in the same manner prescribed by law for feloniously stealing property of the value of the articles so stolen, purloined or embezzled.

§ 44. Every person who shall buy, or in any way receive, any goods, money, right in action, personal property, or any valuable security or effects whatsoever, that shall have been embezzled, taken or secreted, contrary to the provisions of the four last sections, or that shall have been stolen from another, knowing the same to have been so embezzled, taken or secreted or stolen, shall, upon conviction, be punished in the same manner, and to the same extent, as for the felonious stealing the money, property or other thing so bought or received.

§ 45. In any indictment for any offence specified in the last section, it shall not be necessary to aver, nor on the trial thereof to prove, that the principal who embezzled, took, secreted or stole such property, has been convicted.

§ 46. Every person who, with intent to cheat or defraud another, shall designedly, by color of any false token or writing, or by any other false pretence, obtain the signature of any person to any written instrument, or obtain from any person any money, personal property, right in action, or other valuable thing or effects whatsoever, upon conviction thereof, shall be punished in the same manner and to the same extent as for the feloniously stealing the money, property or thing so obtained.

§ 47. If the false token by which any signature, money, property, right in action, or other thing, shall be obtained, as specified in the last section, be a promissory note, bill of exchange, check or evidence of debt, purporting to have been made or issued by or under authority of any banking company or corporation, not in existence, the person convicted of such cheat may be punished by imprisonment in the penitentiary not exceeding seven years.

§ 48. If upon the trial of any person indicted for any offence, prohibited in the two last sections, it shall be proved that he obtained the property, or other thing in question, in such manner as to amount in law to a larceny, he shall not, by reason thereof, be entitled to an acquittal, but he shall be convicted and punished as if the offence had been proved as charged.

§ 49. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money, goods, rights in action, or property, or effects of any description, belonging or intended to be delivered to the individual also personated, shall, upon conviction, be punished in the same manner and to the same extent as for feloniously stealing the money, property or other thing so received.

§ 50. Every person who, being a party to any conveyance, or assignment of any estate, or interest in real estate, goods or things in action, of any rents or profits, issued therefrom, or to any charge upon such estate, interest, rents or profits, made or created, with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons; and every person being privy to, or knowing of, such conveyance, assignment or charge, who shall willingly put

the same in use, as having been made on good faith, shall, on conviction be adjudged guilty of misdemeanor.

§ 51. Every person who shall violate the provisions of the preceding section, shall pay to every person injured or defrauded by any of the means therein mentioned, double damages, to be recovered by action on the case.

§ 52. If any person shall unlawfully and maliciously destroy or injure any boat or vessel, or any engine or machinery for propelling the same, whether the same be complete or in an unfinished state, or shall unlawfully and maliciously cast away, or strand, or in anywise injure any boat or vessel, with intent thereby to injure or prejudice any owner, or part owner of such boat or vessel, or of any goods on board the same, or the insurer of such boat or vessel, or on the freight thereof, or upon any goods on board the same, the person so offending shall be punished by imprisonment in the penitentiary not exceeding seven years.

§ 53. Every person who shall wilfully administer any poison to any cattle, or shall maliciously expose any poisonous substance with intent that the same shall be taken or swallowed by any cattle, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding three years, or in the county jail not exceeding six months, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

§ 54. If any person shall wilfully and maliciously, kill, maim or wound, any cattle of another, he shall, on conviction, be punished as in the next preceding section is provided.

§ 55. Every person who shall wilfully, unlawfully and maliciously, break, destroy, or injure the door or window of any dwelling-house, shop, store or other house or building, or sever therefrom, or from any gate, fence or enclosure, or any part thereof, or any material of which it is formed, or sever from the freehold any produce thereof, or any thing attached thereto, or pull down, injure or destroy any gate, post, railing or fence, or any part thereof, or cut down, lap, girdle, or otherwise injure or destroy any fruit or ornamental or shade tree, being the property of another, shall, on conviction, be adjudged guilty of a misdemeanor.

§ 56. Every person who shall wilfully and maliciously burn, injure or destroy, any pile or raft of wood, plank, boards or other lumber, or any part thereof, or cut loose or set adrift any such raft or part thereof, or shall cut, break, injure, sink or set adrift any boat, canoe, skiff, or other vessel, being the property of another, shall be adjudged guilty of a misdemeanor.

§ 57. Every person who shall wilfully and maliciously cut down, break, injure or destroy any bridge or mill-dam, or other dam, erected to create hydraulic power, or any embankment necessary to support such dam, or shall wilfully and maliciously make, or cause to be made, any aperture in such dam or embankment, with intent to destroy or injure the same, shall be adjudged guilty of a misdemeanor.

§ 58. Every person who shall wilfully and maliciously either,

First, Remove any monument of stone or other durable material, created for the purpose of designating the corner or any other point in the

boundary of any lot or tract of land, or of the state, or any legal sub-division thereof, or,

Second, Deface or alter the marks upon any tree, post or other monument, made for the purpose of designating any point in any such boundary, or,

Third, Cut down or remove any tree, upon which any such marks shall be made for such purpose, with intent to destroy such marks, shall, upon conviction, be adjudged guilty of a misdemeanor.

§ 59. Every person who shall wilfully and maliciously break or destroy, or remove any mile post, mile stone, or any guide board, erected by authority of law on any public highway or turnpike road, or shall wilfully and maliciously deface or alter any inscription on any such post, stone or board, shall be deemed guilty of a misdemeanor.

§ 60. Every punishment and forfeiture, imposed on any person, maliciously committing any offence prohibited by the provisions of either of the eight last preceding sections, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property, in respect to which it shall be committed, or otherwise.

§ 61. Every person who shall be convicted of a misdemeanor, as prohibited by this article, the punishment of which is not herein-before prescribed, shall be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

§ 62. Every person who shall be convicted of arson, burglary, robbery, or larceny in any degree, in this article specified, or who shall be sentenced to imprisonment in the penitentiary for any other crime, punishable under the provisions of this article, shall be incompetent to be sworn as a witness, or serve as a juror in any cause, and shall be forever disqualified from voting at any election, or holding any office of honor, trust or profit, within this state.

ARTICLE IV.

Of offences affecting records, currency, instruments, or securities, public and private.

SEC. 1, & 2. Cases enumerated, to constitute forgery in the first degree.

3. Forging certain seals, forgery in second degree.
4. Altering, &c., records, &c., forgery in the second degree.
5. Falsely making, &c., entries in records, forgery in second degree.
6. Officers making false certificates of proof of deed, &c., forgery in the second degree.
7. Counterfeiting gold and silver coins, forgery in second degree.
8. Forging notes, bills, orders, checks, &c, on any bank, &c., forgery in second degree.
9. To exchange, deliver, or sell such note, bill, &c., with intent, &c., forgery in second degree.
10. To bring into this state, or have in possession, such note, bill, &c., with intent, &c., forgery in second degree.
11. Engraving, &c., plates in similitude of bank bills, &c., forgery in second degree.
12. When plates to be deemed in similitude of genuine bills.
13. Possessing counterfeit coins, with intent to defraud, &c., forgery in the third degree.
14. Selling, exchanging, delivering, &c., any counterfeit coin, &c., with intent, &c., forgery in third degree.
- 15, & 16. Forging, &c., certain public and private instruments, forgery in third degree.
17. False entries, &c., in certain public books of accounts, forgery in third degree.
18. False entries in books of monied corporations, forgery in third degree.
19. Having in possession counterfeit instruments, herein-before declared, &c., forgery in fourth degree.
20. To sell, deliver, or offer to sell, deliver, &c., altered, forged or counterfeited instrument, &c.

- SEC. 21. Uttering counterfeit instrument, or coin, forgery In fourth degree.
22. Total erasure or obliteration of instruments of writing, &c., when to be deemed forgery.
 23. Putting together parts of several genuine instruments, with intent to defraud, &c.
 24. What to be deemed a writing, and a written instrument.
 25. Affixing pretended signatures to notes, &c., of corporations.
 26. Making false instruments, &c., in a pretended or fictitious name.
 27. Making false instruments, &c., in his own name, as the act of another, &c.
 28. Impairing, clipping, &c., gold or silver coin, &c., with intent, &c.
 29. Punishment for different degrees of forgery.
 30. To make, mend, or keep in possession, paper, rolling-press, &c., with intent, &c., how punished.
 31. To cast, stamp, engrave, &c., or have mould or pattern, with intent, &c., how punished.
 32. Punishment for doing certain acts in false character.
 33. Unlawfully to tear, cut, burn, &c., any will, deed or other instrument of writing, &c.
 34. To aid or abet, counsel, &c., in the commission of any offences under this article; how punished.
 35. For what offences under this article, persons disqualified from being witness, juror, voting, &c.

§ 1. Every person who shall forge, counterfeit or falsely alter, or cause or procure to be forged, counterfeited or falsely altered,

First, Any will of real or personal property, or any deed, or other instrument, being or purporting to be the act of another, by which any right or interest in real property shall be, or purport to be, transferred, or in any way changed or affected, or,

Second, Any certificate of the acknowledgment or proof of any deed or other instrument, which by law may be recorded, made or purporting to have been made by any court or officer, duly authorized to make such certificate or endorsement, or,

Third, Any certificate of the proof of any will of real or personal property, which by law may be recorded, made or purporting to have been made by any court or officer, authorized to make such certificate, or,

Fourth, Any certificate or endorsement of the filing or recording any such will, deed or other instrument, which by law may be recorded, or purporting to have been made by any officer authorized to make such certificate or endorsement, with intent to defraud, shall, on conviction, be adjudged guilty of forgery in the first degree.

§ 2. Every person who shall forge, counterfeit, or falsely alter, or cause or procure to be forged, counterfeited or falsely altered,

First, Any warrant, order, bill, certificate, or other public security, issued or purporting to have been issued under the authority of this state, by virtue of any law thereof, by which the payment of any money, absolutely or upon a contingency, shall be promised, or the receipt of any money, goods, or valuable thing, shall be acknowledged, or which shall be, or purport to be, receivable in payments of the state, or,

Second, Any certificate of any share or interest in any public stock, created by virtue of any law of this state, issued or purporting to have [been] issued by any public officer, or any bond or other evidence of any debt of this state, either absolute or contingent, made or issued, or purporting to have been made or issued by any public officer, or,

Third, Any endorsement, assignment, or other instrument, transferring or

purporting to transfer, the right or interest of any holder of any such warrant, order, bill, certificate, public security, certificate of stock, bond, evidence of debt, or liability, or any person entitled to such right or interest, with intent to defraud this state, or any public officer thereof, or any other person, shall, on conviction, be adjudged guilty of forgery in the first degree.

§ 3. Every person who shall forge or counterfeit, or cause or procure to be forged or counterfeited, the seal of this state, the seal of any court of record, or the seal of any public office authorized by law, the seal of any officer by law entitled to have and use an official seal, or the seal of any body corporate, duly incorporated by, or under, the laws of this state, or who shall make or forge, or counterfeit any impression purporting to be the impression of any such seal, with intent to defraud, shall, upon conviction, be adjudged guilty of forgery in the second degree.

§ 4. Every person who, with intent to defraud, shall falsely alter, destroy, corrupt or falsify, or procure to be falsely altered, destroyed, corrupted or falsified,

First, Any record of any will, conveyance, or other instrument, the record, or a copy of the record of which, by law, shall be evidence, or,

Second, Any record of any judgment or decree in any court of record, or,

Third, The return of any officer, court or tribunal, to any order, writ or process of any court, shall, upon conviction, be adjudged guilty of forgery in the second degree.

§ 5. Every person who shall falsely make, forge or alter, or cause or procure to be falsely made, forged or altered, any entry in any book of records, or any instrument purporting to be any record or return, specified in the last section, with intent to defraud, shall, on conviction, be adjudged guilty of forgery in the second degree.

§ 6. If any person authorized to take the proof or acknowledgment of any conveyance of real estate, or of any instrument which by law may be recorded, shall either,

First, Wilfully certify that any such conveyance or instrument was acknowledged by any party thereto, when in truth no such acknowledgment was made, or,

Second, Wilfully certify that any such conveyance or instrument was proved, when in fact no such proof was made, or,

Third, Wilfully certify falsely in any material matter contained in any certificate, being or purporting to be a certificate of the acknowledgment or proof of any such conveyance or instrument, shall, upon conviction, be adjudged guilty of forgery in the second degree.

§ 7. Every person who shall counterfeit, or cause or procure to be counterfeited, any gold or silver coin, at the time current within this state, by law or usage, or in actual use or circulation within the state, or shall make or cause to be made any false or counterfeit coin, in imitation or similitude of any gold or silver coin so current, or in actual use or circulation within this state, shall, on conviction, be adjudged guilty of forgery in the second degree.

§ 8. Every person who shall forge or counterfeit, or falsely make or alter, or cause or procure to be forged, counterfeited or falsely made or altered,

First, Any promissory note, bill of exchange, draft, check, certificate of deposit, or other evidence of debt, being or purporting to be made or issued by any bank incorporated under the laws of the United States or of this state, or of any other state, territory, government or country, or,

Second, Any order or check, being or purporting to be drawn on any such incorporated bank, or any cashier thereof, by any other person, company or corporation, shall, upon conviction, be adjudged guilty of forgery in the second degree.

§ 9. Every person who shall sell, exchange or deliver, or offer to sell, exchange or deliver, or receive upon a sale, exchange or delivery, for any consideration, any falsely made, altered, forged or counterfeited note, check, bill, draft or other instrument, the falsely making, altering, forging or counterfeiting of which, is, by the last section, declared to be an offence, knowing the same to be falsely made, altered, forged or counterfeited, with intent to have the same uttered or passed, shall be adjudged guilty of forgery in the second degree.

§ 10. Every person who shall bring into this state, or have in his possession or custody, any falsely made, altered, forged or counterfeited note, bill, check, draft or other instrument, the falsely making, altering, forging or counterfeiting of which, is, by the eighth section of this article declared to be an offence, knowing the same to be falsely made, altered, forged or counterfeited, with the intent to utter, pass, sell, or exchange the same as true or false, or to cause the same to be passed, uttered, sold or exchanged, with intent to defraud, shall, on conviction, be adjudged guilty of forgery in the second degree.

§ 11. Every person who shall either,

First, Make or engrave, or cause or procure to be made or engraved, any plate, in the form or similitude of any promissory note, bill of exchange, draft, order, check, certificate of deposit, or other evidence of debt, issued by any incorporated bank in this state, or by any bank incorporated under the laws of the United States, or of any state or territory thereof, or under the laws of any foreign country or government, without the authority of such bank, or,

Second, Have or keep in his custody or possession, any such plate, without the authority of such bank, with the intent of using or having the same used for the purpose of taking therefrom any impression, to be passed, sold, or uttered; or,

Third, Make or cause to be made, or have or keep in his custody or possession, any plate upon which shall be engraved any figures or words, intended or adapted to, or which may be used for, the purpose of falsely altering any evidence of debt issued by any such incorporated bank, with the intent of using or having the same used, for that purpose, or,

Fourth, Make or cause to be made, or have or keep in his custody, or possession,

without the authority of such bank, any impression taken from any such plate, with the intent to fill up and complete, or to have the same filled up and completed, for the purpose of being passed, sold or uttered, or,

Fifth, Sell, exchange or deliver, or cause to be sold, exchanged or delivered, any impression from any such plate, with the intent to have the same filled up and completed, or sold, passed, or uttered, shall, upon conviction, be adjudged guilty of forgery in the second degree.

§ 12. Every plate specified in the last section, shall be deemed to be in the form and similitude of the genuine instrument, in either of the following cases:

First, When the engraving on such plate, or any impression therefrom, resembles and conforms to such parts of the genuine instrument as are engraved, or,

Second, Where such plate shall be partly finished, and the part so finished, or any impression therefrom, resembles and conforms to similar parts of the genuine instrument.

§ 13. Every person who shall bring into this state, or have in his custody or possession, any counterfeit, or imitation of any gold or silver coin, the counterfeiting of which is herein-before declared to be an offence, knowing the same to be counterfeited, with intent to defraud or injure by uttering the same, as true or false, or by causing the same to be uttered, shall, upon conviction, be adjudged guilty of forgery in the third degree.

§ 14. Every person who shall sell, exchange or deliver, or offer to sell, exchange or deliver, or receive upon any sale, exchange or delivery, any such counterfeit or imitation of any gold or silver coin, specified in the last section, knowing the same to be counterfeited, with the intent to have the same uttered or passed, shall be adjudged guilty of forgery in the third degree.

§ 15. Every person who, with intent to injure or defraud, shall falsely make, alter, forge, or counterfeit any instrument or writing, being or purporting to be any process issued by any competent court, or magistrate, or officer, or any pleading or proceeding filed or entered in any court of law or equity, or any certificate, order or allowance, by any competent court or officer, or any license or authority, authorized by any statute, shall, on conviction, be adjudged guilty of forgery in the third degree.

§ 16. Every person who, with intent to injure or defraud, shall falsely make, alter, forge, or counterfeit any instrument or writing, being or purporting to be the act of another, by which any pecuniary demand or obligation shall be, or purport to be transferred, created, increased, discharged or diminished, or by which any rights or property whatsoever, shall be or purport to be transferred, conveyed, discharged, increased, or in any manner affected, the falsely making, altering, forging or counterfeiting of which is not herein-before declared to be a forgery in some other degree, shall, on conviction, be adjudged guilty of forgery in the third degree.

§ 17. Every person who, with intent to defraud, shall make any false entry, or

shall falsely alter any entry made, in a book of accounts kept in the office of the auditor of public accounts, or in the office of the state treasurer, or of any county treasurer, by which any demand or obligation, claim, right, or interest, either against or in favor of this state, or any county, or any individual, shall be, or shall purport to be, created, increased, discharged, diminished or in any manner affected, shall, upon conviction, be adjudged guilty of forgery in the third degree.

§ 18. Every person who, with intent to defraud, shall make any false entry, or shall falsely alter any entry made in a book of accounts, kept by any monied corporation within this state, or in any book of accounts kept by any such corporation or its officers, and delivered or intended to be delivered to any person dealing with such corporation, by which any pecuniary obligation, claim or credit, shall be, or shall purport to be, created, increased, diminished or discharged, or in any manner affected, shall, upon conviction, be adjudged guilty of forgery in the third degree.

§ 19. Every person who shall have in his possession, buy or receive any falsely made, altered, forged or counterfeited instrument or writing, the forgery of which is herein-before declared to be an offence, (except such as are enumerated in the eighth section of this article,) knowing the same to be forged, counterfeited, or falsely made or altered, with intention to injure or defraud, by uttering the same as true, or false, or causing the same to be so uttered, shall, on conviction, be adjudged guilty of forgery in the fourth degree.

§ 20. Every person who shall sell, exchange, or deliver, or offer to sell, exchange or deliver, for any consideration, any falsely altered, forged or counterfeited instrument or writing, the forgery of which is declared punishable, (except as in the last section is excepted,) knowing the same to be forged, counterfeited, or falsely altered, with the intention to have the same uttered or passed, shall, on conviction, be adjudged guilty of forgery in the fourth degree.

§ 21. Every person who, with intent to defraud, shall pass, utter, or publish, or offer or attempt to pass, utter or publish as true, any forged, counterfeited, or falsely altered instrument, or writing, or any counterfeit or imitation of any gold or silver coin, the altering, forging, or counterfeiting of which is herein-before declared to be an offence, knowing such instrument, writing or coin, to be altered, forged or counterfeited, shall, upon conviction, be adjudged guilty of forgery in the same degree herein-before declared for the forging, altering or counterfeiting the instrument, writing or coin, so passed, uttered or published, or offered or attempted to be passed, uttered or published.

§ 22. The total erasure or obliteration of any instrument or writing, with intent to defraud, by which any pecuniary obligation, or any right, interest or claim to money, right in action to property, shall be, or purport to be, or shall be intended to be created, conveyed, transferred, increased, discharged, diminished, or in any manner affected, shall be deemed forgery in the same manner, and in the same degree, as the false alteration of the whole, or any part of such instrument or writing.

§ 23. When different parts of several genuine instruments shall be so placed or connected together as to produce one instrument, with intent to defraud, the same

shall be deemed forgery, in the same manner and in the same degree as if the parts so put together were falsely made or forged.

§ 24. Every instrument, partly printed and partly written, or wholly printed, with a written signature thereto, and every signature of an individual, firm or corporate body, or of any officer of such body, and every writing purporting to be such signature, shall be deemed a writing, and a written instrument, within the meaning of the provisions of this article.

§ 25. The false making, forging, or counterfeiting of any evidence of debt or negotiable instrument, issued or purporting to have been issued by any corporation, having authority for that purpose, to which shall be affixed the pretended signature of any person as an agent or officer of such corporation, shall be deemed a forgery in the same degree and in the same manner, as if such person was at the time an officer or agent of such corporation, notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence.

§ 26. The false making, forging or counterfeiting of any instrument or writing, being, or purporting to be, the act of another, by which any pecuniary demand or obligation, or any right, interest or claim to money, right in action, or property, shall be, or purport to be, or shall be intended to be conveyed, transferred, created, increased, discharged, diminished, or in any manner affected, to which shall be affixed a fictitious name, or the name or pretended signature of any person not in existence, shall be deemed a forgery in the same degree and in the same manner as if the name so affixed was the name of a person in being, or purporting to be the signature of a person in existence.

§ 27. If any one shall, with intent to injure or defraud, make any instrument or writing, (as in the last section specified,) in his name, and shall utter or pass it under the pretence that it is the act of another who bears the same name, he shall, upon conviction, be adjudged guilty of forgery in the same degree, as if he had forged the instrument in the name of a person bearing a different name from his own.

§ 28. Every person who, with intent to defraud, shall impair, falsify, clip, scale, lighten or diminish any gold or silver coin, current by law or usage, or in actual use and circulation within this state, shall, on conviction, be adjudged guilty of forgery in the fourth degree.

§ 29. Persons, if convicted of forgery as herein specified and declared, shall be punished as follows:

First, Those convicted of forgery in the first degree, by imprisonment in the penitentiary for a term not less than ten years.

Second, Those in the second degree, by the like imprisonment, not less than seven years nor more than ten years.

Third, Those in the third degree, by like imprisonment, not exceeding seven years.

Fourth, Those in the fourth degree, by the like imprisonment, not exceeding five years, or by imprisonment in a county jail not exceeding six months.

§ 30. Every person who shall form, make or mend, have or keep in his posses-

sion or custody, or sell, exchange or deliver to another, any paper, rolling-press or other tool, instrument or material, devised, adapted and designed for the stamping, forging and making any false or counterfeit bill, note, certificate, or other negotiable evidence of debt, in imitation of, or purporting to be, a bill, note, draft, check, certificate or evidence of debt, issued by any incorporated bank, as specified in the eight section of this article; or devised, adapted and designed for the falsely altering any such bill, note, draft, check, certificate or other evidence of debt of any such bank, with intent to use and employ the same, or cause or permit the same to be used or employed in the falsely making, altering, forging or counterfeiting any such bill, note, draft, check, or certificate or other evidence of debt, shall, upon conviction, be punished as herein-before prescribed for forgery in the third degree.

§ 31. If any person shall cast, stamp, engrave, form, make or amend, or shall begin to cast, stamp, engrave, form, make or amend, or shall knowingly have in his possession or custody, or shall sell, exchange or deliver to another, any mould, pattern, dye, puncheon, engine, press or other tool or instrument, devised, adapted or designed for the coining or making, edging, graining or lettering, any false or counterfeit money, or coin, in imitation, or similitude of any gold or silver coin current by law or usage, or in use or circulation within this state, with the intent to use and employ the same, or procure or permit the same to be used or employed, in coining, or making, or edging, graining, or lettering, any such false and counterfeit coin, shall, upon conviction, be punished as herein-before prescribed for forgery in the fourth degree.

§ 32. Every person who shall falsely represent or personate another, and in such assumed character, shall either,

First, Become bail or security, or acknowledge any recognizance, or execute any bond or other instrument as bail or security, for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or security, or,

Second, Confess any judgment, or,

Third, Acknowledge the execution of any conveyance of any real or personal property, or any other instrument, which by law may be recorded, or,

Fourth, Do any other act in the course of the suit, proceeding or prosecution, whereby the person so represented or personated may be made liable, in any event, to the payment of any debt, damages, costs, or sum of money, or his rights or interests may be in any manner affected, shall, on conviction, be punished by imprisonment in the penitentiary not exceeding ten years.

§ 33. If any person shall unlawfully, wilfully and maliciously, tear, cut, burn, or in any way whatever destroy any will, deed, or other instrument or writing, the falsely making, altering, forging or counterfeiting of which is herein-before declared to be a punishable offence, shall, on conviction, be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 34. Every person who shall aid or assist, abet, counsel, hire, or by any means

procure any other person to commit any offence, punishable under any of the preceding provisions of this article, shall be adjudged guilty of the same offence in the same degree, and shall be punished in the same manner as for the committing the offence so aided, assisted, abetted, counselled, hired, or procured to be committed.

§ 35. Every person who shall be convicted of any felony, punishable by the provisions of this article, shall be incompetent to be sworn as a witness or juror, and forever disqualified from voting at any election, or holding any office of honor, trust or profit within this state.

ARTICLE V.

Of offences affecting the administration or execution of justice.

- Sec. 1. Perjury defined.
2. Its punishment.
3. Subornation of perjury.
4. Its punishment.
5. Attempt to induce perjury; its punishment.
6. What shall be sufficient to set forth in indictment for perjury.
7. What facts sufficient to set forth in indictment for subornation of perjury.
8. To bribe, or induce, or attempt to induce, witnesses, &c.; how punished.
9. Jurors, arbitrators and referees, taking any thing to give their verdict, award, or report, &c.
10. Corrupting, or attempting to corrupt, jurors, referees, &c.; how punished.
11. In what cases a juror adjudged guilty of a misdemeanor; how punished.
12. Attempting to influence a juror, arbitrator or referee, in cases pending before them; how punished.
13. Persons whose duty it is to summons jurors, &c., guilty of unfair or improper conduct; how punished.
14. Punishment for compounding, &c., offences punishable by death, &c.
15. Compounding, &c., misdemeanors or forfeitures.
16. Conviction of principal in the two preceding sections, not necessary to be proved.
17. Obstructing the execution of legal process in case of felony; how punished.
18. Obstructing the execution of legal process in all civil and criminal cases, other than felony.
19. To assault, beat, or wound an officer engaged in the service of process, or in discharge of his official duty.
20. To set at liberty or rescue prisoners convicted of capital offence; how punished.
21. To set at liberty or rescue persons charged with a capital offence; how punished.
22. To set at liberty or rescue persons charged with felony not capital, either before or after conviction, &c.
23. To set at liberty or rescue persons charged with offences, other than felony, before or after conviction; how punished.
24. To attempt to set at liberty or rescue prisoner, &c., for felony, either before or after conviction.
25. To attempt to set at liberty or rescue prisoners, &c., for offences other than felony, before or after conviction.
26. Conveying instruments into jail, &c., to aid escape of felons.
27. Conveying instruments into jail, &c., to aid escape of prisoners, other than felons.
28. Aiding escape of felons, and rescuing prisoners.
29. Aiding prisoners, not felons, to escape.
30. Aiding prisoners to escape from the custody of an officer.
31. Aiding escapes prescribed in the three last sections, by prisoner in jail, &c.; how punished.
32. Punishment for escaping from state prison.
33. Also for convicts in county jail, or in custody, going to jail, escaping.
34. In custody on criminal charge before conviction, or violating penal statute, escaping; punishment for.
35. Convicts in the penitentiary, &c., attempting to escape by force, &c., how punished.
36. Prisoners in a county jail, attempting to escape by force, &c., to be punished.
- 37, & 38. Punishment of officers conniving at escapes, &c.
39. Officers wilfully, or corruptly, failing or refusing to execute process directed to him, &c.
40. Jailor refusing to receive criminal lawfully committed, &c.
41. Officer convicted of offences in the four preceding sections, to forfeit his office.
42. Prisoner escaping, may be retaken and imprisoned, &c.
43. Common barrator, how punished.
44. For what offences, under this article, persons rendered incompetent to be a juror, witness, &c.

§ 1. Every person who shall wilfully and corruptly swear, testify or affirm falsely, to any material matter upon any oath or affirmation or declaration, legally administered, in any cause, matter or proceeding, before any court, tribunal or public body or officer, shall be deemed guilty of perjury.

§ 2. Every person who shall be convicted of wilful and corrupt perjury, shall be punished in the following cases, as follows:

First, For perjury committed on the trial of any indictment for a capital offence, with an express premeditated design to effect the condemnation and execution of the prisoner, death, or confinement in the penitentiary not less than ten years.

Second, For perjury committed on the trial of an indictment for a capital offence, without such design, or for any other felony, by imprisonment in the penitentiary not less than seven years.

Third, For perjury committed on any other trial or proceedings, or in any other case, by imprisonment in the penitentiary for a term not exceeding seven years.

§ 3. Every person who shall procure any other person, by any means whatsoever, to commit any wilful or corrupt perjury, on any cause, matter or proceeding, in or concerning which such other person shall be legally sworn or affirmed, shall be adjudged guilty of subornation of perjury.

§ 4. Every person convicted of subornation of perjury, shall be punished in the same manner as herein-before prescribed, upon a conviction for the perjury which shall have been so procured.

§ 5. Every person who shall, by the offer of any valuable consideration, attempt, unlawfully and corruptly, to procure, or entice any other to commit wilful and corrupt perjury in any cause, matter or proceeding, in or concerning which such other person might by law be sworn or affirmed, shall, on conviction, be punished by imprisonment in the penitentiary for a term not exceeding five years.

§ 6. In any indictment for perjury, it shall be sufficient to set forth the substance of the offence charged, and by what court or before whom the oath was taken, (avering such court or person or persons to have competent authority to administer the same,) together with the proper averments to falsify the matter wherein the perjury is assigned, without setting forth any part of the record, proceeding or process, either in law or equity, or any commission or authority of the court, or person before whom the perjury was committed, or the form of the oath or affirmation, or the manner of administering the same.

§ 7. In every indictment for subornation of perjury, or for any corrupt bargain, contract, or attempt to procure another to commit perjury, it shall be sufficient to set forth the substance of the offence, without setting forth the record, proceeding or process, or any commission or authority of the court or person before whom the perjury was committed, or was agreed or promised to be committed.

§ 8. Every person who shall, by bribery, menace or other means, directly or indirectly induce, or attempt to induce, any witness to absent himself, or avoid a subpoena or other process, or to withhold his evidence, or shall deter or attempt to

deter him from appearing or giving evidence in any cause, matter or proceeding, civil or criminal, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding one year, and by fine not exceeding three hundred dollars.

§ 9. If any person, summoned as a juror, or if any person chosen as an arbitrator, or appointed a referee, shall take any thing to give his verdict, award or report, or shall receive any gratuity or gift from any party to a suit, proceeding or prosecution, for the trial of which such person shall have been summoned or sworn as a juror, or for the hearing of which he shall have been chosen an arbitrator, or appointed a referee, he shall, on conviction, be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 10. Every person who shall corrupt, or attempt to corrupt, any other, summoned or sworn as a juror, appointed a referee, or chosen an arbitrator, by giving or offering to give any gift or gratuity whatsoever, with intent to bias the mind of such juror, referee, or arbitrator, or incline him to be more favorable to one side than the other, in relation to any cause, matter or proceeding, which may be pending in the court to which such juror shall have been summoned, or in which such referee or arbitrator shall have been chosen or appointed, shall, on conviction, be punished as in the next preceding section is prescribed.

§ 11. If any person, summoned or sworn as a juror in any case, shall promise or agree to give any verdict for or against any party in any cause or proceeding, civil or criminal, or shall receive any paper, evidence or information from any one in relation to any matter or cause, for the trial of which he shall be sworn, without the authority of the court or officer before whom such juror shall have been summoned, and without immediately disclosing the same to such court or officer, he shall, on conviction be adjudged guilty of a misdemeanor, be punished by fine not exceeding three hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

§ 12. Every person who shall attempt, improperly, to influence any juror in any civil or criminal case, or any one summoned as such juror, or any one chosen an arbitrator, or appointed a referee, in relation to any matter pending in the court, or before the officer before whom such juror shall have been summoned or sworn, or pending before such arbitrator or referee, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished as in the last preceding section is prescribed.

§ 13. If any person, whose duty it shall be to select or summon any jurors in any court, or before any court, or before any officer, shall be guilty of any unfair, partial or improper conduct, in selecting or summoning any juror, he shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

§ 14. Every person having a knowledge of the actual commission of any

offence, punishable by death, or by imprisonment in the penitentiary, who shall take any money or property of another, or any gratuity or reward, or any promise, engagement or undertaking therefor, upon agreement or understanding, express or implied, to compound or conceal such crime, or to abstain from any prosecution therefor, or withhold any evidence thereof, shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding five years.

§ 15. Every person having a knowledge of the actual commission of any offence, punishable only by imprisonment in the county jail or by fine, or by such imprisonment and fine, or of any misdemeanor or violation of any statute, for which any pecuniary or other penalty or forfeiture is, or shall be, prescribed, who shall take any money, property, gratuity or reward, or any promise, engagement or undertaking therefor, upon any agreement or understanding, express or implied, to compound or conceal any such offence or misdemeanor, or to abstain from any prosecution therefor, or to withhold any evidence thereof, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding three hundred dollars, or by both such imprisonment and fine.

§ 16. Upon the trial of any indictment, for any offences specified in the two last sections, it shall not be necessary to prove the conviction of any offender for the offence, in relation to which any agreement or understanding therein prohibited shall have been made.

§ 17. If any person or persons shall knowingly and wilfully obstruct, resist, or oppose, any sheriff or other ministerial officer, in the service or execution, or in the attempt to serve or execute any writ, warrant or process, original or judicial, or in discharge of any official duty in any case of felony, every person so offending shall, on conviction, be punished by imprisonment in the penitentiary for a term not exceeding five years, or by imprisonment in the county jail for a term not more than six months, or a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 18. If any person or persons shall, knowingly and wilfully, obstruct, resist or oppose any sheriff, or any other ministerial officer in the service or execution, or [in the] attempt to serve or execute any writ, warrant or process, original or judicial, or the discharge of any other duty in any case, civil or criminal, other than felony, or in the service, or attempt to serve any order, or rule of court in any case, every person so offending shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail for a term not exceeding one year, and by fine not exceeding three hundred dollars, or by both such fine and imprisonment.

§ 19. Every person who shall, knowingly and wilfully, assault, beat or wound any such officer, while engaged in the service or execution, or an attempt to serve any writ, warrant or process, original or judicial, or any order or rule of court, or while in the discharge of any other official duty, shall, on conviction, be adjudged guilty of a misdemeanor, and punished as in the last preceding section is declared.

§ 20. If any person or persons shall, by force, set at liberty, or rescue from custody or prison, any person convicted of a capital offence, or shall set at liberty, or rescue any person convicted of such crimes, while going to execution, or during execution, every person so offending shall be punished by imprisonment in the penitentiary for a term not less than ten years.

§ 21. If any person or persons shall, by force, set at liberty or rescue any prisoner, while in custody or confinement for a capital offence, before conviction, every person so offending shall, on conviction, be punished by imprisonment in the penitentiary not exceeding ten years.

§ 22. If any person or persons shall, by force, set at liberty or rescue any prisoner, in custody or confinement for a felony, not capital, whether before or after conviction, every person so offending, shall be punished by imprisonment in the penitentiary for a term not exceeding ten years.

§ 23. If any person or persons shall, by force, set at liberty or rescue any person held in custody or prison, for any offence other than felony, whether before or after conviction, or upon any writ or process, original or judicial, in any civil case, every person so offending shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail for a term not exceeding one year, and by fine not exceeding five hundred dollars.

§ 24. Every person who shall attempt, by force, to set at liberty or rescue any prisoner, in custody or confinement for a felony, whether before or after conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding five years.

§ 25. Every person who shall attempt, by force, to set at liberty or rescue any prisoner, in custody for an offence other than felony, before or after conviction, or upon any writ, warrant or process, original or judicial, in a civil case, or any other lawful authority, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding three hundred dollars, or by imprisonment in a county jail not exceeding six months.

§ 26. Every person who shall convey into the penitentiary, or any jail or other place of imprisonment, any disguised instrument, arms, or other thing, proper or useful to aid any prisoner in his escape, with intent thereby to facilitate the escape of any prisoner lawfully committed to, or detained in, such penitentiary, jail or place [of confinement,] for any felony whatever, whether such escape be effected or attempted, or not, shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding ten years.

§ 27. Every person who shall convey into any jail or place of confinement, any disguised instrument, or any thing proper or useful to facilitate the escape of any prisoner, lawfully committed to, or detained in, such jail or place of confinement, for any criminal offence, other than a felony, or lawfully imprisoned or detained therein for any violation of any penal statute, or in any civil action, whether such escape be effected or attempted, or not, shall be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 28. Every person who shall, by any means whatever, aid or assist any prisoner, lawfully detained in the penitentiary, or any jail or place of confinement, for any felony, to escape therefrom, whether such escape be effected or not, shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding five years.

§ 29. Every person who shall, by any means whatever, aid or assist any prisoner lawfully committed to any jail or place of confinement, in any case, civil or criminal, other than a felony, to escape therefrom, whether such escape be effected or not, shall be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 30. Every person who shall aid or assist any prisoner in escaping or attempting to escape from the custody of any sheriff, coroner, constable or other ministerial officer, or other person, who shall have the lawful charge of such prisoner, shall, upon conviction, be punished in the same manner as if such prisoner were confined in any jail or other place of confinement.

§ 31. But if any aid or assistance, prohibited by the three last sections, be rendered by any prisoner detained for any crime in the same jail, place of confinement or custody, with the intent of facilitating his own escape, the punishment of such prisoner shall exceed that prescribed by law, upon conviction for his own escape.

§ 32. If any person confined in the penitentiary, for any term less than life, or in lawful custody going to the penitentiary, shall break such prison or custody, and escape therefrom, he shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding five years, to commence at the expiration of the original term of imprisonment.

§ 33. If any person confined in any county jail, upon any conviction for a criminal offence, or held in custody going to such jail and escape therefrom, he shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding three years, or in a county jail not exceeding one year, to commence at the expiration of the original term of imprisonment.

§ 34. If any person, lawfully imprisoned or detained in any county jail or other place of imprisonment, or in the custody of any officer, upon any criminal charge before conviction, or for the violation of any penal statute, shall break such prison or custody and escape therefrom, he shall, upon conviction, be punished in the penitentiary not exceeding two years, or in the county jail not exceeding one year.

§ 35. Every person lawfully imprisoned in the penitentiary, or held in custody going to the penitentiary under a sentence of imprisonment therein for a term less than life, who shall attempt, by force or violence to any person, to effect his escape from such imprisonment or custody, whether such escape be effected or not, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years, to commence at the expiration of the original term of imprisonment.

§ 36. Every person lawfully imprisoned in a county jail or other place of con-

finement, or held in custody of any officer, for any cause whatever, who shall attempt, by force or violence to any person, to effect his escape from such imprisonment or custody, although no escape be effected, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail not exceeding six months, or fined not exceeding one hundred dollars, or both.

§ 37. If any officer or other person, having, by law, the custody or charge of the penitentiary, or any county jail or other place of confinement, or the under officer or deputy of such officer or person, shall knowingly suffer or permit any disguised instrument, arms, or other thing, proper or useful to aid any prisoner in his escape, to be conveyed into, or remain in such penitentiary, jail or place, he shall, upon conviction, suffer the like punishment as the person conveying such disguised instrument, arms or other thing into such penitentiary, jail or place, would be liable to, according to the provisions of this act.

§ 38. If any officer, or his under officer or deputy, having the lawful custody of any prisoner, for any cause whatever, shall voluntarily suffer or permit, or connive at the escape of such prisoner from his custody, or permit him to go at large, he shall, on conviction, be punished in the same manner as if he were convicted of aiding or assisting such prisoner to escape.

§ 39. If any sheriff, or other officer, shall wilfully or corruptly fail or refuse to execute any lawful process, which by law it is his duty to execute, requiring the apprehension or confinement of any person charged with a criminal offence, whereby such person shall escape, the officer so offending shall be punished in the same manner as persons convicted of aiding or assisting such escape.

§ 40. If any jailor, or keeper of a county jail, shall refuse to receive in the jail under his charge, any person lawfully committed to such jail, on any criminal charge or conviction, or on any lawful process whatever, he shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, and by fine not exceeding three hundred dollars.

§ 41. Every officer who shall be convicted of any of the offences specified in the four last preceding sections, shall forfeit his office.

§ 42. If any person sentenced to imprisonment in a county jail, or in the penitentiary, on a conviction for a criminal offence, shall escape, he may be pursued, retaken and imprisoned again, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time he is retaken, and shall remain so imprisoned until tried for such escape, or until he be discharged, or in a failure to prosecute therefor.

§ 43. Every person who shall be convicted of being a common barrator, shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding three hundred dollars, or by both such fine and imprisonment.

§ 44. Every person who shall be convicted of any perjury, or subornation of perjury, punishable by any of the provisions of this article, shall thereafter be incompetent to serve as a juror, or testify as a witness, in any cause, civil or criminal, and shall be disqualified from voting at any election, or holding any office of honor, profit or trust within this state.

ARTICLE VI.

Of offences by persons in office, or affecting public trusts, and public rights.

- Sec. 1.** Giving, or offering to give, bribe to any officer, &c., with intent to influence his opinion, &c.
- 2.** Every officer who shall, directly or indirectly, accept or receive such bribe, guilty of bribery.
- 3.** Giving or offering to give, &c., to any officer, to influence him to bestow appointment, &c.
- 4.** Officer accepting such bribe, guilty of bribery; how punished.
- 5.** Assisting to procure offices, &c., upon the consideration mentioned in the 1st and 3d sections of this article.
- 6.** Accepting or receiving office, &c., upon consideration mentioned in 2d and 4th sections of this article.
- 7.** Offering or attempting to bribe officers by any of the means before mentioned; how punished.
- 8.** Offering to give, &c., to procure election to office, &c., bribery; how punished.
- 9.** Receiving such money, gift, office, &c., upon any such engagement as in the preceding section.
- 10.** Any person having a right to vote, who shall ask money, &c., to give his vote; how punished.
- 11.** Corrupting, or attempting to corrupt, persons having a right to vote, &c.
- 12.** Selling office, or deputation thereof, &c.; how punished.
- 13.** Giving, or agreeing to give, money or property, &c., for such office.
- 14.** Construction and qualification of the two preceding sections.
- 15.** Grant or deputation of office made contrary to the foregoing provisions, void.
- 16.** Officer guilty of wilful and malicious oppression, in official capacity; how punished.
- 17.** Officer committing fraud in his official capacity; how punished.
- 18.** Persons convicted of offences mentioned in the preceding sections of this article, disqualified, &c.
- 19.** Demanding fees, by color of his office, that is not due, or more than is due, &c.
- 20.** Guilty of neglect of official duty, or misconduct, when not otherwise provided for; how punished.
- 21.** When officer, convicted, &c., shall forfeit his office.
- 22.** Doing or performing acts, as an officer, without lawful authority, &c.; how punished.
- 23.** Penalty for attempting to influence voters. &c.
- 24.** Voting more than once at the same election.

§ 1. Every person who shall, directly or indirectly, give any money, goods, right in action, or any other valuable consideration, gratuity or reward, or any promise, undertaking or security therefor, to any officer of this state, or of any county,

First, With intent to influence his vote, opinion, judgment or decision on any question, matter, cause or proceeding, which may be then pending, or may by law be brought before him in his official capacity, or to induce him to neglect or omit the performance of any official duty, or to perform such duty with partiality or favor, or otherwise than is required by law, or,

Second, In consideration that such officer hath given any vote, opinion, judgment or decision, in any particular manner, upon any particular side, or more favorable to one side than the other, or any matter, question, cause or proceeding, or hath omitted to perform any official act or duty, or hath performed such act or duty with partiality or favor or otherwise, contrary to law, shall, on conviction, be adjudged guilty of bribery, and be punished by imprisonment in the penitentiary for a term not exceeding seven years.

§ 2. Every such officer who shall, directly or indirectly, accept or receive any such gift, consideration, gratuity or reward, or any promise or undertaking to make the same,

First, Under any agreement that his vote, opinion, judgment or decision, shall be given in any particular manner, on any particular side, or more favorable to one side than the other, in any question, matter,

cause or proceeding, which may be pending or be brought before him in his official capacity, or that he shall neglect or omit to perform any official duty, or perform the same with partiality or favor, or otherwise than according to law, or,

Second, In consideration that he hath given his vote, opinion, judgment [or] decision, in any particular manner, on any particular side, or more favorable to one side than the other, of any question, matter, cause or proceeding, or hath neglected or omitted to perform any official act or duty, or performed such act or duty with partiality or favor, or otherwise contrary to law, shall, on conviction, be adjudged guilty of bribery, and shall be punished in the penitentiary for a term not less than two years.

§ 3. Every person who shall, directly or indirectly, give or engage to give any sum of money, or other valuable consideration, gratuity or reward, to any officer,

First, With intent to influence or induce such officer to give to, or procure for, him or any other, by his act, interest, influence or other means whatever, any appointment, office or place of trust, or any preferment, or emolument, or assist, by any means whatsoever, to procure the same, or,

Second, In consideration of any office or appointment, preferment, or emolument, act, interest or influence, or any aid or assistance in procuring or attempting to procure, such appointment, office or place of trust, or any emolument, shall, on conviction, be adjudged guilty of bribery, and shall be punished by imprisonment in the penitentiary for a term not exceeding seven years.

§ 4. Every officer who shall, directly or indirectly, accept or receive of another, any sum of money or other valuable consideration, gratuity, or reward, or any promise or security thereof,

First, Upon any agreement to give, or procure by his act, interest or influence, or other means, any appointment, office, or place of trust, or any preferment or emolument, or to aid or assist in procuring the same for another person, or,

Second, In consideration of any office, or appointment, place or preferment, or emolument, or any act, interest or influence, aid or assistance, by any means, in procuring, or attempting to procure any such appointment, office, place of trust, preferment or emolument, shall, on conviction, be adjudged guilty of bribery, and shall be punished as in the next preceding section is prescribed.

§ 5. Every person who shall, directly or indirectly, give to or procure, or aid or assist in procuring for another, by his aid, interest, or influence, or by any other means whatsoever, any office, appointment or place of trust, or any preferment or emolument, with the intent, or upon the consideration mentioned in the first or third sections of this article, shall, upon conviction, be adjudged guilty of bribery,

and punished in the same manner as if he had paid or engaged to pay money with the like intent or for a like consideration.

§ 6. Every person who shall, directly or indirectly, accept, or receive or obtain, any appointment, office, or place of trust, preferment, or emolument, or aid or assistance in obtaining or attempting to obtain the same, for himself or another, or any promise or undertaking to procure such office, appointment, place of trust, preferment or emolument, by the act, interest or influence, aid or assistance of another, upon any agreement or consideration mentioned in the second and fourth sections of this article, shall, upon conviction, be adjudged guilty of bribery, and punished in the same manner as if he had received money upon a like agreement or consideration.

§ 7. If any person shall, by any of the means mentioned in the preceding sections of this article, or otherwise, offer or attempt to bribe any officer or other person, in any of the cases herein-before mentioned, shall, on conviction, be punished by imprisonment in the penitentiary for a period not exceeding five years, or by imprisonment in the county jail for a term not exceeding one year, and a fine not less than one thousand dollars.

§ 8. If any person shall, directly or indirectly, give or procure to be given, any money, gift or reward, or any office, place or employment, upon any engagement, contract or agreement, that the person to whom, or to whose use, or on whose behalf, such gift or promise shall be made, shall, by himself or any other, procure or endeavor to procure the election of any person to any office, at any election by the electors, or any public body, under the constitution or laws of this state, the person so offending shall, on conviction, be adjudged guilty of bribery, and punished by imprisonment in the penitentiary for a term not exceeding five years.

§ 9. Every person who shall, by himself, or another, to his use or on his behalf, accept or receive any such money, gift or reward, office, place or employment, or any promise or security therefor, upon any such engagement, contract or agreement, as specified in the preceding section, shall be adjudged guilty of bribery, and shall forfeit the full amount of such money, gift or reward, and shall, moreover, be punished by imprisonment in the penitentiary, for a term not exceeding five years.

§ 10. If any person who shall have, or claim to have, a right to vote in any election, authorized to be held by the constitution or laws of this state, shall ask, receive or take any money or other reward, by way of gift, loan or other device, or agree or contract for any money, gift, office, employment or other reward whatsoever, to give his vote, or refuse or forbear to give his vote, in any such election, the person so offending shall, on conviction, be adjudged guilty of bribery, and shall be punished by fine not exceeding three hundred dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment.

§ 11. If any person by himself, or any person employed by him, shall, by any gift or reward, office, or employment, or by any promise, agreement, or security therefor, corrupt or procure, or attempt to corrupt or procure, any person who shall have, or claims to have a right to vote at any election, to give or forbear to give his

vote at such election, the person so offending shall, on conviction, be adjudged guilty of bribery, and shall be punished as in the next preceding section is prescribed.

§ 12. Every person holding or exercising any office or public trust, under the constitution or laws of this state, who shall, for any reward or gratuity, or any valuable consideration, paid or agreed to be paid, directly or indirectly, grant, bargain or sell such office, or any deputation thereof, or grant the right or authority to discharge any of the duties thereof to another, shall, on conviction, be punished by imprisonment in the penitentiary not exceeding five years, or by imprisonment in a county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 13. Every person who shall give, or make any agreement to give, any money, property, right in action or other gratuity or reward, in consideration of any such bargain, grant or deputation of an office, or any part thereof, shall, upon conviction, be punished as prescribed in the last preceding section.

§ 14. The two preceding sections shall not be construed to extend to the appointment of a deputy, by any officer authorized by law to have a deputy, so that no gratuity or reward be paid or agreed to be paid for such deputation.

§ 15. Every grant or deputation of office, made contrary to the foregoing provisions, shall be void, but all official acts done before conviction under this act, by any deputy of an officer authorized to make such appointment, shall be valid.

§ 16. Every person exercising or holding any office or public trust, who shall be guilty of wilful and malicious oppression, partiality, misconduct, or abuse of authority in his official capacity, or under color of his office, shall, on conviction, be punished by imprisonment in a county jail for a term not exceeding one year, and fine not exceeding one thousand dollars.

§ 17. Every officer or public agent of this state, or of any county, who shall commit any fraud in his official capacity, or under color of his office, shall be adjudged guilty of a misdemeanor, and punished by imprisonment in the county jail for a term not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine.

§ 18. Every person who shall be duly convicted of any of the offences mentioned in the preceding sections of this article, shall be forever disqualified from holding any office of honor, trust or profit under the constitution or laws of this state, and from voting at any election.

§ 19. Every officer who shall, by color of his office, unlawfully and wilfully exact, or demand and receive any fee or reward to execute or do his duty, or for any official act done or to be done, that is not due, or more than is due, or before it is due, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

§ 20. Every officer or person holding any public trust or appointment, who shall be convicted of any wilful misconduct or misdemeanor in office, or neglect to perform any duty enjoined on him by law, where no special provision is made for the

punishment of such misdemeanor, misconduct or negligence, shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or [by] both such fine and imprisonment

§ 21. Every officer who shall be convicted of any official misdemeanor or misconduct in office, or who shall be convicted of any offence, which, by this or any other statute, is punishable by disqualification to hold office, shall, in addition to other punishments prescribed for such offences, forfeit his office.

§ 22. If any person shall take upon himself any office or public trust in this state, and exercise any power or do any act appertaining to such office, or trust, without a lawful appointment or deputation, he shall, upon conviction, be adjudged guilty of a misdemeanor, be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail for a term not exceeding one year, or by both such fine and imprisonment.

§ 23. If any person, by menaces, threats or force, or by any other unlawful means, either directly or indirectly, attempt to influence any qualified elector in giving his vote, or to deter him from giving the same, or disturb or hinder him in the free exercise of his right of suffrage, at any election held under the constitution or laws of this state, the person so offending shall, on conviction thereof, be adjudged guilty of a misdemeanor, and be punished by fine not exceeding five hundred dollars, or [by] imprisonment in the county jail not exceeding one year.

§ 24. Every person who shall, at the same election, vote more than once, either at the same or a different place, shall, on conviction, be adjudged guilty of a misdemeanor, and [be punished] by fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding three months.

ARTICLE VII.

Of offences against the public peace, or affecting the security of persons, and property, and not before enumerated.

- SEC. 1. Punishment for fighting duels; persons present as second, &c.; how punished.
2. Sending, carrying, &c. challenges, and accessaries to duels; how punished.
3. To post or publish another for not sending or accepting a challenge to fight a duel.
4. Duty of judges, justices, &c., to issue their warrant against persons about to fight a duel.
5. How judge, &c., to proceed when person brought before him.
6. Three or more assembling together, to do an unlawful act, &c.; how punished.
7. Three or more assembling together, to do an unlawful act, and make some advances, but part without doing it; how punished.
8. Three or more assembling for the purpose of doing an unlawful act, but part without doing it.
9. Duty of judges, justices, &c., when persons assemble as specified in the three preceding sections.
10. Proclamation being made, if they do not disperse, power of the officer to disperse them.
11. Making forcible resistance to the officer, he may summon to his aid the militia, &c.
12. Duty of militia officers, and others, summoned under the two last sections.
13. Additional penalty on persons resisting the officer, or refusing to disperse.
14. Taking possession of real estate by force or violence, without authority, &c.
15. Disturbing the peace of the neighborhood in the night-time, by quarrelling, fighting, &c.
16. Sending letters threatening to accuse persons of crime, &c.; how punished.
17. Conspiracies defined; punishment.
18. Overt acts necessary in certain conspiracies.
19. Officers, &c., arresting, &c., under pretence of authority; punishment.

§ 1. Every person who shall fight a duel with any dangerous or deadly weapon, although no death or bodily harm ensue thereby, and every person who shall be

present at such duel, either as second or aid, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 2. Every person who shall challenge another to fight a duel, or shall send, deliver or accept any written or verbal message, purporting or intended to be such challenge, or who shall knowingly carry or deliver any such challenge or message, or who shall advise or give any countenance, or assistance to any such duel, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 3. If any person shall post another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or shall, in writing or in print, use or publish any reproachful, contemptuous or opprobrious language to, or concerning any one, for not sending or accepting a challenge to fight a duel, or for not fighting a duel, he shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 4. It shall be the duty of every judge and justice of a court of record, and every justice of the peace, whenever he shall have good cause to suspect that any person is about to fight a duel, or to aid, or be in anywise concerned therein, to issue his warrant to bring such party before him.

§ 5. If any judge or justice shall be satisfied of any intended violation of any law, as specified in the preceding section, by the person brought before him, he shall cause such person to enter into a recognizance, with good security, in a sum sufficient to effect the object, conditioned, that such person shall keep the peace for six months, or more, in the discretion of the judge or justice, and shall not, within such time, be directly, or indirectly, concerned in any duel.

§ 6. If three or more persons shall assemble together with the intent, or, being assembled, shall agree mutually to assist one another to do any unlawful act, with force or violence, against the person or property of another, or against the peace, or to the terror of the people, and shall accomplish the purpose intended, or do any unlawful act in furtherance of such purpose, in a violent or turbulent manner, every person so offending, or who shall aid or assist in doing any unlawful act, shall be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in a county jail, not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 7. If three or more persons shall assemble with the intent, or, being assembled, shall agree mutually to assist each other to do any act specified in the last section, with force or violence, and shall make any movement or preparation toward the execution of the purpose intended or agreed upon, although such purpose be not accomplished, every person so offending shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail, not exceeding

six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 8. If three or more persons assemble with the intent, or, being assembled, agree mutually to assist each other in the doing of any act prohibited by the sixth section of this article, and in the manner therein specified, although the purpose intended, or agreed upon, be not accomplished, nor any act done, nor any movement or preparation made in furtherance thereof, every person so offending shall, on conviction thereof, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding three months, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

§ 9. Whenever three or more persons shall be riotously, unlawfully or tumultuously assembled, as specified in either of the three preceding sections, it shall be the duty of every judge and justice of the peace, who shall have a knowledge or be informed thereof, to make proclamation among the persons so assembled, or as near to them as he can safely come, charging and commanding them, immediately to disperse themselves, and peaceably to depart to their habitations or lawful business.

§ 10. If, upon such proclamation being made, the persons so assembled shall not immediately disperse and depart as commanded, or if they shall resist such officer, or prevent the making such proclamation, such officer may command all persons there being, and the power of the county, if necessary, and he shall disperse such assembly, arrest the offenders, and take them before some judicial officer, to be dealt with according to law.

§ 11. If any of the persons so assembled shall be armed, or make forcible resistance to the officer so making or attempting to make such proclamation, such officer may summon to his aid a sufficient number of the militia, or other persons in arms, to disperse such assembly, arrest the offenders and maintain the authority of the laws.

§ 12. All military officers and others, who shall be summoned under the provisions of the two last sections, are required to render prompt assistance and full obedience to the officer so summoning them, under the penalty of fifty dollars for every neglect or refusal.

§ 13. If any of the persons so unlawfully, riotously or tumultuously assembled, shall refuse obedience to any proclamation made in pursuance of the preceding provisions, or shall, by menaces or force, prevent any officer from making such proclamation, or shall resist such officer, or any of his assistants, in dispersing such assembly, or arresting and securing the offenders, every person so offending, shall, in addition to the punishments hereinbefore prescribed, be punished by imprisonment in a county jail not exceeding six months.

§ 14. Every person who shall take or keep possession of any real property, by actual force or violence, without the authority of law, or who, being armed with a deadly or dangerous weapon, shall, by violence to any person in possession, or entitled to the possession, or by putting him in fear of immediate danger to his person, obtain or keep the possession of any such real property, without the authority of law, shall, on conviction, be adjudged guilty of a misdemeanor, and be pun-

ished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 15. If any such person or persons shall, in the night-time, wilfully disturb the peace of any neighborhood or of any family, by loud and unusual noise, loud and offensive or indecent conversation, or by threatening, quarrelling, challenging or fighting, every person so offending shall, upon conviction, be adjudged guilty of a misdemeanor, and be punished by fine not exceeding two hundred dollars, or by imprisonment in a county jail not exceeding three months, or by both such fine and imprisonment.

§ 16. Every person who shall knowingly send or deliver any letter or writing, with or without a name subscribed thereto, or signed with a fictitious name, or any letter or mark, threatening to accuse any person of a crime, or to kill, maim or wound any person, or to do any injury to the person or property of another, though no money or property be demanded, or extorted thereby, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding two hundred and fifty dollars, or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment.

§ 17. If two or more persons shall agree, conspire, combine or confederate,

First, To commit any offence, or,

Second, Falsely or maliciously to indict another for any offence, or procure another to be charged or arrested for any offence, or,

Third, Falsely or maliciously to move or maintain any suit, or,

Fourth, To cheat and defraud any person of any money or property, by means which are in themselves criminal, or,

Fifth, To cheat and defraud any person of any money or property by any means, which, if executed, would amount to cheat or to obtaining money or property by false pretences, or,

Sixth, To commit any act injurious to the public health, or public morals, or for the perversion or obstruction of justice, or the due administration of the laws, they shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 18. No agreement, except to commit a felony upon the person of another, or to commit arson or burglary, shall be deemed a conspiracy, unless some act, besides such agreement, be done to effect the object thereof, by one or more of the parties to such agreement.

§ 19. If any sheriff or other officer, or any person pretending to be an officer, shall, under color or pretence of any process, or other legal authority, arrest any person, or detain him against his will, or seize, or levy upon any property, dispossess any one of any lands or tenements, without due and legal process, or other lawful authority therefor, he shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

ARTICLE VIII.

Of offences against public morals and decency, or the public police, and other miscellaneous offences.

- Sec. 1. Bigamy; its punishment.
2. Cases excepted.
 3. Husband or wife marrying without the state, &c., bigamy.
 4. Where indictment may be found and trial had.
 5. Persons knowingly marrying the husband or wife of another; punishment.
 6. Punishment for incest.
 7. Punishment for crime against nature.
 8. Adultery, lewdness, &c., how punished.
 9. Guardian defiling his ward, in cases not otherwise provided; how punished.
 10. Penalty on ministers, &c., solemnizing marriages in certain cases.
 11. Removing dead bodies from graves; punishment.
 12. Receiving bodies so removed.
 13. Opening graves with certain intents; how punished.
 14. Exception to the three preceding sections.
 15. Keeping certain gaming tables, or gambling device; punishment for.
 16. Betting on such gaming table, &c.; punishment for.
 17. Persons suffering such gaming table to be set up in any house, &c.
 18. Keeping a gaming house, or bawdy house; how punished.
 19. Leasing houses, &c., for the purposes set forth in the four preceding sections; how punished.
 20. Who shall be deemed to be the keeper of gaming tables, &c. brothels, or bawdy houses.
 21. Lessee of house, keeping a gaming table or bawdy house, to forfeit his lease.
 22. Person playing at any of the gaming devices, competent witness, though not to affect himself.
 - 23, & 24. Duty of judge or justice, on knowledge of gambling device kept in the county.
 25. Officer charged with process specified in two last sections; his powers.
 26. Judge, or justice, to cause gaming table, &c., brought before them to be destroyed.
 27. Disturbance of public worship; how punished.
 28. Laboring or compelling others, &c., to labor on Sunday; punishment.
 29. Exception to the last section.
 30. Horse-racing, cock-fighting, or playing at cards on Sunday; punishment.
 31. Exposing goods to sale, or keep open, ale, porter, grocery or tipling house, &c., after 9 o'clock on Sunday.
 32. Last section not to extend to drugs, medicines, provisions, &c.
 33. Punishment for selling, &c., certain poisons without labelling.
 34. Preceding section not to extend to practising physician, &c.
 35. To maliciously and cruelly maim, beat, &c. any horse, ox, &c.; punishment.
 36. To cruelly or inhumanly beat, torture, wound or abuse any slave, &c.
 37. Wilfully breaking open sealed letter, without authority, not addressed to himself.
 38. Publishing contents of letters so opened.
 39. Not to extend to breaking open letters punishable by the laws of the United States.
 40. Persons convicted of felony, under this article, disqualified from holding office, &c.
 31. For offences specified in 7th and 8th sections of this article, additional disqualifications, &c.

§ 1. Every person having a husband or wife living, who shall marry any other person, whether married or single, (except in the case specified in the next section,) shall, on conviction, be adjudged guilty of bigamy, and be punished by imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 2. The last section shall not, by reason of any former marriage, extend to any person again marrying, in either of the following cases:

First, Where the husband or wife, by such former marriage, shall have been absent for seven successive years, without being known to such person to be living, nor,

Second, Where the husband or wife, by such former marriage, shall have been absent, and continually remaining without the United States and their territories, for seven successive years, nor,

Third, Where such former marriage shall have been dissolved by competent authority, and such person is not by law prohibited from again marrying, or the time of such disability has not expired, nor,

Fourth, Where such former marriage shall have been declared void by competent authority, nor

Fifth, Where such former marriage was contracted by such persons while under the age of legal consent, nor,

Sixth, Where the husband or wife, by such former marriage, shall have been sentenced to imprisonment in the penitentiary for life.

§ 3. Every person having a husband or wife living, who shall marry another person, without this state, in any case where such marriage would be punishable if contracted or solemnized within this state, and shall afterwards cohabit with such other person within this state, shall be adjudged guilty of bigamy, and punished in the same manner as if such second or subsequent marriage had taken place within this state.

§ 4. An indictment for bigamy, as defined in the preceding sections, may be found, and proceedings, trial, conviction, judgment and execution thereon had, in the county in which such second or subsequent marriage, or the cohabitation, shall have taken place, or in the county in which the offender may be apprehended.

§ 5. If any unmarried person shall knowingly marry the husband or wife of another, in any case where such husband or wife would be punished according to the foregoing provisions, such person shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 6. Persons within the degrees of consanguinity, within which marriages are declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding seven years.

§ 7. Every person who shall be convicted of the detestable and abominable crime against nature, committed with mankind, or with beast, shall be punished by imprisonment in the penitentiary not less than ten years.

§ 8. Every person who shall live in a state of open and notorious adultery, and every man and woman (one or both of whom are married, and not to each other,) who shall lewdly and lasciviously abide and cohabit with each other, and every person, married or unmarried, who shall be guilty of open, gross lewdness or lascivious behavior, or of any open and notorious act of public indecency, grossly scandalous, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding three hundred dollars, or by both such fine and imprisonment.

§ 9. If any guardian of any white female under the age of eighteen years, or of any other person, to whose care or protection any such female shall have been confided, shall defile her by carnally knowing her, he shall, in cases not in this act otherwise provided for, be punished by imprisonment in the penitentiary not less than two years, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 10. Every person who shall solemnize any marriage, having knowledge of any fact which renders such marriage criminal in either of the parties, under the preceding provisions of this article, or where either of the parties shall be under the age of legal consent, or where, to his knowledge, any other legal impediment exists to such marriage, shall, on conviction, be deemed guilty of a misdemeanor, and be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 11. Every person who shall remove the dead body or remains of any human being, from the grave or other place of interment or sepulture, for the purpose of selling the same, or for the purpose of dissection, or any surgical or anatomical experiment or preparation, or from mere wantonness or mischief, shall, upon conviction be adjudged guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 12. Every person who shall receive the dead body or remains of any human being, knowing the same to have been disinterred, contrary to the provisions of the preceding section, shall, on conviction, be adjudged guilty of a misdemeanor, and punished as in that section specified.

§ 13. Every person who shall open the grave, or other place of interment or sepulture, with intent to remove the dead body or remains of any human being, for any of the purposes specified in the eleventh section of this article, or to steal the coffin, or any vestment or other article, or any part thereof interred with such body, shall, on conviction, be adjudged guilty of a misdemeanor, and punished as in the said eleventh section is specified.

§ 14. The provisions of the three last sections shall not extend to any person who shall open a grave or other place of sepulture or interment, or remove, sell or receive the body or remains of any deceased person for the purpose of dissection, or some surgical or anatomical experiment, examination or preparation, with the knowledge and consent of the near relations of such deceased person, nor to the disinterment or removal, for such purpose, of the body of any criminal executed for crime, or of the body of a slave, with the consent of his owner.

§ 15. Every person who shall set up or keep any table or gambling device, commonly called A. B. C., Faro-Bank, E. O., Roulette, Equality, or any kind of gambling table or gambling device, adapted, devised and designed for the purpose of playing any game of chance, for money or property, and shall induce, entice or permit any person to bet, or play at, or upon, any such gaming table or gambling device, or at or upon any game played at, or by means of, such table or gambling device, or on the side, or against the keeper thereof, shall, on conviction, be adjudg-

ed guilty of a misdemeanor, and punished by imprisonment in a county jail not exceeding one year, and by fine not exceeding one thousand dollars.

§ 16. Every person who shall bet any money or property, or play at or upon any gaming table, bank or device prohibited by the preceding section, or who shall bet upon or play at any game played at or by means of any such gaming table, bank or other device, or on the side or against the keeper thereof, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by [fine] not exceeding twenty-five dollars.

§ 17. Every person who shall suffer or permit any gaming table, bank or device, prohibited by the preceding provisions, to be set up or used for the purpose of gaming in any house, building, shed, booth, shelter, lot or other premises to him belonging or by him occupied, or of which he hath at the time the possession or control, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding five hundred dollars, or imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment.

§ 18. Every person who shall set up or keep a common gaming house, or a bawdy house, or brothel, shall, on conviction, be adjudged guilty of a misdemeanor, and be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 19. Every person who shall knowingly lease, or let to another, any house or other building for the purpose of setting up, or keeping therein, any of the gaming tables, banks or other gambling devices, prohibited by the preceding provisions, or for the purpose of being used or kept as a gaming house, brothel or bawdy house, shall, on conviction, be adjudged guilty of a misdemeanor and punished by imprisonment in a county jail not exceeding three months, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 20. Every person appearing or acting as master or mistress, as having the care, use or management for the time, of any prohibited gaming table, bank, or device, shall be deemed a keeper thereof; and every person who shall appear or act as master or mistress, or having the care, use or management of any house or building, in which any gaming table, bank or device is set up or kept, or of any gaming house, brothel, or bawdy house, shall be deemed to be the keeper thereof.

§ 21. Whenever any lessee of any house or building shall be convicted of suffering or permitting any prohibited gaming table, bank or device, to be set up, kept or used therein for the purpose of gaming, or keeping in the same a bawdy house, brothel or common gaming house, the lease or agreement for letting such house or building shall become void, and the lessor may enter upon the premises so let, and shall have the same remedies for the recovery thereof as in the case of a tenant holding over his term.

§ 22. No person shall be incapacitated or excused from testifying, touching any offence committed by another against any of the foregoing provisions relating to gaming, by reason of his having betted or played at any of the prohibited games or gaming devices, but the testimony which may be given by such person shall in no case be used against him.

§ 23. Whenever any judge or justice of the peace shall have knowledge, or shall

receive satisfactory information, that there is any prohibited gaming table or gambling device, kept or used within his county, it shall be his duty forthwith to issue his warrant, directed to the sheriff or any constable, to seize and bring before said judge or justice such gaming table or other device.

§ 24. If any judge or justice have knowledge, or shall be satisfactorily informed, of the name or description of the keeper of any such prohibited gaming table or device, he shall also issue his warrant to apprehend such keeper and bring him before such judge or justice.

§ 25. The officer who shall be charged with the execution of any warrant, specified in either of the two last sections, shall have power, if necessary, to break open doors for the purpose of executing the same, and for that purpose may summon to his aid the power of the county.

§ 26. It shall be the duty of every judge or justice of the peace, before whom any such prohibited gaming table or device shall be brought, to cause the same to be publicly destroyed, by burning or otherwise.

§ 27. Every person who shall wilfully, maliciously or contemptuously, disquiet or disturb any congregation or assembly of people, met for religious worship, by making a noise, or by rude or indecent behavior or profane discourse within their place of worship, or so near to the same as to disturb the order or solemnity of the meeting, or menace, threaten or assault any person there being, shall be deemed guilty of a misdemeanor, and punished by fine not exceeding one hundred dollars, and, if unable to pay the fine, by confinement in the county jail not exceeding three months.

§ 28. Every person who shall either labor himself, or compel his apprentice, servant or slave, or any other person under his charge or control, to labor or perform any work, other than the household offices of daily necessity, or other works of necessity or charity, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding five dollars.

§ 29. The last section shall not extend to any person who is a member of a religious society, by whom any other than the first day of the week is observed as a Sabbath, so that he observes such Sabbath. nor to prohibit any ferryman from crossing passengers on any day of the week.

§ 30. Every person who shall be convicted of horse-racing, cock-fighting or playing at cards or game of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor and fined not exceeding fifty dollars.

§ 31. Every person who shall expose to sale any goods, wares or merchandize, or shall keep open any ale or porter-house, grocery or tippling house, or shall sell or retail any fermented or distilled liquor, after nine o'clock in the morning, on the first day of the week, commonly called Sunday, shall, on conviction, be adjudged guilty of a misdemeanor and fined not exceeding fifty dollars.

§ 32. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions or other articles of immediate necessity.

§ 33. Every person who shall sell or deliver to any other, any arsenic, corrosive sublimate, prussic acid, or any other substance or liquid, usually denominated poisonous, without having the word "poison" plainly written or printed on a label attached to the phial, box, vessel or package in which it is delivered, or who shall sell or deliver any tartar emetic, without having the true name written or printed on a label and attached to the phial, box, vessel or package containing the same, shall, on conviction, be adjudged guilty of a misdemeanor and fined not exceeding twenty-five dollars.

§ 34. The preceding section shall not be so construed as to extend to any practising physician, who shall deliver any of the articles therein mentioned, with a prescription for the use of the article.

§ 35. Every person who shall maliciously and cruelly maim, beat, or torture any horse, ox or other cattle, whether belonging to himself or another, shall, on conviction, be adjudged guilty of a misdemeanor and fined not exceeding fifty dollars.

§ 36. Every person who shall cruelly or inhumanly torture, beat, wound, or abuse any slave in his employment or under his charge, power or control, whether belonging to himself or another, shall, on conviction, be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

§ 37. If any person shall wilfully open or read, or cause to be read, any sealed letter not addressed to himself, without authority so to do from the writer thereof, or the person to whom it is addressed, he shall, on conviction, be adjudged guilty of a misdemeanor, and shall be punished by fine not exceeding two hundred and fifty dollars, or by imprisonment in a county jail not exceeding three months.

§ 38. Every person who shall publish the whole or any part of the contents of such letter, without the authority of the writer thereof, or of the person to whom it is addressed, knowing the same to have been so unlawfully opened, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished as in the preceding section is specified.

§ 39. The two last sections shall not extend to the breaking open of letters which shall be punishable by the laws of the United States.

§ 40. Every person who shall be convicted of any felony punishable under any of the provisions of this article, shall be thereafter disqualified from holding any office of honor, profit or trust, or voting at any election within this state.

§ 41. Every person who shall be convicted of any of the offences specified in the seventh and eighth sections of this article, shall, in addition to the disabilities specified in the last section, be incompetent to be sworn as a juror or witness in any cause, civil or criminal.

ARTICLE IX.

General provisions concerning crimes and punishments.

Sec. 1. Punishments for attempting to commit offences.

2. When convictions not to be had for attempts to commit crimes, &c.

3, & 4. Proceedings against persons stealing in another state, &c.

- SEC 5. Punishment of principals in second degree, and accessaries-before the fact.
6. Punishment for concealing, or giving aid to offender, after commission of a felony.
 7. Punishment for second offences.
 8. Convicts in other states, &c., liable to punishment of second conviction.
 9. Sentence of persons convicted of two or more offences at the same time.
 10. When courts may imprison for life; never less than two years in state prison.
 11. Courts not authorized to impose fines when offender is sentenced to the state prison.
 12. Cases where no punishment is prescribed by statute for a misdemeanor; how punished.
 13. For offences punishable in county jail, and no fine prescribed by law, courts may impose a fine, &c.
 14. When jury may find offence in a less degree than that charged.
 15. Acquittal, &c., on charge of one degree, to bar trial for any other degree.
 16. When defendant acquitted, may be again tried for same offence.
 17. When acquittal to be in bar of subsequent accusation.
 18. Certain minor convicts to be sentenced to county jail, instead of state prison.
 19. Effect of sentence of imprisonment in state prison for less than life; for life, civilly dead.
 20. Injuries to convicts imprisoned in the state prison.
 21. Forfeitures of estates, &c., on conviction, &c., abolished.
 22. The benefit of clergy abolished.
 23. Persons disqualified to be a witness, vote, &c., according to this act; how disabilities may be removed.
 24. Disabilities of convicts under certain age; how and when removed.
 25. Remedy of persons injured by commission of a felony, against property of the felon.
 26. Punishment of slaves for larceny, &c., or other offences under this act, where the punishment is by fine and imprisonment in the county jail.
 27. Slave charged with offences specified in last section; how tried.
 28. On such trial, jury may be summoned, &c.
 29. Fines against persons other than a slave; how recovered.
 30. Circuit courts have exclusive original jurisdiction in all cases of felony, &c.
 - 31, & 32. Slaves convicted of felony, and sentenced to state prison for less than life, how he may be disposed of.
 33. Governor may commute punishment of slaves under the provisions of the two last sections.
 34. How the order of the governor, for commutation, to be executed.
 35. Persons injured by an offence committed by a slave; remedy against the master.
 - 36 to 43. Definition of terms "felony," "infamous crime," "misdemeanor," "crime," "offence," "criminal offence," "personal property," "real property," "real estate," "property," "person," &c.
 44. Persons, with respect to whom intent to defraud, may be charged.

§ 1. Every person who shall attempt to commit an offence prohibited by law, and in such attempt shall do any act towards the commission of such offence, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same, upon conviction thereof, shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows:

First, If the offence attempted to be committed be such as is punishable by the death of the offender, the person convicted of such attempt shall be punished by imprisonment in the penitentiary not exceeding ten years.

Second, If the offence so attempted, be punishable by imprisonment in the penitentiary for four years or more, the person convicted of such attempt shall be punished by imprisonment in the penitentiary for a term not exceeding one half of the longest time of imprisonment prescribed upon a conviction for the offence so attempted.

Third, If the offence so attempted, be punishable either by imprisonment in the penitentiary for a term less than four years, or in a county jail, the person so convicted of such attempt shall be punished by imprisonment in the county jail not exceeding one year.

Fourth, If the offence so attempted, be punishable by imprisonment and fine, the offender convicted of such attempt may be punished by both imprisonment and fine, or either, not exceeding one half the longest time of imprisonment, and one half of the greatest fine which may be imposed upon a conviction for the offence so attempted.

Fifth, If the offence attempted, be punishable by fine only, the offender convicted of such attempt, shall be liable to a fine not exceeding one half of the greatest fine which may be imposed upon a conviction of the offence so attempted.

§ 2. No person shall be convicted of an assault with an intent to commit a crime, or of any other attempt to commit any offence, when it shall appear that the crime intended, or the offence attempted, was perpetrated by such person at the time of such assault, or in pursuance of such attempt.

§ 3. Every person who shall steal, or obtain by robbery, the property of another, in any other state, or country, and shall bring the same into this state, may be convicted and punished for larceny, in the same manner as if such property had been feloniously stolen or taken within this state; and, in any such cases, the larceny may be charged to have been committed, and may be indicted and punished, in any county, into or through which such stolen property shall have been brought.

§ 4. Every person prosecuted under the last section, may plead a former conviction or acquittal for the same offence in another state or country, and if such plea be admitted or established, it shall be a bar to any other or further proceedings against such person.

§ 5. Every person who shall be a principal in the second degree in the commission of any felony, or shall be an accessory to any murder or other felony, before the fact, shall, upon conviction, be adjudged guilty of the offence in the same degree, and be punished in the same manner, as herein prescribed with respect to the principal in the first degree.

§ 6. Every person who shall be convicted of having concealed any offender after the commission of any felony, or having give to such offender any other aid, knowing that he has committed a felony, with the intent, and in order that he may avoid or escape from arrest, trial, conviction or punishment, and no other, shall be deemed an accessory after the fact, and upon conviction, shall be punished by imprisonment in the penitentiary not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

§ 7. If any person convicted of any offence, punishable by imprisonment in the penitentiary, or of petit larceny, or any attempt to commit an offence, which, if perpetrated, would be punishable by imprisonment in the penitentiary, shall be discharged, either upon pardon or upon compliance with the sentence, and shall subsequently be convicted of any offence committed after such pardon or discharge, he shall be punished as follows:

First, If such subsequent offence be such, that, upon a first conviction, the offender would be punishable by imprisonment in the penitentiary for life, or for a term which, under this act, might extend to imprisonment for life, then such person shall be imprisoned in the penitentiary during life.

Second, If such subsequent offence be such, that, upon a first conviction, the offender would be punishable by imprisonment for a limited term of years, then such person shall be punished by imprisonment in the penitentiary for the longest term prescribed upon a conviction of such first offence.

Third, If such subsequent conviction be for petit larceny, or for an attempt to commit an offence, which, if perpetrated, would be punishable by imprisonment in the penitentiary, the person convicted of such subsequent offence shall be punished by imprisonment in the penitentiary for a term not exceeding five years.

§ 8. Every person who shall have been convicted in any of the United States, or in any district or territory thereof, or in a foreign country, of an offence which, if committed within this state, would be punishable by the laws of this state by imprisonment in the penitentiary, shall, upon conviction for any subsequent offence within this state, be subject to the punishment herein prescribed upon subsequent convictions, in the same manner, and to the same extent, as if such first conviction had taken place in a court of this state.

§ 9. When any person shall be convicted of two or more offences, before sentence shall have been pronounced upon him for either offence, the imprisonment to which he shall be sentenced upon the second, or other subsequent conviction, shall commence at the termination of the term of imprisonment to which he shall be adjudged on prior convictions.

§ 10. Whenever any offender is declared by law punishable upon conviction in the penitentiary, for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the offender may be sentenced to imprisonment during his natural life, or for any number of years not less than such as are prescribed; but no person shall, in any case, be sentenced to imprisonment in the penitentiary for any term less than two years.

§ 11. Whenever any offender is declared by law punishable upon conviction, by imprisonment in the penitentiary, or by imprisonment in a county jail, or by fine, or by both such fine and imprisonment, it shall not be construed to authorize the imposition of a fine, where the offender is sentenced to imprisonment in the penitentiary.

§ 12. Whenever any offence is declared by statute to be a misdemeanor, and no punishment is prescribed by that or any other statute, the offender shall be punished by imprisonment in a county jail, not exceeding six months, or by fine not exceeding two hundred dollars, or by both such fine and imprisonment.

§ 13. Upon conviction for any offence, punishable by imprisonment in a county

jail, in relation to which no fine is by law prescribed, a fine may be imposed on the offender not exceeding one hundred dollars.

§ 14. Upon an indictment for any offence, consisting of different degrees, as prescribed by this act, the jury may find the accused not guilty of the offence charged in the indictment, and may find him guilty of any degree of such offence, inferior to that charged in the indictment, or of an attempt to commit such offence.

§ 15. When a defendant shall be acquitted or convicted upon any indictment for any offence, consisting of different degrees, as specified in this act, he shall not thereafter be tried or convicted of a different degree of the same offence, nor shall he be tried or convicted for an attempt to commit the offence charged in the indictment, or to commit any degree thereof.

§ 16. When a defendant shall have been acquitted of a criminal charge upon trial, on the ground of variance between the indictment and the proof, or upon any exception to the former substance of the indictment, he may be tried and convicted on a subsequent indictment for the same offence, or any degree thereof.

§ 17. When a defendant shall have been acquitted upon a trial on the merits and facts, and not on any ground stated in the last section, he may plead such acquittal in bar to any subsequent accusation for the same offence, notwithstanding any defect in form and substance in the indictment upon such acquittal was had.

§ 18. Whenever any person under the age of sixteen years shall be convicted of any felony, he may be sentenced to imprisonment in a county jail not exceeding one year, instead of imprisonment in the penitentiary, as prescribed by the preceding provisions of this act.

§ 19. A sentence of imprisonment in the penitentiary for a term less than for life, suspends all civil rights of the person so sentenced during the term thereof, and forfeits all public offices and all private trusts, authority and power; and a person sentenced to such imprisonment for life, shall, thereafter, be deemed civilly *dead*.

§ 20. The person of a convict sentenced to imprisonment in the penitentiary, is under the protection of the law, and any injury to his person, not authorized by law, shall be punishable in the same manner as if he was not sentenced or convicted.

§ 21. No conviction of any person, for any offence whatever, shall work corruption of blood, or any forfeiture of any estate, or any right or interest therein; and all forfeiture, in cases of suicide, or death by casualty, or where any person shall flee from justice, are abolished.

§ 22. The benefit of clergy, in criminal cases, and all appeals of felony, are forever abolished.

§ 23. When any person shall be sentenced upon a conviction for any offence, and is thereby, according to the provisions of this act, disqualified to be sworn as a witness or juror in any cause, or to vote at any election, or to hold any office of honor, profit or trust within this state, such disabilities may be removed by a pardon by the governor, or by an act of the legislature, and not otherwise, except in the case in the next section specified.

§ 24. If such convict shall have committed the offence, while within the age of sixteen years, and such conviction shall be for a first offence, all civil disabilities

incurred, shall be removed, and his competency restored at the expiration of the term of imprisonment to which he shall have been sentenced.

§ 25. In no case shall the right of action of any party injured by the commission of a felony, be deemed or adjudged to be merged in such felony, but he may recover the amount of damages sustained thereby in an action to be brought before any court or tribunal of competent jurisdiction.

§ 26. If any slave shall commit petit larceny, or shall steal any neat cattle, sheep or hog, or be guilty of any misdemeanor or other offence, punishable under the provisions of this act, only by fine, or by imprisonment in a county jail, or by both such fine and imprisonment, he shall, instead of such punishment, be punished, if a male, by stripes on his bare back, not exceeding thirty-nine; or, if a female, by imprisonment in a county jail not exceeding twenty-one days, or by stripes not exceeding twenty-one, at the discretion of the owner.

§ 27. Every slave charged with the commission of any of the offences specified in the last section, shall be tried in a summary manner, before a justice of the peace of the county in which the offence is committed, and such justice (if a jury is not required as provided for in the next section) shall hear the evidence, determine the cause, [and,] on conviction, pronounce sentence and cause the same to be executed.

§ 28. If any slave, or his master, in any case cognizable before a justice of the peace, shall require a jury, the justice shall cause such jury to be summoned, sworn and empannelled, who shall determine the facts and assess the punishment in case of conviction, and the justice shall enter judgment and cause the same to be executed.

§ 29. When any offence, punishable by fine only, and such fine is limited to one hundred dollars, shall be committed by any person other than a slave, such fine shall be recovered by action of debt, to the use of the county, before any justice of the peace of the county in which the offence is committed.

§ 30. The circuit courts shall have exclusive original jurisdiction in all cases of felony, and of all offences not herein expressly declared to be cognizable before a justice of the peace.

§ 31. When any slave shall hereafter be convicted of a felony, and shall be sentenced to imprisonment in the penitentiary for a term less than life, the court, before whom such conviction is had, on the application of the owner or other person having charge of such slave, shall, instead of such imprisonment, sentence the offender to receive, on his bare back, any number of lashes not exceeding thirty-nine, and order him to be removed or sent out of the state, and for that purpose cause him to be delivered to the applicant, on the terms in the next section specified.

§ 32. Before such slave shall be delivered to any person, the applicant shall pay all costs of prosecution and maintenance of such slave, and shall enter into bond to the state in the sum of one thousand dollars, with one or more sureties, to be approved by the court, conditioned that such slave be taken or sent out of this state, within sixty days after delivery to such applicant, and shall not return to this state for twenty years thereafter, without lawful permission.

§ 33. It shall be lawful for the governor, at any time, to commute the punishment of a slave sentenced to imprisonment in the penitentiary for a term of years less than for life, in the manner specified in the thirty-first section of this article, on the application of the owner or other person having the charge of such slave, and bond given as specified in the last section.

§ 34. In case of such commutation being made by the governor, he shall issue his warrant under the seal of the state, specifying therein the punishment to be inflicted, and directing the officer in whose custody the slave may be, to inflict such punishment, and deliver the slave to the person therein named, on the payment of costs, which warrant shall be executed accordingly.

§ 35. Every person who shall be injured by the commission of any offence against his person, as specified in the second article, or against his property, as specified in the third article of this act, committed by a slave, shall have an action against the master or owner of such slave for the time, to recover any damages by him sustained by the commission of such offence, not exceeding in amount the value of the slave.

§ 36. The term "felony," when used in this act, or any other statute, shall be construed to mean any offence for which the offender, on conviction, shall be liable by law to be punished with death or by imprisonment in the penitentiary, and no other.

§ 37. Whenever the term "infamous crime" is used in this or any other statute, [it] shall be construed as including every offence for which the offender, on conviction, or sentence, is declared to be disqualified or rendered incompetent to be a witness or juror, or to vote at any election, or to hold any office of honor, profit or trust within this state.

§ 38. The term "misdemeanor," as used in this or any other statute, shall be construed as including every offence punishable only by fine, or imprisonment, or both.

§ 39. The terms "crime," "offence" and "criminal offence," when used in this or any other statute, shall be construed to mean any offence, as well misdemeanor as felony, for which any punishment by imprisonment or fine, or both, may by law be inflicted.

§ 40. The term "personal property," as used in this act, shall be construed to mean goods, chattels, effects, evidences of right in action, and all written instruments by which any pecuniary obligation, or any right or title to property real, or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged or diminished.

§ 41. The terms "real property" or "real estate," as used in this act, includes every estate, interest and right in lands, tenements or hereditaments.

42. The term "property," as used in this act, includes "personal property" and "real property," or real estate, as defined in the two last sections.

43. When the term "person" is used in this act, to designate the party whose property may be the subject of any offence, such term shall be construed to include the United States, this state, or any other state, government or country, county, or

any other municipal, public or private corporation, which may lawfully own any property within this state, as well as individuals.

§ 44. Where any intent to injure, defraud or cheat, is required by law to be shewn, in order to constitute any offence, it shall be sufficient if such intent be to injure, defraud or cheat the United States, this state, or any other state or country, or the government, or any public officer thereof, or any county, city, town, or village, or any corporation, body politic or private individual.

[This act to] take effect from and after the first day of December next.

Approved, March 20th, 1835.

DECISIONS OF THE SUPREME COURT.

An act to provide for the filing and reporting the decisions of the supreme court.

SEC. 1. The attorney general to be, ex-officio, reporter.

2. Counsel to make brief statement of the points and authorities, &c.; to be filed.
3. Opinion of the court shall be in writing and filed; what they shall contain.
4. Clerk to indorse day of filing; shall make a true copy thereof.
5. Duty of clerk in making out copy of points, and authorities, cited by counsel; shall transmit the same, with copy of decisions, to reporter.
6. Penalty on clerk failing, &c.; how to proceed against him.
7. Duty of the reporter to prefix to each decision, notes containing the points, &c.
8. When and how reports to be published.
9. What to be prefixed to the semi-annual part, and what at the last part of each volume.
10. How and when index to be published.
11. 1,500 copies to be published; the size, type, &c.
12. How to be stitched, bound, &c., for distribution.
13. Two copies, when to be transmitted to the clerk of each court.
14. One copy so transmitted shall be for the use of the court, other to be kept in the office.
15. When decisions are completed, to be delivered to the secretary of state.
16. 20 copies deposited in state library, one copy to be transmitted to the federal and state executives.
17. A number equal to the number of justices of the county court, to be transmitted to their clerk.
18. To whom the clerk of each county court shall deliver a volume.
19. Contract for printing and binding to be let to the lowest bidder.
20. Compensation to clerks of supreme court for making out transcripts.
21. Compensation to the reporter.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The attorney general shall be, ex-officio, reporter of the opinions and decisions of the supreme court of this state.

§ 2. The counsel, who make briefs under the rules and regulations of the supreme court, shall, after the statement of the cause, briefly state the points; which brief, containing the points and authorities, shall be filed with the opinion of the court, and make part of the papers in the cause.

§ 3. The opinion of the court shall, in all cases, be reduced to writing and filed in the cause to which it relates, which shall apply as well to motions which will dispose of a cause, as to final decisions. The opinions shall always contain a sufficient statement of the cause, so that the same may be understood without reference to the record and proceedings in the same; and it shall always appear in the opinion, which of the judges delivered the same, and who concurred or dissented.

§ 4. The clerk of the supreme court shall, when any opinion of the court is filed in his office, endorse thereon the day it is filed, and enter the same on his minutes, and shall, within thirty days thereafter, make a true copy thereof.

§ 5. The clerk shall, also, at the same time, make out a true copy of the points and citation of authorities by the counsel, as provided by the second section of this act, giving the names of counsel who signed the briefs, and distinguishing the same from the opinions of the court, and shall certify the same with a true copy of the decisions in the cause, under the seal of the court, and transmit the same to the reporter within thirty days.

§ 6. If any clerk of the supreme court fail to make out, certify, and transmit copies as aforesaid, within the time aforesaid, he shall be fined in any sum not less than twenty dollars, nor more than one hundred dollars, in the discretion of the court of which he is clerk; and it shall be the duty of the reporter, in case said copies are not received by him, to certify that fact to the supreme court for the proper district, who shall examine into the matter; and if the court find said copies were not made out, certified and transmitted as aforesaid, shall enter up a fine as aforesaid to the state, against the clerk, which shall be collected and certified to the auditor as in other cases.

§ 7. The reporter shall prefix to each decision a note or notes, containing the points decided, and shall make proper marginal notes to every paragraph of each opinion, stating briefly the principles there decided, and shall, from time to time, furnish the printer who may be employed to print the same, the copies and notes aforesaid.

§ 8. The reports shall be published semi-annually in parts, each part to contain the decisions of the supreme court, in the several districts, at the terms next preceding; they shall be printed in continuous paging, until there shall be sufficient matter to form one volume of not less than six hundred pages.

§ 9. There shall be prefixed to each semi-annual part, the title of the causes therein reported, and a brief note of the points to which the decisions relate; there shall also be prefixed to, and published with, the last part of each volume, a title page and an alphabetical list of the cases therein reported.

§ 10. The reporter shall make out and publish with the last part of each volume, (except every fifth one) a complete index to such volume; and he shall make out and publish with the last part of every fifth volume, a complete index to the contents of that and the next four preceding volumes.

§ 11. There shall be printed and published, fifteen hundred copies of each volume of the reports, of a super-royal octavo size, on such type and paper as shall be approved by the reporter.

§ 12. As many copies of each part as may be necessary for distribution in that form, shall be stitched and neatly covered with strong paper; the residue shall be neatly bound in law binding, as soon as may be, after a volume is completed.

§ 13. It shall be the duty of the reporter to transmit to the clerk of each court of record, two copies of each part of the report, as soon as practicable after it is published and ready for delivery.

§ 14. One of the copies to be delivered to the clerk shall be for the use of the court of which he is clerk, and the other shall be kept in his office, free to the inspection and examination of all persons.

§ 15. As soon as the printing and binding the copies of any volume shall be completed, they shall be delivered to the secretary of state on his order, to be disposed of by him as hereinafter provided.

§ 16. Twenty copies of each volume shall be deposited in the state library; one copy shall be transmitted to the executive of the United States, and the governor of each state in the union.

§ 17. The secretary of state shall transmit to the clerk of the county court in each county, a number of copies equal to the whole number of justices of the county court of each county.

§ 18. The clerks of the county courts, respectively, shall deliver to each justice of the county court, and justice of the peace, one copy of each volume, and take his receipt therefor.

§ 19. The reporter shall let out the contracts for the printing and binding required by this act, to the lowest and best bidder; but no contract shall embrace more than one volume, nor shall any contract be made for a second volume until the previous one be complied with.

§ 20. The clerks of the supreme court, for making out transcripts for publication as aforesaid, shall receive, respectively, eight cents for every hundred words the transcripts may contain.

§ 21. The reporter shall receive, as a full compensation for his services required by this act, one hundred and fifty dollars per annum, to be paid quarterly, out of the appropriation for the pay of civil officers; he shall also receive twelve and a half cents for every mile he must necessarily travel, in going from his place of residence to the place where the work is executed and returning thence, to be paid out of the general contingent fund.

Approved, March 20th, 1835.

DEPOSITIONS.

An act concerning depositions.

SEC. 1. Depositions may be obtained, when.

2. Witness residing out of the state, commission to take the deposition, &c.
3. Commission, how issued and to whom directed.
4. Power and duty of the officer taking the deposition under the commission.
5. Witness residing in the state, how his deposition may be taken.
6. Notice of the time and place of taking depositions to be given.
7. What shall be notice if the adverse party or his attorney do not reside in the state.
8. Notice to take depositions to be given.
9. On affidavit, special commission to issue.
10. To whom such commission shall be directed, &c.
11. Interrogatories to be annexed to the commission; how to be drawn up and signed.
12. Duty of the person taking the deposition; examination, &c., to be reduced to writing.
13. Witnesses to be examined on oath.

SEC. 14. Officers taking depositions may compel the attendance of witnesses.

15. Certificate of the officer taking the deposition to be appended; what it must show
16. Official character of officers in foreign country, how attested.
17. Official character of officers within the United States, &c., how attested.
18. Exhibits, interrogatories, &c., to be inclosed in the deposition.
19. When depositions taken according to this law, may be read.
20. Certificate of the officer, &c., as to residence of the witness, *prima facie* evidence of the fact.
21. Objections to the competency, &c., of witnesses, or relevancy, &c., of questions, &c., how taken.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Any party to a suit depending in any court of record in this state, may obtain the deposition of any witness, to be used in such suit conditionally.

§ 2. Where the witness resides out of this state, the party desiring his testimony may sue out of the court in which the suit is pending, or out of the office of the clerk thereof in vacation, a commission to take the deposition of the witness.

§ 3. The commission shall be under the seal of the court, and shall be directed to any judge, justice of the peace, or other judicial officer, within the government where the witness resides.

§ 4. The commission shall authorize such officer to cause to come before him, such person or persons as shall be named to him by the party suing the same, and shall command such officer to examine such person touching his knowledge of any thing relating to the matter in controversy, and to reduce such examination to writing and return the same, annexed to the commission, to the court wherein the action is pending, with all convenient speed.

§ 5. Where the witness resides in this state, the deposition may be taken before any judge or justice of the peace thereof, without any commission or order from any court or clerk.

§ 6. In all cases where depositions shall be taken by virtue of any of the preceding sections of this law, the party at whose instance the same shall be taken, shall cause notice, in writing, of the time and place of taking such depositions to be served on the adverse party, if he resides in this state, and if not, then on his attorney of record in the cause.

§ 7. If neither the adverse party, nor his attorney of record in the cause, reside in this state, causing such notice to be put up in the office of the clerk of the court wherein such suit is pending, shall be a sufficient notice.

§ 8. In all cases where notice is required by this law to be served on the adverse party, the same shall be served at least three days before the day of taking the depositions, and one day additional for every twenty-five miles of distance from the place of serving or setting up such notice, to the place of taking the depositions.

§ 9. Where any party to any suit, pending in any court of record in this state, shall make application to such court, in term time, for a commission to take the examination of witnesses, and shall support such application by affidavit, and shall have given to the adverse party reasonable notice of such application, the court may, upon such terms as it shall think proper, award such commission.

§ 10. The commission shall be to such person as the court shall appoint to be named in the commission, or to any judicial officer of the government in which the

witnesses reside, commanding such person, or officer, to examine such witnesses (naming them,) upon interrogatories.

§ 11. The interrogatories shall be annexed to the commission, and shall be drawn and signed by the parties or their counsel in the cause, under the sanction and direction of the court.

§ 12. The commission shall further command the person or officer, to whom the same is directed, to reduce the examination of the witnesses, and their answers to the interrogatories annexed, to writing, and return the same, with the commission, into the court, with all convenient speed; and the person or officer shall examine the witnesses named in the commission, touching the matters contained in the interrogatories annexed, and none others, at any time and place, when and where such witnesses may be found.

§ 13. Every witness examined in pursuance of this law, shall be sworn or affirmed to testify the whole truth, and his examination shall be reduced to writing in the presence of the person or officer before whom the same shall be taken.

§ 14. Every person, judge, or justice of the peace in this state, required to take the depositions or examination of witnesses, in pursuance of this law, or by virtue of any commission issued out of any court of record, in this or any other government, shall have power to issue subpoenas for witnesses to appear and testify, and to compel their attendance in the same manner and under like penalties as any court of record of this state.

§ 15. To every deposition or examination, taken by virtue of this law, shall be appended the certificate of the person or officer, by or before whom the same shall be taken, shewing that the deposition or examination was subscribed and sworn to by the witness, and the day on which it was done.

§ 16. Depositions or examinations taken by any judge, justice of the peace or other judicial officer, out of this state, by virtue of any commission issued in pursuance of this law, shall be accompanied by a certificate of the official character of such officer, attested by the seal of state of the government in which the depositions or examinations were taken.

§ 17. The official character of any such officer, taking depositions or examinations within any of the United States, or any of the territories of the United States, authenticated and proved by the certificate and seal of the clerk of any court of record, within any county of the state or territory, where such officer resides, and certifying, also, that such officer was an acting judge or justice of the peace, and duly commissioned as such, at the time when the depositions were taken, shall be a sufficient authentication, any thing in the preceding section notwithstanding.

§ 18. Depositions or examinations taken by virtue of any of the provisions of this law, and all exhibits produced to the person or officer taking such examinations or depositions, and proved or referred to by any witness, together with the commission and interrogatories, (if any,) shall be enclosed, sealed up and directed to the clerk of the court in which the action is pending.

§ 19. Examinations or depositions taken and returned in conformity to the provisions of this law, may be read and used as evidence in the cause in which it shall

have been taken, as if the witness were present and examined in open court, on the trial thereof,

First, If the witness reside, or is gone, out of the state.

Second, If he be dead.

Third, If, by reason of age, sickness or bodily infirmity, he be unable or cannot safely attend the court.

Fourth, If he resides at a greater distance than sixty miles from the place of trial.

Fifth, If he be gone to a greater distance than sixty miles from the place of trial, without the consent or collusion of the party requiring his testimony.

§ 20. When the officer taking depositions in virtue of this law, shall, in his certificate, state the place of residence of the witness, such statement shall be *prima facie* evidence of the facts.

§ 21. Every objection to the competency or credibility of a witness examined, or to the competency or relevancy of any question put to him, or of any answer given by him, may be made in the same manner and with the like effect as if such witness were personally examined at the trial.

Approved, February 14th, 1835.

DESCENTS AND DISTRIBUTIONS.

An act to direct descents and distributions.

SEC. 1. Real estate, &c., to whom to descend; course of descent.

2. Posthumous children to inherit; none except the children of the intestate to take, unless in being at the intestate's death.
3. Rule where the inheritance is to go by the moieties to the paternal and maternal kindred.
4. Where some are of the whole and others of the half blood.
5. When they shall take *per capita*, when *per stirpes*.
6. Advancements made may be brought into hotchpot.
7. Alienage of ancestor, no bar.
8. Bastards may inherit.
9. When bastards shall be legitimated.
10. Marriages deemed null in law, or dissolved by divorce, issue shall be legitimate.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. When any person, having title to any real estate of inheritance, or personal estate undisposed of, or otherwise limited by marriage settlement, shall be intestate as to such estate, it shall descend and be distributed in parcenary to his kindred, male and female, subject to the payment of his debts and the widow's dower, in the following course:

First, To his children, or their descendants, in equal parts.

Second, If there be no children, or their descendants, then to his father, mother, brothers and sisters, and their descendants, in equal parts.

Third, If there be no children, or their descendants, father, mother, brother, or sister, nor their descendants, then to the grand-father, grand-mother, uncles, and aunts, and their descendants, in equal parts.

Fourth, If there be no children or their descendants, father, mother, brother, sister, nor their descendants, grand-father, grand-mother, uncle, aunt, nor their descendants, then to the great grand-fathers, great grand-mothers, and the brothers and sisters of the grand-fathers and grand-mothers, and their descendants, in equal parts; and so on in other cases without end, passing to the nearest lineal ancestors, and their children, and their descendants, in equal parts.

§ 2. All posthumous children of the intestate, shall inherit in like manner as if born in the life-time of the intestate; but no right of inheritance shall accrue to any person, other than the children of the intestate, unless they be in being, and capable, in law, to take as heirs at the time of the intestate's death.

§ 3. If there be no children, or their descendants, father, mother, brother nor sister, nor their descendants, nor any paternal nor maternal kindred, capable of inheriting, the whole shall go to the wife, or husband of the intestate; and if the wife or husband be dead, it shall go to her or his kindred, in the like course as if such wife or husband had survived the intestate, and then died entitled to the estate.

§ 4. Where the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood of the intestate, and the other part of the half blood only, those of the half blood shall inherit only half as much as those of the whole blood; but if all such collaterals be of half blood, they shall have whole portions, only giving to the ascendants double portions.

§ 5. When several lineal descendants, all of equal degree of consanguinity to the intestate, or his father, mother, brothers or sisters, or his grand-father, grand-mother, uncles and aunts, or any ancestor living, and their children, come into partition, they shall take *per capita*, (that is) by persons; where a part of them is dead, and a part living, and the issue of those dead have right to partition, such issue shall take *per stirpes*, (that is,) the share of their deceased parent.

§ 6. When any of the children of the intestate shall have received in his life-time any real or personal estate, by way of advancement, shall choose to come into partition with the other parceners, such advancement shall be brought into *hotchpot* with the estate descended.

§ 7. In making title by descent, it shall be no bar to a demandant that any ancestor, through whom he derives his descent from the intestate, is or has been an alien.

§ 8. Bastards shall be capable of inheriting and transmitting inheritance on the part of their mother, in like manner as if they had been lawfully begotten of such mother.

§ 9. If a man having by a woman a child or children, and afterwards shall intermarry with her, and shall recognise such child or children to be his, they shall thereby be legitimated.

§ 10. The issue of all marriages deemed null in law, or dissolved by divorce, shall be legitimate.

Approved, February 11th, 1835.

DETINUE.

An act concerning the action of detinue.

- SEC. 1. *Capias* to issue on affidavit, bail required.
2. Defendant committed, &c., unless he give bond; condition of the bond.
 3. Officer failing to return a bond, or an insufficient one, to be made co-defendant, &c.
 4. Remedy of the plaintiff against bail, and the officer when made co-defendant.
 5. Amount of bail may be reduced by the court, or common appearance accepted.
 6. Verdict omitting damages, inquiry to be awarded.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. In actions of detinue, when the plaintiff files in the clerk's office the affidavit of himself, or of some credible person, stating that the property for which the action is brought belongs to him, the value thereof, and the defendant unlawfully detains the same, the clerk shall issue a writ of *capias* in detinue, endorse on the writ the amount sworn to, and a direction to the officer to take bail in double that sum.

§ 2. The officer charged with the execution of a *capias* in detinue, shall take the defendant and commit him to jail, unless the defendant enters into a bond to the plaintiff, with sufficient security, conditioned, that, if judgment is given against him in the action, he will deliver to the plaintiff the property thereby recovered, and pay the damages for its detention and costs of suit, and the officer shall return the bond, with the writ, as in other cases.

§ 3. If the officer returns the writ executed, and has not the defendant according to the command thereof, or if he fails to take or return the bond, or if the bond returned is adjudged insufficient at the return term of the writ, and the defendant fails to perfect his bail, if ruled thereto, the officer shall be made a co-defendant, may defend the suit upon the pleas of the defendant, and shall be subject to the same judgment and be joined therein.

§ 4. When a bond, taken in pursuance of this act, is forfeited, the plaintiff shall have the same remedy against the bail, and the bail the same remedy against their principal; and the officer, when made a co-defendant, the same remedies against the principal and bail, as may exist by law in cases of bail in other civil cases, and the same proceedings shall be had thereon.

§ 5. The court out of which any *capias* in detinue is issued, or any judge thereof in vacation, may reduce the sum for which bail is demanded, and the court may accept the appearance of the defendant, and cancel the bond in such manner for like causes, and with the like effect, as in cases of bail in other civil cases.

§ 6. If in any action of detinue, the value of the property recovered, or the damages for the detinue thereof, be omitted in any verdict for the plaintiff, the court may, at any time, award an enquiry to ascertain the same.

Approved, February 5th, 1835.

DIVORCE AND ALIMONY.

An act concerning divorce and alimony.

Sec. 1. Causes of divorce from bonds of matrimony.

2. Circuit courts to have jurisdiction, &c.; manner of proceeding; under what rules bill and answer to be filed.
3. Complainant must reside one year in the state, except, &c.
4. Collusion between the parties, or adultery by both, a bar to dower.
5. Order touching alimony, security for may be required; payment of, how compelled, &c.
6. Divorce from bonds of matrimony, guilty party forfeits rights, &c; when allowed to marry again, &c.;
ex parte proceedings, how conducted.
7. Husband abandoning his family, &c., court may decree maintenance.
8. Wife divorced, her property, &c., to revert to her and children.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. When a marriage hath been or shall be solemnized between two persons, and either party at the time of the contract was and still is impotent, or that he or she had a wife or husband living at the time of the marriage, or has committed adultery subsequently to the marriage, or wilfully deserts and absents himself, or herself, without a reasonable cause, for the space of two years, or shall be convicted of felony or infamous crime, or addicted to habitual drunkenness for the space of two years, or shall be guilty of such cruel and barbarous treatment as to endanger the life of the other, or shall offer such indignities to the person of the other, as shall render his or her condition intolerable, the innocent and injured party may obtain a divorce from the bonds of matrimony, but no such divorce shall effect the legitimacy of the children.

§ 2. The circuit court, sitting as a court of chancery, shall have jurisdiction in all cases of divorce and alimony or maintenance; and the like process and proceedings shall be had in said causes as are had in other causes on the equity side of the court, except the answer of the defendant shall not be under oath; the bill of the complainant shall be accompanied by an affidavit annexed thereto, that the facts stated in the bill are true, according to the best knowledge and belief of the complainant, and that the complaint is not made out of levity, or by collusion, fear or restraint, between the complainant and defendant, for the mere purpose of being separated from each other, but, in sincerity and truth, for the causes mentioned in said bill; the proceedings shall be had in the county where the complainant resides, and the process may be directed in the first instance into any other county in the state, where the defendant resides.

§ 3. No person shall be entitled to a divorce from the bonds of matrimony, who has not resided in the state one whole year next before the filing the bill, unless the offence or injury complained of was committed within this state, or whilst one or both of the parties resided within this state.

§ 4. If it shall appear to the court that the adultery, or other injury or offence complained of, shall have been occasioned by the collusion of the parties, or done with an intention to procure a divorce, or that the complainant was consenting thereto, or that both parties have been guilty of adultery, then no divorce shall be decreed.

§ 5. When a divorce shall be decreed, the court shall make such order touching the alimony and maintenance of the wife, and the care, custody and maintenance of the children, or any of them, as from the circumstances of the parties, and the nature of the case, shall be reasonable; and, when the wife is complainant, to order the defendant to give security for such alimony and maintenance, and upon his neglect to give the security required of him, or upon default of himself and his security, if any there be, to pay or provide such alimony and maintenance, to award an execution for the collection thereof, or to enforce the performance of the decree or order, by sequestration of property, or by such other lawful ways and means as is according to the practice of said court; the court, on the application of either party, may make such alterations, from time to time, as to the allowance of alimony and maintenance, as may be proper, and may order any reasonable sum to be paid for the support of the wife, during the pendency of her application for a divorce.

§ 6. In all cases from the bonds of matrimony, the guilty party shall forfeit all rights and claims under and by virtue of the marriage; nor shall the guilty party be allowed to marry again, by reason of such divorce, under five years after such divorce, unless otherwise expressed in the decree of the court; and in all cases where the proceedings shall be *ex parte*, the court shall, before it grants such divorce, require proof of the good conduct of the petitioner, and be satisfied that he or she is an innocent and injured party.

§ 7. When the husband, without good cause, shall abandon his wife, and refuse or neglect to maintain and provide for her, the court shall decree such support and maintenance to be provided and paid by said husband for the wife and her children, or any of them, by that marriage, out of his property, and for such time as the nature of the case and the circumstances of the parties shall require, and to compel the defendant to give security for such maintenance, and, from time to time, to make such further orders touching the same as shall be just, and to enforce such decree in the manner prescribed in the fifth section of this act; and so long as said maintenance is continued, the husband shall not be charged with the wife's debts, contracted after the decree of such maintenance.

§ 8. When the wife shall obtain a divorce from the bonds of matrimony, all property which came to the husband by means of the marriage, and remaining undisposed of at the time of filing the bill, shall revert to the wife and children.

Approved, January 24th, 1835.

An act explanatory of the law of divorce and alimony.

- SEC. 1. Cause of divorce commencing beyond the limits of the state and continued within the state, &c., courts have jurisdiction.
2. This act to take effect from its passage.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. In cases in which the cause of divorce has heretofore, or shall hereafter commence, beyond the limits of this state, and has been or shall be continued or com-

pleted within the state, the courts shall have the same jurisdiction as if the cause had commenced and been completed within the state.

§ 2. This act shall take effect from and after the passage thereof.

Approved, March 19th, 1835.

DOWER.

An act concerning dower.

- SEC. 1. Widow to be endowed; in leasehold estates, how endowed.
2. How endowed in slaves and other personal estate, when there are children, &c.
 3. How endowed, if no children or descendants.
 4. The provisions made in the last section subject to the payment of debts.
 5. If there be no children or other descendants, the widow may elect to take according to 1st or 3rd section of this act, &c.
 6. Such election, how and when to be made.
 7. Conveyance by the husband without the assent of the wife, &c., judgment, covin, &c., no bar to dower.
 8. Divorce, when a bar to dower.
 9. Devise of land to widow, a bar to dower, unless otherwise expressed.
 10. Not to be endowed when the husband makes a will, unless she renounce the provisions made for her by the will, &c.
 11. Jointure in lieu of dower, when a bar.
 12. Jointure assured during coverture, or infancy of the wife, may be renounced, and dower claimed.
 13. Title to jointure failing, widow entitled to dower.
 14. Desertion and adultery a bar to dower.
 15. Widow entitled to the mansion house, &c., until dower assigned.
 16. If dower not assigned, widow may sue for and recover it with damages, &c.
 17. Widow claiming dower, where to file her petition; summons to issue, how served; proceedings thereon; defendants not summoned, publication to be made.
 18. Several defendants, some appearing, others not, proceedings, &c., made defendants.
 19. Judgment by default, &c., or on trial of issues for demandant, she is entitled to dower; commissioners to be appointed, &c.
 20. Commissioners to set off widows' dowers.
 21. County surveyor to attend; commissioners, when and how to make report; proceedings thereon.
 22. If report approved, jury to assess damages; proceedings of the court thereon.
 23. If estate be not susceptible of division, value of dower to be ascertained; when and how.
 24. Judgment for the value in lieu of dower; damages may be assessed, &c.
 25. Summons in dower not to abate; when.
 26. How heirs, legatees, &c., may proceed to assign dower; notice to be given to the widow, &c.
 27. Upon such application and proof of notice, commissioners to be appointed; how to proceed, &c.
 28. Assignment of dower by collusion, &c., with the guardian, not obligatory on the minor, &c.
 29. Parties and privies only to an action for dower bound; effect of proceedings under this act.
 30. Proceedings to admeasure dower, in property assigned, by persons not concluded by former assignment, &c.
 31. If it be found that dower had been correctly assigned, judgment, &c., if for the demandant, judgment, &c.
 32. Commissioners to admeasure dower; their proceedings.
 33. Report to be made, proceedings thereon; power of the court to supply vacancies, &c.
 34. Infants not concluded, if judgment obtained by collusion; widow shall not lose her dower by default, &c.
 35. Fees of commissioners to be taxed, &c.; costs, how adjudged.
 36. Judgment for damages in favor of the widow, against what estate execution to issue.
 37. When the yearly allowance adjudged in lieu of dower shall not be paid, execution to issue, &c.
 38. Action brought by the widow under this act, not to abate by the death of either party; proceedings.
 39. If she die before action brought, who may sue; if one or more of defendants die, how to proceed.
 40. Action against the widow not to abate by the death of the plaintiff; who may appear and prosecute.
 41. Appeal and writ of error allowed.
 42. On judgment for the widow's dower, for what the appellant shall be bound in the recognizance; judgment affirmed, how to proceed.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Every widow shall be endowed of the third part of all the lands, whereof her husband or any other person to his use was seized, of an estate of inheritance at any time during the marriage, to which she shall not have relinquished her right of dower, in the manner prescribed by law, to hold and enjoy during her natural life. Dower in leasehold estate, for a term of or more than twenty years, shall be granted and assigned as in real estate; for a less term than twenty years, shall be granted and assigned as in personal property.

§ 2. Where the husband shall die, leaving a child or children, or other descendants, the widow shall be entitled absolutely to a share in the slaves and other personal estate belonging to the husband at the time of his death, equal to the share of a child of such deceased husband, after the payment of debts.

§ 3. Where the husband shall die without any child or other descendant in being, capable of inheriting, his widow shall be entitled,

First, To all the real and personal estate which came to the husband in right of the marriage, remaining undisposed of absolutely.

Second, One half of the real and personal estate belonging to the husband at the time of his death absolutely.

Third, Where the husband shall die having such child or descendant, but not by his last marriage, his widow may, in lieu of dower, elect to take, in addition to her real estate, the slaves and other personal property in possession of the husband, that came to him in right of the wife by
- means of the marriage.

§ 4. The provisions made for the widow in the last section, shall be subject to the payment of the husband's debts.

§ 5. When the husband shall die without a child or other descendant living, capable of inheriting, the widow shall have her election to take her dower as provided in the first section, discharged of debts or the provisions of the third section subject to debts.

§ 6. Such election shall be made by a declaration in writing, acknowledged before some officer, authorized to take the acknowledgment of deeds, and filed in the office of the clerk of the court, in which letters testamentary or of administration shall have been granted, within six months after the grant of the same.

§ 7. No act, deed or conveyance, executed or performed by the husband, without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the estates of married women, and no judgment or decree confessed by, or recovered against, him, and no laches, default, covin or crime of the husband, shall prejudice the right and interest of the wife, provided in the foregoing sections of this act.

§ 8. If any woman be divorced from her husband for the fault or misconduct of such husband, she shall not thereby lose her dower; but if the husband be divorced from the wife for her fault or misconduct, she shall not be endowed.

§ 9. If any testator shall, by will, pass any real estate to his wife, such devise

shall be in lieu of dower out of the real estate of her husband, whereof he died seized unless the testator, by his will, otherwise declare.

§ 10. If the wife survive the husband, she shall not be endowed in any of the real estate whereof her husband died seized, unless she shall, by writing, duly executed and acknowledged, as in case of deeds for lands, and filed in the office of the court in which the will is proven and recorded, within twelve months after the proof of the will, declare that she will not accept the provisions made for her by said will.

§ 11. If any woman, prior to, and in contemplation of, marriage, shall, on agreement or marriage contract with her intended husband or other person, receive an estate, either real or personal, to take effect after the death of her husband, by way of jointure, as a provision for her support during life, and expressed to be in full discharge of all claim for dower, such estate shall be valid, and a bar to dower in the estate of her husband. When any lands have been, or hereafter shall be, conveyed to the husband and wife, or to any other person, and to their heirs, and to the use of the husband and wife, or to the use of the wife, for the jointure of the wife, every such married woman, having such jointure made, shall not claim any dower in the residue of the land of which her husband was at any time seized.

§ 12. If any deed of conveyance, assurance, agreement, or contract for jointure, be made after marriage, or be made before marriage and during the infancy of the wife, in either case the widow may, at her election, renounce her jointure and have dower. In all cases, if the title to the estate settled on the wife as her jointure shall fail, or she be evicted from, or cannot recover such estate, she shall have dower in the estate of her husband; or if the title fail as to a part only, the deficiency shall be made up out of the husband's estate.

§ 13. When any deed, conveyance, assurance, agreement, or contract for jointure, in lieu of dower, shall, through any default, fail to be a legal bar to dower, and the widow availing herself of such default shall demand her dower, then the estate and interest, so conveyed to such widow, shall cease and determine.

§ 14. If a wife voluntarily leave her husband and go away, and continue with an adulterer, or after being ravished, consent to the ravisher, she shall be forever barred from having her jointure or dower, unless her husband be voluntarily reconciled to her and suffer her to dwell with him.

§ 15. Until dower be assigned, the widow may remain in and enjoy the mansion house of, her husband, and the messuages or plantation thereto belonging, without being liable to pay any rent for the same.

§ 16. Where any widow shall be entitled to dower in real estate, and she be deformed thereof, or cannot have it without suit, or if her dower be unfairly assigned, or not assigned within twelve months after the death of her husband, she may sue for and recover the same with damages; that is to say, the value of the whole dower to her belonging, from the time of her husband's death (if he died, or shall die seized,) or from the time of demanding dower (if the husband was or shall be seized, but did not or shall not die seized) unto the day that she shall recover her dower.

§ 17. Any widow may file a petition in the office of the clerk of the circuit court of the county wherein the real estate in which she claims her dower is situate; or

if the land is divided by a county line, then in either county, against any person claiming any interest in such lands, or being in possession thereof, or who shall deforce her of her dower therein; the clerk shall, thereupon, issue a summons, endorsed or annexed to such petition, which shall be served as process in actions at law, and if the defendant appear and plead, the cause shall proceed according to the course of proceedings at law. If any defendant shall not be summoned or shall not appear, the court shall award an order of publication, which shall notify such defendant, that, unless he appear on the first day of the next succeeding term, and proceed to trial, judgment will be rendered against him by default: which order shall be published in some newspaper, printed in this state, for two months, and when so published, shall be equivalent to the service of a summons.

§ 18. When there are several defendants, some of whom are summoned or appear, and others do not, the demandant may proceed against those summoned or appearing, without regard to the others, or may continue the cause and take out *alias* writs, or make publications as aforesaid, to bring in the other parties. Any person claiming title to the land, whereof dower is claimed, may be made a defendant if he appear and apply for that purpose, and proceedings shall be had thereon, in all respects as if he were originally a party duly summoned.

§ 19. If judgment be rendered by default, *nil dicit* or *non sum informatus*, the court shall hear the proofs and allegations of the demandant, or empanel a jury for that purpose; and if it be found upon such proceeding or on the trial of the issues, that the demandant is entitled to dower, the court or jury shall determine in what proportion, and the court shall thereupon render judgment, that she be seized of her dower accordingly, for and during her natural life, and that she recover the damages which may be assessed, and thereupon shall appoint three competent persons as commissioners to assign and admeasure such dower, who, before they enter upon the discharge of their duties, shall take an oath or affirmation, honestly and impartially to execute the trust reposed in them respectively.

§ 20. The commissioners, or a majority of them, shall proceed to the lands or other real estate, and, by actual admeasurement, ascertain and set off the widow's dower thereon, according to the judgment of the court.

§ 21. The county surveyor of the county, if thereto required by the commissioners, shall make such surveys and plats as the commissioners shall direct, and the commissioners shall make full report of their proceedings, with a plat and boundaries of the land so assigned by them as dower, to the court appointing them, at the next term thereof, which report, if approved, shall be recorded among the records of the court; but if it shall not be approved, the commissioners shall again proceed, as before directed, and as often as may be necessary, until their report shall be approved; and such court may at any time discharge any commissioner, and appoint others in their stead, and may supply any vacancy which may happen by death resignation or refusal to act; of any of the commissioners.

§ 22. When any report assigning dower shall be approved, the court shall empanel a jury to assess damages, and shall render judgment for the damages assessed

if the same has not before been done, and award a writ of possession, according to the report of the commissioners, and execution of the damages.

§ 23. If the commissioners shall report that the lands or other estate is not susceptible of a division, without great injury thereto, a jury shall be empannelled to enquire of the yearly value of the widow's dower therein, and shall assess the same accordingly.

§ 24. The court shall, thereupon, render a judgment, that there be paid to such widow, as an allowance in lieu of dower, on a day therein named, the sum so assessed as the yearly value of her dower, and the like sum on the same day in every year thereafter, during her natural life; and such jury shall, moreover, (if the same have not been before done,) assess the damages which may have accrued down to the time of rendering their verdict.

§ 25. No writ of summons in dower shall abate by the exception of the tenant or defendant, that the demandant hath received her dower of another person before her writ was sued out, unless he can shew that the dower so received was in satisfaction of her dower in the lands whereof she demands dower.

§ 26. When any widow shall be entitled to dower in lands or other real estate, whereof her husband died seized, it shall be lawful for any heir or legatee, or the guardians of such as are minors, entitled to any interest in such lands or real estate, or the executors or administrators of the intestate, or to any creditor of the widow, and after her marriage, any creditor of her husband, to apply by petition to the circuit court of the county wherein the lands lie, to assign and admeasure such dower, giving twenty days notice in writing, of such intended application, to such widow, by personal service or leaving a copy at her usual place of abode.

§ 27. Upon such application, and due proof of the service of such notice, the court shall appoint three commissioners to assign and admeasure such dower, who shall take the same oath and perform the like duties, and the court shall proceed in like manner therein, as hereinbefore provided in like cases, where the widow demands dower. In proceedings under this section, there shall be no judgment for damages, and the costs and charges shall be divided and apportioned among the persons concerned, according to their respective interests in the lands and real estate out of which the dower shall be assigned.

§ 28. Where a widow, having no right to demand dower, sues out a writ of dower against the guardian of any minor, and the guardian endows the widow by favor, or makes default, or by collusion defends the plea faintly, whereby she is awarded her dower to the prejudice of such minor, such minor, when he shall arrive at full age, shall have an action to demand seizen, or to admeasure such dower according to law.

§ 29. Every person who shall not have been made a party to any action, and duly notified or summoned to appear, and shall not have appeared to any action brought by any widow for her dower (except such as claim under any of the parties who have appeared, or were summoned or notified, by title derived after the commencement of such action,) shall have their action against such widow to admeasure the

dower, and all other persons shall be concluded by the proceedings under the provisions of this act.

§ 30. When any person, not concluded as aforesaid, shall file his petition in the office of the clerk of the circuit court of the county in which the lands or other real estate, in which dower has been assigned under the provisions of this act, are situate, stating that such widow was not entitled to dower in such lands or other real estate, or that her dower was unduly assigned, and claiming title to the lands so assigned, or a part thereof, the clerk shall issue a summons thereon, in the nature of a writ of admeasurement of dower, which shall be served on such widow, as the like process in other cases at law, and such widow may appear and deny the title of the demandant, and put him upon the proof thereof, and may shew her right of dower, and that it was properly and duly assigned according to law, and may plead as many pleas as she may think proper, and have every defence which may be allowed in the law in like cases, and proceedings shall be had as in ordinary cases at law.

§ 31. If it be found that the demandant hath not good title to the premises, or that she is entitled to dower, and the same has been assigned according to her right, she shall have judgment to retain her dower, and go quit of the said action; but if it shall be found, that the demandant hath good title and that such widow is not entitled to dower, he shall have judgment of seizen.

§ 32. If upon proof of title in the demandant, it appear that the widow is entitled to dower, but that the same has not been duly assigned, the court shall appoint commissioners, as in case of petition of the widow, who shall take an oath and proceed in like manner as herein-before provided in the assignment of dower.

§ 33. The court shall proceed upon their report in the same manner and shall have the same power to supply vacancies and discharge commissioners and appoint others, as is provided in case of commissioners appointed to assign dower, and when the report is approved, shall award a writ of possession accordingly; and all parties to any such action, and those claiming under them, shall be concluded thereby.

§ 34. Where such action is brought by any guardian, his ward, when he comes of age, shall not be bound thereby, if the judgment be obtained by collusion, but may have his action within three years after he comes of age; and in like manner the widow shall be aided, if she be impleaded and lose her dower by default, but she shall recover her dower, if she hath right thereto, as if no proceeding had ever been had.

§ 35. The charge of the commissioners for their services, not exceeding one dollar per day each, shall be taxed as other costs; and where judgment shall be for the defendant, he or she shall have judgment to recover his or her costs; and where the judgment shall be for the defendant, he shall recover his costs.

§ 36. In all cases of judgments for damages in favor of any widow, under the provisions of this act, execution thereof shall be awarded only against the estate in which dower shall be assigned.

§ 37. Where a writ of possession shall not have been awarded by reason that a division of the estate cannot be had, and a yearly allowance shall have been

adjudged in lieu thereof, the court, when any such yearly allowance shall become due, and be unpaid, shall award execution therefor in favor of such widow; or, if she die before the end of any year, then in favor of her executors or administrators, for all arrearages and a just proportion of the last year's allowance, computing the time which had elapsed at the time of her death.

§ 38. No action brought by any widow for the recovery of her dower, shall abate by the death of either party, but if the demandant die, her husband, if she be married, or, if not, her executors or administrators, may appear and prosecute the action; but no admeasurement of dower, or writ of possession, shall in such case be awarded, but he or they shall have judgment and execution only for the damages occasioned by the deforcement.

§ 39. If she die before action brought, her executors and administrators may have and maintain an action, in which case no admeasurement shall be made, or writ of possession awarded, but upon the issue found, the court or jury shall assess the damages according to this act; and where one or more of the defendants die, the action shall proceed against the survivors, and if all the defendants die, the action may be revived against their executors and administrators, as in other cases; but any other person, claiming title to the lands, may be made a party by his voluntarily appearing to such action as a defendant.

§ 40. No action against any widow for admeasurement of dower shall abate by the death of the plaintiff or demandant, but his heir, legatee, and the guardians of such as are minors, may appear and prosecute such action.

§ 41. If either party shall feel aggrieved by the final judgment of the court, he may have an appeal or prosecute a writ of error in the same manner as in other actions at law; but no appeal or writ of error shall operate as a supersedeas, unless the appellant or plaintiff in error shall enter into a recognizance as required by law.

§ 42. Where the judgment shall be, that the widow be seized of her dower, the appellant [shall] become bound in such recognizance to pay, not only all damages which have been adjudged, but all which may be adjudged to such widow in the action thereafter; and when any such judgment shall be affirmed, there shall be a writ to enquire of the mesne profits and damages by waste done after the first judgment.

Approved, March 20th, 1835.

EJECTMENT.

An act regulating the action of ejectment.

- SEC. 1. Persons entitled to possession may maintain this action.
2. In what other cases this action may be maintained.
 3. This action, how prosecuted, and against whom brought.
 4. The person under whom defendant claims may be made co-defendant.
 5. What shall be averred in the declaration.

6. How defendant may plead; proceedings in this action, how conducted.
7. General issue, what it shall be.
8. What such plea shall put in issue.
9. What the plaintiff must show to entitle him to recover.
10. Joint tenant, or tenant in common, suing his co-tenant, what the plaintiff must show.
11. If the plaintiff prevail, how and under what circumstances damages to be recovered.
12. If the right of plaintiff to possession expires after suit commenced, judgment for damages and costs only.
13. If the plaintiff prevail, when judgment shall be for possession, damages and costs.
14. Judgment for possession, &c., writ of possession to issue; damages, &c., how collected.
15. Judgment for damages and costs only, how collected.
16. On judgment of dispossession, compensation for lasting improvements, &c., when and how recovered.
17. What facts the party shall set forth in his bill to recover value of improvements; to be verified by affidavit.
18. Injunction may be granted until value of improvements be ascertained, &c.
19. When plaintiff in ejectment may file his cross bill, to relinquish the land and recover the value, &c.
20. If the value of improvements exceed the value of the land, decree of the court, and effect thereof.
21. Decree that occupying claimant shall take the land; when and what title plaintiff, &c., to convey.
22. If the land, aside from improvements, exceeds the value of improvements, what decree the court in its discretion may make.
23. If plaintiff at law insist on retaining the land, partition shall not be made.
24. No improvements, after notice, to be paid for.
25. Person, other than the proprietor of the better title, paying for improvements, &c., his remedy.
26. Improvements made prior to 23rd day of January, 1816, not to be paid for.
27. Upon the cases enumerated in 2nd section of this act, trespass may be maintained.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The action of ejectment may be maintained in all cases when the plaintiff is legally entitled to the possession of the premises.

§ 2. The action of ejectment may also be maintained, in all cases where the plaintiff claims the possession of the premises, against any person not having a better title thereto, under or by virtue of,

First, An entry with the register and receiver of any land office of the United States, or with the commissioner of the general land office thereof; or,

Second, A pre-emption right under the laws of the United States; or,

Third, A New Madrid location; or,

Fourth, A confirmation made under the laws of the United States; or,

Fifth, A French or Spanish grant, warrant or order of survey, surveyed by proper authority under the French or Spanish governments, and recorded according to the usages of the country, prior to the tenth day of March, eighteen hundred and four.

§ 3. The action shall be prosecuted in the real names of the parties thereto, and shall be brought against the person in possession of the premises claimed.

§ 4. The person from, or through whom the defendant claims title to the premises, may, on motion, be made a co-defendant.

§ 5. It shall be sufficient for the plaintiff to aver in the declaration, that, on some day therein to be specified, he was entitled to the possession of the premises, describing them, and being so entitled to the possession thereof, that the defendant afterwards, on some day to be stated, entered into such premises, and unlawfully withholds from the plaintiff the possession thereof, to his damage, any sum he may claim.

§ 6. The defendant may plead the general issue, or he may plead his defence specially; and all pleadings and proceedings in the action shall be conducted as in personal actions, except where it is herein otherwise prescribed.

§ 7. The general issue shall be, that the defendant is not guilty of unlawfully withholding the premises from the plaintiff, as alleged against him.

§ 8. Such plea shall put in issue every matter required to be established by the plaintiff on the trial, to entitle him to recover, and the defendant may thereunder give in evidence any matter in bar of the action.

§ 9. To entitle the plaintiff to recover, it shall be sufficient for him to show, that, at the time of the commencement of the action, the defendant was in possession of the premises claimed, and that the plaintiff had such right to the possession thereof, as is declared by this act to be sufficient to maintain the action.

§ 10. If the action is brought by a joint tenant, or tenant in common against his co-tenant, the plaintiff shall also be required to show on the trial, that the defendant actually ousted him, or did some act amounting to a total denial of his right as such co-tenant.

§ 11. If the plaintiff prevail in the action, he shall recover, by way of damages, the rents and profits down to the time of assessing the same, or to the time of the expiration of the plaintiff's title, under the following limitations:

First, Where it shall not be shown on the trial, that the defendant had knowledge of the plaintiff's claim prior to the commencement of the action, such recovery shall be only from the time of the commencement of the action.

Second Where it shall be shown on the trial, that the defendant had knowledge of the plaintiff's claim prior to the commencement of the action, and that such knowledge came to the defendant within five years next preceding the commencement of the action, such recovery shall be from the time that such knowledge came to the defendant.

Third, Where it shall be shown on the trial, that knowledge of the plaintiff's claim came to the defendant more than five years prior to the commencement of the action, such recovery shall only be for the term of five years next preceding the commencement of the action.

§ 12. If the right of the plaintiff to the possession of the premises expire after the commencement of the suit, and before the trial, the verdict shall be returned according to the fact, and judgment shall be entered only for the damages and costs.

§ 13. In cases where no other provision is made, the judgment, if the plaintiff prevail, shall be for the recovery of the possession of the premises, and the damages assessed, and costs.

§ 14. When the judgment for the plaintiff is both for the recovery of the possession, and of the damages, the plaintiff may have a writ of possession, which shall command the officer to whom directed, to deliver to the plaintiff possession of the premises, and shall also command him to levy and collect the damages and costs as in executions on judgments in personal actions.

§ 15. When the judgment for the plaintiff is only for damages and costs, execution may be had thereon as on judgments in personal actions.

§ 16. If judgment of dispossession shall be given in an action of ejectment, or in any real action, in favor of a person having a better title thereto, against a person in the possession of any land, by virtue of any grant, warrant, concession, settlement right or survey, confirmed under the authority of the laws of the United States, such person may recover, in a court of equity, compensation for all valuable and lasting improvements made by such person, in good faith, on the land under such title.

§ 17. The complainant, in his bill, shall set forth the nature of his title, the length of his possession, and the kind and value of the improvements made, and shall also aver therein, that he entered into the possession of the land, believing that he had good title thereto, and that he made the improvements specified in the bill, in good faith, under the belief that he had good title to the land, and shall be verified by the affidavit of the complainant thereto annexed.

§ 18. An injunction may be granted, to stay the plaintiff at law from taking possession of the land, until the value of the improvements is ascertained, or until the further order of the court.

§ 19. The plaintiff at law may file a cross bill, praying for leave to relinquish the land to the occupying claimant, and to recover the value thereof, aside from the improvements.

§ 20. If the value of the improvements exceed the value of the land, aside from the improvements, the court may decree, that the occupying claimant shall, by a time to be specified in the decree, take the land and pay the ascertained value thereof to the plaintiff at law, and that, in default of such payment, the plaintiff shall take possession of the land, discharged from all claim of such occupying claimant.

§ 21. In all cases where the occupying claimant shall be decreed to take the land and pay the value thereof, the plaintiff at law shall, on the payment of the money, make to the occupying claimant a conveyance thereof, with general warranty.

§ 22. If the value of the land, aside from the improvements, exceed the value of the improvements, the court may, in its discretion, decree either, that the claimant shall pay for the improvements before he shall be allowed to take possession of the land, or that the land shall be divided between the occupying claimant and the plaintiff at law, according to their respective rights in equity.

§ 23. No partition shall be decreed if the plaintiff at law insists upon his right to retain the land.

§ 24. If the plaintiff at law shall give the occupying claimant notice in writing of his claim, and of the nature thereof, such notice shall bar the occupying claimant, and all persons claiming from, or through him, of compensation for improvements made after such notice.

§ 25. No occupying claimant shall recover compensation twice for his improvements; and in all cases where the occupying claimant shall be paid for his improve-

ments by any person other than the proprietor of the better title, such person shall be invested with the same rights, and the same remedy for the recovery thereof, as is given by this act to such occupying claimant.

§ 26. No compensation shall be allowed under this act, for improvements made prior to the twenty-third day of January, eighteen hundred and sixteen.

§ 27. An action of trespass may be maintained in all the cases enumerated in the second section of this act.

Approved, March 9th, 1835.

ELECTIONS.

An act to regulate elections.

- Sec. 1. General election to be held on the 1st Monday in August, 1836.
2. Election for governor and lieutenant governor, every four years thereafter.
 3. Clerks to transmit certificate of elections to next succeeding general assembly.
 4. Election for representatives, senators, &c., on 1st Monday in August, 1833, and every two years thereafter.
 5. Districts, county court to appoint three persons to hold elections, designate place, &c.
 6. Failing to designate place, appoint judges, &c., how the sheriff and voters to proceed.
 7. Special elections, when and how to be advertised by the sheriff.
 8. Writ for special election issued by the governor, to specify length of notice to be given.
 9. Form of the oath to be taken by the judges, &c.
 10. Two clerks to be appointed by the judges; their oath, duty, &c.
 11. Duty of county court clerks to furnish two blank poll-books for each township, &c.
 12. To be delivered by the sheriff to the judges of election.
 13. Polls, when to be opened and closed.
 14. Vote of each elector to be cried aloud as given in.
 15. Polls may be kept open three days, by order of court.
 16. Judges to certify the number of votes given, &c., to be transmitted, together with one of the poll-books, by one of their clerks, to clerk of the county court, &c.
 17. Polls to be cast up and arranged by clerk and two justices, &c.
 18. Duty of the clerks in comparing the polls; when and how done.
 19. Duty of clerks in senatorial districts composed of two or more counties.
 20. Duty of clerk to whom return was made, on examination, &c., to give certificate of election.
 21. Abstract of votes for representatives to congress, governor, and lieutenant governor, senators and representatives to be returned by mail.
 22. Returns by mail, failing, special messenger to be sent by the secretary of state.
 23. Failure happening by neglect of the clerk, penalty, and how recovered.
 24. Under what circumstances secretary of state may delay longer than one mail.
 25. Shall not, in any case, delay to despatch a messenger longer than forty days.
 26. Secretary of state, when and how to proceed to cast up votes for members to congress; certificates of election to be made out.
 27. In case of a tie, governor to order new election by proclamation, &c.
 28. Governor may direct return of such elections to be made by special messengers.
 29. List of members elected to be laid before the general assembly by secretary of state; when.
 30. Abstract of votes for governor and lieutenant governor, to be laid before the general assembly, to be counted in the presence of both houses, &c.; elections to be declared.
 31. In case of a tie, to be determined by a joint vote of the two houses, &c.
 32. Compensation to clerks and messengers for carrying returns of elections, &c.
 33. Votes to be given *viva voce*, or by tickets read aloud.
 34. Judge or clerk undertaking and failing to perform duties, subject to a fine; how recovered.
 35. Messengers employed to carry returns and failing, fined; how recovered.
 36. Proviso, in case of sickness, &c.
 37. Voters may be examined on oath as to their qualifications to vote.

38. Persons voting out of their township, oath to be administered, &c.
39. Names of rejected voters to be recorded, and of persons for whom they vote to be taken down.
40. Judges, clerks and voters, privileged from arrest.
41. Constables to attend elections of their respective townships; their duty.
42. Judges may fine disorderly persons.
43. Justices and clerks to issue order for new election in case of a tie; when and to whom.
44. Election for sheriff to be contested before the circuit court; proceedings.
45. Depositions may be taken and read on trial; to be determined in a summary way.
46. Contested election of senators and representatives, proceedings; depositions, when and how taken.
47. Depositions to be taken, time not to exceed forty days from the day of election, &c.
48. Justices taking such testimony, to certify the same, and to whom.
49. No testimony to be taken, except to points specified.
50. Contested election for governor and lieutenant governor, to be determined by the legislature.
51. Party contesting election for governor or lieutenant governor, to present petition, stating points, &c.
52. If a majority be in favor of the petition, joint committee to be appointed; their powers and duties.
53. Notice of taking depositions to be given; duty of the judge or justice taking depositions.
54. Parties allowed to examine and cross-examine witnesses before the committee, but no testimony to be taken except to the points in the petition.
55. Report of committee and proceedings thereon.
56. Fines and forfeitures under this act appropriated.
57. Penalty on persons voting who are not qualified; how recovered.
58. Penalty on persons voting more than once at same election; how recovered.

Be it enacted by the general assembly of the state Missouri, as follows:

§ 1. On the first Monday in August, in the year eighteen hundred and thirty-six, there shall be an election held in each township in this state, for the election of governor, lieutenant governor, and state senators whose time has expired, representatives to the general assembly, sheriff and coroner in each county or district.

§ 2. Every four years thereafter, there shall be an election held as aforesaid, for governor and lieutenant governor.

§ 3. A certificate of which election shall be transmitted to the next succeeding general assembly, by the clerks of the county courts respectively.

§ 4. On the first Monday in August, eighteen hundred and thirty-eight, and every two years thereafter, there shall be elections held as aforesaid, for the election of representatives and senators in those districts where the term of those elected has expired.

§ 5. Every township now established, or that may hereafter be established, shall compose an election district; and the county court of each county shall name a house in each township, where the election shall be held, and appoint three discreet persons to hold the same at each place of election.

§ 6. If the court fail to designate the house, or appoint judges, or those appointed fail to act, it shall be the duty of the sheriff to fix the place of holding the election, and the voters, when assembled, may appoint the judges of the election.

§ 7. The sheriff shall, one month previous to each special election, put up advertisements at three of the most public places in each township in his county, stating the time and place of holding such election.

§ 8. When the governor issues a writ of election to fill any vacancy, he shall mention in said writ, how many days the sheriff shall give notice thereof.

§ 9. The judges, before they enter on their duties, shall take the following oath or affirmation: "I — do swear (or affirm,) that I will impartially discharge the duties

of judge of the present election, according to law and the best of my abilities, so help me God."

§ 10. The judges shall appoint two clerks, who, before entering on the duties of their appointment, shall take an oath or affirmation, that they will faithfully record the names of all the voters, and distinctly carry out, in lines and columns, for whom each voter votes.

§ 11. It shall be the duty of the clerks of the county courts respectively, one month before each general election, or six days before such special election, to make out, and deliver to the sheriff of their counties, two blank poll-books for each township in their county, properly laid off in ^{same, by act, the neces-} ~~same, by act, the neces-~~ ^{arrangement of a grand jury, to the use} ~~arrangement of a grand jury, to the use~~ cates attached.

§ 12. The sheriff shall forthwith deliver to the judge of each respective township, the blank books aforesaid: ^{any election, fail to do so}

§ 13. The judges of each election shall open the polls at ^{opened as in the case} morning, and continue them open until six o'clock in the evening.

§ 14. The officer attending the different elections shall cry, in ^{many person pre-} the vote of each elector as given in. ^{ed them by this}

§ 15. The county courts may, if they think proper, order that the polls in ⁱⁿ respective counties, or in any township thereof, be kept open any number of days not exceeding three, at any one election.

§ 16. At the close of each election, the judges shall certify, under their hands, the number of votes given for each candidate, which shall be attested by their clerks, and transmit the same, together with one of the poll books, by one of their clerks, to the clerk of the county court in which the election was held, within five days thereafter; the other poll book shall be retained in the possession of the judges of the election, free to the inspection of all persons.

§ 17. The clerks of the county courts shall, within eight days after the close of each election, take to his assistance two justices of the peace of his county, or two justices of the county court, and examine and cast the votes given to each candidate, and give to those having the highest number of votes a certificate of his election.

§ 18. The clerks, in comparing the returns from the several townships, shall do it publicly, in the court house of their counties, first giving notice of the same, by public proclamation, at the court house door.

§ 19. In all senatorial districts, composed of two or more counties, the clerks of all the counties in the district shall transmit to the clerk of the county first named in the said district, within twelve days after such election, a certificate under their hands, of the number of votes given for each candidate in each respective county.

§ 20. The clerk of the county to which such return shall be made, after examining the same, shall give to the person having the highest number of votes, a certificate of his election, under the seal of his office.

§ 21. The clerks of the several courts, to whom a transcript of the votes is directed, shall, within two days after the time limited for the examination of the polls, deliver into the nearest post office, on the most direct route to the seat of

government, a fair abstract of the votes given in their respective counties for members to congress, governor, and lieutenant governor, state senators and representatives.

§ 22. If there shall be a failure to receive any of the returns at the seat of government, for one mail after the same is due, the secretary of state shall despatch a messenger to the county not returned, with directions to bring up said abstracts.

§ 23. If such failure shall happen by neglect of the clerk, he shall forfeit to the state one hundred dollars, together with the expense of such messenger, to be recovered by action of debt, before any court having jurisdiction thereof.

§ 24. The secretary of state shall not delay longer than one mail after such failure, if the circumstances require, to take care that the returns, in all cases, be

51. Party contesting election for governor, lieutenant governor and lieutenant

52. If a majority be in favor of the returns from the most remote counties ought to [be]

53. Notice of taking depositions to

54. Parties allowed to examine

except to the persons [of state] shall in no instance delay to despatch a messenger

55. Report of committee before than forty days after the close of such election.

56. Fines and forfeitures

57. Penalty on persons forty days after each general election, or sooner, if the returns shall

58. Penalty on persons made, the secretary of state, in the presence of the governor, shall

cast up the votes given in the counties in this state for members to congress, and shall give to the persons having the highest number of votes, certificates of their election, under his hand, with the seal of state affixed thereto.

§ 27. Should any two or more persons have an equal number of votes, and a higher number than any other person, the governor, in such case, if necessary, shall issue his proclamation, giving notice of such fact, and that an election will be held at the places of holding elections in the state, for such member to congress; in which shall be mentioned, the day of the election, which election shall be conducted and returned agreeably to the provisions of this act.

§ 28. The governor may, in special elections, if he thinks proper, direct in his proclamation, that the returns be forwarded by messengers.

§ 29. Within two days after the meeting of each general assembly, the secretary of state shall lay before each house a list of the members elected, agreeably to the returns in his office.

§ 30. After each election of governor and lieutenant governor, he shall, within the time aforesaid, lay before the general assembly a complete abstract of the votes given for the officers last mentioned, and the two houses shall, without delay, assemble in the hall of the house of representatives, and the president of the senate and the speaker of the house of representatives shall, in the presence of both houses, examine the returns, and declare who are elected to fill said offices.

§ 31. If any two or more persons have an equal number of votes for the same office, and a higher number than any other person, the two houses shall, by joint vote, determine the election; and the president of the senate, and speaker of the house of representatives, shall deposit in the office of the secretary of state, a certificate, declaring what persons have been elected to said offices.

§ 32. There shall be allowed to clerks, for sending or conveying the returns of any senatorial election into any other county in the district, as occasion may

require, and also to any messenger who may be employed to convey the returns of the election for members of congress, and governor and lieutenant governor, at the rate of five cents per mile, going and returning.

§ 33. The votes given at all elections, shall be given *viva voce*, or by a ticket handed to the judges, and then read, and the clerks to note them, as before, in the presence and hearing of the voter.

§ 34. If any judge or clerk, after they shall have undertaken to perform the duties pointed out in this act, fail so to do, he shall be fined two hundred dollars, to be recovered by any person who will sue for the same, by action of debt, before any court having competent jurisdiction, or by presentment of a grand jury, to the use of the county.

§ 35. If any person employed to carry the returns of any election, fail to do so in due time, he shall be fined two hundred dollars, to be recovered as in the case of a judge or clerk.

§ 36. Nothing herein contained shall impose the said penalty on any person preby sickness, inability or unavoidable accident, from the duties assigned them by this act.

§ 37. Where any person offers to vote, and neither of the judges is personally acquainted with the qualifications of such person, either of the judges may administer an oath, and examine him touching his qualifications as a voter.

§ 38. Where any person offers to vote in a township of which he is not a resident, if he possess the necessary qualifications of a voter, he may vote, on taking an oath that he has not voted, and will not vote, in any other township during the present election.

§ 39. When any person, who shall offer himself as a voter, shall be excluded from voting by the judges, they shall cause his name to be entered on the poll-book, as a rejected voter, and shall also take down the names of the persons for whom such person wishes to vote.

§ 40. All judges, clerks and voters, shall be free from arrest, except for felony or breach of the peace, in going to, attending on, and returning from, elections.

§ 41. The constable shall attend the elections in his township, and perform such duties as are enjoined on him by law, under the direction of the judges.

§ 42. The judges of the elections shall preserve good order, and punish any disorderly person for contempt, by fine not exceeding twenty dollars, at their discretion, and commit the offender to the jail of the county until the fine so inflicted be paid.

§ 43. If there shall be a tie given for any two candidates, other than senator or representative to the general assembly, sheriff or coroner, the clerk or justice casting up the number of votes, or a majority of them, shall issue their order to the sheriff of the county, or senatorial district, where the same may occur, directing him to issue his proclamation for holding an election agreeably to this act; and in all cases of such special election, the clerk and justices, when they issue the order to the sheriff, shall, in said order, state the day on which the election shall be held, giving reasonable time for the same to be promulgated.

§ 44. When the election of any sheriff is contested, it shall be before the circuit court of the county, and the person contesting such election shall give to the opposite party, notice in writing, fifteen days before the term of the court at which such election shall be contested, specifying the grounds on which he intends to rely; and if any objection be made to the qualification of any voters, the names of such voters, with the objections, shall be stated in the notice, and the parties shall be allowed process for witnesses.

§ 45. Either party may, on giving notice thereof to the other, take depositions, to be read in evidence on the trial; and the court shall, at the first term, (if twenty days shall then have elapsed after such election, and if less than twenty, then, at the second term,) in a summary way, determine the same according to evidence.

§ 46. If any candidate of the proper county or district, contest any election of any person proclaimed duly elected to the senate or house of representatives, such person shall give notice thereof in writing, to the person whose election he contests, or leave written notice thereof at the house where such person last resided, within twenty days after the return of the election to the clerk's office, expressing the points on which the same will be contested, and the names of the two justices of the peace, who will attend at the taking of the depositions, and when and where they will attend to take the same.

§ 47. The time for taking such depositions shall not exceed forty days from the day of election; and the said justices, or either of them, shall issue subpoenas to all persons required by either party, commanding such persons to appear and give testimony at the time and place therein mentioned.

§ 48. The justices shall hear and certify all testimony relative to such election, to the president of the senate, if the contest is for a seat in the senate; if for the house of representatives, then to [the] speaker of the house of representatives.

§ 49. No testimony shall be received by the justices on the part of the person contesting the election, which does not relate to the points specified in the notice, a copy of which notice, attested by the person who delivered or served the same, shall be delivered to the said justices, and by them transmitted with the depositions.

§ 50. All contested elections for governor or lieutenant governor, shall be decided by joint vote of both houses of the general assembly. The joint meeting of the two houses, deciding on such elections, shall be held in the hall of the house of representatives, and the president of the senate shall preside.

§ 51. If any person contest the election of governor or lieutenant governor, he shall present a petition to the general assembly, setting forth the points on which he will contest the same, and the facts which he will prove in support of those points, and shall pray for leave to produce his proof, and a vote shall be taken in each house, by yeas and nays, whether the prayer shall be granted.

§ 52. If a majority of the whole number of votes of both houses shall be in the affirmative, they shall appoint a joint committee to take the testimony on the part of the petitioner, and also on the part of the person whose place is contested, with power to send for witnesses, issue warrants under the hand of the chairman, to any judge or justice of the peace, to take the deposition of witnesses, at such time and place as

the warrant shall direct, which warrant shall mention the points to which the testimony is to be taken.

§ 53. Reasonable notice shall be given by the party in whose favor depositions shall be allowed to be taken, to the opposite party, of the time and place of taking the same; and the judge and justices shall proceed in all things in procuring the attendance of witnesses, and in taking and certifying the testimony, as is directed in the last preceding section.

§ 54. The party shall also be allowed to attend the examination of witnesses before the committee, and to cross examine them; but no testimony shall be taken except on points set forth in the petition.

§ 55. The committee shall report the facts to the houses, and a day shall be fixed by a joint resolution for the meeting of the two houses, to decide upon the same, on which decision the yeas and nays shall be taken by the clerks of the houses, and shall be entered upon the journals.

§ 56. All fines, penalties and forfeitures, by this act imposed, and which are not herein-before otherwise appropriated, are appropriated to the use of the county.

§ 57. Every person not being a qualified voter, according to the constitution or laws of this state, who shall vote at any election within this state, knowing that he is not entitled to a vote, shall forfeit twenty dollars, to be recovered before any justice of the peace, by action of debt, one half to the use of the county, and the other half to the person suing therefor.

§ 58. If any person votes more than once at any one election, he shall forfeit the sum of twenty dollars, to be recovered and applied in the same manner as provided in the preceding section.

Approved, March 20th, 1835.

ELECTION OF MEMBERS TO CONGRESS.

An act to provide for electing two members to congress from this state.

SEC. 1. Election, when to be held; how conducted.

Be it enacted by the general assembly of the state of Missouri, [as follows:]

That an election shall be held at the several election precincts in this state, on the first Monday in August next, and on the first Monday in August, in the year one thousand eight hundred and thirty-six, and on the first Monday in August every two years thereafter, for the purpose of electing two members to congress from this state; and the said election to be governed in all other respects under the laws which governed the election of members to congress from this state heretofore.

Approved, February 4th, 1835.

ELECTORS.

An act to provide for choosing electors of president and vice president of the United States.

- SEC. 1. Four election districts established; of what counties composed, &c.
2. In case of new apportionment, governor to lay off districts.
 3. Proclamation of such divisions, when and how to be made.
 4. Elections, when to be held; one elector to reside in each district.
 5. Elections, how conducted.
 6. Returns by judges of elections to clerks; by clerks to be made to the governor.
 7. Votes to be arranged, and election determined.
 8. In case of a tie, election determined by the general assembly.
 9. Persons elected, to be notified, &c.
 10. Contested elections, how determined.
 11. List of persons chosen to be delivered to electors.
 12. Compensation for carrying returns and notices.
 13. Electors when to meet; their duty.
 14. Electors, their compensation; accounts, how audited and allowed.
 15. Vacancies, how supplied.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The state shall be divided into four districts, for the purpose of electing four electors to elect a president and vice president of the United States, in the following manner, to-wit: the first district shall be composed of the counties of Cape Girardeau, Crawford, Pulaski, Green, Washington, Wayne, Ripley, St. Francois, Madison, Ste. Genevieve, Perry, Scott and New Madrid. The second district shall be composed of the counties of Saline, Pettis, Cooper, Morgan, Cole, Gasconade, Franklin, St. Louis and Jefferson. The third district shall be composed of the counties of Jackson, Lafayette, Clinton, Clay, Ray, Carroll, Chariton, Howard, Randolph and Boone. The fourth district shall be composed of the counties of St. Charles, Lincoln, Pike, Marion, Ralls, Monroe, Lewis, Montgomery, Callaway and Warren: and when any new county shall be made, it shall be attached to, and become a part of, that district out of which the new county may have been taken.

§ 2. When any new apportionment shall be made of the members to be elected to the house of representatives of the United States, whereby the number of electors to which this state may be entitled shall be increased or diminished, it shall be the duty of the governor to lay off the state into as many districts as shall be equal to the number of electors to which the state shall then be entitled, so that the said districts contain as near as may be an equal number of free white male inhabitants, and that no county shall be divided.

§ 3. It shall be the duty of the governor, whenever he shall exercise the power hereby vested in him, to give notice of the division made by him, by proclamation, to be published in all the newspapers printed in this state, sixty days at least before the first election under such arrangement.

§ 4. The qualified voters in each of said districts shall meet at their respective places of holding elections, on the first Monday in November, in the year one thousand eight hundred and thirty-six, and on the first Monday of November in every

fourth year thereafter, unless the congress of the United States shall appoint a different day, and in that case, on such day as the said congress shall appoint, and shall proceed to elect as many fit persons as the state shall then be entitled, as electors of president and vice president, one of whom shall be a resident of each district.

§ 5. The election shall be conducted by the judges who may have been appointed to hold the general election for the same year, and under the same regulations, and have the same public notice thereof given by the sheriff in each county, as is or may be required by law regulating such general elections.

§ 6. It shall be the duty of the judges of such elections in the different townships, to make return thereof to the clerks of the county courts of their respective counties, within two days after such election, which clerks shall, within two days after they receive such returns, certify and transmit the same, by some person employed for that purpose, to the governor.

§ 7. The governor, on the receipt of the certificates from the several counties in each district, which he may have received within fifteen days after the day of election, shall immediately add up the votes from the several counties, and the person residing in any one district having the highest number of votes, given in the state for any one person residing in the same district, shall, by him, be declared duly elected elector for said district.

§ 8. If two or more persons residing in one district shall have an equal number of votes given in the state as aforesaid, and more than any other person residing in the same district, the governor shall immediately notify the general assembly thereof, and such election shall be determined by joint vote of both houses of the general assembly, by choosing one of the persons so having an equal number of votes.

§ 9. It shall be the duty of the governor, at the expense of the state, in all cases immediately to notify the persons chosen, of their election, as soon as the same shall have been ascertained, agreeably to the provisions aforesaid.

§ 10. All contested elections for electors shall be determined by joint vote of both houses of the general assembly, and the proceedings in contesting such elections shall be the same in all respects as in contested elections for governor.

§ 11. The governor shall, on or before the meeting of such electors, cause three lists of the names of such electors to be made and delivered to them, as required by act of congress.

§ 12. The persons employed in giving the notices, or conveying the returns as aforesaid, shall be allowed five cents for every mile such person may travel in going and returning in the performance of any of the services aforesaid, to be audited and paid as other claims.

§ 13. The electors shall meet at the seat of government on the first Wednesday in December, next ensuing their appointment, and shall then and there give their votes for president and vice president, and shall do and perform all the duties required of them by the act of congress in that case made.

§ 14. The electors shall receive for their services the same compensation as the

members of the general assembly, and the governor shall audit their accounts and grant them certificates for the amount ascertained to be due, which certificates shall be sufficient vouchers to authorize the auditor of public accounts to draw his warrant for the amount, which shall be paid out of the state treasury as other demands.

§ 15. If the electors appointed under this act, or any of them, fail to attend at the seat of government by the hour of two o'clock, in the afternoon of the day pointed out in this act, then the senate and house of representatives shall proceed immediately, by a joint vote of both houses, to fill such vacancy or vacancies.

Approved, March 18th, 1835.

ESCHEATS.

An act concerning escheats.

- Sec. 1. What property shall escheat to the state.
2. Where there are no known heirs, &c., administrator to account, &c.
 3. On settlement, if there is more than will pay the debts, &c., duplicate certificates of amount, &c.
 4. Balance to be paid into the state treasury, &c.; proceedings, &c.
 - 5, & 6. On production of the auditor's certificate, payments to be credited; failure to make payment, proceedings, &c.
 7. Costs of proceedings, &c.; how the same may be adjudged.
 8. Attorney general and circuit attorney, when to enforce settlements, &c.
 9. Powers and duties of attorney general, &c., touching estates.
 10. Proceedings to be instituted and prosecuted by attorney general, &c., against real estate; information to be filed.
 11. *Scire facias* to issue, and against whom.
 12. Service and publication, when and how made.
 13. Parties interested, when and how they may appear and plead to the *scire facias*.
 14. Judgment for the state on default of appearance, or *nil dicit*, &c.
 15. On appearance and issue joined, to be tried, &c.; survey may be ordered. &c.
 16. Issues found for the state, &c., judgment for the state and costs.
 17. On trial, if the state has no title, defendant to recover costs; how adjusted and paid.
 18. Form and effect of the judgment in favor of the state.
 19. Writ of seizin to issue.
 20. Upon the return of the writ, transcript of the record to be deposited with the auditor; recorded, &c.
 21. Appeal and writ of error allowed.
 22. Accounts to be kept by auditor.
 23. Heir appearing, proceedings to establish his claim.
 24. Decree for money, copy of the order sufficient voucher for issuing the warrant.
 25. Proceedings to recover land, petition to be filed, &c.
 26. Copy of petition to be served on attorney general, &c.; proceedings, and decree of the court.
 27. Limitations, saving to infants, &c.
 28. State may cause lands to be sold.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. If any person die seized of any real or personal estate, without any devise thereof, and leaving no heirs or representatives capable of inheriting the same, or the devisees be incapable of holding the same, and where there is no owner of real estate capable of holding the same, such estate shall escheat to, and vest in, the state.

§ 2. Where there is administration granted, and there are no known heirs or legal

representatives of the intestate, or no person shall appear within three years, after granting the letters of administration, to claim the personal estate of such intestate as next of kin, the administrator, in the settlement of his accounts with the proper court, shall account for all money which may come to his hands as administrator.

§ 3. If there be more than sufficient to pay the debts of the deceased, and the expenses of administration, such court shall, on each settlement, ascertain the amount remaining in the hands of such administrator, and grant duplicate certificates thereof, one of which shall be transmitted to the attorney general, or circuit attorney prosecuting for the district, and the other to the auditor of public accounts, who shall charge the administrator with the amount.

§ 4. Such administrator shall pay such balance into the state treasury, within ninety days after such settlement; and if he shall so pay the same, the treasurer shall grant him duplicate receipts therefor, one of which he shall deliver to the auditor of public accounts, who shall grant him a certificate thereof, and credit him with the amount so paid into the treasury, and shall charge the treasurer therewith.

§ 5. The court having the settlement of the accounts with such administrator, shall, on the production of the auditor's certificate to them, credit the administrator with the amount; but if payment shall not be made as aforesaid, the attorney general, or circuit attorney for the district, shall move the court to enter judgment against such administrator and his securities, or either of them, for such balance, and three per centum per month thereon, giving to such administrator and his securities, ten days previous notice of such intended motion; and the said court shall hear and determine the same in a summary manner.

§ 6. If such administrator, or his securities, shall not produce the auditor's certificate, showing full payment of the balance into the state treasury, such court shall render judgment against such administrator and his securities, or such of them as shall receive notice, for the amount due, and three per centum per month thereon, from the time the balance was first ascertained, until the rendition of the judgment, and the costs of the proceeding, and issue execution therefor.

§ 7. If the auditor's certificate be produced, such administrator and his securities may, nevertheless, be adjudged to pay the cost of the proceeding, at the discretion of the court, but shall in no case recover costs; and the like proceedings shall be had at each subsequent settlement.

§ 8. Where there are no known heirs or legal representatives, the attorney general, or circuit attorney of the district, within which the courts are held, wherein the accounts of any administrator are required to be settled, shall examine the proceedings of such administrator, shall cause process to be issued to compel the prompt settlement of his accounts, attend such settlements when necessary, on behalf of the state, contest any item which to him shall appear unjust or unreasonable, and, in case of waste or mismanagement of the estate, or other mal-administration, cause proper suits and proceedings to be instituted and prosecuted.

§ 9. He is required in behalf of the state to do all things touching such administration, which could be done by any sole heir, and especially to preserve the real estate from being improperly sold, wasted or damaged; and it is made his special

duty to examine the records of the courts having the settlement of administrator's accounts, and cause process to be issued, requiring all administrator's, whose letters have been granted more than three years before the taking effect of this act, to make settlement as herein-before required, and shall, in default of any such settlements, bring suits against the administrator in default, and his securities, without delay.

§ 10. When the attorney general or circuit attorney shall be informed, or have reason to believe, that any real estate within his district hath escheated to the state, and such estate shall not have been sold according to law, within five years after the person last seized, for the payment of the debts of the deceased, he shall file an information in behalf of the state, in the circuit court of the county in which such estate is situate, setting forth a description of the estate, the name of the person last lawfully seized, the names of the terre-tenants and persons claiming such estate, if known, and the facts and circumstances in consequence of which such estate is claimed to have escheated, and alleging that, by reason thereof, the state of Missouri hath right to such estate.

§ 11. Such court shall award and issue a *scire facias* against such person, bodies politic or corporate, as shall be alleged in such information, to hold, possess or claim such estate, requiring them to appear and shew cause why such estate should not be vested in the state, at the next term of such court.

§ 12. Such *scire facias* shall be served fifteen days before the return day thereof, and the court shall make an order, setting forth briefly the contents of such information, and requiring all persons interested in the estate to appear and show cause, at the next term of the said court, why the same shall not be vested in the state; which order shall be published, for six weeks, in some newspaper printed in this state, and in or nearest to the county in which such proceeding is had.

§ 13. All persons, bodies politic and corporate, named in such information as terre-tenants or claimants to the estate, may appear and plead to such proceeding and may traverse or deny the facts stated in the information, the title of the state to the lands and tenements herein mentioned, at any time on or before the third day after the return of such *scire facias*; and any other person claiming an interest in such estate, may appear and be made a defendant, and plead, by motion, for that purpose in open court, within the time allowed for pleading.

§ 14. If no person appear and plead, or, appearing, shall refuse to plead within the time, then judgment shall be rendered, that the state be seized of the lands and tenements in such information claimed.

§ 15. If any person appear and deny the title set up by the state, or traverse any material fact in the information, issues shall be made up and tried as other issues of fact, and a survey may be ordered and entered as in other actions, when the title or boundaries of lands are drawn in question.

§ 16. If, after the issues are tried, it appears from the facts found or admitted, that the state hath good title to the lands and tenements in the information mentioned, or any part thereof, judgment shall be rendered, that the state be seized thereof, and recover costs against the defendant.

§ 17. If it shall appear that the state hath no title in such estate, the defendant shall recover his costs, to be taxed and certified by the clerk, and the auditor of public accounts shall, on such certificate being filed in his office, issue a warrant therefor on the state treasury, which shall be paid as other demands on the treasury; but no defendant shall be entitled to recover costs, unless the title to such estate shall appear to the court, in the facts found, to be in him.

§ 18. When any judgment shall be rendered, that the state be seized of any real estate, such judgment shall contain a description of such estate, and shall vest the title in the state.

§ 19. A writ shall be issued to the sheriff of the same county, commanding him to seize the real estate vested in the state.

§ 20. Upon the return of such writ of seizure, the attorney general, or circuit attorney, shall cause the record and process to be exemplified under the seal of the court, and deposite the same in the office of the auditor of public accounts, and cause a transcript of the judgment to be recorded in the office of the recorder of the county in which the lands lie; and such judgment shall preclude all parties and privies thereto, their heirs and assigns, so long as such judgment shall remain in force.

§ 21. Any party who shall have appeared to any proceedings, and the attorney general or circuit attorney, on behalf of the state, shall have the right to prosecute an appeal, or writ of error, upon any such judgment.

§ 22. The auditor shall keep just accounts of all money paid into the treasury, and of all lands vested in the state as aforesaid.

§ 23. If any person appear, within ten years after the death of the intestate, and claim any money paid into the treasury as aforesaid, as heir or legal representative, he may file a petition to the circuit court, or court of chancery, for the county in which the estate is, stating the nature of his claim, and praying that such money may be paid to him, a copy of which petition shall be served upon the attorney general, or circuit attorney, who shall put in an answer to the same.

§ 24. The court shall examine the said claim and the allegations and proofs, and if they find that such person is entitled to any money so paid into the treasury, such court shall order the auditor to issue his warrant on the treasurer for the payment of the same, but without interest or costs, a copy of which order, under the seal of the court, shall be a sufficient voucher for issuing such warrant.

§ 25. If any person appear and claim lands vested in the state as aforesaid, within five years after the judgment was rendered, such person (other than such as were served with a *scire facias*, or appeared to the proceeding, their heirs or assigns,) may file his petition in the circuit court (as a court of chancery of the county in which the claimed estate shall lie,) setting forth the nature of his claim, and praying that the said estate may be relinquished to him.

§ 26. A copy of which petition shall be served on the attorney general, or circuit attorney of the district, who shall answer, and the court shall examine the claim and the allegations and proofs; and if it appear that the person is entitled to such claim, the court shall decree accordingly, which shall divest the interest of the state in such estate, but no costs shall be adjudged against the state in such case.

§ 27. All persons who fail to appear and file their petitions within the times limited, shall be forever barred, saving, however, to infants, married women, and persons of unsound mind, or persons beyond the limits of the United States, the right to appear and file their petitions at any time within five years after their respective disabilities shall be removed.

§ 28. The general assembly may cause such estate to be sold at any time after seizure, in such manner as may be provided by law, in which case the claimants shall be entitled to the proceeds in lieu of the real estate, upon obtaining a decree, or order, as aforesaid.

Approved, February 26th, 1835.

EVIDENCE.

An act concerning evidence.

- Sec. 1.** Private acts printed by authority, evidence.
2. Laws of sister states and the several territories, printed by authority.
 3. Certified copies of the same by the secretary of state, &c., when they shall be evidence.
 4. Certified copies of proceedings before justices of the peace.
 5. When their docket, &c., has been delivered to clerk of the county court, copies certified by him, evidence.
 6. Certified copies of plats, surveys, &c., by surveyor general, received as evidence.
 7. Certified copies of confirmations, evidence.
 8. Copies of New Madrid certificates.
 9. Certified copies of ordinances, resolutions; &c. of any city or incorporated town.
 10. Register of marriages, births, baptisms, deaths, &c., when admitted as evidence.
 11. Copies of such register, how and by whom certified and authenticated, before received in evidence.
 12. Penalty on persons making false registry, &c., or making false certificate of copy, &c.
 13. Certified copies of all bonds of officers of, or under, the state, &c., shall be received in evidence.
 14. Certified copies of contracts with the state or county, &c., when they shall be evidence.
 15. Certified copies of bonds of executors, administrators, guardians, &c., and in other cases, when evidence.
 16. Suits brought on copy of bond or contract, under what circumstances original to be produced.
 17. Fees allowed to surveyor and recorder of land titles, for certified copies, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The printed statute books of this state, printed under the authority of the state, shall be evidence of the private acts therein contained.

§ 2. The printed statute books of sister states, and the several territories of the United States, purporting to be printed under the authority of such states or territories, shall be evidence of the legislative acts of such states or territories.

§ 3. Copies of any act, law or resolution, contained in the printed statute books of sister states and the territories of the United States, purporting to be printed by authority, and which are now, or may be hereafter, deposited in the office of the secretary of state of this state, and required by law there to be kept, certified under the hand and seal of office of the secretary of state, shall be admitted as evidence.

§ 4. Copies of proceedings before justices of the peace, certified by the justice before whom the proceedings are had, shall be evidence of such proceedings.

§ 5. Where the docket, files, books and papers of a justice of the peace shall have been delivered to the clerk of the county court, according to law, copies of such docket, files, books or papers, certified by such clerk, shall be evidence.

§ 6. Copies of plats, surveys, entries, New Madrid certificates and locations, and of all other papers which are by law required to be deposited or kept in the office of the surveyor of the lands of the United States in this state, duly certified by such surveyor, shall be received as evidence.

§ 7. Copies of confirmations had before the board of commissioners for the adjustment of land claims within this state, or before the recorder of land titles, duly certified by the recorder of land titles, or by the person who shall, by law, have the custody of the books and papers, containing such confirmations, shall be received as evidence.

§ 8. Copies of certificates granted by the recorder of land titles, under the act of congress for the relief of the sufferers by earthquakes, in the county of New Madrid, and of all other books and papers which, by law, are required to be deposited or kept in his office, duly certified by him, shall be received as evidence.

§ 9. Printed copies of the ordinances, resolutions, rules, orders and by-laws of any city or incorporated town in the state, published by authority of such city or incorporated town, and manuscript copies of the same, certified under the hand of the proper officer, and having the corporate seal of such city or town affixed thereto, shall be received as evidence.

§ 10. When, by the ordinance or customs of any religious society or congregation in this state, a register is required to be kept of marriages, births, baptisms, deaths or interments, such register shall be admitted as evidence.

§ 11. Copies of the register referred to in the preceding section, certified by the pastor, or other head of any such society or congregation, or by the clerk or other keeper of such register, and verified by his affidavit in writing, shall be received as evidence.

§ 13. If any person shall knowingly make a false registry of any marriage, birth, baptism, death or interment, or shall knowingly make a false certificate or affidavit of any copy or pretended copy of any such registry, such person so offending shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine and imprisonment, or both, at the discretion of the court.

§ 13. Copies of all bonds required by law to be given by sheriffs, collectors, county treasurers, collectors of the revenue, clerks of the supreme, circuit and county courts, recorders, and all other officers of, or under, the state, who are required by law to give bond for the faithful performance of their duties, duly certified by the seal of office of the officer in whose custody such bond is required by law to be kept, may be sued upon, and shall be received in evidence, to all intents and purposes, as the originals themselves.

§ 14. Copies of contracts entered into by individuals with the state, or any officer thereof, or with any county, or with any person for the benefit of any county under or by authority of any law, or the lawful order of any court, the originals of which are, by law, or the lawful order of any court, in the custody and keeping of any officer, duly certified and attested with the official seal of such officer, or if such officer has no official seal, then verified by the affidavit of such officer, may be sued upon and shall be received in evidence, to all intents and purposes, as the originals themselves.

§ 15. Copies of all bonds required by law to be given by executors, administrators, guardians, curators and commissioners, for the faithful discharge of their duties as such, and the bonds of principals and sureties, required to be taken in the course of any judicial proceedings in any of the courts of this state, duly certified by and attested with, the seal of office of the officer to whom, by law, the custody of the same are committed, shall be evidence, to all intents and purposes, as the originals themselves.

§ 16. Where suit shall be brought upon any copy of a bond or contract, in writing, mentioned in any of the three preceding sections, and the defendant shall plead *non est factum*, or on motion to the court, such plea or motion being verified by affidavit, the court may, if necessary to the attainment of justice, require the production of the original bond or other writing.

§ 17. The surveyor of public lands, and the recorder of land titles, shall be allowed, for copies and certificates made out under the fifth, sixth and seventh sections of this act, to charge at the rate of twelve and a half cents for every hundred words, and twenty-five cents for each certificate.

Approved, January 26th, 1835.

EXECUTIONS.

An act to regulate executions.

- Sec. 1.** In whose favor execution may issue.
2. To issue against the goods and chattels and real estate, except in certain cases.
 3. Upon the special application of the party entitled to execution, a clause to take the body to be inserted.
 4. How to issue against executor and administrator and heir; when against their body; goods, chattels and real estate.
 5. Form of execution against the estate and body of the defendant.
 6. Form omitting body of the defendant; against heir or devisee, except in certain cases, how worded.
 7. Returnable to the next succeeding term, unless otherwise directed.
 8. Garnishees to be summoned by the officer, if property cannot be found, &c.; proceedings.
 9. May be directed to, and executed in, any county in the state.
 10. Amount of debt, damages and costs to be endorsed; abstract to be kept by clerk; index, &c.
 11. Body of defendant in custody, may be discharged on payment of money or delivery of property.
 12. May be retaken, if property not sufficient.
 13. Defendant escaping, may be retaken on new writ.
 14. Property exempt from execution, when owned by person other than the head of a family.
 15. Property exempt, when owned by the head of a family.
 16. Effect of the preceding sections on contracts made prior to the passage of this act.
 17. Enumeration of property liable to be seized and sold upon any execution.
 18. From what time property, real and personal, is bound.
 19. Time of receiving writ to be endorsed; two or more delivered on same day have equal rank.
 - 20 & 21. Bank shares and other stock, information of, how obtained; execution, how levied.
 22. Defendant may elect what property shall be first levied on; duty of the officer.
 23. Title to property levied on disputed, how tried; notice of claim to be given; how sheriff to proceed.
 24. Witnesses may be summoned, &c.; verdict of the jury, how rendered, and effect of, &c.
 25. Fees of sheriff and witnesses, by whom paid; how levied and collected.
 26. Real estate levied on, to be divided if practicable, and not more sold than necessary.
 27. Defendant may elect what property to be first sold; proceedings.
 28. Ten days notice of time and place of sale of personal property to be given.
 29. Personal property levied on, may be retained till the day of sale, by giving bond; condition of the bond.

30. Property not delivered according to the condition of the bond, levy to remain as a lien, &c.
31. Conditions of the bond broken, officer to seize other property and sell the same; how, &c.
32. Bond forfeited, judgment at the return term of the writ may be entered against defendant and securities.
33. Motion to be determined in a summary way, proceedings and effect of the judgment.
34. Second delivery bond shall not be taken, nor shall one be taken from a security, &c.
35. Bond to be returned with execution; not returned, or adjudged insufficient, effect of, &c.
36. If there be time, day of sale to be fifteen days before the return day of the execution.
37. The eight proceeding sections shall, as far as applicable, apply to justices courts.
38. Sale of real estate, when and where; notice of sale, how given.
39. Sale of property how conducted; within what hours.
40. Purchaser refusing to pay, property to be sold; deficiency, if any, how recovered.
41. Proceedings to be in a summary way, and the like proceedings against subsequent purchasers who refuse, &c.
42. Officer not to purchase property, directly or indirectly; all such purchases to be void.
43. Personal property to be delivered to purchaser; bill of sale thereof given, if required.
44. Bill of sale of bank stock, &c., to be made.
45. Deed to be executed for real estate; recitals in the deed, &c.
46. Deed to be acknowledged before the court; in case of death, resignation, &c., may be proved.
47. Certificate of acknowledgment or proof, to be endorsed on the deed by the clerk.
48. Deeds to be recorded, and copy, evidence.
49. Term of service of officer expiring after levy, he shall execute the writ, &c.
50. Proceedings in case of death, resignation or removal from office, after levy and before sale.
51. If after sale, how to proceed to obtain a deed.
52. Officer refusing to levy, or sell after levy, or make return, &c., or permit escape, liable for amount of execution.
53. Remedy of the plaintiff in certain cases against the officer.
54. Officer making sale, or making monies and not paying over, proceedings against, &c.
55. Execution improvidently issued, on petition to judge, verified by affidavit, complaint to be heard.
56. On hearing complaint, execution may be stayed; recognizance to be entered into; property to continue bound.
57. Return to be made by judge; proceedings in court, &c.
58. Leases for three years or more, subject to execution, shall not be sold by justice's execution.
59. Construction of the term "real estate," as used in this act.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The party in whose favor any judgment is, or shall be, rendered, or any order or decree, made by any court of record, may have an execution in conformity with the judgment, order or decree.

§ 2. Such execution, except in cases hereinafter otherwise provided, shall be a *feri facias* against the goods, chattels, and real estate of the party, against whom the judgment, order or decree, shall have been rendered.

§ 3. Upon the special application of the party entitled to an execution, a clause shall be inserted therein, commanding, that, for want of sufficient goods, chattels and real estate, whereon to levy the same, the body of the defendant be taken in execution.

§ 4. No execution shall be issued against the body, or goods, chattels or real estate of any heir, executor or administrator, unless he shall have made his estate liable thereto, by false pleading or otherwise. Such execution, except in cases hereinafter otherwise provided, shall be a *feri facias* against the goods, chattels and real estate of the party, against whom the judgment, order or decree, shall have been rendered.

§ 5. Executions against the estate and body of the defendant, shall be in the form or of the effect following: "To the sheriff of the county of ——. Whereas, A. B., on the ——— day of ———, in the year of our Lord eighteen hundred and ———, at our ——— court, hath recovered against C. D., for debt, (or damages, as the case

may be,) and which to the said A. B., were adjudged for his damages and also for his costs,—These command you, that, of the goods and chattels, and real estate of the said C. D., you cause to be made the debt, (or damages alone,) and for want of sufficient goods and chattels, and real estate, whereon to levy and make the same, we command you, that you take C. D., if he be found in — county, and him keep, and have his body before the said judge on the — day of —, to satisfy the debt (or damages) and costs, and that you certify how you execute this writ. Witness E. F., clerk of the said court, at —, this — day of —, in the year —. E. F., clerk.”

§ 6. Writs of *feri facias* shall be in the form or of the effect prescribed in the preceding section, omitting so much as commands the body of the defendant to be taken in execution, and on such writs it shall not be lawful to take the body of the defendant. When such execution shall be issued against any person as heir or devisee, (unless he shall have made his estate liable by false pleading or otherwise,) the officer to whom the same shall be directed, shall be commanded only, that of the goods and chattels, which were of the ancestor, or testator, at the time of his death, he cause to be made the debt, damages and costs; and if sufficient goods and chattels cannot be found in his county, then, that, of the real estate which was of the ancestor or testator at the time of his death, he cause to be made the debt, damages and costs, or sum of money, in such execution specified.

§ 7. Executions issuing from any court of record shall be made returnable to the next succeeding term thereof, unless the plaintiff, or person to whose use the suit was brought, shall otherwise direct; then it shall be the duty of the clerk issuing the same, to make it returnable to the second succeeding term thereof.

§ 8. When a *feri facias* shall be issued and placed in the hands of an officer for collection, if no sufficient property can be found in the county whereof to levy the amount due on said writ, it shall be the duty of the officer to summon, in writing, as garnishees, all such debtors of the defendant as the plaintiff, his agent or attorney shall direct, to appear in court at the return day of the *feri facias*, to answer on oath such interrogatories as may be exhibited against him, on the part of the plaintiff, touching his indebtedness to the defendant in the execution; and the like proceedings shall be had, and the like judgment rendered for or against the garnishee, as are or may be provided in case of garnishees, summoned in suits originating by attachment.

§ 9. Executions issued upon any judgment, order or decree, rendered in any court of record, may be directed to, and executed in, any county in this state.

§ 10. The clerks of courts of record shall endorse upon every execution by them issued, the debt and damages and costs, to be recovered before the delivery of such execution to be executed, and to keep in his office a well bound book, and enter therein an abstract of all executions issued out of his office, shewing the date, the names of the parties, amount of debt, damages and costs, to what officer directed, the return (if any) and a reference to the book and page wherein the judgment, order or decree, whereon such execution issued is entered. And every such clerk shall, moreover, keep a regular index to such abstract of executions, arranged alphabetically, both by the name of the plaintiff and defendant therein.

§ 11. If any person who shall be taken on any execution, or committed thereon to prison, shall pay to the officer the full amount of money, in such execution specified, and costs, or if he shall pay a part thereof, and surrender and deliver to the officer, property liable to execution, sufficient to satisfy such execution, then such officer shall discharge him from custody, and dispose of the money and property, so by him received, in like manner and with the same effect as if such execution had originally been against the goods and chattels, and real estate of such person.

§ 12. If by the sale of property so surrendered, there shall not be sufficient to satisfy such execution, the person at whose suit such writ was sued out, may sue forth a new execution on the judgment, order or decree, as if the body of the defendant had never been taken.

§ 13. If any person taken in execution or committed to prison thereon, escape by any means whatever, the person at whose suit such prisoner was taken, or charged in execution at the time of his escape, may retake such prisoner by a new execution on the judgment, order or decree.

§ 14. The following property only shall be exempt from execution, when owned by any person other than the head of a family:

First, The wearing apparel of all persons whatever.

Second, The necessary tools and implements of trade of any mechanic, whilst carrying on his trade.

§ 15. The following property, when owned by the head of a family, shall be exempt from levy and sale, under any execution:

First, One work horse, mule, or yoke of oxen, not to exceed the value of forty dollars; one cow and calf, one plough, one axe, one hoe, and one set of plough gears.

Second, The spinning wheels, and cards, one loom and apparatus, necessary for manufacturing cloth in any private family.

Third, All the spun yarn, thread and cloth, manufactured for family use.

Fourth, Any quantity of hemp, flax and wool, not exceeding twenty-five pounds of each.

Fifth, All wearing apparel of the family, two beds, with the usual bedding, and such other household and kitchen furniture, not exceeding the value of twenty-five dollars, as may be necessary for the family, agreeable to an inventory thereof, to be returned on oath, with the execution, by the officer whose duty it may be to levy the same.

Sixth, The necessary tools and implements of trade of any mechanic, while carrying on his trade.

Seventh, All arms and military equipments required, by law to be kept.

Eighth, All such provisions as may be on hand for family use, not exceeding twenty-five dollars in value.

§ 16. The preceding section shall not be construed to effect any contract made before the passage of this act, so as to exempt from execution any property not exempt by the laws now in force.

§ 17. The following property shall be liable to be seized and sold upon any execution issued upon a judgment, order or decree of any court of record.

First, All goods and chattels, (not herein-before exempted.)

Second, All slaves, and the rights and shares in the stock of any bank, insurance company, turnpike company, or other corporation.

Third, Any current gold and silver coin, which shall be returned by the officer as so much collected, without exposing the same to sale.

Fourth, Any bills or other evidences of debt, issued by any monied corporation, or by the government of the United States, this state, or any other state, belonging to any person against whom an execution shall be issued, at the time such writ shall be delivered to the officer to be executed; or at any time thereafter.

Fifth; All the real estate, whereof the defendant, or any person for his use, was seized in law or equity, on the day of the rendition of the judgment, order or decree, whereon execution issued, or at any time thereafter.

§ 18. No execution, shall, be levied on the property, in any slaves; goods or chattels, or the rights or shares in any stock, or any real estate, to which the lien of the judgment, order or decree, does not extend, or has been determined, but from the time such writ shall be delivered to the officer in the proper county, to be executed. The word *levy*, as used in this act, shall be construed to mean the actual seizure of property by the officer charged with the execution of the writ.

§ 19. The several sheriffs and their deputies shall, upon the receipt of such writ, without fee for doing the same, endorse thereon the day of the month and year when they received the same, and if two or more writs shall be delivered on the same day, against the same persons, they shall have equal rank, and be executed accordingly.

§ 20. When an execution shall be issued against any person being the owner of any shares or stock, in any bank, insurance company, turnpike company, or other corporation, it shall be the duty of the cashier, secretary or chief clerk, of such bank, insurance company or turnpike company, or other corporation, upon the request of the officer having such execution, to furnish him with a certificate under his hand, stating the number of rights or shares the defendant holds in the stock of such bank, company or corporation, with the incumbrances thereon.

§ 21. The officer upon obtaining such information, or in any other manner, may make a levy of such execution on such rights and shares, by leaving a true copy of such writ with the cashier, secretary or chief clerk, and if there be none, then with some other officer of such bank, company or corporation, with an attested certificate by the officer making the levy, that he levies upon, and takes such rights and shares, to satisfy such execution.

§ 22. The person against whom any execution shall be issued, may elect what property, real or personal, shall be sold to satisfy the same; and if he give to the officer a list of the property so elected, sufficient to satisfy such execution, the

officer shall levy upon the property, and no other, if it be sufficient in his opinion, if not, then upon such additional property as shall be sufficient.

§ 23. When personal property, or any shares in any bank, company or corporation, or other effects, shall be seized by virtue of any execution, and any person, other than the person against whom such execution issued, shall claim such property, or any part thereof, and shall give notice thereof in writing, the sheriff may summon a jury to determine the right of property, giving ten days notice of the time and place of holding the inquest, to the plaintiff in the execution or his attorney.

§ 24. The sheriff, at the request of either party, or at his own instance may summon witnesses and compel them to attend and give testimony, and may administer the necessary oaths to the jurors and witnesses; and the verdict of such jury, being rendered in writing, and signed by the foreman, shall be a full indemnity to such officer proceeding thereon.

§ 25. The sheriff and witnesses shall be allowed the like fees, as for similar services in the circuit court; and if the verdict be against the claimant, he shall pay all costs attending the inquest; and if found for him, the plaintiff in the execution shall pay them, and the sheriff may levy all costs upon the goods and chattels of the party made liable to pay them, as on execution.

§ 26. When an execution shall be levied upon real estate, the officer levying the same, shall divide such property (if susceptible of division,) and sell so much thereof as will be sufficient to satisfy such execution, unless the defendant in the execution shall desire the whole of any tract or lot of land to be sold together, in which case it shall be sold accordingly.

§ 27. The person whose goods, chattels and real estate, are taken in execution, may elect what part thereof shall be first sold; and if he shall deliver to the officer having charge thereof, a statement in writing of such election, three days before the day appointed for the sale, stating, specifically, what goods, chattels and real estate he desires to be first sold, and so on until the execution be satisfied, the officer shall proceed according to such election until sufficient monies shall be made to satisfy the amount in the execution specified, and costs.

§ 28. No goods and chattels, or other personal effects, seized and taken by virtue of any execution, shall be sold until the officer making the sale shall have given ten days notice of the time and place of sale, and property to be sold, by at least three advertisements, put up in public places in the township in which the sale is to be made, and one at some public place in each of the other townships in the county.

§ 29. When the sheriff or other officer charged with the service of an execution shall levy it upon personal property, the defendant may retain possession thereof until the day of sale, by giving bond in favor of the plaintiff, with sufficient security, to be approved by the officer, in double the value of such property, conditioned for the delivery of the property to the officer, at the time and place of sale to be named in such condition.

§ 30. If the property be not delivered according to the condition of the bond, the levy

shall remain a lien upon the property taken for the satisfaction of the judgment, into whose possession soever the property may pass.

§ 31. When the condition of the bond shall be broken, as mentioned in the last section, the officer may seize any property of the defendant subject to the execution, and sell the same, (if personal property,) on three days notice; if real estate, on ten days notice, to satisfy the judgment.

§ 32. If the condition of the bond be broken, and the execution returned unsatisfied, the defendant and his sureties shall be deemed to have notice of the facts, and the plaintiff, without further notice may, on the first or any subsequent day of the return term of the execution, move the court for judgment on the bond against the defendant and his sureties, or any of them, or the plaintiff may, at his option, bring an ordinary suit on the bond.

§ 33. If any controversy arise on the motion, it shall be heard and determined in a summary way, without the form of pleading, and, unless the demand be avoided, judgment shall be rendered thereon without delay, according to the circumstances, as follows: If the value of the property so levied on, and not delivered at the day of sale, be less than such amount, the judgment shall be for the value of the property so not delivered, with ten per cent damages, for the delay and costs in both cases.

§ 34. No second delivery bond shall be taken in behalf of a defendant so failing to comply with the first, nor shall any such bond be taken of a surety upon a judgment founded on such bond.

§ 35. Every delivery bond shall be returned with the execution, and if the officer fail to return the same, or the same be adjudged insufficient at the return term of the execution, he shall stand as surety for the defendant for the delivery of the property levied on, and may be proceeded against as such.

§ 36. If there be sufficient time, the officer shall appoint the day of sale at least fifteen days before the return day of the execution.

§ 37. The eight preceding sections shall apply to justices courts, so far as they are applicable under the general laws.

§ 38. When real estate be taken in execution by any officer, it shall be his duty to expose the same to sale, at the court house door, on some day during the term of the circuit court of the county, where the same is situated, having previously given twenty days notice of the time and place of sale, and what real estate is to be sold, and where situated, by at least six hand bills, signed by him and put up in public places, in different parts of the county, or by advertisements in some newspaper printed in the county.

§ 39. All property taken in execution by any officer shall be exposed to sale on the day for which it is advertised, between the hours of nine in the forenoon, and five of the afternoon, publicly, by auction, for ready money, and the highest bidder shall be the purchaser.

§ 40. If a purchaser refuse to pay the amount bid by him for property struck off to him, the officer making the sale may again sell such property, at any time, to the highest bidder, and if any loss shall be occasioned thereby, the officer shall recover

the amount of such loss, with costs, by motion before any court, or before any justice of the peace, if the sum shall not exceed his jurisdiction.

§ 41. Such court or justice shall proceed in a summary manner, and give judgment and award execution therefor forthwith, and the same proceedings shall be had against any subsequent purchaser who shall refuse to pay, and the officer may, in his discretion, forever thereafter refuse the bid of any person so refusing.

§ 42. No officer to whom any execution shall be directed, or any of his deputies, or any person for them, shall purchase any goods or chattels, real estate or other effects, at any sale made by virtue of such execution, and all purchases so made shall be void.

§ 43. When the purchaser of any goods or chattels shall pay the purchase money, the officer selling the same shall deliver him such property, and, if desired, shall execute an instrument of writing, drawn and delivered to him at the expense of such purchaser, testifying the sale and payment of the purchase money, and conveying to such purchaser all the right, title and interest, which the debtor had in, and to, the property sold, on the day the execution was delivered.

§ 44. When any rights or shares of stock in any bank, company, or corporation, shall be sold, the officer making such sale shall execute an instrument in writing, to be drawn at the expense of the purchaser, reciting the sale and payment of the consideration, and conveying to the purchaser such rights and shares, and shall also leave with the cashier, secretary, or chief clerk, or if there be none, then with any other officer of such bank, corporation or company, a copy of the execution and his return thereon; and the purchaser shall thereupon be entitled to all dividends and stock, and to the same privileges as a member of such company or corporation, as such debtor was entitled to.

§ 45. The officer who shall sell any real estate, or lease of lands and tenements, for more than three years, shall make to the purchaser a deed, to be paid for by the purchaser, reciting the names of the parties to the execution, the date when issued, the date of the judgment, order or decree, and other particulars as recited in the execution, also a description of the property, the time, place and manner of sale, which recital shall be received as evidence of the facts therein stated.

§ 46. Every officer executing any deed for lands, tenements, or hereditaments, sold under execution, shall acknowledge the same before the circuit court of the county in which the estate is situated; but if he die, or leave the state, resign, be removed from office, or otherwise disqualified from acting before making such acknowledgment such deed may be proved before such court as other deeds.

§ 47. The clerk of such court shall endorse upon such deed, a certificate of the acknowledgment, or proof under the seal of the court, and shall make an entry of such acknowledgment or proof, with the names of the parties to the suit, and a description of the property thereby conveyed.

§ 48. Every deed so executed, acknowledged, or proved, shall be recorded as other conveyances of land; and thereafter, such deed or copy thereof, or of the record certified by the recorder, shall be received as evidence in any court in this state, without further proof of the execution thereof.

§ 49. When an officer shall have levied upon any goods and chattels, real estate or other effects, by virtue of any execution, and the term of service of such officer shall expire and be determined before, or after, the sale thereof, and before the purchaser shall have obtained a deed therefor, duly executed, such officer shall nevertheless, have power to do and perform all things in relation to such execution, and the sale of such property, and in the making, executing, and acknowledging a deed to the purchaser, in the same manner and with the like effect, to all intents and purposes, as if his term of service had not expired; and he and his securities shall be subject to the like penalties, actions, proceedings and judgments, for neglect, misconduct or failure therein, as if he still continued in office.

50. When any officer shall die or be removed from office, or otherwise disqualified from acting, after having taken in execution any goods and chattels, real estate or other effects, and before sale thereof, the sheriff or coroner, then in office, shall proceed thereon, and do and perform all things remaining to be done and performed in relation to such execution, and the sale of such property, and in making and executing deeds and conveyances therefor, in the same manner and with the like effect as the officer so deceased, removed from office, or disqualified, could have done.

§ 51. When any officer shall die, be removed from office or disqualified, after the sale of any property, and before executing any conveyance therefor, the purchaser may petition the court out of which the execution issued, stating the facts, and if he satisfy the court that the purchase money has been paid, the court shall order the sheriff then in office to execute and acknowledge a deed to the purchaser, reciting the facts, which deed shall be executed accordingly, and shall have the same effect to all intents and purposes as if made by the officer so deceased, removed from office, or disqualified.

§ 52. If any officer, to whom any execution shall be delivered, shall neglect or refuse to execute or levy the same according to law, or shall take in execution any property, or any such property be delivered to him by any person against whom an execution is issued, and such officer shall neglect or refuse to make sale of the property so taken or delivered, according to law, or if any such officer shall not return any such writ according to law, or shall make a false return thereof, or after having taken the defendant's body in execution, shall permit him to escape, and shall not have his body according to the command of the writ, then, and in any of the cases aforesaid, such officer shall be liable and bound to pay the whole amount of money in such writ specified or thereon endorsed, and directed to be levied.

§ 53. If any such officer shall not, on the return of such writ, or at the time the same ought to be returned, have the money which he shall become liable to pay as aforesaid, before the court, and pay the same according to the command of the writ, any person aggrieved thereby may have his action against such officer, and his securities upon his official bond, or may have his remedy by action on the case, against such officer in default.

§ 54. If any officer sell any property under any execution, whether he received

payment therefor or not, or shall make the money in any execution specified, or thereon endorsed and directed to be levied, or any part thereof, and shall not have the amount of such sales, or the money so made, before the court, and pay over the same according to law, he shall be liable to pay the whole amount of such sales or money by him made, to the person entitled thereto, with lawful interest thereon, and damages in addition thereto at the rate of five per centum per month, to be computed from the time when the execution is returnable until the whole be paid, to be recovered by action of debt against such officer, and his securities on his official bond, or by action on the case against such officer, or the party aggrieved may proceed against such officer by motion to the court before which such writ is returnable, in a summary way, two days previous notice being given of such intended motion, and the court shall render judgment for the amount which ought to have been paid, with interest and damages as aforesaid, and award execution thereon forthwith; and it shall be the duty of every officer to whom any execution shall be delivered, issued upon any judgment recovered according to the provisions of this section, to execute the same within fifteen days after it shall be delivered to him, and shall be subject to the like liabilities and penalties for any default therein, as on other executions.

§ 55. If any person, against whom any execution shall be issued, apply to any judge of the court out of which the execution or order of sale may have been issued, by petition, verified by oath or affirmation, setting forth good cause why such execution ought to be stayed, set aside or quashed, reasonable notice of such intended application being previously given to the opposite party, his attorney of record, or agent, such judge shall thereupon hear the complaint.

§ 56. If it appear that such execution ought to be stayed, set aside or quashed, and the petitioner enter into recognizance with sufficient securities, in such sum as shall be reasonable, to be taken and approved by such judge, conditioned, that if such application finally be determined against such petitioner he will pay the debt, damages and costs, to be recovered by such execution or order of sale, or surrender in execution all his property liable to be seized and taken, or sold, by such writ or order of sale, or that the securities will do it for him, then such judge shall make an order for the stay of the execution, or order of sale as aforesaid; but all the property, real and personal, bound by such execution or order of sale, shall remain bound as if no such stay had been granted.

§ 57. The judge shall return such petition and proceedings thereon, duly certified, to the court out of which the execution was issued, or order of sale is made returnable, and the clerks of such courts shall enter the same upon their motion docket, and the courts shall hear and determine the same in a summary way, according to right and justice, and may award a perpetual stay of such execution or order of sale, or may order the execution or order of sale to be enforced.

§ 58. Every lease upon lands, for any unexpired term of three years or more, shall be subject to execution and sale as real property, and shall not be subject to sale upon, or by virtue of, an execution issued by a justice of the peace.

§ 59. The term real estate, as used in this act, shall be construed to include all estate and interest in lands, tenements and hereditaments.

Approved, March 20th, 1835.

F E E S .

An act to regulate fees.

- Exc. 1. Officers allowed to charge the fees hereinafter provided.
2. Attorney general and circuit attorney.
 3. Clerks of county courts, for county business.
 4. Clerks of county courts, for probate and all business relating to estates, guardians, curators, idiots and lunatics.
 5. Clerks of supreme court,
 6. Clerks of circuit courts.
 7. Clerks of the circuit courts in chancery.
 8. Sheriffs.
 9. Money collected by the sheriff to be paid to plaintiff, his order, or attorney of record.
 10. Coroners.
 11. Constables.
 12. Interpreters and translators.
 13. County surveyors.
 14. Recorders.
 15. Notaries public.
 16. The secretary of state.
 17. The auditor of public accounts.
 18. Jurors.
 19. Witnesses; fees in more than one case on same day, not to be charged.
 20. Account of witness for attendance to be sworn to, &c.
 21. Justices of the peace
 22. Fees allowed according to the number of words; each figure to be counted as one word.
 23. Sheriff, coroner, or constable, to state, at full length, when and how process was executed, &c.
 24. Officers allowed fees by this act, to keep table of fees set up, &c.; on failure, penalty, &c.
 25. Officers and witnesses may make out fee bills at the end of each term of court.
 26. To be examined by the clerk, certified and delivered to the sheriff; justices of the peace may issue fee bills.
 27. If not paid in twenty days after demand, sheriff to collect as on execution; proceeding against sheriff on neglect of duty.
 28. Party paying fees before judgment, to recover them; not paid before judgment, to be endorsed on execution.
 29. Fees of each officer to be endorsed on execution; clerk to keep fee books, &c.
 30. Copy of fees charged in fee book, to be given to the person charged, without fee.
 31. Suit against clerks and other officers for illegal fees; fee book and entries therein may be given in evidence.
 32. Officer collecting fees, to give an account in writing to the person charged, if demanded, &c.
 33. Penalty on officer for demanding illegal fees, how and when sued for.
 34. In what cases fees shall be paid by the county.
 35. When to be paid by the state.
 36. Fees chargeable to the state or county, how to be audited and certified.
 37. On accounts certified, warrants to be drawn; certificate of court, sufficient voucher.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Such fees are allowed to the officers hereinafter named for their services, rendered in discharging the duties imposed on them by law, as are herein provided, and such officers may lawfully charge, demand and receive the same.

§ 2. The attorney general, and circuit attorneys, respectively, shall be allowed as follows:

For judgment obtained upon plaint or information,	\$4 00
For a conviction upon indictment or presentment for a misdemeanor, and in cases where the punishment is by fine only,	4 00
For a conviction in any case where the offence is punishable by fine and imprisonment,	4 00
For a conviction in any case punishable by confinement in the penitentiary, except cases of rape, arson, burglary, robbery, forgery and counterfeiting,	8 00
For a conviction for homicide, other than capital, or for offences excepted in the last clause,	10 00
For a conviction in a capital case,	20 00
For his services in all actions which it is, or shall be, made his duty by law to prosecute or defend,	4 00

But no fee shall be allowed where an indictment in a criminal case, or any plaint or information, shall be quashed or held bad on demurrer, or judgment thereon arrested, by reason of the insufficiency of the indictment, plaint or information; nor shall any of the above fees be paid by the state or county.

§ 3. The clerks of the county courts, respectively, shall be allowed fees for their services in county business, as follows:

For an order to erect or repair a public bridge,	12½
For making out and issuing of the appointment of any commissioners for erecting or repairing any public bridge,	25
For filing the bond of a contractor for erecting or repairing a bridge,	06½
For reading and filing every petition, and recording the order made thereon, (to be paid by the petitioners,)	50
For copying the petitions, orders, plats and survey of roads, and all other records appertaining thereto, for every hundred words, (to be paid by the petitioners,)	10
For issuing each certificate of the appointment of a commissioner of roads,	25
For reading, filing and entering the complaint or application of persons objecting to a road, (to be paid by the complainants,)	25
For issuing a precept for an inquiry of damages in the case of roads, (to be paid by the complainants,)	50
For reading and filing a return of such inquisition, (to be paid by the complainants,)	12½
For entering every order to justices of the peace for laying out road districts, and issuing copies thereof,	37½
For entering the appointment of overseers of roads, and issuing a notification thereof,	25
For entering the appointment of a constable, taking and filing his bond, and issuing a certificate of his appointment, (to be paid by the constable,)	50

For entering every order concerning the erecting or repairing of any county building,	25
For entering the appointment of persons to superintend the erecting and repairing any county building, and issuing a certificate thereof,	37½
For reading, filing and entering such report, plan, bond or other papers, touching any county building,	25
For entering every order for ascertaining any county line, and issuing a copy thereof,	25
For entering every order approving or disapproving any return of the survey of county lines,	25
For recording return of survey of county lines, if approved,	25
For entering every appointment of judges of election, and issuing certificates thereof, for each township,	25
For entering every order fixing the places of holding elections in his county,	12½
For entering every order for the support of any poor person, idiot or lunatic,	12½
For reading, entering and recording proceedings in relation to any prison bounds, for every hundred words,	10
For all services required by law to be performed by him, touching the incorporation of any town, (to be paid by the petitioners,)	1 00
For all services required to be performed by him in relation to the laying out of a township, or altering township lines, and certifying the same,	50
For trying any weight or measure by the county standard, and sealing the same, (to be paid by the applicant,)	25
For entering the appointment of any assessor or collector, and issuing a certificate thereof, under the seal of his office,	50
For all services in taking, filing and safe keeping of a collector's bond for state taxes, (to be paid by the state,)	1 00
For like services in relation to a collector's bond for county taxes, (to be paid by the county,)	1 00
For making out state tax list, for every hundred words, (to be paid by the state,)	6½
For making out every county tax list, for every hundred words, (to be paid by the county,)	6½
For issuing each license, under the seal of his office, (to be paid by the applicant,)	50
For taking, filing, and safe keeping any bond, not herein otherwise provided for, touching county business, (to be paid by the applicant,)	50
For making any settlement of account with the county,	25
For all services attending the licensing of a ferry,	1 00
For all services attending the licensing an inn or tavern,	50
For issuing each writ, and receiving, filing and docketing returns,	50

FEEES.

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For filing every paper not herein-before specified,	06½
For administering each oath,	06½
For swearing and entering a jury,	50
For taking the verdict of a jury, and entering the same of record,	25
For entering every judgment,	25
For copies of record and papers, not herein-before provided for, for every hundred words,	06½
For every rule or order, not herein-before specified, and copy thereof,	12½
For commission to take depositions,	75
For entering an appeal, except in appeals from assessor's books to county courts,	12½
For every certificate and seal, not herein-before provided for,	50
For every subpœna,	50
For recording every paper, not herein-before provided for, for every hundred words,	10
For taking every acknowledgment of a deed or other writing,	25
§ 4. The clerks of the county courts, respectively, shall be allowed fees for their services in probate, and all other business relating to the settlement of estates, guardians, curators, idiots and lunatics, [as follows:]	
For granting letters of administration, or testamentary, recording the same, appointing appraisers, administering oaths, and every thing relating thereto,	1 00
For taking bond of guardian,	25
For every order relating to administrators, executors or guardians, or for other purposes,	10
For filing any paper,	06
For copying an order,	10
For copying any record or paper, not herein provided for, for every twelve words,	01
For taking bonds of heirs to refund,	25
For entering verdict or judgment,	10
For taking new bond of administrator, executor or guardian,	25
For recording any instrument of writing, for every twelve words,	01
For issuing citation to an administrator, executor or guardian,	25
For taking proof of any will or codicil,	25
For every certificate and seal,	25
For issuing every subpœna,	18½
§ 5. Clerks of the supreme court shall be allowed fees for their services as follows:	
For a writ of error, certiorari, habeas corpus, quo warranto, or mandamus,	1 50
For a supersedeas,	50
For any other original writ,	1 00
For taking a bond or recognizance, on issuing a writ of error, or supersedeas,	1 00
For filing a transcript and docketing a case,	50

For filing assignment of errors or joinder,	20
For recording the opinions of the court, if required so to do, for every ten words,	01
For certified copies of the opinions of the court, for every hundred words,	10
For filing any paper in a case,	12½
For certified copies of abstracts of briefs of counsel, for every hundred words,	08
For every other service to be performed by the said clerks, they shall be allowed the like fees as are allowed to the clerks of the circuit courts for similar services.	
§ 6. Clerks of the circuit court shall be allowed, as follows:	
For filing a declaration, petition, plea, demurrer, affidavit or other paper in a case,	06½
For drawing, sealing and entering every writ, original or judicial, filing the same and docketing the same,	1 00
For entering an appearance,	10
For filing a bail bond,	25
For taking and entering a recognizance of bail, in a civil or criminal case,	25
For every other bond in a case,	25
For entering surrender of principal by bail,	25
For filing jailors' receipt, or entering exonerater,	25
For entering an order cancelling a bail bond, or discharging a recognizance,	10
For every issue joined,	25
For entering a motion or rule,	25
For every continuance of a cause,	25
For every subpoena,	50
For a rule of reference for trial, to shew cause to take depositions, or give security for costs,	25
For a copy of the same, if demanded without seal,	25
For a commission to take depositions,	50
For a copy of the interrogatories thereto annexed, for every hundred words,	10
For entering every order, not otherwise provided for,	25
For entering a retraxit, discontinuance, or non-suit,	50
For entering a judgment by confession, default, <i>nil dicit</i> or <i>non sum informatus</i> ,	50
For swearing and entering each jury,	50
For attending and striking a special jury, and delivering a copy to each party,	75
For taking a general verdict of a jury, and entering the same of record,	25
For taking and entering a special verdict, for every ten words,	01

For a trial before the court, without a jury,	50
For entering the report of referees,	10
For entering judgment upon any issue of law or fact, or on the report of referees,	25
For entering appeals from inferior courts,	25
For entering an appeal to supreme court,	25
For taking appeal bond or recognizance,	25
For a writ of certiorari,	50
For taking bond on certiorari,	50
For a writ of attachment,	1 00
For administering every oath,	06½
For entering satisfaction of record,	25
For copies of records and papers, for every ten words,	01
For bringing a particular record into court,	25
For every indictment returned by a grand jury,	50
For every submission,	25
For taking and entering of record every acknowledgment of a sheriff's deed,	50
For acknowledgment of a deed in other cases,	50
For a certificate and seal,	50
For a scire facias or recognizance, judgments, or to revive a lien,	1 00
For a venire to summon a grand jury or special jury,	75

§ 7. The clerks of the circuit court shall be allowed fees for their services in chancery, as follows:

For filing a bill, petition, answer, plea, demurrer or replication in a case,	20
For drawing, sealing, entering, issuing every writ, original, filing the same, and docketing the return,	1 00
For entering every appearance,	10
For taking every bond in a case,	25
For every issue joined,	25
For entering every motion or rule,	20
For every continuance of a cause,	25
For every subpœna,	50
For every rule of reference, to shew cause, to take depositions, or give security for costs,	25
For a commission to take depositions,	50
For every copy of interrogatories, for every ten words,	01
For swearing and entering each jury,	50
For taking the verdict of a jury and entering the same on record,	25
For the trial of an issue of fact before the court, without a jury,	50
For entering a final decree,	1 50
For entering an interlocutory decree,	1 00
For entering any order, not otherwise provided for,	50
For entering the report of a commissioner, auditor, or referees,	50

For filing exceptions to a bill or answer,	10
For filing an affidavit, deposition, or other paper in a cause,	06½
For administering an oath or affirmation,	06½
For entering appeals from inferior courts,	50
For taking an appeal bond or recognizance,	50
For entering appeal to the supreme court,	50
For a writ of ne exeat, or injunction,	1 50
For every execution,	75
For an attachment, other than against a witness or juror,	1 00
For an attachment against a witness or juror,	50
For issuing a process of sequestration,	1 00
For copies of records and papers, for every ten words,	01
For bringing a particular record into court,	25
For every certificate and seal,	50

And for all other services by the said clerk in chancery, they shall be allowed the same fees as are, or may be, allowed to clerks of the circuit courts, for similar services at law.

§ 8. Sheriffs shall be allowed fees for their services, as follows:

For serving every <i>capias</i> , summons, or declaration in ejectment, and returning the same for each defendant,	1 00
For serving a writ of <i>scire facias</i> or attachment, for each defendant,	1 00
For taking and returning every bail or delivery bond,	50
For serving a <i>ne exeat</i> or injunction, for each defendant,	1 00
For serving a <i>habe facias possessionem</i> , or sequestration,	1 50
For serving every writ of execution,	1 00

And when served on real estate, the officer shall not be bound to go on the land, but may make his levy by describing the same in the best manner he can.

For making, executing and delivering a sheriff's deed, (to be paid for by the purchaser,)	2 00
For every return of <i>non est</i> on a writ, original or judicial,	50
For a return of <i>nulla bona</i> ,	50
For executing a writ of inquiry, drawing inquisition, and returning the same,	1 50
For summoning a grand jury,	4 00
For summoning a special jury to try forcible entry and detainer, or to assess damages on a special <i>venire facias</i> ,	4 00
For summoning each witness,	50
For every return of <i>non est</i> on a <i>subpœna</i> ,	12½
For serving every notice or rule of court, notice to take depositions, or citation on an executor, administrator or guardian,	50
For committing any one to jail on civil process,	50
For discharging a commitment in civil cases,	50
For attending each court, per day,	1 50
For calling every action at each term,	10

For calling each party,	10
For calling each jury,	25
For calling each witness,	06½
For committing a criminal to jail,	75
For furnishing a prisoner with board, for each day,	37½
For every trial in a criminal case, or confession,	1 00
For every trial in a capital cause,	3 00
For executing every death warrant, or sentence of death, to include all necessary expenditures in performing the same,	15 00

For the safe keeping, supporting and removing live stock and other property, seized under legal process, such fees as the court out of which the process issued, shall deem reasonable, to be paid as other costs.

For commission for receiving and paying monies on execution or process, where land and goods have been taken into custody, advertised and sold, three and one half per centum on the first two hundred dollars, and two per centum on all sums above that sum; and one half of such commission where the money is paid to the sheriff, without seizure, or where the land and goods seized, or taken, shall not be sold. The party at whose application any writ, execution, subpœna, or other process, has issued from the supreme court, shall cause the same to be returned without fee, unless the court shall, for special reasons, order the personal attendance of the sheriff, in which case he shall be allowed, for each mile going and returning from the court house of the county in which he resides, to the place where the writ is returnable, five cents per mile. Guards employed to carry convicts to the penitentiary, and sheriffs engaged in the same service, shall each receive one dollar a day, while actually employed in said service, and shall each be allowed five cents a mile from the place whence the convict is taken, to the penitentiary, and five cents a mile returning the same distance; and for every criminal, one dollar per day, which fees shall be paid out of the state treasury; provided the sheriff shall not, in any case, summon more than two persons as a guard for one prisoner, and in no case more than four persons to guard any number of prisoners the said sheriff may have in charge at one time.

§ 9. All monies collected by the sheriffs shall be paid to the plaintiff or his order, or his attorney of record.

§ 10. Coroners shall be allowed fees for their services as follows:

For the view of a dead body,	3 00
For issuing a warrant summoning each jury of inquest,	50
For swearing each jury,	50
For each subpœna for witnesses,	25
For taking each recognizance,	25
For going from his residence to the place of reviewing a dead body and returning, each mile,	05

Which fees, together with the fees allowed to jurors, constables and witnesses in all inquests, shall be paid out of the county treasury, as other demands.

For performing the duties of sheriff, the coroner shall be entitled to the same fees as are, for the time being, allowed to sheriffs for such services.

§ 11. Constables shall be allowed fees for their services as follows:

For serving a warrant in a criminal case, for each defendant,	50
For serving a warrant or summons in a civil case, for each defendant,	25
For summoning and swearing each jury, to try the right of property, and taking the verdict,	1 00
For summoning each jury before a justice,	75
For taking criminal or debtor to jail,	75
For serving or giving notice of each execution,	25
For taking delivery bond,	25
For summoning each witness,	25.
For serving a writ of attachment,	50

For receiving and keeping property taken on execution, such compensation as may be awarded by the justice from whom the process issued.

For collecting and paying over to plaintiff, for all sums collected, three per centum.

§ 12. Interpreters and translators shall be allowed fees for their services, as follows:

For interpreting the testimony of each witness,	25
For translating every ten words,	02

§ 13. County surveyors shall be allowed fees for their services, as follows:

For every survey actually made,	1 00
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And the further sum of one cent for every chain, lineal measure, above one hundred chains.

For calculating the quantity of every tract of land not divided,	50
For calculating each division made in a tract of land,	50
For making each plat,	37½
For recording a plat, and certificate,	37½
For every copy of a plat and certificate,	37½
For travelling to the place of surveying, and returning, per mile,	05
For ascertaining and planting each corner, under this act, to perpetuate testimony,	1 00
For recording each certificate, under the same act,	75
For each day's attendance, as a witness, under the same act,	1 00
For delivering depositions to the recorder, under the same act,	25

§ 14. Recorders shall be allowed fees for their services, as follows:

For recording every deed, deposition, will or other instrument, for every hundred words,	10
For every certificate and seal,	25
For recording a plat of survey, if not more than six courses,	37½
For every course above six of the same,	05
For copies of plat, if not more than six courses,	37½
For every course above six,	05
For recording any certificate of marriage,	25

§ 15. Notaries public shall be allowed fees for their services, as follows:

For noting a bill of exchange or promissory note for protest,	25
For entering a protest of the same,	50
For registering protest,	50
For noting without protest,	50
For notice to indorsers and other parties, each,	25
For travel per mile,	10
For taking an acknowledgment of a power of attorney, or other instrument,	50
For a marine protest,	2 00
For each certificate,	25
For an affidavit to an account, attested by seal,	50
For affixing a notarial seal,	25
For drawing a contract of a boatman, if required by the parties,	50
For taking the acknowledgment of the parties to such contract,	1 00
For making an entry of a boatman, not rendering himself on board agreeably to contract,	25
For affixing his seal thereto,	25
For all copies of records or papers in his office, for every hundred words,	10
For all other services concerning boatmen and their contracts, the same fees as are allowed to justices of the peace, for similar services.	
§ 16. The secretary of state shall be allowed fees for his services, as follows:	
For every certificate to authenticate any instrument of writing, to which the seal of state shall be affixed,	1 00
For every like certificate, to which the seal of his office shall be affixed,	1 00
For all copies of records and papers in his office, for every hundred words,	10
But no fees shall be allowed for such service in the business of the state.	
§ 17. The auditor of public accounts shall be allowed for his services, as follows:	
For each copy of an account or document in his office, with the seal of his office thereto affixed, to be paid by the party applying for the same,	75
For executing a release to lands which have been bid off to the state, or individuals,	75
§ 18. Jurors shall be allowed fees for their services, as follows:	
For each juror attending a view, inquest, or on the execution of a writ of <i>ad quod damnum</i> , per day,	50
§ 19. Witnesses shall be allowed fees for their services, as follows:	
For attending any court of record, referee, auditor, commissioner, clerk or coroner, at any inquest, inquiry of damages, within the county where the witness resides, each day,	50
For like attendance out of the county in which he resides, each day,	1 00

For travelling allowance in the above cases, for each mile he shall necessarily travel in going to, and returning from, the place of trial,

05

For attending before a justice of the peace, each day,

50

For attending as a witness under the law to perpetuate testimony and mileage, the same fees as are allowed for attending on a court of record, in like cases; but witnesses summoned and attending in more than one cause on the same day, and at the same place, shall only be allowed fees in one cause; and any witness who shall charge fees for attending two or more causes on the same day, and at the same place, shall not be entitled to receive any fees for that day.

§ 20. Every account for the attendance of any witness shall be sworn to, and shall state that he was summoned to attend as a witness in the cause in which the charge is made, the number of days he attended, and the number of miles he had to travel in consequence of the summons.

§ 21. Justices of the peace shall be allowed fees for their services, as follows:

For administering every oath,

06½

For every subpoena,

18½

For every summons or warrant, in a civil case,

18½

For issuing every attachment,

25

For entering judgment in every civil case,

37½

For issuing each execution,

25

For making certified copies on appeals or certiorari, for each hundred words contained therein,

10

For taking and entering special bail,

12½

For issuing a bail piece,

25

For granting and drawing a writ of habeas corpus, and deciding thereon, to each justice,

1 50

For issuing a scire facias against bail to renew judgment,

25

For issuing a venire for a jury in a civil case,

25

For taking the acknowledgment of a deed or power of attorney,

25

For solemnizing a marriage,

2 00

For signing and certifying depositions, if ready,

25

For writing depositions, when required to do so, for every hundred words,

10

For issuing a summons in forcible entry and detainer, or detainer only,

75

For a venire to summon a jury in the last case,

25

For issuing a writ of restitution, or re-restitution,

50

For taking and entering a verdict in forcible entry and detainer, or detainer,

25

For appointing appraisers of an estray, or of money or goods found,

25

For certified copies of the appraisement,

25

For issuing an order to view a fence,

25

For issuing a warrant to assess damages,

25

For viewing a dead body, the same fees as are allowed to coroners in like cases.

For swearing a jury,

25

§ 22. In all cases where fees are allowed by this law, according to the number of words, each figure shall be calculated as one word.

§ 23. Each sheriff, coroner and constable, in the return made by him on any writ, or other process, shall state, at full length, the time when such writ or other process was served, and how; otherwise such officer shall not be entitled to demand or receive any fee for the service or execution of the same.

§ 24. Every officer to whom fees are allowed by this law, shall cause to be set up, in some conspicuous place in his office, (if any he have,) and there constantly kept, a fair table of his fees, herein-before prescribed, and shall forfeit to him who will sue for the same, two dollars for every day that he may neglect to keep such table set up, to be recovered by action of debt.

§ 25. All officers or witnesses entitled to fees by this law, for services rendered in any suit, matter or controversy, depending in any court of record, may make out fee bills for such services at the end of each term of the court, wherein the same is pending, charging the party at whose instance the services were rendered.

§ 26. Such fee bills shall be examined by the clerk of the court in which the services were rendered, and, if found correct, the clerk shall certify the fee bills and deliver them to the sheriff of the proper county, to be by him collected. Justices of the peace may issue fee bills for all services rendered in justices courts; and all fee bills so issued, shall have the same force and validity, and be subject to the same rules and regulations, as fee bills issued by clerks of courts of record.

§ 27. If the person chargeable, shall neglect or refuse to pay the amount thereof to the sheriff, within twenty days after the same shall have been demanded, the sheriff shall, and may, levy such fee bills, and the amount claimed therein, on the goods and chattels of such person, in the same manner, and with the like effect, as on a *fieri facias*; and if any sheriff shall neglect or refuse to levy and collect such fees, or to pay over the money when collected to the person entitled thereto, within three months after such fee bills shall have been delivered to him, the court shall, upon ten days previous notice to him given, on motion, enter up judgment for the amount of the fee bills so delivered to him, and issue execution therefor.

§ 28. If any party to a suit or other proceeding, shall pay any of the fees allowed by this law, before final judgment, and judgment shall thereafter be rendered in his favor, and costs adjudged to him, the amount so paid shall be taxed and endorsed on the execution, and levied and collected by virtue thereof, for the benefit of such party; and all fees which shall not be so paid, shall be endorsed on the execution and collected by virtue thereof, for the benefit of the person rendering the service, or the same may be collected on fee bills as in the last section is provided, but only the costs of the prevailing party shall be so taxed and endorsed, and levied and collected.

§ 29. The clerks of the courts shall endorse on every execution which they shall issue, the fees due to each officer, and any other person, and shall, at the same time of

issuing an execution or fee bill, or of recovering any fees due to them by any party or other person, enter, in a particular book, the several items for which he has charged, in words of full length.

§ 30. Such clerk shall deliver to any party or person from whom such fees are due, on demand, a full and complete copy of the entry made in such book, without any compensation for the same.

§ 31. Whenever any suit is instituted against any clerk or other officer, for having asked or taken illegal fees, the book referred to in the two last sections, and the entries therein, may be given in evidence on the trial.

§ 32. No fees of any coroner, sheriff, justice of the peace, constable, or any other cer or person, to whom fees shall be due and owing by virtue of this law, shall be collected or paid by any person, either on execution, fee bill or otherwise, until such sheriff, or other officer or person, shall produce and deliver unto the person chargeable with the same, if demanded, an account in writing, containing, in words, the particular items for which such person [is] charged, which shall be signed by such sheriff, or other officer or person to whom the same may be due.

§ 33. If any officer shall demand, charge or receive any more or greater fees for his services than are allowed by law, or shall demand, charge or receive any such fees without having performed the services for which the same are charged, such officer, for every such offence, shall forfeit to the party injured, or against whom the same shall have been charged, the amount of the fees illegally charged, and five dollars for each item illegally demanded, charged or received, with costs, to be recovered by action of debt, if the same shall be sued for within one year from the time the offence shall have been committed.

§ 34. In all criminal cases, other than capital, and in all cases where the fine, penalty or forfeiture, or any part thereof, on conviction, would accrue to any county, the fees of officers and witnesses concerned therein shall be allowed and paid out of the county treasury, if the defendant be acquitted, or where such defendant or his estate, or the prosecutor, is not made liable for the payment of costs, or proves insolvent.

§ 35. In all capital cases, and other cases, where the fine, penalty or forfeiture, on conviction, would accrue to the state, the fees, in case of acquittal, or inability of the defendant or prosecutor to pay the same, shall be paid out of the state treasury.

§ 36. In all cases where the state, or any county, shall be chargeable with fees, the courts, respectively, in which the services charged for are rendered, shall audit and adjust the accounts, and certify the amount due.

§ 37. Any amount certified as in the last section is provided, shall be paid out of the state or county treasury, on warrants to be drawn therefor, as for other demands, for the issuing of which warrant, the certificate of the court allowing the amount shall be a sufficient voucher.

Approved, March 21st, 1835.

F E R R I E S.

An act regulating ferries.

- Sec. 1.** Not to be kept without license.
2. Application for license how made; to be granted on pay of the tax assessed.
 3. Tax to be not less than two dollars, nor more than five hundred dollars.
 4. License to issue on production of the collector's receipt for the tax.
 5. Before delivery of the license, bond to be given; condition of the bond, and where to be filed.
 6. Rates of ferriage to be fixed by the court.
 7. License may be granted by the clerk in vacation, assess the tax, fix rates, &c.
 8. To continue to the end of next term.
 9. Good boats and sufficient hands to be kept.
 10. Penalty for neglect; how recovered.
 11. Ferriage to be first paid, or tendered.
 12. List of rates to be put up.
 13. Penalty for neglect.
 14. Keeping ferry without license, and receiving ferriage; penalty.
 15. Liable to further damages, in an action on the case, &c.
 16. Penalties under this act may be recovered, &c., in the name of the county.
 17. On failure to perform duties herein required, bond to be sued on; how.
 18. Limitation to prosecution of suits under this act.
 19. License may be revoked; when.
 20. License, in the discretion of the county court, may be granted without tax.
 21. Rates to be fixed; not to be granted within one mile of ferry paying license.
 22. Master or commander of steam-boat, liable to pay penalty to owner of ferry boat in certain cases; how recovered.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. No person shall keep a ferry, so as to demand and receive pay thereat, without a license.

§ 2. Any person may petition the county court of the county for license to keep a ferry, and if the court believe such ferry necessary, and that the petitioner is a suitable person to keep the same, it shall order the clerk to issue a license upon the payment of the tax assessed in such order.

§ 3. Such tax shall not be less than two dollars, nor more than five hundred dollars, paid to the use of the state.

§ 4. Upon the production of the receipt of the collector of the county for the tax to such clerk, he shall issue a license to keep a ferry at the place therein mentioned, for one year.

§ 5. Before the delivery of the license, such person shall give bond to the state, with sufficient security, approved by such clerk, in such sum as the court shall order, conditioned for the faithful performance of the duties required by law at such ferry, which bond shall be filed in the office of such clerk.

§ 6. The county court shall fix the rate of ferriage at each ferry, and may, at any time, alter the same, having regard to the breadth and situation of the stream, and publicity of the ferry. No change in the rates of ferriage shall go into effect during the continuance of any license.

§ 7. The clerk of the county court, in vacation, may grant ferry license, assess

the tax, and fix the rates for the same, and exercise all the power of the court touching the same.

§ 8. Such license shall continue until the end of the next term of the county court, and the tax shall be assessed in proportion to the time for which the license is granted, and, in all other respects, the clerk and collector shall proceed as upon licenses granted by the court.

§ 9. Every ferry-man shall keep at his ferry a good boat, (or boats,) in good repair, suitable to the water, and sufficient hands to attend on all occasions.

§ 10. Every ferry-man failing to give such due attendance, shall, for every offence, forfeit five dollars, and for failure to keep such boat in good repair, shall forfeit thirty dollars to the county where the ferry is situated; and he shall be liable for all damages that any person may sustain thereby, to be recovered in an action on the case, in any court having jurisdiction.

§ 11. No ferry-man shall be compelled to do any act as such, before payment or tender therefor be made, according to the rates of the ferry.

§ 12. Every ferry-man shall keep a list of the legal rates of ferriage, printed, or written in a legible hand, constantly posted up at some public place at the ferry or ferry-house.

§ 13. If any ferry-man fail to comply with the preceding section, he shall, for every such offence, forfeit four dollars to the county.

§ 14. If any person demand or receive pay for services as ferry-man, without a license, he shall forfeit to the county twenty dollars, for every day he shall keep such ferry.

§ 15. Such person shall be further liable, in an action on the case, for all damages that may accrue to the person licensed to keep such ferry.

§ 16. All penalties imposed by this act, may be recovered before any court, having jurisdiction, in the name of the county.

§ 17. Upon the failure of any ferry-man to perform any duty required by this act, the attorney general, or circuit attorney for the district, shall commence and prosecute an action on the bond given by the ferry-man, and the recovery of any penalty shall be no bar to any action on such bond.

§ 18. Every offence under this act shall be prosecuted within one year.

§ 19. If any ferry-man fail to perform his duties, the county court may, at any time, revoke his license.

§ 20. If any county court believe that any ferry in their county is so little used as not to justify the payment of license, they may, in their discretion, give to the keeper of such ferry a license, without the payment of any tax.

§ 21. Such court shall take bond and fix the rates as in other ferries; and no such free ferry shall be licensed within one mile of any other ferry that pays license.

§ 22. If the master or commander of any steam-boat shall land at the platform, or known landing place of any public ferry, or shall intentionally obstruct the passage of any ferry-boat, or moor, or unload against, over or upon the same, without the consent of the owner or keeper of such ferry, such master or owner of such steam-boat shall forfeit and pay to the legal possessor of such ferry-landing, fifty

dollars for each offence, to be recovered by action of debt, before a justice of the peace, and shall be liable to an action for damages, to be recovered before any court having competent jurisdiction.

Approved, February 26th, 1835.

FORCIBLE ENTRY AND DETAINER.

An act concerning forcible entries and detainers.

- SEC. 1. Possession of lands, &c., only to be taken in a peaceable manner, and where entry is given by law.
2. What acts deemed a forcible entry and detainer.
 3. What deemed an unlawful detainer.
 4. Three preceding sections, what estates they shall extend to and comprehend.
 5. Cognizable before one justice of the peace.
 6. Upon complaint in writing to a justice of the peace, summons to issue.
 7. Summons to be annexed to the complaint; form of the summons.
 8. When and how summons to be served.
 9. Precept for summoning a jury.
 10. Form of the precept.
 11. Jurors challenged, or not attending, others to be summoned.
 12. Return of summons and precept, when and how made.
 13. Party not appearing, proceedings to be *ex parte*, or cause adjourned.
 14. Subpœnas for witnesses, how issued; attachment to compel their attendance may issue; cause may be continued.
 15. Depositions may be taken; how, &c.
 16. When returned, under what circumstances to be read in the cause.
 17. Oath to be administered to the jury; form of the oath.
 18. Complaint to be read to the jury; what proof complainant shall make.
 19. On general verdict of guilty, judgment for restitution and writ of, to issue, &c.
 20. Verdict of the jury to be in writing and signed by the foreman; verdict for part only, form of the verdict.
 21. Verdict against complainant, judgment for costs, execution to issue, &c.
 22. Justice to keep a docket of his proceedings; what shall be entered on the same.
 23. Justice to grant new trial, if applied for, &c.; not more than one new trial shall be granted, &c.
 24. Cause to be removed only by certiorari; on service of certiorari on justice, his duties, &c.
 25. The estate or merits of the title not to be enquired into; limitation of this remedy.
 26. Certiorari to be applied for in ten days; notice to be given; writ of restitution, when to issue.
 27. Obtaining writ of certiorari, bond, &c., to be given, or, in default thereof, not to operate as a supersedeas; and, in default of notice, to be dismissed.
 28. Actual settlers to have this remedy; proviso.
 29. Quantity and extent of recovery; where there is no survey, extent of, &c.
 30. Judgment, no bar to other proceedings.
 31. Form of the writ of restitution.
 32. Cause taken to the circuit court, how court to proceed.
 33. Transcripts, when and how filed to create a lien on the real estate of the party bound, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1 No person shall enter upon or into any lands, tenements or other possessions, and detain or hold the same, but where entry is given by law, and then only in a peaceable manner.

§ 2. If any person shall enter upon or into any lands, tenements or other possessions, and detain and hold the same with force, or strong hand, or with weapons, or breaking open the doors or windows, or other part of a house, whether any person be in it or not, or by threatening to kill, maim or beat the party in posses-

sion, or by such words or actions as have a natural tendency to excite fear or apprehension of danger, or by putting out of doors, or carrying away the goods of the party in possession, or by entering peaceably, and then turning out by force, or frightening by threats, or other circumstances of terror, the party out of possession, in such case, every person so offending, shall be deemed guilty of forcible entry and detainer, within the meaning of this act.

§ 3. When any person shall wilfully, and without force, hold over any lands, tenements or other possessions, after the termination of the time for which they were demised or let to him, or the person under whom he claims, or shall lawfully and peaceably obtain possession, but shall hold the same unlawfully and by force, and after demand made in writing for the deliverance of possession thereof, by the person having the legal right to such possession, his agent or attorney shall refuse or neglect to quit such possession, such person shall be guilty of an unlawful detainer.

§ 4. The three preceding sections of this act shall extend to, and comprehend terms for years, and all estates, whether freehold or less than freehold.

§ 5. The aforesaid forcible entries and detainers, forcible and unlawful detainers, are hereby made cognizable before any justice of the peace of the county in which they are committed.

§ 6. When complaint to any justice of the peace for the proper county shall be made in writing, and signed by the party aggrieved, his agent or attorney, specifying the lands, tenements or other possessions, so forcibly entered and detained, by whom and when done, it shall be the duty of the said justice to issue his summons under his hand, directed to the sheriff or constable of the county, commanding him to summon the person against whom the complaint shall be made, to appear before the said justice, at a day in such summons to be named.

§ 7. The summons shall be endorsed on, or annexed to, the complaint, and shall be in the form or effect following:

“THE STATE OF MISSOURI,

To the sheriff or constable, (as the case may be,) of the county of — Greeting:

You are hereby commanded to summon G. H. of the county of —, to appear before the undersigned justice of the peace, within and for said county, at —, in said county, on the — day of —, at the hour of — o'clock, in the forenoon of said day, then and there to answer and defend against the complaint of E. F., of forcible entry and detainer, or of an unlawful detainer, (as the case may be,) made by the said G. H. upon the lands of the said E. F., as by the complaint of the said E. F. hereto annexed, will more fully appear, and have you then and there this precept, with the return of your proceedings thereon.

Given under the hand of the said justice, this — day of —, in the year of our Lord —.

A. B., justice of the peace.”

§ 8. Such summons shall be served at least five days before the return day thereof, by reading the complaint and summons to the defendant therein named, or delivering him a copy thereof, or by leaving such copy at his usual place of abode,

with some white member of his family above the age of fifteen years, and explaining to such person the contents thereof.

§ 9. The justice shall, at the same time, issue to the sheriff, or any constable, a precept, commanding him to summon twelve good and lawful men, qualified to serve as jurors, to appear at the same time and place appointed for the trial of said complaint, to be a jury in the cause.

§ 10. The precept shall be in the form or of the effect following:
 “THE STATE OF MISSOURI,

To the sheriff or constable, (as the case may be,) of the county of ——— Greeting :

Whereas, complaint in writing is made to the undersigned, a justice of the peace in and for said county, of a certain forcible entry and detainer, (or if of detainer only, then say, of a certain unlawful detainer,) made by G. H., in the messuage, or on the land of E. F., in the county aforesaid, these are, therefore, to command you, that you cause to come before the said justice, at ———, in the county aforesaid, on the ——— day of ———, at the hour of ——— o’clock, in the forenoon of said day, twelve good and lawful men, of the body of the county, to make a jury, to enquire into the forcible entry and detainer, (or unlawful detainer,) before described.

Given under my hand, this ——— day of ———, in the year one thousand eight hundred and ———.

A. B., justice of the peace.”

§ 11. If a sufficient number of jurors fail to attend, or attending, are set aside by challenge, the justice may order the officer to complete the number.

§ 12. The officer shall return to the justice the summons and precept, on the day assigned for the trial of the cause, and shall state on the back of the summons how he hath served the same; and, on the back of the precept, a list of the jury summoned in obedience thereto.

§ 13. If the party does not appear at the time appointed for hearing the complaint, the justice may proceed *exparte*, or adjourn the cause at his discretion, except that he shall not adjourn for a longer time than ten days, nor to any other place than that assigned for the hearing of said cause, as named in the summons.

§ 14. The justice shall have power to issue *subpœnas* for witnesses, on the application of either party, and if the witnesses summoned do not attend, the justice may issue an attachment to compel their attendance, and may continue the cause, at his discretion, not exceeding ten days.

§ 15. Depositions may be taken to be read on the trial of any such cause in the same manner as in courts of record, except that the commission for taking the testimony of non-resident witnesses shall be issued by the justice, and the depositions, when taken, shall be certified to the justice before whom the cause is pending.

§ 16. Every such deposition, taken and returned according to law, may be read, if competent and relevant, as evidence in the cause; if it appear to the satisfaction of the justice that the witness resides out of the state or county in which the trial is to be had, or is dead, or by reason of his age, sickness or bodily infirmity, is unable to attend the trial, or has gone out of the state or county without collusion, privity or consent of the party offering his testimony.

§ 17. To the jurors, and each of them, who shall be returned to enquire of and try the complaint, the justice shall administer the following oath or affirmation: "You do solemnly swear, (or affirm,) that you will, well and truly try the forcible entry and detainer, or unlawful detainer, as in the complaint of E. F., alledged, and a true verdict give according to evidence.

§ 18. When the jury is sworn, the justice shall cause the complaint to be read to them, and then call upon the complainant to support the same; but the complainant shall not be compelled to make further proof of the forcible entry or detainer, than, that he was lawfully possessed of the premises, and that the defendant unlawfully entered into and detained the same.

§ 19: If the jury on the trial find the defendant guilty, the justice shall record the verdict and give judgment thereon with costs, and also issue a writ of restitution, directed to the officer, to cause the complainant to be re-seized or re-possessed, to which shall be added a clause commanding the officer to levy the said costs of the goods and chattels of the offender.

§ 20. The verdict of the jury shall be in writing, and signed by the foreman only, and shall be in the form and effect, following: "We, the jury, find the defendant guilty, (or not guilty, as the case may be,) of the forcible entry and detainer, (or if the complaint is for an unlawful detainer only,) then say, "of the unlawful detainer," in manner and form as the complainant hath in his complaint alledged;" or if the jury find the defendant guilty of part, only, of the forcible entry and detainer, (as the case may be,) they shall so find, and shall find the defendant not guilty as to the residue.

§ 21. If the jury find against the complainant, the justice shall record the verdict and give judgment accordingly, with costs, and shall issue execution therefor against the goods and chattels of the complainant.

§ 22. It shall be the duty of the justice to enter on his minutes, or docket, the names of the jurors, their verdict, and his judgment thereon, and the admission of evidence objected to, and the rejection of evidence offered, and the reason of such admission or rejection, and all the proceedings before him had, touching the complaint.

§ 23. In all cases under this act, the justice shall have power to grant a new trial, if the same be applied for on the day on which the verdict was rendered, and good cause be shewn therefor: yet not more than one new trial shall be granted to the same party.

§ 24. The proceedings had under this act, may be removed to the circuit court of the county, by certiorari, and in no other way, and then only after judgment; and when a certiorari shall be served upon the justice, he shall return, to the next circuit court of the county, a complete copy of his docket, containing a copy of all the proceedings had before him in the cause, together with the original papers.

§ 25. The estate or merits of the title shall in nowise be enquired into on any complaint which shall be exhibited by virtue of this act, and this act shall not extend to any person who hath had the uninterrupted occupation, or been in quiet possession of any lands or tenements, for the space of three whole years together

immediately preceding such complaint so exhibited to the justice, and whose estate therein is not ended or determined; but every such person may plead the same to the complaint which shall be tried, as before described.

§ 26. No certiorari shall be allowed, unless applied for in ten days after the trial, nor shall the justice issue any writ of restitution within ten days after the trial; and where the party obtains a certiorari, he shall notify the opposite party thereof, at least ten days before the sitting of the court to which the same may be returned.

§ 27. The clerk of the circuit court may issue writs of certiorari under this act, and the party, before obtaining such writ, shall give bond and security in such sum as the clerk of the circuit court shall direct, conditioned for the payment of all costs that has or may accrue, if he shall fail to prosecute his certiorari with effect; and in default thereof, the said certiorari shall not operate as a supersedeas, and in default of notice, the certiorari shall be dismissed; and when the bond and security is given, the clerk shall endorse on the writ of certiorari that security has been given; then, and in that case, the writ of certiorari being served on the justice, shall operate as a supersedeas to all further proceedings in the court below.

§ 28. Every person who shall have a settlement or field on public land, and who shall reside on, or be in possession of, the same, at the time of the forcible entry and detainer, or forcible and unlawful detainer, shall and may have the same remedy as is herein provided in such cases, against any person who shall make such unlawful entry upon him: *Provided*, that any person having authority from the United States, or lawfully claiming under them, shall have power to enter into such lands.

§ 29. When any forcible entry and detainer, or unlawful detainer, shall be made upon any lands or other possessions, against the provisions of this act, the person having the unlawful possession shall, against the wrong doer, be considered as entitled to such quantity, extent and limits of land as by the patent, grant, concession, deed, survey, donation, settlement or pre-emption right, such person or those under whom he claims, can, by the laws of the United States, or of this state, have, and lawfully claim in and to such premises; and where no legal survey has been made of such possession, the improvement of the person entitled to the possession shall be in the middle of the tract, as near as may be, making the survey as near in a square as may be, not to interfere with any established surveys or line, or any conditional lines agreed upon by the adjoining proprietors or possessors.

§ 30. Neither the judgment, or any thing in this act, shall bar or prevent the party injured from bringing an action of trespass, or other action, against the aggressor or party offending.

§ 31. The writ of restitution shall be in the form, or to the effect, following:
 "THE STATE OF MISSOURI,

To the sheriff or constable, (as the case may be,) of the county of —, Greeting:
 Whereas, E. F. did make to the undersigned, a justice of the peace within

and for said county, a complaint in writing against G. H., of said county, that he had been guilty of a forcible entry and detainer, (or of an unlawful detainer, as the case may be,) of a certain tract of land, (or other possessions, as the case may be,) of the said E. F., and whereas, the jury was empanelled and sworn to enquire of the said complaint, did return their verdict, that the said G. H. was guilty thereof, in manner and form as the said E. F. had complained against him; or if the verdict is guilty as to part only, then as follows: (here insert a description of that part of the premises of which the defendant is found guilty as in the verdict.) And whereas, judgment was thereupon entered by the said justice, that the said E. F. should have restitution of the said premises; you are, therefore, commanded to cause the said G. H. to be forthwith removed from the premises aforesaid, and the said E. F. to have peaceable restitution of the same; and, also, to levy of the goods and chattels of the said G. H., found in your county, the sum of — dollars, and — cents, being the costs on the trial aforesaid, together with — for this writ, and also your own fees; and make return of this writ, with your doings thereon, within twenty days next coming.

Witness, the said justice, this — day of —, in the year of our Lord —
A. B., justice of the peace.”

§ 32. When any cause shall be regularly taken to the circuit court under this act, if the court shall find the proceedings regular and lawful, the judgment shall be affirmed; but if their be substantial error in the proceedings, the judgment shall be reversed and a new trial awarded, which trial shall be had in the circuit court, and the court may award a writ of restitution, or re-restitution, as the circumstances of the case may require, and the costs shall, in all cases, abide the judgment in the circuit court.

§ 33. If any execution issued by the justice under this act shall be returned unsatisfied, the party entitled to satisfaction may file a transcript of the judgment, execution and return, certified by the justice, in the office of the clerk of the circuit court of the county; and the judgment, from the time of filing the transcript, shall have the same lien on the lands and tenements of the party as judgment rendered in the circuit court, and the clerk may issue execution thereon against the goods and chattels, lands and tenements of the party, which shall be proceeded in in like manner, and with like effect, as in cases of executions or judgments of a court of record.

Approved, January 22d, 1835.

F R A U D .

An act to prevent fraud.

- Sec. 1. Deed of gift and conveyance of goods, &c., in trust, &c., void as to creditors and purchasers.
2. Conveyances of land, goods, &c., with intent to delay, hinder, or defraud creditors, &c., void.
3. Qualification of preceding section as to subsequent purchasers.

- Sec. 4. Gift of goods, chattels, slaves, &c., not on consideration deemed valuable, &c., void as to creditors and purchasers, unless possession accompany it, or the will, or deed, be acknowledged, recorded, &c.
5. Loans, after five years possession, reservation, &c., after five years possession, void as to creditors and purchasers, and the property with the possession, unless declared by deed or writing, proved and recorded, &c.
 6. Conveyances not valid until delivered for record; and not then, if made with intent to defraud, &c.
 7. Not to extend to *bona fide* conveyances, or to subsequent *bona fide* purchaser.
 8. Leases not in writing to operate as estates at will, except leases not exceeding three years in certain cases.
 9. Assignment and surrender of leases, &c., to be in writing.
 10. Declarations, or creations of trusts, &c., and all grants and assignments of trusts, &c., to be by will or writing.
 11. Force and effect of resulting trusts.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Every deed of gift, and conveyance of goods and chattels, in trust to the use of the person so making such deed of gift or conveyance, is declared to be void as against creditors, existing and subsequent, and purchasers.

§ 2. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods and chattels, or things in action, or of any rents and profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents and profits thereof, and every bond, suit, judgment, decree or execution, made or contrived with the intent to hinder, delay or defraud creditors, or other persons, of their lawful actions, damages, forfeitures, debts or demands, as against creditors and purchasers, prior and subsequent, shall be void.

§ 3. No such conveyance or charge shall be deemed void in favor of a subsequent purchaser, if the deed or conveyance shall have been duly acknowledged or proved and recorded, or the purchaser have actual notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or [person] to be benefitted by such charge, were party or privy to the fraud intended.

§ 4. Every gift of goods, chattels and slaves, and all other conveyances of the same, not in consideration deemed valuable in law, shall be void as against all creditors and purchasers, unless possession shall really and *bona fide* accompany such gift or conveyance, or unless the same be by will, duly proved and recorded, or by deed in writing, acknowledged or proved and recorded in such manner as conveyances of lands are by law directed to be acknowledged, or proved and recorded.

§ 5. Where any goods or chattels, or slaves, shall be pretended to have been loaned to any person, with whom, or those claiming under him, possession shall have remained for the space of five years, without demand made and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of any use of property by way of condition, reservation or remainder, or otherwise, in goods and chattels, the possession whereof shall have remained in another, the same shall be taken as to all creditors and purchasers of the persons so remaining in possession, to be void, 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 or acknowledged and recorded as required by the preceding section.

§ 6. No conveyance, required by either of the two preceding sections to be recorded, shall be valid or binding, except between the parties and their legal representatives, until the same shall have been deposited in the recorder's office for record; and even then, if made with intent to defraud prior creditors or purchasers, shall be void against such creditors and purchasers.

§ 7. This act shall not extend to any estate, or interest in any lands, tenements, or hereditaments, goods or chattels, or any rents, profits or commons out of the same, which shall be upon valuable consideration, and *bona fide* and lawfully conveyed; nor shall this act be construed to avoid any deed as against any subsequent *bona fide* purchaser from the grantee, for valuable consideration, and without any notice of fraud.

§ 8. All leases, estates, interest of freeholds, or lease of years, or any uncertain interests of, in, to or out of any messuages, lands, tenements or hereditaments, made or created by livery and seizen only, or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents, lawfully authorised by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force, except leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord, during such term, shall amount unto two-third parts at the least of the full improved value of the thing demised.

§ 9. No leases, estates, interest, either of freehold or of term of years, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, except leases for a term of years not exceeding three, shall at any time hereafter be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents, lawfully authorised by writing, or by operation of law.

§ 10. All declarations or creations of trusts or confidences of any lands, tenements or hereditaments, shall be manifested and proved by some writing, signed by the party who is or shall be by law enabled to declare such trusts, or by his last will in writing, or else they shall be void; and all grants and assignments of any trust or confidence shall be in writing, signed by the party granting or assigning the same, or by his or her last will in writing, or else they shall be void.

§ 11. Where any conveyance shall be made of any lands, tenements or hereditaments, by which a trust or confidence may arise or result by implication of law, such trust or confidence shall be of like force as the same would have been if this act had not been made.

Approved, February 11th, 1835.

FREEDOM.

An act to enable persons held in slavery to sue for their freedom.

Sec. 1. Persons held in slavery, how permitted to sue.

2. If petition contains sufficient matter to authorize suit, what order the court or judge shall make.

Sec. 3. Both orders to be endorsed on petition, and copied on the writ, and how served.

4. In case of improper restraint, severe treatment, &c., court or judge to order prisoner to be brought up, &c
5. Warrant for that purpose to be directed to sheriff; what it shall contain.
6. Warrant, how and where it may be executed.
7. Petitioner brought before the judge, person in whose possession he was found, to enter into recognizance.
8. Failing to enter into recognizance, petitioner to be hired out; bond to be taken; condition of the bond.
9. Form of the action to be commenced.
10. The declaration, and what averments it shall contain.
11. What, and how, the defendant may plead.
12. Petitioner required to prove his freedom.
13. On judgment for the petitioner, its extent and effect.
14. Plaintiff shall not recover any damages in suits under this act.
15. Appeal or writ of error allowed; when taken by the plaintiff, shall be a supersedeas, without recognizance.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Any person held in slavery may petition the circuit court, or judge thereof in vacation, for leave to sue as a poor person, in order to establish his right to freedom, and shall state, in his petition, the ground on which his claim to freedom is founded.

§ 2. If in the opinion of the court or judge, the petition contains sufficient matter to authorize the commencement of a suit, the court or judge shall make the following orders:

First, An order allowing the person to sue as a poor person to establish his right to freedom, and assigning him counsel.

Second, An order that the person have reasonable liberty to attend his counsel and the court, as occasion may require; that he be not removed out of the jurisdiction of the court, and that he be not subject to any severity on account of his application for freedom.

§ 3. Both orders shall be endorsed upon the petition, and a copy of them endorsed upon the writ, and served therewith, and in the same manner.

§ 4. If the court or judge is satisfied, at the time of presenting the petition, or at any time during the pendency of the suit, that the petitioner has been, or is about to be, restrained by any person, of reasonable liberty of attending his counsel or the court, or is about to be removed out of the jurisdiction of the court, or that he has been, or is about to be, subjected to any severity on account of his application for freedom, the court or judge shall cause the petitioner to be brought up by a warrant under the seal of the court or hand of the judge.

§ 5. The warrant may be directed to the sheriff of any county, and shall command the officer to seize the petitioner, wherever he may be found, and bring him before the court or judge, and to summon the person, in whose possession he is found, to appear before the court or judge, on a day and at a place to be therein specified.

§ 6. The warrant may be executed by the officer to whom it is directed, in any county in this state.

§ 7. When the petitioner is brought before the court or judge, the person in whose possession he was found, or his agent, shall enter into a recognizance to the state of Missouri, with sufficient security, conditioned that the petitioner shall,

during the pendency of the suit, have reasonable liberty of attending his counsel and the court, that he shall not be removed out of the jurisdiction of the court where the suit is to be brought or is pending, and that he shall not be subjected to any severity on account of his application for freedom, which recognizance shall be filed in the court and be a record thereof.

§ 8. If the person, or his agent, fail to enter into the recognizance, the court or judge shall make an order that the sheriff take possession of the petitioner, and hire him out to the best advantage, from time to time, during the pendency of the suit, and take a bond from the hirer, payable to the state of Missouri, in such penalty as the court or judge shall, in the order, direct, and with such security as the sheriff approves, conditioned as in the recognizance of the defendant, and further conditioned that the hirer will pay the hire to the sheriff, and return the petitioner at the expiration of the term for which he is hired, or as soon as the action is determined.

§ 9. The action to be brought under the leave given, shall be an action of trespass for false imprisonment, and shall be instituted in the name of the petitioner, against the person holding him in slavery or claiming him as a slave.

§ 10. The declaration shall be in the common form of a declaration for false imprisonment, and shall contain an averment, that the plaintiff, before and at the time of the committing of the grievances, was, and still is, a free person, and that the defendant held, and still holds, him in slavery.

§ 11. The defendant may plead as in other like cases, or he may plead the general issue, and give any special matter in evidence.

§ 12. If the plaintiff be a negro or mulatto, he is required to prove his right to freedom.

§ 13. If the plaintiff's right to freedom is established, judgment of liberation shall be given in his favor against the defendant, and all persons claiming under him, by title derived after the commencement of the suit.

§ 14. In actions prosecuted under this act, the plaintiff shall not recover any damages.

§ 15. Either party to the suit may have a writ of error, or appeal, to the supreme court; and an appeal or writ of error taken by the plaintiff, shall operate as a supersedeas, without any recognizance.

Approved, January 27th, 1835.

FUGITIVES FROM JUSTICE.

An act relative to fugitives from other states.

- Sec. 1.** Upon demand regularly made, governor to issue his warrant; to whom directed.
- 2.** What shall be set forth in the warrant.
- 3.** Where and how warrant to be executed; power and duty of the person to whom warrant is directed.
- 4.** May be put in jail for safe keeping, on his passage from the place taken to the place to be brought by the warrant.

Sec. 5. Expenses to be paid out of the state treasury.

6. Persons charged, on the oath of another, of fleeing from another state for crime, warrant to issue.
7. On examination, the party charged may be committed to jail, or bailed.
8. Judge or justice, how to proceed in the examination; return thereof to be made, and copy to be furnished to the governor.
9. Duty of the governor.
10. Offender to be delivered up on demand.
11. If the offender be out on bail, sheriff shall be authorized to take him, &c.
12. Circuit court may discharge or detain accused; when.
13. Not to be kept in prison, or held to bail, beyond the end of second term after arrest.
14. Recognizance forfeited, it shall inure to the state.
15. Security to be taken for the payment of costs from the prosecutor.
16. Costs may be collected by fee bills; duty of the sheriff in such case.
17. If not paid, when execution to issue.
18. Clerk may, notwithstanding the two preceding sections, sue on the bond for cost and charges.
19. Warrant, when to issue, to take fugitives from service from other states.
20. Proof to entitle person to such warrant; what it shall be.
21. How the warrant shall be executed.
22. Court or magistrate, how to proceed when such fugitive shall be brought before them.
23. On the hearing of the parties, &c., person charged may be discharged; when, &c.
24. If the person charged be a slave, and not the property of the claimant, how to proceed.
25. Person charged, &c., and discharged, his remedy against the person who had him arrested.
26. Proceeding, if it appear that the claimant is entitled to the services of the fugitive.
27. Authority of the claimant under the certificate granted to him by the court, &c.
28. No person to remove fugitive from this state, unless by the provisions of this act.
29. Violating the provisions of the preceding section, penalty.
30. Fees and expenses, how paid in proceedings against fugitives from labor.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Whenever the executive of any other state shall demand of the executive of this state, any person as a fugitive from justice, and shall have complied with the requisites of the act of congress in that case made and provided, it shall be the duty of the executive of this state to issue his warrant under the seal of the state, directed to any sheriff, coroner, or other person, whom he may think fit to intrust with the execution of such warrant.

§ 2. The warrant shall authorise the officer or person to whom it is directed, to arrest the fugitive any where within the limits of this state, and convey him to any place therein named, and commanding all sheriffs, coroners, constables and other officers, to whom the warrant may be shewn, to aid and assist in the execution thereof.

§ 3. Every warrant so issued may be executed in any part of the state, and the officer or person to whom it is directed shall have the same power to command assistance therein, and in receiving and conveying to the proper place, any person duly arrested by virtue thereof, as sheriffs and other officers by law have in the execution of civil or criminal process directed to them, with like penalties on those who refuse their assistance.

§ 4. The officer or person executing such warrant may, when necessary, confine the prisoner, arrested by him, in the jail of any county through which he may pass in conveying such prisoner to the place commanded in the warrant, and the keeper of such jail shall receive, and safely keep such prisoner, until the person having him in charge shall be ready to proceed on his route.

§ 5. The expenses which may accrue under the foregoing sections of this act, being first ascertained to the satisfaction of the executive, shall, on his certificate, be allowed and paid out of the state treasury.

§ 6. Whenever any person within this state shall be charged, on the oath or affirmation of any creditable witness, before any judge or justice of a court of record, or a justice of the peace, with the commission of any crime in any other state or territory of the United States, and that he fled from justice, it shall be lawful for the judge or justice to issue his warrant for the apprehension of the party charged.

§ 7. If, upon examination, it shall appear to the judge or justice that the person charged is guilty of the crime alleged, he shall commit him to the jail of the county, or, if the offence is bailable, take bail for his appearance at the next term of the circuit court in the county.

§ 8. The judge or justice shall proceed in the examination in the same manner as is required when a person is brought before such officer charged with an offence against the laws of this state, and shall reduce the examination to writing, and make return thereof as in other cases, and shall also send a copy of the examination and proceedings to the governor of this state, without delay.

§ 9. If, in the opinion of the governor, the examination contains sufficient evidence to warrant the finding an indictment, he shall forthwith notify the executive of the state or territory in which the crime is alleged to have been committed, of the proceedings against the person arrested, and that he will be delivered, on demand, without requiring a copy of an indictment to accompany the demand.

§ 10. When a demand shall be made for the offender, the governor shall forthwith issue his warrant, under the seal of the state, to the sheriff of the county wherein the party charged is committed, or bailed, commanding him to surrender the accused to such messenger as shall be therein named, to be conveyed out of the state.

§ 11. If the accused shall be at large, on bail or otherwise, it shall be lawful for the sheriff to arrest him forthwith, any where within the state, and to surrender him agreeably to the command of the warrant.

§ 12. In all cases where the party shall have been admitted to bail, and shall appear according to the condition of his recognizance, and he shall not have been demanded, the circuit court may discharge the recognizance, or continue it, according to the circumstances of the case, such as the distance of the place where the offence is alleged to have been committed, the time since the arrest, the nature of the evidence, and the like.

§ 13. In no case shall the party be kept in prison, or held to bail, beyond the end of the second term of the circuit court, after the arrest; and if no demand is made for him within that time, he shall be discharged.

§ 14. If any such recognizance shall be forfeited, it shall inure to the benefit of the state.

§ 15. When a complaint shall be made against any person, as provided by this act, the judge or justice shall take from the prosecutor a bond to the clerk of the circuit court, with sufficient security, to secure the payment of the costs and ex-

penses a saich may accrue by occasion of the arrest and detention of the party charge All juich bond shall be certified and returned, with the examination, to the office tion is nlerk of. the circuit court.

§ 16. The ass. the determination of the proceedings in that county [court,] the clerk may issue fee bills, which shall be served on the principal and securities in the bond, by the sheriff, in the same manner as other fee bills; for which service the sheriff shall be allowed the same fee as for serving notices.

§ 17. If the costs and charges are not paid on or before the first day of the next term of the circuit court, nor any cause shown why they should not be paid, the clerk may issue execution for the same against the parties on whom the fee bill was served.

§ 18. Nothing in the two preceding sections shall be construed to prevent the clerk from instituting suit on such bond for the recovery of the costs and charges.

§ 19. Whenever any person, legally held to labor or service in any state or territory of the United States, shall escape into this state, the person entitled to the services of such fugitive, or the agent of such person duly authorized by him, upon making due proof of such title to any court of record, or any judge or justice thereof, or a justice of the peace, shall be entitled to a warrant, directed to the sheriff of the county where such justice shall be, commanding him to take the body of such fugitive, and have him before the court or magistrate issuing the warrant, on a day to be therein specified.

§ 20. The proof to entitle any person to such warrants shall be by affidavit, setting forth, particularly and minutely, the ground of such claim to the services of such fugitive, the time of the escape, and where he then is.

§ 21. The officer to whom such warrant shall be directed and delivered, shall execute the same by arresting and taking the body of such fugitive, and bringing him before the court or magistrate before whom such writ shall be returnable.

§ 22. The court or magistrate shall proceed to hear the allegations and proof of the parties, and shall, if required, allow a reasonable time to either party to procure further necessary proof, and, in such case, commit such fugitive to the custody of the sheriff of the county for safe keeping, or may take bond to the claimant in such penalty as shall be deemed reasonable, with sufficient securities, conditioned that such fugitive shall appear before the court or magistrate at a time and place therein specified, to abide the order and decision of the court or magistrate, in relation to the claim.

§ 23. If upon the hearing of the parties and witnesses, the court, or officers, shall be satisfied that the claimant is not entitled to the service of such person, he shall be discharged, except in the case hereinafter next mentioned.

§ 24. If it appear that the person so arrested and brought before a court or magistrate, is a runaway slave, not the property of the claimant, the court or magistrate shall commit such slave to the jail of the county, there to be dealt with in all respects as by law provided in cases of runaway slaves.

§ 25. When any person arrested under this act shall be discharged by the court or magistrate, the person at whose instance he was arrested shall pay him one

hundred dollars, the costs and expenses incurred by him, and all damages he may have sustained.

§ 26. If it shall appear that the claimant is entitled to the service of such fugitive, the court or magistrate before whom such hearing shall be had, shall grant to the claimant a certificate, stating, that it satisfactorily appears that such fugitive (who shall be particularly described in the certificate by his name, age and personal appearance,) doth owe service or labor to the claimant, (naming such person and his place of residence,) and thereby allowing such person or his agent (to be also named in the certificate) to take such fugitive and convey him to the place of residence of the person entitled to his labor or service, and such fugitive shall thereupon be delivered to such claimant, or to his agent, duly appointed for that purpose.

§ 27. Such certificate shall authorize the claimant, or his agent therein named, to remove such fugitive without any unnecessary delay, through, and out of the state, to the place of residence of the claimant.

§ 28. No person shall take or remove any such fugitive from this state, or do any act toward such removal, unless authorized so to do pursuant to the provisions of this act.

§ 29. Every person violating the provisions of the last preceding section, shall forfeit and pay five hundred dollars to the aggrieved party.

§ 30. The fees and expenses incurred in proceedings herein authorized against any fugitive from labor or service, shall be paid by the person at whose instance the proceedings are instituted, before any warrant shall be issued, or other service rendered, for which a fee is chargeable, except, that when such fugitive is committed as a runaway slave, the costs of commitment and detainer shall be paid in the same manner as like expenses under the law concerning runaway slaves.

Approved, March 9th, 1835.

GAMING.

An act to restrain gaming.

- Sec. 1. Property or money lost at gaming may be recovered, and how.
2. Heirs, executors, administrators and creditors of the person losing, has the same remedy as the loser.
 3. Judgments, contracts, bonds, bills, notes, &c., upon gaming consideration, void.
 4. The assignment of such judgment, bond, bill, &c., not to effect the defence of person executing the same.
 5. Defence may be specially pleaded or given in evidence under the general issue.
 6. Before justice of the peace, defendant may be called to answer, &c.; failing to do so, taken as confessed.
 7. Answer not to be given in evidence against defendant on indictment.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Any person who shall lose any money or property at any game or gambling device, may recover the same by action of debt, if money; if property, by action of trover or detinue.

§ 2. The heirs, executors, administrators and creditors of the person losing, may

have the same remedy against the winner as is provided in the preceding section.

§ 3. All judgments, conveyances, bonds, bills, notes, and securities, when the consideration is money or property, won at any game or gambling device, shall be void.

§ 4. The assignment of any bond, bill, note, judgment, conveyance or other security, shall not effect the defence of the person executing the same.

§ 5. Any matter of defence under this act, may be specially pleaded or given in evidence under the general issue.

§ 6. In all suits under this act, before a justice of the peace, the plaintiff may call on the defendant to answer, on oath, any interrogatory touching the case; and if the defendant refuse to answer, the same shall be taken as confessed.

§ 7. Such answer shall not be admitted as evidence against such person in any proceedings by indictment.

Approved, March 14th, 1835.

GROCERS.

An act to license grocers.

- SEC. 1. Dealing in certain articles enumerated, shall be deemed a grocer.
2. Qualification of the preceding section.
3. License to be obtained.
4. Exercising the trade of grocer without license, penalty; not to sell at more than one place under the same license.
5. Tax on grocers license, when to issue, &c., and levied.
6. Blank license to be issued by the clerk; abstract to be kept by clerk; license to be delivered, &c.
7. Penalty on grocer selling to slave, without permit in writing from the master, &c.
8. Tax to be collected by the collector; his duty to prosecute for penalties under this act, and how.
9. Grand jurors and civil officers, &c.; collector to deliver list of licenses, &c., to grand jury; this act to be given in charge to the grand jury; not to extend to tavern keepers, &c.
10. Qualification of this act.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Any person who shall deal in the selling of wines and spirituous liquors, or either, in a less quantity, or in less quantities, than fifteen gallons at one time, and any person who shall deal in the selling of distilled spirituous liquors, in less quantity than twenty gallons at one time, and who shall deal in the selling of sugar coffee, tea, indigo, foreign fruits, crockery-ware, wooden-ware, queens-ware, tin-ware, glass-ware, nails, window glass, lead, powder, shot, tar, ropes, oakum, brooms, brushes, corks, cotton, yarns, raw cotton, mats, feathers, wrapping paper, mustard, rice, tobacco, salt, molasses, juices, flour, meal, cheese, fish, butter, lard, chocolate, bacon, beef, pork, soap, candles, porter, cider, vinegar, oils and spices, shall be deemed, and is hereby declared to be, a grocer.

§ 2. Nothing contained in the foregoing section shall extend to surgeons, apothecaries, chemists, or to any wines or spirituous liquors which they may use in the preparation, or making up of medicine, or to the sale of domestic distilled spirituous liquors in quantities not less than one quart, at the place where the same shall

have been distilled, or to the sale of domestic distilled spirituous liquors in quantities not less than one quart at a time, at any place which shall be at least three miles from any town or village.

§ 3. Every person who shall become, or intend to become, a grocer, before he or she shall begin to retail, or sell as aforesaid, [shall] obtain a grocer's license.

§ 4. If any person shall exercise the trade and business of a grocer, by selling or retailing as aforesaid, without a license continuing in force, such person shall, in addition to the tax by this act prescribed, forfeit and pay the sum of not less than twenty, nor more than one hundred dollars, with costs of suit; and no such license shall be sufficient to authorize the exercise of the trade and business of a grocer as aforesaid, at more than one place at one time.

§ 5. There shall be levied and collected on each license to grocers, [a sum] not exceeding one hundred dollars, nor less than five dollars, according to the probable amount of business to be done for every six months, to be levied and assessed by the county court; and in addition to the above sum, the one-eighth of one per centum on the amount of all groceries, excepting such as are the growth, produce or manufacture of this state, which license shall be granted by said court, and issued by the clerk under the seal of said court, for which the applicant shall pay to the clerk fifty cents as a fee for issuing the same.

§ 6. When the licenses shall have been issued, they shall, by the clerk, be briefly entered, so far as respects the date thereof, the amount to be paid, and to whom issued, in a book to be kept for that purpose; and then, on application by the collector of the revenue, be delivered by the clerk to the collector, who shall deliver the same to the person applying therefor, and collect the amount charged as aforesaid.

§ 7. If any person, licensed by virtue of this act, shall sell, directly or indirectly, any wines, spirituous liquors, or any article or articles mentioned in the first section of this act, to any slave or slaves, without a permit in writing from the owner or possessor thereof, such person shall, for every such offence, forfeit his license, and shall, moreover, forfeit and pay the sum of not less than fifteen, nor more than fifty dollars, to be recovered with costs of suit; and if, after conviction of the offence, such person shall presume to exercise the trade and business of grocer, without having his license renewed, by selling, and retailing as described in the first section of this act, and every person not licensed as aforesaid, who shall be guilty of the offence aforesaid, shall forfeit and pay the sum of not less than twenty, nor more than one hundred dollars, to be recovered with cost.

§ 8. It shall be the duty of the several collectors in their respective counties, to collect the tax imposed by this act, and to prosecute for the recovery of any forfeitures incurred by virtue of this act; and all fines, penalties and forfeitures, incurred by virtue of this act, shall and may be recovered in the name of the state, to the use of the state, by complaint, bill or information, before any court of competent jurisdiction; or, if the amount shall not exceed ninety dollars, before any justice of the peace.

§ 9. It shall be the duty of all grand jurors and civil officers in this state, at

each term of the circuit court in their respective counties, to give information of all violations of this act coming within their knowledge; and it shall be the duty of the several collectors to make out and deliver to each grand jury empanelled in their respective counties, on the first day of each term, a list of all licenses granted under the provisions of this act, and continuing in force, and the circuit court shall give this act in charge to the grand juries in their respective courts at each term; but nothing herein contained shall be so construed as to extend to tavern keepers who are, or may be hereafter, regularly licensed for that purpose.

§ 10. This act shall not be so construed as to limit or restrict the sale of any of the articles in the first section of this act named, wines and spirituous liquors excepted, by any merchant regularly licensed to vend merchandize.

Approved, March 18th, 1835.

GUARDIANS AND CURATORS.

An act concerning guardians, curators and minors.

- SEC. 1. Who shall be the natural guardian of children; property not derived from parent; to give bond, &c.
2. When court to appoint guardian; minors over 14 may choose guardian, &c.
3. Curators, when they may be appointed or chosen.
4. Choice of guardian as to religious persuasion.
5. When curator for the estate different from the guardian of the person may be appointed or chosen; guardians and curators to defend suits for minors, &c.
6. Minor having a guardian or curator, how to proceed in choosing another when he arrives at 14 years old.
7. Guardians and curators to be 21 years old; to give bond, &c.; condition of the bond, &c.; court may require additional security, and in default thereof, to be removed, and others appointed or chosen.
8. Court to order the proper education of minors; may appropriate money, and order the lease, &c., of real estate for that purpose.
9. Money of minors to be loaned out; if it cannot be loaned, guardian and curator responsible for principal.
10. Guardians and curators to make annual settlements; how made and conducted; on failure, rule to show cause why attachment should not issue, &c.
11. Receipts, &c., given by guardians and curators valid, except in cases of fraud; guardians, &c., liable for fraudulent receipts, &c.
12. Guardians or curators, how finally discharged.
13. Minors without sufficient estate, &c., to be bound apprentices, &c.
14. Testamentary guardians may be appointed, &c.
15. Testamentary guardian not accepting, &c., court may appoint a guardian.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. In all cases not otherwise provided by law, the father, while living, and after his death, and when there shall be no lawful father, then the mother, if living, shall be the natural guardian of their children, and have the custody and care of their persons, education and estates; and when such estate is not derived from the parent acting as guardian, such parent shall give security and account as other guardians.

§ 2. If a minor have no parents living, or the parents be adjudged, according to law, incompetent or unfit for the duties of guardian, the county courts, in their respective counties, shall appoint guardians to such minors under the age of fourteen years, and admit those over that age to choose guardians for themselves; and

when it shall appear to the court, that a minor over that age has no guardian, the court shall issue notice to such minor to appear before them, at a stated time, to choose a guardian, or that one will be appointed, and if such minor, on due notice, shall neglect or refuse to appear, or to choose a guardian after appearing, the court shall appoint one according to law, as if such minor were under the age of fourteen years.

§ 3. When a minor shall be entitled to, or possessed of, any estate not derived from the parent who shall be the natural guardian at the time, and it shall be suggested to the court that such parent is incompetent to the care of such estate, or is mis-managing or wasting the same, the court may issue a notice to such parent to appear before them, at a stated time, to shew cause why a curator of such estate should not be appointed; or chosen; and if, on due notice, no sufficient cause be shewn, the court shall appoint a curator for the management of such estate for the minor, if under fourteen years of age, or, if over that age, admit the minor to choose one in the same manner as above provided for the choice or appointment of guardians for minors over that age.

§ 4. A minor shall not be committed to the guardianship of a person of religious persuasion, different from that of the parents, or of the surviving parent of the minor, if another suitable person can be procured, unless the minor, being of proper age, should so choose.

§ 5. Whenever the court shall be satisfied that it will be for the advantage of minors to appoint a curator of the estate, different from the guardian of the person, it shall be lawful to make such separate appointments for minors under fourteen years of age, and to allow those over that age to make such separate choices; and all guardians and curators shall be allowed to prosecute and defend for the minors, in all matters committed to the care of such guardians and curators, respectively, without further admittance, in the several courts of this state.

§ 6. A minor having a guardian or curator appointed by the court, upon attaining the age of fourteen years may choose another guardian or curator, before the proper court, in the county of the minor's residence; and if the guardian or curator so chosen, reside in a county different from that in which the former appointment was made, the court may, on being satisfied that it will not be injurious to the interest of the minor, order a removal of the proceedings to the county in which the guardian or curator so chosen shall reside; on presenting a copy of such order to the court in which the proceedings of the former guardianship or curatorship shall be, that court shall order a transcript of all the proceedings, and all the money, property, evidences of rights and titles, to which the latter guardian or curator is entitled to the possession, to be delivered to him or her, [and] the receipt of such latter guardian or curator shall be a sufficient voucher for so much to the former one, in the settlement of his or her accounts. The court to which such removal shall be made, shall take jurisdiction of the case, place the said transcript of record, and proceed to the final settlement of the case, as if the appointment or choice had been made before them.

§ 7. All guardians and curators appointed by the courts, or chosen by the

minors, shall be twenty-one years of age, and shall, respectively, before entering upon the duties of their offices, give bond, with security to be approved by the court before which they shall be appointed, or chosen, to the state of Missouri, for the use of the minors respectively, in double the value of the estate or interest to be committed to their care, conditioned for the faithful discharge of their duties according to law; and the court shall have power to order them to give supplemental security whenever it shall appear proper to secure the interest of minors, and, in default thereof, or for other good cause, upon reasonable notice, when they can be found in the proper county, to remove them and appoint or admit the choice of others in their stead.

§ 8. The county court shall order the proper education of minors according to their means, and for that purpose may, from time to time, make the necessary appropriations of the money, or the personal estate of any minor; and when the personal estate shall be insufficient, or not applicable to the object, the courts may order the lease or sale of real estate, or so much thereof as may be requisite, or that the same be mortgaged for not less than two-thirds of its real value, to raise the funds necessary to complete the education of such minor.

§ 9. Guardians and curators shall put the money of minors intrusted to their care, to interest upon mortgage, or other sufficient security, for all sums under five hundred dollars, to be approved of by the court; or they may, with leave of the court, and the assent of their securities, retain the money in their own hands, paying interest therefor; but if no person be found to take the money upon interest, and the guardian or curator should not choose to retain the same, paying interest, then they shall be liable for the principal only, until the same can be put to interest. The interest in such cases shall be payable annually, and, if not then paid, shall become part of the principal, and bear interest as such, without the necessity of a new mortgage or security, unless the court should deem such additional security to be proper.

§ 10. Guardians and curators shall make annual settlements of their accounts with the county courts in which their proceedings shall be, beginning at the first term after the end of a year from their appointments or admissions, respectively, and at each corresponding annual term, as nearly as may be, until their final settlement, and shall give the same notice required of executors and administrators of their settlements; and in such settlements, guardians, having the care of the education of minors, shall make a statement on oath of the application of all monies directed by the court to be applied by them to the education of their wards. Guardians and curators neglecting or refusing to make such settlements, or such statements on oath as are herein required, shall be liable to be attached and imprisoned until they make such settlements and statements, the courts first making a rule on them, respectively, to shew cause why they should not be so proceeded against.

§ 11. Discharges, acquittances and receipts, given by guardians and curators during the continuance of their respective offices, for any debts, rents or other money or property, due to minors under their care, shall be valid in favor of all persons who take them without fraud on their part, against such minors and their

representatives; but the guardians and curators, and their securities, shall be liable to such minors, if such discharges, acquittances or receipts be given illegally, or for fraudulent purposes.

§ 12. Minors attaining the age of twenty-one years, and having received all money and other estate due from their guardians or curators, shall acknowledge satisfaction of record in the proper court; or if such minor, on due notice, neglect or refuse to make such acknowledgment, or cannot be found in the county to be served with notice, the court shall enter a discharge of such guardians or curators on the record, and give them a certificate therefor.

§ 13. Minors having no estate sufficient for their maintenance and education, shall be liable to be bound apprentices by their guardians, so appointed or chosen, in such manner as shall be provided by the law respecting apprentices; and no indentures of apprenticeship shall be effected by the minor exercising the right of choosing a guardian or curator during the term of the apprenticeship; but such minor shall be allowed all reasonable time and opportunity to exercise such right.

§ 13. The lawful father of any minor under the age of twenty-one years, may; by last will, appoint a guardian of the person of such minor, who, if he accept; shall give bond and security, and be in all things upon the same footing as guardians appointed by the court or chosen by the minor, except that the minor shall not be allowed to choose another guardian upon arriving at the age of fourteen years, unless the testamentary guardian decline to serve longer, and notify the court thereof.

§ 15. If any testamentary guardian shall fail to notify the proper court of his acceptance of the guardianship, and give bond and security within six months after the probate of the will, the court may appoint a guardian as if no appointment had been made by the testator.

Approved, January 22, 1835.

HABEAS CORPUS.

An act to regulate proceedings on writs of habeas corpus.

- ARTICLE I. Of proceedings to obtain the writ, and the form thereof.
 ART. II. Of the service and return of the writ, and matters incident thereto.
 ART. III. Of the hearing, and other proceedings on the return.
 ART. IV. Miscellaneous provisions.

ARTICLE I.

Of proceedings to obtain the writ, and the form thereof.

- SEC. 1. Who may prosecute a writ of *habeas corpus*.
 2. How, and to whom, application for such writ to be made.
 3. What facts must be set forth in the petition.
 4. Petition must be verified by oath.
 5. If confined on process, copy thereof to accompany the petition, unless, &c.

- Sec. 6. Writs to be granted without delay, in cases where party can be relieved by this act.
7. When courts of record, or judges of the supreme or circuit courts, shall issue writ without petition.
 8. Writ to be in the name of the state, to whom directed, what it shall contain.
 9. Writ issued by the court, to be under its seal; issued by judge or justice, to be signed by him.
 10. Name of the person having the custody of the prisoner, and also the name of the prisoner, to be designated on the writ, and how.
 11. To prevent pretended ignorance, writs issued under this act to be endorsed, "By the *Habeas Corpus Act*."
 12. Writ, though defective in form to be obeyed; person upon whom served, deemed to be the person to whom directed, &c.
 13. Charges for bringing up the prisoner and conveying him back, &c; whom the court &c. may order it to be paid, to be endorsed on the writ; amount to be specified, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

ARTICLE I.

Of proceedings to obtain the writ, and the form thereof.

§ 1. Every person committed, detained, confined or restrained of his liberty within this state, for any criminal or supposed criminal matter, or under any pretence whatsoever, except when according to the provisions of this act such person can be neither discharged or bailed or otherwise relieved, may prosecute a writ of *habeas corpus*, as herein-after provided, to enquire into the cause of such confinement or restraint.

§ 2. Application for such writ shall be made by petition, signed by the party for whose relief it is intended, or by some person in his behalf, to some court of record in term, or to a judge of the supreme or circuit court, or any justice of the county court.

§ 3. The petition must state, in substance, by whom the party, for whom relief is prayed, is imprisoned or restrained of his liberty, and the place where, naming both parties, if their names are known, or describing them, if they are not, all the facts concerning the imprisonment or restraint, and the true cause thereof, to the best of the knowledge and belief of the party; and if the imprisonment be alleged to be illegal, the petition must also state in what the illegality consists.

§ 4. The facts stated in the petition must be verified by the oath of the applicant, or some other competent person.

§ 5. If the restraint or confinement is by virtue of any warrant, order or process, a copy thereof must accompany the petition, or it must appear by affidavit annexed thereto, that, by reason of the prisoner's being removed or concealed before the application, a demand of such copy could not be made, or that such demand was made of the person by whom the prisoner is confined or restrained, and a copy refused.

§ 6. Any court or magistrate, empowered to grant any writ of *habeas corpus* under this act, to whom such petition shall be presented, shall grant such writ without delay, unless it appear from the petition itself, or the documents annexed, that the party can neither be discharged, admitted to bail, nor in any other manner relieved under the provisions of this act.

§ 7. Whenever any court of record, or any judge of the supreme or circuit court,

shall have evidence from any judicial proceedings had before them, that any person is illegally confined, or restrained of his liberty, within the jurisdiction of such court or judge, it shall be the duty of the court or judge to issue a writ of habeas corpus for his relief, although no application or petition be presented for such writ.

§ 8. Every such writ of habeas corpus shall be in the name of the state of Missouri, directed to the officer or person by whom the party to be relieved is imprisoned or restrained of his liberty, commanding him to have the body of the person detained or imprisoned, together with the time and cause of such imprisonment and detention, before the court or judge, without delay, to do and receive what shall then and there be considered concerning the person imprisoned or detained.

§ 9. All such writs issued by a court shall be under the seal of the court by which they were awarded, and if issued by a judge or justice out of court, they shall be signed by the officer by whom they were granted.

§ 10. On such writ, the person having the custody of the prisoner, may be designated, either by his name of office, if he have any, or by his own name; or if both names be unknown or uncertain, he may be described by an assumed appellation, and the person directed to be produced may be designated by the name, or if his name be uncertain or unknown, he may be described in any other way, so as to designate the person intended.

§ 11. To the end that no person may pretend ignorance therein, every writ of *habeas corpus*, issued under the provisions of this act, shall be endorsed with these words: "By the *Habeas Corpus* act."

§ 12. Such writs shall not be disobeyed for any defect of form, and any one who shall be served therewith shall be deemed to be the person to whom it is directed, although it may be directed to him by a wrong name, or description, or to another person.

§ 13. The courts and magistrates allowing a writ of *habeas corpus*, may, in their discretion, require as a duty to be performed, in order to render the service thereof effectual, that the charges of bringing up the prisoner, and conveying him back if remanded, shall be paid by the petitioner; and in such case the court or magistrate shall, on the allowance of the writ, specify the amount, which shall not exceed ten cents per mile; and the amount so to be paid shall be stated in writing on the writ, signed by the clerk if in term, or by the officer by whom the writ is awarded.

ARTICLE II.

Of the service and return of the writ, and matters incident thereto.

SEC. 1. Writ, how it may be served.

2. If the person upon whom it is to be served conceal himself, or refuse admittance, &c., how it shall be served.
3. Writs can only be served by a free white person above the age of twenty-one years.
4. Service not deemed complete, till charges are paid or tendered to the officers, &c., having custody of the prisoner.
5. Duty of officer or other person upon whom such writ is served, to obey and return the same, &c.
6. When, and in what time return to be made.
7. What facts to be stated in the return of the officer or person upon whom such writ is served.
8. Return to be signed by the person making it, and if not made by a sworn public officer in his official capacity, to be verified by oath.

9. Body of the person, for whose benefit the writ was awarded, to be brought before the court, &c.; when, &c.
10. Refusing to obey the writ and make return of the same without sufficient excuse, attachment to issue; to whom directed; person refusing, &c., to be brought before the court, &c.
11. Person so brought, to be confined in close jail until he comply with the writ, &c.
12. If the delinquent be a sheriff, attachment may be directed to the coroner; how he shall proceed.
13. When attachment is issued, precept may also be issued to bring the person, for whose benefit the habeas corpus issued, before the court, &c.
14. In executing the attachment and precept, or either of them, sheriff may call to his aid the body of the county.
15. Duty of the person upon whom the writ is served, when the person in his custody stands charged of a criminal offence, &c.
16. How to proceed, if no such examination accompanied the commitment, &c.
17. If no examination of the prisoner has been filed, &c., committing magistrate to appear at the return of the writ; failing to do so, attachment to issue.

§ 1. The writ may be served by delivering the same to the officer or person to whom it is directed, or by being left at the jail or other place in which the prisoner may be confined, with any under officer, jailor or other person having charge (for the time) of the prisoner.

§ 2. If the person upon whom the writ ought to be served conceal himself, or refuse admittance to the person attempting the service thereof, it may be served by affixing the same in some conspicuous place, on the outside either of his dwelling house, or of the place where the party is confined.

§ 3. Writs of *habeas corpus* can only be served by a free white male person, above the age of twenty-one years.

§ 4. In all cases where charges are allowed by the court, or officer awarding the writ, the person serving the same shall pay or tender to the officer, or other person having custody of the prisoner, the amount of the charges for bringing up such prisoner, and shall also give bond with security, if required, to the officer or person having the custody of the party to be relieved, conditioned for the payment of the charges of conveying back the prisoner if remanded; otherwise, the service shall not be deemed complete.

§ 5. It shall be the duty of every officer and other person, upon whom a writ of *habeas corpus* shall be served according to the provisions of this act, whether such writ be directed to him or not, to obey and return such writ, according to the exigency thereof, to the court or magistrate by whom the writ was awarded, or in case of the adjournment of such court, or the absence of such magistrate, then before some other judge authorized by this act to issue such writ.

§ 6. If the place of hearing be within twenty miles of the place of service, the return shall be made within twenty-four hours after service of the writ, and the like time shall be allowed for every additional twenty miles.

§ 7. Every officer or other person, upon whom such writ of *habeas corpus* shall be duly served, shall state in his return plainly and unequivocally:

First, Whether he have or have not the party in his custody, or under his power or restraint.

Second, If he have the party in his custody or power, or under his restraint, he shall state the authority and true cause of such imprisonment or restraint, setting forth the same at large.

Third, If the party be imprisoned or detained by virtue of any writ, order, warrant or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited on the return of the writ, to the court or officer to whom the same is returnable.

Fourth, If the person making the return shall have had the party in his power or custody, or under his restraint, at any time before the service of the writ, and has transferred such custody or restraint to another, the return shall state, particularly, to whom, at what time, for what cause, and by what authority such transfer took place.

§ 8. The return must be signed by the person making the same, and except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by his oath.

§ 9. If any officer or person upon whom a writ of habeas corpus shall have been served, shall have in his custody or power, or under his restraint, the party for whose benefit the writ was awarded, he shall also bring the body of such person before the court, or magistrate, according to the command of the writ and within the time herein specified for making return except, in case of the sickness of such person as herein-after provided.

§ 10. If the officer or person upon whom a writ of *habeas corpus* shall be duly served, shall refuse or neglect to obey the same, by producing the party named in the writ, and making a full and explicit return to such court, within the time required by this act, and no sufficient excuse for such refusal or neglect be shewn, the court or officer before whom such writ shall have been made returnable, shall, upon due proof of service thereof, forthwith issue an attachment against the delinquent, directed to the sheriff of any county within this state, commanding him forthwith to apprehend such delinquent, and to bring him immediately before such court or officer.

§ 11. On such person's being so brought, he shall be committed to close custody in the jail of the county in which the court or officer shall be, until he shall comply with such writ, and obey any order that may be made by such court or officer in relation to the person for whose relief such writ shall have been issued.

§ 12. If the delinquent be a sheriff, the attachment may be directed to any corner or other person, to be designated therein, who shall have full power to execute the same, and such sheriff, upon being brought up, may be committed to the jail of any county other than his own.

§ 12. The court or magistrate by whom such attachment shall be awarded, may also issue a precept to the same sheriff, or other person to whom such attachment shall be directed, commanding him to bring forthwith before such court, or officer, the party for whose benefit such writ of *habeas corpus* shall have been allowed, who shall thereafter remain in the custody of the sheriff or person executing such precept, until he shall be discharged, bailed or remanded, as such court or magistrate shall direct.

§ 14. In the execution of such writ of attachment and precept, or either of them,

the sheriff or other person to whom they shall be directed, may call to his aid the power of the county, as is provided by law in the execution of writs and process by any officer.

§ 15. When the party for whose relief a writ of *habeas corpus* shall have been issued, shall stand committed for any criminal or supposed criminal matter, it shall be the duty of the officer or person upon whom the writ was served, to bring with the writ, all and every examination and information in his hands, possession, custody or charge, relating to the commitment.

§ 16. If no such examination shall have accompanied the commitment, nor be in the possession of the officer having the prisoner in custody, such officer shall exhibit the *habeas corpus*, when served on him, to the magistrate by whom the prisoner was committed, or to the clerk of the court, if the papers are in his office; and it shall be the duty of the magistrate or clerk to deliver to such officer having the custody of the prisoner, the examination and proofs relating to the offence charged, to be by such officer returned with the writ.

§ 17. If no examination shall have been filed with the commitment, or filed in the office of the clerk of the circuit court, as required by law, and none be produced by the committing magistrate upon the exhibition of the writ of *habeas corpus* to him, as provided in the preceding section, such magistrate shall appear in person at the time and place to which the writ is returnable, and if he fail so to do, may be proceeded against by attachment.

ARTICLE III.

Of the hearing, and other proceedings on the return.

- Sec. 1. On the return of the writ, day to be set for hearing of the cause, &c.
2. Facts set forth in the return, may be denied on oath, &c.
3. Return and allegations filed against it, may be amended.
4. Cause to be tried in a summary way, and the prisoner disposed of as the case shall require.
5. If no legal cause be shown for detention, prisoner to be discharged.
6. When, and in what cases, the court or magistrate shall remand the party.
7. Who shall not be discharged under the provisions of this act.
8. No slave shall be discharged, nor right of freedom had, under this act.
9. In what cases prisoner to be discharged, when in custody on process from court or a judicial officer.
10. Limitation of the power of courts under this act.
11. Examination and information of committing magistrate, on a criminal charge, to be read in evidence before the court hearing the cause.
12. Imprisoned on indictment cannot be discharged under this act, but may be bailed.
13. If imprisoned for a supposed criminal offence, and it appear that there is sufficient cause for commitment, not to be discharged, but may be bailed or re-committed.
14. Where offence clearly set forth in the warrant of commitment, what evidence to be heard, &c.
15. When prisoner to be discharged; certificate of, to be delivered to the prisoner.
16. Prisoner held to answer for a bailable offence, how to proceed.
17. When recognizance with sufficient security shall be taken, and by whom.
18. Proceedings when prisoner is not discharged or bailed.
19. Prisoner let to bail or remanded, examination, documents, &c., to be returned, &c.
20. Custody of prisoner between return and judgment thereon.
21. When prisoner need not be brought up on writ.
22. How to proceed on cases mentioned in the preceding section.
23. Writ or order for a discharge, how to be enforced.
24. Officers not liable for obeying writ or order of discharge.

§ 1. Upon the return of the writ of *habeas corpus*, a day shall be set for the hearing of the cause of imprisonment or restraint, not exceeding five days thereafter, unless the prisoner shall request a longer time, or the court or officer may proceed to such hearing immediately as the circumstances of the case may require.

§ 2. The party brought before any court or magistrate by virtue of any writ of *habeas corpus*, may deny the material facts set forth in the return, or allege any fact to shew, either that his detention or imprisonment is unlawful, or that he is entitled to his discharge, which allegations, or denials, shall be on oath.

§ 3. The return and the allegations made against it, may be amended by leave of the court or magistrate before whom the writ is returned, at any time, that thereby material facts may be ascertained.

§ 4. The court or magistrate shall proceed to examine into the cause of confinement or restraint, and shall settle the facts in a summary way, by hearing the testimony as well on the part of persons interested, as of the prisoner, and the person who holds him in custody, and shall dispose of the prisoner as the case shall require.

§ 5. If no legal cause be shown for the imprisonment or restraint, or for the continuation thereof, the court or magistrate shall forthwith discharge such party from the custody or restraint under which he is held.

§ 6. It shall be the duty of the court or magistrate, forthwith to remand the party, if it shall appear that he is detained in custody either,

First, By virtue of process issued by any court or judge of the United States, in a cause where such court or judge has exclusive jurisdiction; or,

Second, By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or,

Third, For any contempt specially and plainly charged in the commitment by some court, officer or body, having authority to commit for a contempt so charged; and,

Fourth, That the time during which such party may be legally detained has not expired.

§ 7. No person shall be discharged under the provisions of this act who is in custody, or held by virtue of any legal engagement or enlistment in the army or navy of the United States, or who, being subject to the rules and articles of war, is confined by one legally acting under the authority thereof, or who is held as prisoner of war under the authority of the United States, or who is in custody for any treason, felony, or other high misdemeanor, committed in any other state or territory of the United States, who, by the constitution and laws of the United States, ought to be delivered up to such state or territory.

§ 8. No negro or mulatto, held as a slave within this state, or lawfully arrested as a fugitive from service from another state or territory, shall be discharged, nor shall his right of freedom be had under the provisions of this act.

§ 9. If it appear that the prisoner is in custody by virtue of process from any court, legally constituted, or issued by any officer in the service of judicial pro-

ceedings before him, such prisoner can only be discharged on one of the following cases:

First, Where the jurisdiction of such court or officer has been exceeded either as to matter, place, sum or person.

Second, Where, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged.

Third, Where the process is defective in some matter of substance required by law, rendering such process void.

Fourth, Where the process, though in proper form, has been issued in a case, or under circumstances, not allowed by law.

Fifth, Where the process, though in proper form, has been issued or executed by a person who is not authorised by law to issue or execute the same, or where the person having the custody of such prisoner under such process, is not the person empowered by law to detain him.

Sixth, Where the process is not authorized by any judgment, order or decree, nor by any provision of law

§ 10. But no court under this act shall, in any other matter, have power to inquire into the legality or justice of any process, judgment, decree or order of any court legally constituted, nor into the justice or propriety of any commitment for contempt made by any court, officer or body, according to law, and plainly charged in such commitment as herein-before provided.

§ 11. Where any person brought before any court or magistrate, upon a writ of *habeas corpus*, shall have been committed for any criminal or supposed criminal matter, the examination and information taken and certified by the committing magistrate, shall be read in evidence before the court or magistrate before whom the prisoner is brought.

§ 12. No person imprisoned on an indictment found in any court of competent jurisdiction, or by virtue of any process or commitment to enforce such indictment, can be discharged under the provisions of this act; but if the offence be bailable, he may be let to bail, and if the offence be not bailable, he shall be remanded forthwith.

§ 13. Where the imprisonment is for a criminal or supposed criminal matter, the court or magistrate before whom the prisoner shall be brought under the provisions of this act, shall not discharge him for any informality, insufficiency, or irregularity of the commitment; but if from the examination taken and certified by the committing magistrate, or other evidence, it appear that there is sufficient legal cause for commitment, he shall proceed to take bail, if the offence be bailable and good bail be offered, if not, shall commit the prisoner to jail.

§ 14. Where the offence is clearly and specifically set forth in the warrant of commitment, no evidence other than the examination taken and certified thereunto shall be received for or against the prisoner, unless such examination has not been taken and certified according to law, in which case the committing magistrate may be examined, if desired by the prisoner, as to the evidence on which the commit-

ment was founded, and thereupon the court or magistrate shall proceed to bail, discharge, or remand the prisoner, as the circumstances of the case may require; and on the absence of all such evidence, the prisoner shall not be discharged, but may be bailed or remanded according to the circumstances of the case.

§ 15. If it appear that any person brought before a court or magistrate under this act, is entitled to be discharged, the court or magistrate shall make an order in writing, commanding those who have such person in custody to discharge him forthwith, and shall also deliver to the person discharged a certificate of such discharge.

§ 16. If the prisoner be held to answer for a bailable offence, the court or magistrate shall determine in what sum bail shall be given, and shall cause the prisoner to enter into a recognizance, with sufficient securities, which recognizance shall be taken, certified and returned, as provided by law in like cases; and if the prisoner do not give the required bail, the court or magistrate shall make an order remanding him, and shall, by such order, direct the sum in which bail shall be taken, and the court at which he is required to appear, and that on such bail being entered into in conformity with such order and the provisions of law, the prisoner shall be discharged.

§ 17. Upon the production of such order to any judge or justice, or clerk of a court of record, he shall be authorized to take the recognizance, with sufficient sureties in the sum directed, conditioned for the appearance of the prisoner at the court designated in such order.

§ 18. If a prisoner be not entitled to his discharge, and be not bailed, the court or magistrate before whom the proceedings are had, shall remand him to the custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, be entitled thereto; if not so entitled, then he shall be committed to the custody of such officer or person as by law is entitled thereto.

§ 19. When any prisoner shall be let to bail, or remanded, all examinations and documents which shall have been produced by the officer or person making the return, shall be re-delivered to him, the testimony of witnesses examined, the recognizances of all such as testify any thing material taken, and with the examination, duly certified and returned as required by law in like cases.

§ 20. Until judgment be given upon the return, the court or magistrate before whom the party shall be brought, may either commit such party to the custody of the sheriff of the county in which the proceeding is had, or place him in such care or custody as his age or other circumstances may require.

§ 21. Whenever from the sickness or other infirmity of the person directed to be produced by any writ of *habeas corpus*, such person cannot, without danger, be brought before the court or magistrate before whom the writ is returnable, the person in whose custody he is, may state that fact in his return, verifying the same by his oath; and such court or magistrate, if satisfied of the truth of such allegation, and the return be otherwise sufficient, shall proceed thereon and dispose of the matter

in the same manner as if the prisoner were brought before them, except as in the next section provided.

§ 22. If in the case mentioned in the preceding [section] it appear that the prisoner is legally imprisoned, and not bailable, such court or magistrate shall proceed no further therein; if he ought to be held to answer for a bailable offence, an order shall be made and proceeded on as provided by this act in cases where the prisoner is remanded for want of bail; and when it appears that the prisoner is entitled to his discharge, the court or judge shall make an order to that effect.

§ 23. Obedience to any order for the discharge [of a prisoner, granted pursuant to the provisions of this act, may be enforced by the court or magistrate granting such order, by attachment, in the same manner as herein-before provided in cases of failure to make return to a writ of *habeas corpus*, and with like effect in all respects.

§ 24. No sheriff or other person shall be liable to any civil action for obeying any order of discharge made according to the provisions of this act, and if any action shall be brought against him for suffering any person committed to his custody to go at large, pursuant to any such order, he may plead, or, with his plea of the general issue, give notice of the same in bar of such action.

ARTICLE IV.

Miscellaneous provisions.

- SEC. 1. When, and under what circumstances, warrant to issue to bring prisoner up, &c.; to whom directed.
2. When warrant shall contain an order to bring party up, &c., who has prisoner in custody.
3. Warrant, how executed; what return persons bringing such prisoner shall make.
4. Person having prisoner in custody brought before the court as for a criminal offence, how proceeded against.
5. Party discharged, when not to be re-imprisoned; when he may be.
6. Prisoner may be removed out of the county in which he is confined; when.
7. Proceedings if prisoner obtains a second writ of *habeas corpus*.
8. If remanded for a criminal offence, shall not be discharged on a second writ.
9. Penalty for refusing or unreasonably delaying to issue writ of *habeas corpus*.
10. Penalty for re-committing, except as herein allowed.
11. Penalty for refusing copy of process to prisoner.
12. Penalty for refusing to obey writ, and make return thereto.
13. Penalty for concealing prisoner, &c., to avoid writ, or after writ allowed.
14. Penalty for arresting person who has once been discharged for the same cause.
15. Penalty on persons aiding in violating the two last sections.
16. Persons convicted of a misdemeanor under this act, how punished.
17. How penalties may be sued for and recovered under this act.
18. What may be pleaded by defendant in action for penalties.
19. Recoveries under this act, no bar to civil action for damages.
20. Construction of this act as to all cases of *habeas corpus*.

§ 1. Whenever it shall appear by satisfactory proof, that any person is illegally imprisoned or restrained of his liberty, and that there is good reason to believe that he will be carried out of the state, or suffer some irreparable injury before he can be relieved by a writ of *habeas corpus*, any court or magistrate, authorized to issue such writs, may issue a warrant reciting the facts, and directed to any sheriff, coroner, constable or other person, commanding him to take the prisoner and to bring him forthwith before such court or magistrate, to be dealt with according to law.

§ 2. When the proof shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offence committed on the taking or detaining such prisoner, the warrant shall also contain an order for the arrest of such, for such offence.

§ 3. The warrant shall be executed according to the command thereof, and when the prisoner shall be brought before a court or magistrate, the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had as if a writ of habeas corpus had been issued in the first instance.

§ 4. If the person having such prisoner in custody shall be brought before a court or magistrate, as for a criminal offence, he shall be examined, committed, bailed or discharged in like manner as in other criminal cases of the like nature.

§ 5. No person who has been discharged by the order of any court or magistrate upon a *habeas corpus*, issued pursuant to this act, shall be again imprisoned, restrained or kept in custody for the same cause; but it shall not be deemed the same cause,

First, If he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offence, by the legal order or process of the court wherein he shall be bound by a recognizance to appear, or in which he shall be indicted or convicted for the same offence; or,

Second, If after a discharge for defect of proof, or for any material defect in the commitment in a criminal case, the prisoner may be again arrested on sufficient proof and committed by legal process for the same offence; or,

Third, If in a civil suit, the party has been discharged for any illegality in the judgment or process herein-before specified, and is afterwards imprisoned by legal process for the same cause of action; or,

Fourth, If in a civil suit he shall have been discharged from commitment on mesne process, and shall be afterwards committed on execution in the same cause, or on mesne process in any other cause, after such first suit shall have been discontinued; or,

Fifth, Where the discharge, in any case, has been ordered on account of the non-observance of any of the forms required by law, and the party is again arrested for imprisonment by legal process for sufficient cause, and according to the forms required by law.

§ 6. No prisoner charged with a criminal offence shall be removed by writ of *habeas corpus* out of the county in which he is confined, at any time within fifteen days next preceding the term of the court at which such prisoner ought to be tried, except it be to convey him into the county where the offence with which he is charged is properly cognizable.

§ 7. If a prisoner, remanded under the provisions of this act, shall obtain a second writ of *habeas corpus*, it shall be the duty of the officer, or other person, on whom the same shall be served, to return therewith the order remanding the prisoner, and if it appear that the prisoner was remanded for an offence adjudged not bailable, the prisoner shall be forthwith remanded without further proceedings.

§ 8. It shall not be lawful for any court or magistrate, on such second writ of *habeas corpus*, to discharge the prisoner if he is clearly and specifically charged in the order remanding him, or on the warrant of commitment, with a criminal offence; but the prisoner on the return of such writ shall be bailed, or remanded to prison, according to the circumstances of the case.

§ 9. If any court or magistrate, authorised by the provisions of this act to grant writs of *habeas corpus*, shall refuse to issue any such writ when legally applied for, in a case where such writ may lawfully issue, or shall unreasonably delay the issuing such writ, every member of such court who shall have assented to such refusal or delay, and every such magistrate, shall forfeit to the party aggrieved, a sum not exceeding one thousand dollars.

§ 10. If any magistrate, either solely or as a member of any court, or in the execution of any order, judgment or process, shall knowingly recommitt, imprison, or restrain of his liberty, or cause to be recommitted, imprisoned or restrained of his liberty, for the same cause, (except as in this act is provided,) any person so discharged, or shall knowingly aid or assist therein, he shall be deemed guilty of a misdemeanor, and shall also forfeit to the party aggrieved a sum not exceeding one thousand dollars.

§ 11. Any officer or other person having the custody of any prisoner committed on any civil or criminal process, who shall refuse to give such prisoner a copy of the process, order or commitment, by virtue of which the person is held or detained, within six hours after the demand by the prisoner, or any one on his behalf, shall be deemed guilty of a misdemeanor, and shall also forfeit to the party aggrieved five hundred dollars.

§ 12. If any officer or other person upon whom a writ of *habeas corpus* shall be duly served, shall neglect or refuse to obey the same, by producing the party therein named, and making a full and explicit return to the writ as required by this act, he shall be deemed guilty of a misdemeanor, and shall also forfeit to the party aggrieved a sum not exceeding one thousand dollars.

§ 13. Any person having in his custody, or under his power, any person for whose relief a writ of *habeas corpus* shall have been issued, or who would be entitled to a writ of *habeas corpus* to enquire into the cause of his detention, who shall with intent to elude the service of such writ, or to avoid the effect thereof, transfer such prisoner to the custody, or place him under the control or power of another, or conceal him, or change the place of his confinement, shall be deemed guilty of a misdemeanor, and shall also pay to the party aggrieved five hundred dollars.

§ 14. Every one who, knowing that any person has been discharged by competent authority on a *habeas corpus*, shall, contrary to the provisions of this act, arrest such person again for the same cause, shall be deemed guilty of a misdemeanor and shall also pay to the party aggrieved five hundred dollars.

§ 15. Every person who shall knowingly aid or assist in the violation of either of the two last preceding sections, shall be deemed guilty of a misdemeanor.

§ 16. Every person convicted of a misdemeanor under the provisions of this

act, shall be punished by fine and imprisonment, or both, in the discretion of the court in which he shall be convicted, but such fine not to exceed one thousand dollars, nor such imprisonment one year.

§ 17. The right of action for the penalties declared by this act to be incurred, and to be paid to the party aggrieved, shall not cease by the death of either party, but such penalty may be sued for and recovered by the executors or administrators of the aggrieved party, against the offender or his executors or administrators.

§ 18. The defendants in any such action may plead the general issue and give the special matter in evidence.

§ 19. The recoveries of any of the penalties under the provisions of this act, shall be no bar to a civil action for damages.

§ 20. The several provisions contained in this act shall be construed to apply so far as they may be applicable, and, except where otherwise provided, to every writ of *habeas corpus* authorized to be issued by any statute of this state.

Approved, March 6th, 1835.

H O R S E S .

An act respecting seed horses.

SEC. 1. Seed horse, unaltered male mule or jack, not suffered to run at large; penalty.

2 & 3. Found running at large, how dealt with; compensation, &c.

4. If they cannot be taken up, may be killed, notice being given.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. If any seed horse, or any unaltered male mule or jack, over the age of eighteen months, be found running at large, the owner shall be fined for the first offence three dollars, and for every subsequent offence not exceeding ten dollars, to be recovered by action of debt, in the name of any person who will prosecute for the same, one half to his own use and the other half to the county.

§ 2. Any person may take up any such horse, mule or jack, found running at large, and if not claimed within five days, may castrate him, for which he shall recover three dollars from the owner by action of debt, before a justice of the peace.

§ 3. Such castration shall be performed in the usual manner, so that the life of the animal be endangered as little as possible.

§ 4. If any such horse, mule or jack, be running at large, and cannot be taken up, he may be killed, if notice be first put up at the court house, and at three other public places in the county, for ten days, describing the color, marks and brands, as near as practicable, of the animal, and that he will be killed unless taken away and secured.

Approved, February 26th, 1835.

IMPEACHMENT.

An act respecting impeachments.

- Sec. 1. Articles to be preferred and managers elected by the house of representatives.
2. Officer impeached, suspended from office until his acquittal.
3. Appointments pro tem. to be made in certain cases.
4. Impeachment presented to the senate, a day for the appearance of the accused to be appointed; summons to issue, &c. when and by whom executed.
5. Summons, how executed.
6. If the governor be impeached, presiding judge of the supreme court to be notified.
7. Answer to the impeachment, replication, &c., to be filed, and day set for trial.
8. Process for witnesses and commission to take depositions to be issued, and by whom.
9. Depositions to be taken under the same notice, rules, &c., as in the circuit court.
10. Accused failing to appear, &c., senate to proceed *ex parte*.
11. President and members of the senate to be sworn.
12. Trial, how conducted?; power of the court, &c.
13. Accused to be heard by himself and counsel; votes to be given *viva voce* , to be entered on the journals; concurrence of two-thirds required to convict.
14. Conviction no bar to indictment for same offence.
15. Transcript of proceedings to be made out and deposited in the office of secretary of state.
16. Form and attestation of writs, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. When the house of representatives shall be satisfied that there is good cause to impeach any officer, they shall cause articles of impeachment to be made out in due form against such officer, and transmit the same to the senate, and immediately elect managers to prosecute such impeachment.

§ 2. If any officer shall be impeached, he is hereby suspended from exercising his office, after he shall be notified thereof, until his acquittal.

§ 3. If the secretary of state, auditor of public accounts, state treasurer or attorney general, be impeached and notified thereof, an appointment shall be made by the governor to supply such vacancy until such impeachment shall be determined; and if the president of the senate be impeached, notice thereof shall be immediately given by the house of representatives to the senate, that another president may be appointed.

§ 4. When articles of impeachment shall be presented to the senate, they shall immediately appoint some day for the appearance of the accused, and cause a summons to be issued, signed by the president and countersigned by the secretary, with a copy of the articles of impeachment annexed, requiring the accused to appear on the day appointed for that purpose, and answer the charges exhibited against him, which shall be served by the sergeant-at-arms of the senate, or by a special messenger by them appointed, a reasonable time before the day appointed for his appearance.

§ 5. Such notice shall be served on the accused personally, if he can be found, and if he cannot be found, then by leaving a copy of such summons and articles of impeachment at his dwelling house or usual place of abode, with some free white member of the family above the age of fifteen years.

§ 6. If the governor be impeached, the presiding judge of the supreme court shall be notified by the president of the senate of such impeachment, and of the day when his attendance will be required; and such judge shall attend and preside at the trial, and if he be sick and unable to attend, the judge of said court next eldest in commission shall be notified, and preside at the trial aforesaid.

§ 7. Upon the appearance of the accused, he shall have reasonable time to answer the impeachment, and when the answer shall be filed, the managers may reply thereto, and when issue shall be joined on any such impeachment the court shall appoint a time for the trial thereof.

§ 8. The president of the senate, on the application of the respondent, or any of his counsel, or either of the managers, shall issue subpoenas for witnesses, and commissions to take depositions, where the witness is unable to attend from sickness or other infirmity, or when the witness is without the limits of this state.

§ 9. Such depositions shall be taken in the same manner and the same notice to be given, as where depositions are taken in the circuit court.

§ 10. If the accused shall not appear after being notified, or after appearing shall fail to answer, the senate may proceed *ex parte*.

§ 11. At the time and place appointed for trial and before proceeding thereon, the president of the senate or presiding judge, shall administer to the members of the senate there present, and the secretary shall, at the same time, administer to the president or presiding judge, an oath or affirmation, impartially to try and determine the charges, and do justice according to law and evidence; and no member shall sit or give his vote until he shall have taken such oath or affirmation.

§ 12. The members being sworn, the senate shall proceed to hear, try and determine such impeachment, and may adjourn the trial to any other time; and the senate shall determine all questions of law arising, during the trial, upon the admissibility of evidence, the competency of witnesses, or otherwise, and may punish any person for contempt committed towards the senate, or for obstructing the administration of justice on such trial, in as full a manner as any court of record could do for like contempt toward such court.

§ 13. In all such trials the accused shall have a right to be heard by himself and his counsel; and all votes on any question whatever, shall be given *viva voce*, and entered on the journals, and no judgment or sentence of conviction shall be given against any person upon any impeachment, without the concurrence of two-thirds of all the senate present.

§ 14. The party convicted or acquitted shall, notwithstanding such conviction or acquittal, be subject to indictment, trial, judgment and punishment for any indictable offence, according to the law of the land.

§ 15. The secretary of the senate shall make out a transcript of the proceedings had on any impeachment, and of the judgment of the senate, whether of conviction or acquittal, which shall be signed by the officer presiding at the trial, and attested by the secretary, and deposited in the office of the secretary of state.

§ 16. All writs issued by the senate shall run in the name of the state of Missouri,

shall be subscribed by the presiding officer, and countersigned by the secretary, and shall be served by the serjeant-at-arms or any special messenger appointed by the senate.

Approved February 26th, 1835.

INCLOSURES.

An act regulating inclosures.

- Sec. 1. All fields and ground kept for inclosure, shall be inclosed, and how
 2. What shall be deemed a sufficient inclosure in law.
 3. Sufficiency of the fence, by whom adjudged.
 4. Owner of animals trespassing, liable for damages, for the first, second and third trespass: what.
 5. On complaint made to justice of the peace, view to be had.
 6. Persons injuring or killing animals, if fence insufficient, to pay double damages

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. All fields and grounds kept for inclosures shall be inclosed with a fence sufficiently close, composed of sufficient posts and rails, posts and railings, palisadoes or rails alone, laid up in the manner commonly called a worm fence, which posts shall be set deep and strongly in the earth.

§ 2. All such fences composed of posts and rails, posts and railings or palisadoes or of rails, in the manner commonly called a worm fence, shall be at least five feet high; the uppermost rail of each worm fence shall be supported by strong stakes, strongly set and fastened in the earth, so as to compose what is commonly called a staking and riding, 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.

§ 3. In all cases the sufficiency of the worm shall be adjudged of by the persons who may be summoned to view said fence.

§ 4. If any horse, cattle or other stock, shall break into any inclosure, the fence being of the height and sufficiency aforesaid, or if any hog, shote or pig, shall break into the same, the owners of such creature or creatures, shall, for the first trespass, make reparation to the party injured for the true value of the damages he shall sustain; and for every trespass thereafter, double damages, to be recovered with costs, before a justice of the peace, or in any court of record having cognizance of the sum demanded by the party injured; for the third offence, from any of the beasts aforesaid breaking into such inclosure, the party injured may kill and destroy the beasts so trespassing without being answerable for the same.

§ 5. Upon the complaint of the party injured, to any justice of the peace of the township, such justice shall issue his order without delay to three disinterested householders of the neighborhood, no ways related to the party injured, reciting the complaint, and requiring them to view the fence where the trespass is complained of, and take memorandum of the same; and their testimony in such case shall be good evidence on the trial touching the lawfulness of the fence.

INDIANS.

§ 6. If any person damnified for want of such sufficient fence, shall hunt, wound, lame, kill or destroy, or cause the same to be done, by shooting, hurting with dogs or otherwise, any of the creatures in this act mentioned, such person shall satisfy the owner of such creatures in double damages, with costs.

Approved, February 20th, 1835.

INDIANS.

An act to restrain intercourse with Indians.

- Sec. 1. Trade and intercourse with Indians &c., prohibited; penalty.
2. Certain trade with Indians within this state prohibited.
3. Penalty to sell, exchange or give to any Indian, spirituous liquors, &c.
4. Penalties and fines under this act appropriated.
5. General and field officers of militia, when to order Indians to be removed out of the white settlements.
6. Militia thus ordered, to be placed under a commissioned officer; his power and duties.
7. For such services no compensation to be allowed.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Any person who shall reside or attempt to reside as a trader in any hunting camp of any Indian tribe, not permanently settled within this state, shall forfeit all the merchandize found in his possession and offered for sale to the Indians, and shall be fined not exceeding one hundred dollars, or be imprisoned not exceeding thirty days.

§ 2. If any person shall induce any Indian to come within this state for the purpose of trade, otherwise than is hereinafter permitted, or shall purchase or receive of any Indian in the way of trade or otherwise, a horse or gun, he shall be fined in a sum not exceeding fifty dollars.

3. Any person who shall sell, exchange, or give to any Indian, any spirituous or vinous liquors, shall forfeit a sum not less than thirty, nor more than one hundred and fifty dollars, or shall be imprisoned not exceeding thirty days nor less than ten.

§ 4. All penalties and fines accruing under this act, shall be for the use of the county in which the indictment is found.

§ 5. Whenever any general or field officer of the militia shall receive satisfactory information that any Indians are hunting or roaming within the limits of his officers command, he may order out a sufficient portion of his command to remove such Indians out of the white settlements.

§ 6. When any portion of the militia shall be so ordered in any case, they shall be placed under the command of some competent commissioned officer, who shall have the power, and it shall be his duty, to remove such Indians, and to report to the officer, without delay.

§ 7. For rendering services required by the two preceding sections, no pay shall be allowed.

Approved, March 9th, 1835.

INJUNCTIONS.

An act regulating injunctions.

SEC. 1. Who may grant injunctions.

- 2 When county court, or any two justices thereof, in vacation, may grant injunctions.
3. What proof necessary under the second sub-division of the preceding section.
4. Injunctions, to what court returnable.
5. To stay proceedings at law, where to be had; subpoena, where directed.
6. Notice of application for injunction to be given; to whom.
7. Notice may be put up in the clerk's office; when and under what circumstances.
8. What the notice shall contain, and how served.
9. Extent of injunctions to stay proceedings at law.
10. To operate as a release of errors.
11. Bond to be given, condition of the bond.
12. Bond when filed, when it may be entered into before the clerk, &c.
13. Damages to be awarded upon dissolution.
14. Decree according to the circumstances of the case, how enforced.
15. Notice of application not required in certain cases.
16. Application overruled, certificate to be granted; effect thereof.
17. To disobey or violate injunction after service, how punished; proceedings thereon.
18. After answer filed, motion for dissolution always in order; proceedings on the motion.
19. Continuance of motion may be granted on affidavit.
20. Testimony on such motion to be by deposition.
21. May be read on final hearing.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The supreme and circuit courts, and any judge thereof in vacation, may grant injunctions.

§ 2. The county court, or any two justices thereof in vacation, may grant injunctions in the following cases: First, To stay judgments, or proceedings thereon, before any justice of the peace within the county. Second, In all other cases, if there be not within the county any court in session, or any judge authorized by the first section of this act to grant injunctions, at the time of the application therefor.

3 § Whenever an application for an injunction, in any of the cases mentioned in the second sub-division of the last section, shall be made to a county court, or any two justices thereof, the applicant shall produce satisfactory proof that there is not then any supreme or circuit court in session, nor any judge thereof within such county, and if such proof is not produced, the application shall be denied.

§ 4. Injunctions shall be returnable to the circuit court of the proper county.

§ 5. Proceedings on an injunction to stay a suit or judgment at law, shall be had in the county where the judgment was rendered, or the suit is pending, and the subpoena may be directed in the first instance into any county where the defendant resides.

§ 6. Before an injunction shall be granted to stay any proceeding at law, the applicant shall give reasonable notice in writing to the adverse party, if within the state, or to his known agent or attorney, if he has any in the state.

§ 7. If he does not reside in the state, and has no known agent or attorney therein, notice shall be put up, ten days before the application for the injunction,

in the office of the clerk of the circuit court of the county where the proceedings at law were had.

§ 8. The notice shall state the time and place of applying for the injunction, and shall be proved by the return of an officer, the evidence of a witness, or the acknowledgment of the adverse party, his agent or attorney, endorsed thereon.

§ 9. No injunction shall be granted to stay any judgment or proceedings at law, except so much of the recovery or cause of action as the complainant shall shew himself equitably entitled to be relieved against, and so much as will cover costs.

§ 10. Every such injunction shall operate as a release of all errors in the proceedings at law that are prayed to be enjoined.

§ 11. No injunction shall issue in any case until the complainant execute a bond, with sufficient security to the other party, in such sum as the court or judge shall deem sufficient to secure the amount, or other matter to be enjoined, and all damages that may be occasioned by such injunction, conditioned that the complainant will abide the decision which shall be made therein, and pay all sums of money, damages and costs that shall be adjudged against him, if the injunction shall be dissolved.

§ 12. Such bond shall be filed with the clerk of the circuit court of the county to which the injunction is returnable, and the bond may be entered into before said clerk, if the court or judge granting the injunction shall first approve of the security.

§ 13. Upon the dissolution of an injunction in whole or in part, damages shall be assessed by a jury, or if neither party require a jury, by the court; but if money shall have been enjoined, the damages thereon shall not exceed ten per centum on the amount released by the dissolution, exclusive of legal interest and costs.

§ 14. The court shall enter a decree, according to the circumstances of the case, including the damages so expressed, and may award execution thereon, or otherwise enforce such decree according to the rules and practice in chancery.

§ 15. Where an injunction to stay proceedings at law is prayed in the same court where proceedings were had, no notice of the application shall be necessary, unless prescribed by rule of court.

§ 16. When any application for an injunction shall be overruled, the court or judge shall grant to the defendant in the bill, a certificate thereof, and no judge shall afterwards grant an injunction in the same cause in vacation.

§ 17. If any person disobey or violate an injunction after it shall be served on him, the court, or any judge thereof in vacation, shall issue an attachment against him for a contempt, and unless he shall disprove or purge the contempt, the judge may commit him to jail, until the sitting of the court in which the injunction is pending, or take bail for his appearance in said court, at the next term thereof, to answer for the contempt and abide the order of the court.

§ 18. After the answer is filed, a motion may be made at any time in term to dissolve the injunction, and upon such motion the parties may introduce testimony to support the bill and answer, and the court shall decide the motion upon the weight of testimony, without being bound to take the answer as true.

§ 19. If after a motion for dissolution is made, the plaintiff in the bill will satisfy the court by his own affidavit, or that of any disinterested person, that any material specified part of the answer is not true, that he has witnesses, whose testimony he believes he can procure at the next term, who will disprove the same, and that he has not been able to procure such testimony, since the coming in of the answer, the court may continue the motion until the next term.

§ 20. In addition to the bill and answer, and the affidavits filed therewith, all testimony on such motions shall be depositions taken as in other chancery proceedings.

§ 21. Depositions taken to support or dissolve an injunction may be read on the final hearing of the cause in which they have been taken.

Approved, February 25th, 1835.

INNS AND TAVERNS.

An act to regulate inns and taverns.

- SEC. 1. Wine or spirituous liquors not to be sold without a tavern license
2. No person to keep tavern without such license, &c.
3. Penalty for violation of the two preceding sections; how sued for
4. Licenses to inn-keepers, granted, &c., by the several county courts.
5. Application for license to be in writing; what facts to be stated.
6. Duty of each justice of the court on application for license.
7. Tax on licenses to be levied and collected to the use of the state.
8. The sums to be paid, to be ascertained and fixed by the court.
9. Not to be granted to keep an inn, unless applicant is prepared to accommodate guests.
10. Facts to be contained in the order granting a license; copy to be delivered to applicant.
11. Clerk to issue license according to order, on production of collector's receipt, and bond filed by applicant.
12. Bond, how taken; condition of the bond.
13. If license be for keeping an inn and tavern, what further condition shall be in the bond.
14. What facts shall be recited in the license issued by the clerk; how authenticated.
15. License expire in vacation, may be extended by the clerk till the next term of court.
16. How to proceed to extend license under the preceding section.
17. Fees of the clerk for issuing license and extension of license, to be paid by the applicant.
18. Effect and extent of license granted under this act.
19. Inn keepers having a tavern license, to keep good entertainment, bedding, &c.
20. Penalty for failing to keep articles mentioned in the preceding section; how recovered, &c.
21. Penalty for failing to keep an inn or tavern according to the true intent and meaning of this act.
22. Penalty for harboring, &c., apprentice, minor, &c., or to sell liquor, &c., to such servant, apprentice, &c.
23. Penalty to harbor, &c. non-commissioned officer or soldier of the U. S. army, or to sell spirituous liquors to, &c., without written permission, &c.
24. Violating provisions of the two preceding sections, deemed guilty of keeping disorderly house.
25. Convicted of keeping a disorderly house, or of permitting unlawful gaming, penalty, &c.
26. Violation of the provisions of this act deemed a breach of the bond, &c.
27. Fines and penalties under this act, how appropriated.
28. Construction of this act, in selling meat or drink under certain circumstances.
29. Construction and extent of this act affecting persons keeping private entertainment on the road.
30. List of tavern license to be furnished to the attorney general, &c., at each term of the court.
31. Duty of civil officers to give information for violations of this act.
32. Attorney general and circuit attorney to prosecute for violations of this act.
33. This act not to apply to persons dealing as a grocer.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Hereafter no person within this state shall, without a tavern license continuing in force, directly or indirectly sell, barter or deliver, or knowingly permit to be sold, bartered or delivered, for, or on his or her account, any wine or spirituous liquor, by less quantity than one quart, or any composition of which wine or spirituous liquor shall be a part, by less quantity than one gallon, to be delivered to one person at one time, without collusion or fraud.

§ 2. No person without such tavern license shall, under any color or pretence, keep a tavern, or knowingly suffer or permit any wine or spirituous liquor, or any composition of which wine or spirituous liquor forms a part, to be sold, bartered or delivered by him or her, or on his or her account, to be used or drank in his or her house, shop, store or out house, shed, booth, stall, shelter, boat, yard, plantation, lot or other premises occupied by him or her, or under his or her control.

§ 3. Every person who shall violate the provisions of either of the two preceding sections, shall forfeit and pay a sum not exceeding two hundred dollars for each offence, to be recovered by action of debt in the name of the state.

§ 4. The several county courts are authorized to grant tavern licenses to inn-keepers and others within their respective counties, to continue in force for one year, and to renew the same, from time to time, in the manner prescribed by this act, and not otherwise.

§ 5. Every application for a tavern license shall be in writing, and shall state whether the applicant intends to keep an inn and tavern, or a tavern only, and shall designate particularly the place at which the same is proposed to be kept.

§ 6. Upon every application for a tavern license, it shall be the duty of each justice or member of the court, to make known any facts or objections within his knowledge, if any there be, why the application should not be granted, and thereupon the court may, in its discretion, grant or refuse the application.

§ 7. There shall be levied and collected to the use of the state, on each tavern license, as follows: First, if granted to an inn-keeper, not less than ten nor more than thirty dollars. Second, if to a person not an inn-keeper, a sum not less than ten nor more than one hundred dollars.

§ 8. The sums to be paid shall be ascertained and fixed by the court granting the license, taking into consideration the place where the inn or tavern is to be kept, as affording more or less profit to the applicant, and the advantages or disadvantages to the public.

§ 9. No tavern license shall be granted to any person as an inn-keeper, unless the court shall be well satisfied that the applicant is prepared to keep an inn for the accommodation of guests, within the true intent and meaning of this act.

§ 10. Every order granting a license shall specify whether the same is to be for an inn and tavern, or tavern only, the place where, and the name of the person by whom the same is to be kept, and the amount of tax to be assessed, and the clerk shall deliver to the applicant a copy of such order.

§ 11. If the applicant shall pay to the collector of the county the sum assessed,

such collector shall make out and deliver to him a receipt therefor, and on such receipt being delivered to the clerk of the court making the order, and a bond entered into and filed with the clerk as hereinafter directed, such clerk shall issue a license according to the order of the court.

§ 12. The bond of the applicant shall be to the state of Missouri, in such sum as the county court shall direct, with sufficient securities to be taken and approved by the clerk, conditioned that the applicant will, during the term for which he is to be licensed, keep an orderly house, and not permit or suffer any unlawful gaming therein, nor in any out-buildings, nor elsewhere on the premises in his possession or under his control, and that he will in all things observe the direction of the laws regulating inns and taverns.

§ 13. If the applicant is to be licensed to keep an inn and tavern, the bond shall contain the further condition, that the applicant shall constantly find and provide in the inn and tavern to be kept by him, good and wholesome diet and lodging for travellers and other guests, and also provide and furnish sufficient stabling and provender for horses, as the season shall require, during the continuance of the license.

§ 14. The license to be issued by the clerk shall recite the order of the court, the payment of the tax, and the filing the bond, and shall authorize the person in the order named to keep an inn and tavern, or a tavern only, at the place and for the period in the order specified, and then and there to vend wines and spirituous liquors, which license shall be authenticated by the seal of the court.

§ 15. If any license, granted and issued pursuant to the provisions of this act, shall expire at a time when the county court for the proper county shall not be in session, the same may be extended until the next term of such court, in the manner hereinafter next provided.

§ 16. The person having a license which may be extended according to the preceding section, may apply to the clerk for that purpose, who shall ascertain the amount which ought to be paid for such extension, according to the rate of tax imposed in the license by the court, and such amount being paid to the collector, and satisfactory evidence of the payment being deposited with the clerk, he shall endorse on the license a certificate of the extension until the next term of the county court, stating therein the amount paid for such extension.

§ 17. The several clerks shall be entitled to receive the sum of fifty cents for every license and every extension of a license issued by them, which sum shall be paid by the applicant.

§ 18. No license granted by virtue of this act, shall authorize the keeping a tavern, or the sale of wines or spirituous liquors, at any other place than that which shall be therein designated, nor shall such license be assignable, but as to all places and persons not named in the license the same shall be inoperative.

§ 19. Every inn-keeper having a tavern license, shall have, and, at all times during the continuance of his license, keep in his house at least two good beds, with good and sufficient bed clothing for the same, for the use and accommodation of guests, and shall provide and keep good and sufficient diet for travellers and

other guests, and stabling, with good provender of hay and grain, or pasturage and grain for horses, as the season shall require.

§ 20. If any person, who as an inn-keeper has a tavern license, shall fail or neglect to keep any of the articles mentioned in the preceding section, he shall forfeit and pay the sum of twenty dollars, to be recovered in the name and to the use of any person who will sue for the same, by action of debt; and every such neglect or refusal shall moreover be deemed a breach of the condition of the bond.

§ 21. If any person having obtained a license to keep an inn or tavern under the provisions of this act, shall not, according to the true intent and meaning of this act, keep an inn for the accommodation of travellers and other guests, furnished and provided with house room, lodging and diet for men, and stables and provender for horses, but shall, under pretence of keeping such inn, sell wine or spirituous liquors, or any composition of which wine or spirituous liquors shall be a part, such person shall not only forfeit the penalty of his bond, but shall also pay twenty dollars, to be recovered in the name of the state by an action of debt.

§ 22. If any licensed keeper of an inn or tavern shall receive, harbor, entertain or deal with any minor, apprentice, servant or slave, knowing or having reason to believe him to be such, or shall sell, barter or deliver, or knowingly permit to be sold, bartered or delivered to any such minor, apprentice, servant or slave, any wine or spirituous liquor, or any composition of which wine or spirituous liquor forms a part, without the consent in writing of the parent or guardian of such minor, or the master or mistress of such apprentice, servant or slave, the person so offending shall forfeit and pay for every such offence, a sum not less than ten nor more than fifty dollars to the parent or guardian of such minor, and the master or mistress of such apprentice, servant or slave.

§ 23. If any such licensed keeper of an inn or tavern shall receive, harbor or entertain any non-commissioned officer or soldier of the army of the United States, knowing or having reason to believe him to be such, or shall sell, barter or deliver, or knowingly permit to be sold, bartered or delivered to such non-commissioned officer or soldier, any wine or spirituous liquor, or any composition of which wine or spirituous liquor forms a part, without the written permission of some commissioned officer of such army, the person so offending shall forfeit and pay a sum not less than five, nor more than thirty dollars, to be recovered by action of debt in the name of the state of Missouri.

§ 24. Every licensed keeper of an inn or tavern, who shall be guilty of a violation of any of the provisions of either of the two next preceding sections, shall be deemed guilty of keeping a disorderly house.

§ 25. Every such keeper of an inn or tavern, who shall be convicted of keeping a disorderly house, as declared by this act or otherwise, or who shall suffer or permit unlawful gaming therein, shall be fined in a sum not exceeding five hundred dollars, or imprisoned not exceeding six months, or both, according to the nature and aggravation of the offence; and the court before which the conviction is had, may, in its discretion, revoke and annul the license of the person so convicted

and such person shall not be deemed qualified to obtain a tavern license for the period of two years.

§ 26. Every violation of the provisions of this act by any person having a tavern license, shall be deemed a breach of the condition of his bond, and such bond may be sued on and recovery had, in addition to the penalties by this act imposed for such violations.

§ 27. All fines, penalties and forfeitures, which may be recovered for the violation of any of the provisions of this act, unless herein-before otherwise expressly appropriated, shall be paid into the treasury of the county in which the conviction is had.

§ 28. Nothing in this act contained shall be construed to prevent any person having a tavern license continuing in force, from vending meat and drink in the same manner and under the same restrictions as at his own inn or tavern, at any place distant one mile or more from any licensed tavern, there being at such place a muster, public sale, or other lawful meeting.

§ 29. The provisions of this act shall not be construed to prevent any person who lives on any road, from keeping a house of private entertainment and furnishing diet and lodging to travellers and others, and provender and pasturage for horses, without obtaining a tavern license, so that such person do not vend or barter, or suffer to be sold or bartered on his account, any wine or spirituous liquor.

§ 30. It shall be the duty of each clerk of a county court, to make out and deliver to the attorney general or circuit attorney prosecuting for the circuit, at the commencement of each term of the circuit court of the county, a list of all tavern licenses continuing in force.

§ 31. It shall be the duty of all civil officers to give information to the attorney general or circuit attorney prosecuting in their respective circuits, of all violations of this act coming within their knowledge, or which they may have cause to suspect.

§ 32. The attorney general and circuit attorneys respectively, shall, within their respective circuits, prosecute in all cases of violations of the provisions of this act, not otherwise provided for.

§ 33. This act shall not apply to any person dealing as a grocer, having a license so to deal.

Approved, March 18th, 1835.

INQUESTS.

An act for holding inquests.

- SEC. 1. In case of death by violence or casualty, coroner to issue his warrant for summoning a jury, &c.
2. Duty of constable to whom warrant is directed, &c.
 3. Penalty on constable for failing to execute or return the warrant.
 4. Penalty on jurors failing to attend without reasonable excuse; how sued for, &c.
 5. Coroner to administer oath to jurors; form of the oath.
 6. When the jury are sworn, charge to be given them by the coroner.
 7. When the jury are sworn, they shall remain together; what proclamation to be made.
 8. Coroner authorized to issue subpoenas for witnesses.
 9. Shall have power to administer oath to witnesses; form of the oath.
 10. Testimony to be reduced to writing and witness recognized in certain cases; verdict to be delivered to the coroner; return of inquest, &c.
 11. Duty of the coroner if death found by felony; proceedings to apprehend the felon.
 12. When a justice of the peace, or a judge or justice of a court of record, may perform the duties of coroner.
 13. Constable unable to attend, some other person to do his duty, subject to the same penalties, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. That every coroner, so soon as he shall be notified of the dead body of any person, supposed to have come to his death by violence or casualty, found within his county, shall make out his warrant, directed to the constable of the township where the dead body is found, requiring him forthwith to summon a jury of six good and lawful men, householders of the same township, to appear before such coroner at the time and place in his warrant expressed, and to enquire upon a view of the body of the person then lying dead, how, and by whom, he came by his death.

§ 2. Every such constable to whom such warrant shall be directed 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 his proceedings thereon, to the coroner who granted the same.

§ 3. Every constable failing to execute such warrant, or to return the same, shall forfeit and pay the sum of eight dollars.

§ 4. Every person summoned as a juror, who shall fail to appear or make a reasonable excuse to the coroner for his non-attendance within five days after the time appointed in the warrant, shall forfeit and pay the sum of five dollars, which fine shall be recoverable in an action of debt, at the instance of the coroner and in the name of the state, before any justice of the peace, and be applied to the use of the county.

§ 5. The coroner shall administer an oath or affirmation to the jurors, in the following form: "You solemnly swear (or affirm) that you will diligently enquire, and true presentment make, how, and by whom, the person who here lies dead came to his death, and you shall deliver to me, coroner of this county, a true inquest thereof, according to such evidence as shall be laid before you, and according to your knowledge."

§ 6. As soon as the jury shall be sworn, the coroner shall give them a charge, upon their oaths, to declare of the death of the person, whether he died of felony or accident; and if of felony, who were principals, and who were accessories, and

all the material circumstances relating thereto; and if by accident, whether by the act of man, and the manner thereof, and who was present, and who was the finder of the body, and whether he was killed in the same place where the body was found, and if elsewhere, by whom and how the body was brought there, and all other circumstances relating to the death; and if he died of his own act, then the manner and means thereof, and the circumstances relating thereto.

§ 7. When the jury are sworn, they shall remain together, and proclamation shall be made for any person who can give evidence to draw near, and they shall be heard.

§ 8. Every coroner shall be empowered to issue his summons for witnesses commanding them to come before him to be examined, and to declare their knowledge concerning the matter in question.

§ 9. He shall administer to them an oath, or affirmation in form following: "You do swear (or affirm) that the evidence you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth."

§ 10. The evidence of such witness, shall be taken down in writing, and subscribed by them, and if it relate to the trial of any person concerned in the death, then the coroner shall bind such witnesses, by recognizance, in a reasonable sum for their appearance before the circuit court of the county, where the felony appears to have been committed, at the next term thereof, there to give evidence, and to commit to the common jail of the county any witness refusing to enter into such bond; and shall return to the same court the inquisition, written evidence, and recognizance by him taken; and the jury having received the body, heard the evidence, and made all the enquiry in their power, shall draw up and deliver to the coroner their verdict upon the death under consideration, in writing, under their hands, and the same shall be signed by the coroner.

§ 11. The coroner, upon an inquisition found before him, of the death of any person by the felony of another, shall speedily inform one or more of the justices of the peace of the proper county, or some judge or justice of some court of record, and it shall be the duty of such officer forthwith to issue his process for the apprehension, and securing for trial of such person.

§ 12. If the coroner is not able to take the inquest, or if he resides at a greater distance than fifteen miles from the place where the dead body is found, any justice of the peace, or any judge or justice of some court of record of the proper county, may take the inquest and perform all the duties hereby enjoined on the coroner.

§ 13. If the constable of the proper township is unable to execute the duties required by this act, the officer taking the inquest may direct his warrant to any householder of the county, who shall perform the duties of constable, be subject to the same penalties, and entitled to the same fees.

Approved, February 26th, 1835.

INSANE PERSONS.

An act relative to insane persons.

- Sec. 1.** County courts have the power to appoint, and control over, guardians of insane persons, &c.
2. On information in writing, &c., court to cause insane person to be brought before them, and the facts to be enquired into by a jury.
 3. Duty of justice of the county court, justice of the peace, sheriff, coroner or constable, relative to insane persons in their county; proceedings thereon.
 4. On verdict of the jury, when court to appoint guardian for such insane person.
 5. Costs of proceedings under this act, how paid.
 6. If the person alleged to be insane be discharged; costs how to be paid.
 7. Inquisition may be set aside and new jury empanelled; when, and effect of.
 8. Guardian of insane person to enter into bond; condition of the bond.
 9. New bond or additional security may be required of the guardian by the court; in default thereof, guardianship may be revoked.
 10. Bond, when deposited; certified copy of bond evidence, &c.
 11. Notice of such guardianship to be published; when, how, &c.
 12. Guardian to take charge of insane person, to provide for his support, &c.
 13. Guardian to take charge of the goods, chattels, monies, effects, &c., of such insane person.
 14. Inventory of the effects of such insane person to be filed by the guardian; when, &c.
 15. Additional inventory to be filed; when.
 16. Inventories to be made in the presence of, and attested by two credible witnesses, to be verified by oath of guardian.
 17. Guardian to prosecute and defend suits brought by and against his ward.
 18. To collect debts, give acquittances, &c., to adjust, settle, and pay demands, &c., on behalf of the ward.
 19. Power and duty of the county court to make order touching the estate of insane persons, &c.
 20. When personal estate not sufficient to pay debts, maintenance, educate children, &c. guardian to apply by petition to court for leave to mortgage real estate, &c.
 21. What facts the petition shall contain.
 22. On examination, court may order the mortgage, sale or leasing, &c., of the real estate.
 23. Time, terms of sale, mortgage, &c., to be fixed by the court, and the application of the proceeds.
 24. Time, terms of sale, &c., to be published; when and how.
 25. Sale to be made at public vendue to the highest bidder; proceedings to be reported to court.
 26. Report to be accompanied by the affidavit of the guardian; what facts it shall contain.
 27. If the report be confirmed, proceedings under it.
 28. If the report be disapproved, proceedings and order of the court.
 29. Deed by guardian not to be made, until ordered by the court.
 30. Conveyance, &c., made by order of court under this act, shall be valid, &c.
 31. Guardian to make settlement of his guardianship, by order of the court, when, &c.
 32. Contract of ward not binding without consent of guardian; money, property, &c., sold or disposed of by ward may be recovered by guardian.
 33. Insane person not to be held to bail, &c.
 34. Suits against insane persons, process to be served on the guardian, proceedings, &c.
 35. When the guardian may apply for an appropriation from the county to support his ward.
 36. What facts shall be contained in a petition to the county court for that purpose.
 37. When court may make an appropriation out of county treasury to support such insane person.
 38. Allowance not to be made for more than one year, and not until the guardian has accounted, &c.
 39. Allegations, verified by oath, that insane person has been restored, &c., facts to be tried by a jury.
 40. If it be found that such person has been restored, he shall be discharged; guardian to settle, &c.
 41. In case of death of insane persons, guardianship to cease &c.; accounts to be settled, &c.
 42. County court shall have power to remove guardian, &c.
 43. When guardian is removed, he shall settle his accounts, and render to his successor the estate and effects of his ward.
 44. County court shall have control over guardians of insane persons; their powers, &c.
 45. When insane person may be confined, duty of court and guardian.
 46. Insane person not confined by his guardian, or if no person have charge of him, duty of a judge of a court of record or two justices of the peace.
 47. Expenses attending such confinement, how to be paid.
 48. Appropriations made out of the county treasury, how and out of whom they may be recovered.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The several county courts within their respective counties shall have power and jurisdiction to appoint and possess a superintending control over guardians, to take the care, custody and management of idiots, lunatics and persons of unsound mind, who are incapable of conducting their own affairs, and their estates, real and personal, and to provide for the safe keeping of such insane persons, and the maintenance of themselves and their families, and the education of their children, in the manner hereinafter directed.

§ 2. If any person shall give information in writing to the county court, that any person in their county is of unsound mind, as in the preceding section is mentioned, and pray that an enquiry thereof be had, the court, if satisfied that there is good cause for the exercise of its jurisdiction, shall cause the person alleged to be insane to be brought before such court, and enquire into the facts by jury.

§ 3. Whenever any justice of the county court, justice of the peace, sheriff, coroner or constable, shall discover any person resident in his county, to be of unsound mind, (as in the first section of this act mentioned,) it shall be his duty to make application to the county court for the exercise of its jurisdiction, and thereupon the like proceedings shall be had, as in the last preceding section is directed.

§ 4. If it be found by the jury that the person so brought before the court is of unsound mind, and incapable of managing his or her own affairs, the court shall appoint a guardian of the person and estate of such insane person.

§ 5. When any person shall be found to be insane, according to the preceding provisions, the costs of the proceeding shall be paid out of his estate, or, if that be insufficient, by the county.

§ 6. If the person alleged to be insane shall be discharged, the costs shall be paid by the person at whose instance the proceeding is had, unless said person be an officer acting officially, according to the provisions of this act, in which case the costs shall be paid by the county.

§ 7. The court may, if just cause appear at any time during the term at which an inquisition is had, set aside the same, and cause a new jury to be empanelled to enquire into facts; but when two juries concur in any case the second verdict shall not be set aside.

§ 8. Every such guardian shall, before entering upon the duties assigned him, enter into bond to the state of Missouri, in such sum and with such security as the court shall approve, conditioned that he will take due and proper care of such insane person, and manage and administer his estate and effects to the best advantage, according to law, and will faithfully do and perform all such other acts, matters and things, touching his guardianship, as may be prescribed by law or enjoined on him by the order, sentence or decree of any court of competent jurisdiction.

§ 9. The court may at any time require of any such guardian to give a new bond or additional security, as the circumstances of the case shall require; and if any order for that purpose be not complied with within a reasonable time to be therein mentioned, the appointment of the guardian may be revoked, and another appointed, who will give the bond and security required.

§ 10. Every bond given by such guardian shall be deposited with the clerk of the court making the appointment, and a copy thereof, duly certified by such clerk, shall be evidence in all respects as the original.

§ 11. It shall be the duty of every such guardian, within thirty days after his appointment, to cause a notice thereof to be published in some newspaper printed in this state, and continue such publication for four weeks successively, or otherwise publish such notice at such time and in such manner as the court shall order.

§ 12. Every such guardian shall take charge of the person committed to his charge, and provide for his support and maintenance as hereinafter directed.

§ 13. It shall be the duty of such guardian to collect and take into his possession the goods, chattels, monies, effects, books and other evidences of debt, and all writing touching the estate, real and personal, of the person under his guardianship.

§ 14. Within three months after his appointment, such guardian shall make out and file in the office of the clerk of the county court by which he was appointed, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits, and effects, so far as the same shall have come to the knowledge of such guardian.

§ 15. Whenever any property belonging to such estate shall be discovered, after the filing any inventory, it shall be the duty of the guardian to file as aforesaid an additional inventory, containing a just and true account of the same, from time to time, as the same shall be discovered.

§ 16. All such inventories shall be made in the presence of, and attested by, two credible witnesses of the neighborhood, and shall be verified by the oath or affirmation of the guardian.

§ 17. It shall be the duty of every such guardian to prosecute all actions commenced at the time of his appointment, or thereafter to be commenced, by or on account of his ward, and to defend all actions pending, or which may be brought against such ward.

§ 18. Every such guardian is authorized and required to collect all debts due or becoming due to his ward, and give acquittances and discharges therefor; to adjust, settle and pay all demands due, and becoming due from his ward, so far as his estate and effects will extend, as hereinafter provided.

§ 19. Every county court by whom any insane person is committed to guardianship, may make order for the restraint, support and safe keeping of such person, for the management of his estate, for the support and maintenance of his family, and education of his children, out of the proceeds of such estate, to set apart and reserve to the use of such family any property, real or personal, not necessary to be sold for the payment of debts; and to let, sell, or mortgage any part of such estate, real or personal, when necessary for the payment of debts, the maintenance of such insane person or his family, or the education of his children.

§ 20. Whenever the personal estate of any such insane person shall be insufficient for the discharge of his debts, the maintenance of himself and his family, or the education of his children, it shall be the duty of the guardian to apply by petition to the court by which he was appointed, praying authority to mortgage, lease or

sell the whole or so much of the real estate of such person, as shall be necessary to supply the sufficiency.

§ 21. The petition shall set forth the particulars, the amount of the estate, real and personal, of such insane person, and of the debts by him owing, accompanied by a full, true, and perfect account of the guardianship of the petitioner, shewing the application of the assets which may have come to his hands.

§ 22. If it appear to the court upon examination of the matter, that the personal estate is insufficient for the purposes above mentioned, and that the assets have been applied as far as the circumstances of the case rendered proper, the court shall make an order, directing the mortgage, leasing or sale of the whole, or such part of the real estate as may be necessary.

§ 23. The court making such order shall direct the time and terms of sale, the mortgage or lease of such estate, and the manner in which the proceeds shall be secured, and the income or produce thereof appropriated.

§ 24. When a sale of real estate shall be ordered, the guardian shall cause notice of the time, place, and terms of sale, a description of the property to be sold, to be published four weeks successively in some newspaper printed in or nearest to the county in which the premises to be sold are situate, and shall, also, put up like notices at six of the most public places in such county, six weeks before the day of sale.

§ 25. Such guardian shall at the time and place appointed for the sale thereof, sell such lands at public vendue, to the highest bidder, and make report of his proceedings to the county court making the order, at the next term thereof.

§ 26. The report shall be accompanied by the affidavit of such guardian, verifying the report, and stating that such guardian did not directly nor indirectly become the purchaser of the property sold, or any part thereof; that the same was not purchased for his use or benefit, and that he is in no wise interested in the purchase thereof.

§ 27. If the court approve the proceedings, the guardian shall execute a deed to the purchaser, reciting the order of sale, and conveying to the purchaser all the estate, right, title and interest of such insane person to the estate sold.

§ 28. If the report be disapproved, the court may set aside the sale, and order all money paid to be refunded, and all securities given to be cancelled, and may renew the order of sale as often as may be necessary, until the proceedings are approved.

§ 29. When the court shall order a lease or mortgage of any estate, no deed or instrument of writing shall be executed for that purpose, until the court shall have approved the agreement made by the guardian under such order.

§ 30. Every conveyance, mortgage, lease and assurance, made under the order of a county court, pursuant to the provisions of this act, shall be as valid and as effectual as if the same had been executed by such insane person, when of sound memory and understanding.

§ 31. Every such guardian shall, once a year, or oftener if thereto required by

the court appointing him, render to such court a just and true account of his guardianship, and make settlement thereof with such court.

§ 32. No contract of any person found to be of unsound mind, as herein-before specified, which shall be made without the consent of his guardian, shall be valid or binding, and such guardian may sue for and recover any money or property which may have been sold or disposed of by his ward, without his consent.

§ 33. No such insane person shall be held to bail, nor shall his body be taken in execution on any civil or penal action.

§ 34. In all actions commenced against such insane person, the process shall be served on his guardian and on judgments against such insane person or his guardian as such, the execution shall be against his property only, and in no case against his body, nor against the body or estate of such guardian, unless he shall have rendered himself liable thereto by false pleading or otherwise.

§ 35. If the estate of any such insane person shall be insufficient to pay his debts, to maintain himself and family, or educate his children, his guardian may apply to the county court of the proper county by petition, setting forth the particulars, and praying for an appropriation from the county treasury for the support of his ward.

§ 36. The petition shall be accompanied by a true and perfect account of the guardianship, an inventory of the estate and effects, and a list of the debts due from such insane person, and shall be verified by the affidavit of the petitioner.

§ 37. If the county court shall be satisfied that such estate and effects are insufficient for the purposes above specified, such court may order such sum to be paid to the guardian, out of the county treasury, as shall be sufficient to provide for the support of such insane person, and cause a warrant to be issued therefor accordingly.

§ 38. But no allowance shall be made at any one time for a period longer than one year; nor shall such order be made at any time unless the guardian shall have duly accounted for and settled with such court for the monies and effects which shall have come to his hands, for the support of his ward, out of the county treasury or otherwise.

§ 39. If any person shall allege in writing, verified by oath or affirmation, that any person declared to be of unsound mind has been restored to his right mind, the court by which the proceedings were had, shall cause the facts to be enquired into by a jury.

§ 40. If it be found that such person has been restored to his right mind, he shall be discharged from care and custody, and the guardian shall immediately settle his accounts, and restore to such person all things remaining in his hands belonging or appertaining to him.

§ 41. In case of the death of any such insane person while under guardianship, the power of the guardian shall cease, and the estate shall descend and be distributed in the same manner as if such person had been of sound mind, and the guardian shall immediately settle his accounts and deliver the estate and effects of his ward to his personal representative.

§ 42. The several county courts shall have power to remove any such guardian at any time, for any neglect of duty, misconduct or mismanagement, or for disobedience to any lawful order, and appoint another in his place.

§ 43. Whenever any such guardian shall be removed from his trust, he shall immediately settle his accounts, and render to his successor the estate and effects of his ward.

§ 44. The county courts, respectively, shall have full power to control the guardian of any such insane person in the management of the person and estate, and the settlement of his accounts, and may enforce and carry into execution their orders, sentences and decrees, in the same manner as a court of chancery.

§ 45. If any person, by lunacy or otherwise, shall be furiously mad, or so far disordered in his mind as to endanger his own person, or the person or property of others, it shall be the duty of his or her guardian or other person under whose care he or she may be, and who is bound to provide for his or her support, to confine him or her in some suitable place, until the next setting of the county court for the county, who shall make such order for the restraint, support, and safe keeping of such person, as the circumstances of the case shall require.

§ 46. If any such person of unsound mind, as in the last preceding section is specified, shall not be confined by the person having charge of him, or there be no person having such charge, any judge of a court of record, or any two justices of the peace, may cause such insane person to be apprehended, and may employ any person to confine him or her in some suitable place, until the county court shall make further order therein, as in the preceding section specified.

§ 47. The expenses attending such confinement shall be paid by the guardian out of his estate, or by the person bound to provide for and support such insane person, or the same shall be paid out of the county treasury.

§ 48. In all cases of appropriations out of the county treasury, for the support and maintenance or confinement of any insane person, the amount thereof may be recovered by the county from any person who, by law, is bound to provide for the support and maintenance of such insane person, if there be any such of sufficient ability to pay the same.

Approved, March 3d, 1835.

INSOLVENT DEBTORS.

An act for the relief of insolvent debtors.

- SEC. 1. Application for relief how made, and to whom.
2. Order to issue to bring applicant before judge, justice or clerk.
 3. If the debtor be not imprisoned, a day for hearing his application to be set.
 4. Schedule to be annexed to and accompany the petition, what the schedule shall contain.
 5. Affidavit to be annexed to the petition, account and inventory, form of the affidavit.
 6. Copy of schedule to be delivered by petitioner to sheriff, together with his property, books, &c.
 7. The same to be certified by the sheriff to the judge, justice or clerks; portion exempt by law from execution to be reserved and set apart to the applicant.

8. Applicant complying with the foregoing provisions, to be discharged from arrest; extent and effect of.
9. Sheriff to be ordered to sell the perishable property; terms of the order; notice to be given by the sheriff.
10. Papers and proceedings had under this act; to be filed by the judge, justice or clerk; when, where, &c.
11. Applicants to publish notice before final hearing and discharge; when, how, &c.
12. Falling to comply with the foregoing provisions, not to be discharged, unless bond be entered into to answer allegations made against him by his creditors.
13. Trustee for the benefit of creditors, may be appointed by the court or judge in vacation.
14. Trustee, before entering on the duties of his office, to take oath and give bond; condition of the bond.
15. On the filing such bond with the clerk, property, &c., of the debtor, to be vested in the trustee.
16. Sheriff to deliver property, &c., in his hands, to the trustee.
17. Trustee may sue for property, &c. vested in him; prosecute and defend suits on behalf of said debtor.
18. Circuit court may order sale of property of the debtor; when, &c.
19. Money arising from the estate of such debtor, how distributed and disposed of by the trustee.
20. Judgments and executions, their lien on the estate of the debtor before application for discharge, &c.
21. Time and place of adjusting demands to be fixed by the trustee; notice to be published.
22. Debtor and creditor may be examined on oath, by the trustee, touching any claim, whose decision shall be final, unless requested to be referred to a jury.
23. In such case, the same to be certified by the trustee to the circuit court, where it shall be tried.
24. Dividends to be made from time to time by the trustee, reserving part to abide claims referred to a jury.
25. Creditors failing to exhibit demands, &c., precluded from any benefit in said estate.
26. Misconduct or insolvency of trustee, duty and power of the court in such case.
27. Compensation of trustee.
28. Money or property of the debtor, after paying debts and expenses, how disposed of.
29. Sheriff to be trustee until one is appointed; sheriff or trustee authorized to administer oath, &c.
30. Creditors may exhibit allegations of fraud, when; proceedings thereon; defendant to be summoned, &c.
31. Summons returned served, defendant not appearing, how the court shall proceed.
32. If the debtor appear, what proceedings shall be had by the court.
33. Debtor found guilty of fraud or deceit, &c., forever deprived of the benefit of this act.
34. Creditors may file allegations against other persons; facts to be alleged.
35. Proceedings on such allegations to be had as in case of the debtor, and determined in the same way.
36. Liability and penalty on such person, if found guilty of fraud or collusion with the debtor.
37. Final discharge how obtained, and effect.
38. If arrested or imprisoned after final discharge, on view of his certificate to be discharged again.
39. On original process under this act, common appearance without bail to be accepted.
40. The estate of the debtor liable for his debts contracted both before and after his discharge.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Any debtor imprisoned, or liable to be imprisoned for debt, may make application in writing to any judge of the supreme court, judge of the circuit court, or justice or clerk of the county court of the county in which he may be, offering to deliver to the use of his creditors all his property, (wearing apparel for himself and family excepted,) and praying to be permitted to take the benefit of this act.

§ 2. The judge, justice, or clerk, shall immediately issue his order in writing, directed to the officer in whose custody such person may be, commanding him to bring such debtor before him on a day therein named, which shall not exceed five days from the date of the order.

§ 3. If the debtor shall not be imprisoned, the judge, justice or clerk shall set a day for hearing such application, not exceeding ten days after the same is made.

§ 4. Every such debtor shall annex to, and deliver with his petition to the officer to whom it shall be presented, a schedule, containing:

First, A full and true account of all his creditors.

- Second,* The place of residence of each creditor, if known to such debtor, and if not, the fact to be stated.
- Third,* The sum owing to each creditor, and the nature of each debt or demand, whether arising on written security, on account, or otherwise.
- Fourth,* The true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued.
- Fifth,* A statement of any existing judgment, mortgage, or collateral or other security for the payment of any such debt.
- Sixth,* A full and true inventory of all the estate, both real and personal, and mixed, in law and equity, of such debtor; of the circumstances existing thereon, and of all the books, vouchers and securities relating thereto.

§ 5. An affidavit, in the following form, shall be annexed to said petition, account and inventory, and shall be sworn to and subscribed by such debtor, in the presence of such judge, justice or clerk, who shall certify the same: "I do swear (or affirm) that the account of my creditors and the inventory of my estate, which are annexed to my petition, and herewith delivered, are in all respects just and true; and that I have not, at any time, or in any manner whatsoever, disposed of or made over any part of my estate for the future benefit of myself or my family, or in order to defraud any of my creditors; and that I have in no instance credited or acknowledged a debt for a greater sum than I honestly and truly owed, and that I have not paid, secured to be paid, or in any way compounded with any of my creditors, with a view fraudulently to obtain the benefit of this act."

§ 6. The petitioning debtor shall deliver to the sheriff of the county, a copy of such schedule, and all his property in possession therein mentioned, together with his books, title papers, evidences of debts, and contracts of every kind whatsoever.

§ 7. The sheriff shall certify the same to the judge, justice or clerk to whom the application is made, who shall thereupon cause to be delivered or reserved to such debtor, such goods, chattels and property as shall, for the time being, be by law exempt from execution.

§ 8. The judge, justice or clerk, as soon as such debtor shall have complied with the foregoing provisions of this act, shall make an order, discharging and exempting such debtor from arrest and imprisonment, until the end of the term of the circuit court next to be holden for such county, after the expiration of six weeks from the date of such order.

§ 9. The judge, justice or clerk, shall make an order, directed to the sheriff, requiring him to sell the perishable property of such debtor, to be specified in such order, and prescribing the terms of sale; and the sheriff shall sell the same, giving twenty days notice of the time and place, in some newspaper, or by advertisement set up in six public places in the county.

§ 10. The judge, justice or clerk, shall cause the papers, and all proceedings had

before him, to be certified and filed in the office of the clerk of the circuit court of the proper county, on or before the first day of the circuit court to be held for such county, next after such proceedings are had.

§ 11. Every petitioning debtor who shall have surrendered his property, and taken the oath by this act prescribed, shall cause a notice of the proceedings had, and of his intention to apply for a final hearing and discharge on a day therein named, to be published in some newspaper printed in, or most convenient to, the county in which he shall reside, for four weeks successively.

§ 12. If any insolvent debtor shall fail to comply with the foregoing provisions of this act, he shall not be discharged from arrest or exempt from imprisonment for any debt contracted before his application, until the final hearing of his application, unless he shall enter into bond with security to the state of Missouri, in a sum to be specified by the court, judge, justice or clerk, conditioned that the said debtor shall appear at the proper term of the circuit court, and then and there answer all allegations which his creditors may make against him.

§ 13. The circuit court, or judge thereof in vacation, may appoint a trustee or trustees for the benefit of the creditors of any petitioning debtor.

§ 14. Every such trustee shall, before entering upon the duties of his office, take an oath faithfully to discharge the duties thereof, and give bond in such amount and with such security as the court or judge may approve, conditioned for the faithful discharge of his duties.

§ 15. Upon filing such bond with the clerk of the circuit court, all the property, and all claims due, or to become due to such debtor, shall be vested in such trustee for the benefit of creditors.

§ 16. The sheriff or other person, in whose hands any property of the insolvent debtor may be, shall deliver the same to such trustee, and also, all books, writings, contracts, title papers, and evidences of debt.

§ 17. The trustee so appointed, may sue for, and recover in his own name, any property or debt assigned to or vested in him by this act, and may prosecute to judgment, any suit commenced by such debtor, and defend all actions arising, or contracts which said debtor might have defended.

§ 18. The circuit court may, from time to time, order the sale of any property of such debtor, in such manner and upon such terms as they shall deem expedient.

§ 19. The money arising from the estate of such debtor, shall be divided among his creditors according to the amount of their respective demands allowed by the trustee, after paying all expenses accruing in the settlement of the estate, and fees of all officers concerned therein.

§ 20. No judgment which shall be entered up, or contract entered into, after the application of the debtor as aforesaid, shall be a lien upon real property, nor shall any execution have any effect upon the real or personal estate of such debtor, except execution actually delivered to the officer to be levied before such application.

§ 21. The trustee shall appoint a day, which shall be at least six, and not more than twelve, months after the application of the debtor, upon which he will proceed,

publicly, to adjust and liquidate the demands against the estate of such debtor; notice thereof shall be given to all concerned, by advertisements published in some newspaper printed in or nearest the county, for two months.

§ 22. The trustee may examine the debtor and creditors, and any other person on oath, touching any claim, and his decision shall be final, unless a creditor or some other person interested, shall, before decision is made on any particular claim, request the same to be referred to a jury.

§ 23. The trustee shall certify all such cases to the circuit court of the county, who shall order the same to be tried on an issue framed for that purpose.

§ 24. The trustee shall, from time to time, make fair and just dividends according to the provisions of this act, reserving a proportionate part of the debtor's estate, to abide the event of the contested claims referred to a jury.

§ 25. All creditors who, after being notified as aforesaid, shall not attend at the time and place of adjusting and ascertaining demands against such estate, and, on oath, lay before such trustee the nature and amount of their demands, shall be precluded from the benefit of said estate.

§ 26. If any trustee shall become insolvent, or shall misbehave in any manner, the court may enquire into the same in a summary way, and shall make such rules and orders as may be necessary; may punish such trustee for contempt, or remove him from office and appoint another.

§ 27. The circuit court may allow to the trustee such compensation as they may deem reasonable, not exceeding ten per centum on the whole amount of the estate.

§ 28. All money and property which may be left out of any debtor's estate, after payment of all debts and expenses, shall be paid to such debtor, his heirs or assigns.

§ 29. Until a trustee shall be appointed, the sheriff of the proper county shall do and perform all the duties enjoined by this act, and shall be subject to the like proceedings as trustees are; and the trustee or sheriff is authorized to administer all oaths required to be taken or made before them as trustees.

§ 30. If any creditor, at or before the time appointed for the final hearing of any debtor's application for a discharge under this act, or within two years thereafter, shall allege on oath, and in writing, to the court to which such application is made, if before final discharge, and if after, then to any court within whose jurisdiction such debtor may be found, either of the following facts,

First, That the said creditor hath, directly or indirectly, sold, conveyed, concealed, or otherwise disposed of, or purchased in trust for himself or any person, any part of his property, or any part of his debts, rights or claims, with intent to deceive or defraud his creditors, or to secure the same, or to receive or expect any profit or advantage thereby.

Second, That he has passed bonds or other evidences of debt, either without consideration, or on improper consideration; or,

Third, If he hath assigned, conveyed or delivered any of his property, or any of his debts, rights or credits, to any other person, with intent of taking the benefit of this act; or,

Fourth, If he give any undue or improper preference to any creditor, or to any security, the clerk of the court before whom such allegations are filed, shall issue a summons, requiring the debtor to appear and answer such allegations.

§ 31. Upon a return of the summons served, the court, if the debtor do not appear, shall direct an issue or issues to be made up and tried by a jury in a summary way, without the form of an action, to determine the truth thereof.

§ 32. If such debtor appear, the court may, at the election of the creditor filing allegations, require the debtor to answer interrogatories touching the matter alleged against him on oath, or direct an issue to be made up and tried in a summary way, to determine the truth of the same.

§ 33. Any debtor who shall be found guilty of any fraud or deceit, or of having given any undue preference as aforesaid, shall be forever deprived of the benefit of this act.

§ 34. Any creditor may, in like manner, file allegations in writing against any other person, alleging either of the following facts:

First, That such debtor hath, directly or indirectly, conveyed or disposed of, or intrusted to such person, any property, or any part of his debts or effects, rights or claims, with intent to deceive or defraud his creditors, or to secure the same, or any profit or advantage to such debtor; or,

Second, That he has received bonds or other evidences of debt, either without consideration, or on improper consideration; or,

Third, That such debtor hath conveyed or delivered to such person, by his collusion, any property, goods, debts, rights or claims, or the evidence thereof, with the intent to conceal or secure the same from his creditors.

§ 35. The proceedings in such allegations shall be had in the same manner as against the debtor, and determined in the same way.

§ 36. If such person, upon answer to interrogatories or by verdict, shall be found guilty of any fraud or deceit, or collusion therein, with any debtor, he shall pay to the creditors filing the allegations, the whole amount due to them by the debtor, with costs of suit, and shall be liable in like manner to pay all other creditors; and if himself a creditor, shall lose his debt, and be excluded from all distribution.

§ 37. Upon the final hearing of any petitioning debtor's application, if no fraud be established, and he shall have complied with the provisions of this act, the court shall grant him a certificate of final discharge, and exemption from arrest and imprisonment for all contracts, debts, judgments and liabilities of whatsoever nature, contracted or entered into before the application, which certificate shall be attested under the seal of the court.

§ 38. If any such discharged debtor shall thereafter be arrested or imprisoned, on any process served out on any judgment or decree obtained, or for any debt,

damages or costs due, or upon any contract entered into before such application, he shall be discharged upon application to any judge or justice of the peace, upon view of such certificate.

§ 39. The court before whom such original process shall be returnable, shall accept common appearance to the action without bail.

§ 40. The estate, property and effects of such debtor, at the time of his discharge, and all which he shall thereafter acquire, shall be liable to execution for the payment of debts contracted before and after such discharge.

Approved, March 14th, 1835.

INTEREST.

An act regulating interest of money.

SEC. 1. When no rate of interest is agreed upon, six per cent the legal interest.

2. Special contract may be made for payment of interest, not to exceed ten per cent.

3. Judgments and decrees shall bear the same interest, if more than six per cent, that is borne by such contracts; other judgments and decrees to bear six per cent.

4. If more than legal interest be contracted for, what facts and how the defendant may plead; proceedings and effect of, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Creditors shall be allowed to receive interest at the rate of six per centum per annum, when no other rate of interest is agreed upon, for all monies after they become due by any instrument of the debtor in writing, or money lent, or money due on settlement of accounts, from the day of liquidating accounts and ascertaining the balance; on money received for the use of another, and retained without the owner's knowledge of the receipt; on money due and withheld by an unreasonable and vexatious delay of payment or settlement of accounts; and on all other money due or to become due, for the forbearance of payment whereof an express promise to pay interest has been made.

§ 2. The parties may agree in writing for the payment of interest, not exceeding ten per centum per annum, on money due or to become due upon any contract.

§ 3. Interest shall be allowed on all money due by judgment at law, or decrees in equity, from the day of rendering them until satisfaction be made by payment, or sale of property; judgments and decrees for money, upon contracts bearing more than six per cent. interest, shall bear the same interest borne by such contracts, and all other judgments and decrees for money, shall bear six per centum per annum until satisfaction made as aforesaid.

§ 4. No person shall, directly or indirectly, take for the use or loan of money or other commodity, above the rates aforesaid, for the forbearance or use of one hundred dollars, or the value thereof, for one year; and if any person shall, directly or indirectly, receive any obligation, promise, money or other commodity, as a pre-

mium or reward, or by any other name, to the end of obtaining any higher rate of interest than before provided, on any contract which shall hereafter be made, and shall institute a suit upon such contract, it shall be lawful for the defendant in the suit to set forth the special facts in pleading, as a bar of so much of the real sum of money, or price of the commodity, actually due, lent, advanced or sold, as shall be the amount of such premium, reward or sum so received or secured, above the rates aforesaid; and if the plea of the defendant be sustained, the plaintiff shall recover no more than the remainder of the amount really due, after deducting such premium, or excessive reward or interest, without allowing any interest on the principal; and if the premium, or usurious interest and costs, exceed the principal or real sum of money, or price of the commodity actually due, lent, advanced or sold, the excess shall be deemed a debt of record, upon which the defendant may, on motion, have judgment.

Approved, December 11th, 1834.

JAILS AND JAILORS.

An act concerning jails and jailors.

- Sec. 1. Jail to be kept in good and sufficient repair at the county seat of each county.
2. Sheriff to have the custody and keeping of the jail; may appoint a jailor; liable for his acts.
3. Sheriff and jailor to receive prisoners and persons committed to jail; refusal deemed a misdemeanor, punishable by fine.
4. Debtors and criminals to be confined in different rooms, if practicable.
5. Female prisoners to be kept separate and apart from male prisoners.
6. Convicts to pay expenses of commitment and support in prison; property bound therefor from the time of commitment; may be sold by order of court.
7. Prisoners detained for fine and costs only, may be discharged; how.
8. Before his discharge, he shall take the oath of an insolvent debtor; proceedings thereon.
9. Poor prisoners in criminal cases, how provided for.
10. Expenses of criminal prisoners before and after conviction, how to be paid.
11. Prisoners, (except convictions for felonies,) to have certain liberties.
12. Grand juries to examine jails and make report thereof at each term of the court.
13. Duty of the circuit court at each term, to inquire and see that criminals are humanely treated.
14. Prisoner for debt to be maintained by plaintiff, if unable to maintain himself.
15. If the plaintiff refuse to pay for maintenance, sheriff may discharge the prisoner; when.
16. Plaintiff may recover amount of fees paid for maintenance from defendant; when and how.
17. Keepers of jail to receive prisoners committed under authority of United States.
18. Liability of jailors on failure of duty in case of United States prisoners.
19. United States to pay for use of jails, jailor's fees, &c.
20. Duty of the sheriff when jail is out of repair; duty of the court in such case; allowance may be made by the court for deputy jailor; when.
21. Such deputy to be appointed by the sheriff, and removable by him at pleasure.
22. Guard may be employed to guard prisoners if jail is insufficient; when, how, &c.
23. Expenses of said guards, how audited and paid.
24. If there is no jail, or insufficient one, prisoner may be committed to the jail of some other county.
25. Prisoner committed to jail of a different county, notice to be given to the judge; to be removed for trial by *habeas corpus*.
26. Sheriff or keeper of the jail to obey the writ of *habeas corpus*.
27. Sheriff or keeper failing to obey the writ, punishable as for contempt; to be fined, and liable to the prisoner for damages.

Sec. 28. Sheriff or keeper of the jail, may also be removed from office at the discretion of the court.

29. Fees of sheriff for committing prisoner or executing writ of *habeas corpus*.

30. Prisoners committed from another county, how expenses paid.

31. Sheriff may be imprisoned in the jail of his own county.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. There shall be kept and maintained in good and sufficient condition and repair, a common jail in each county within this state, to be located at the permanent seat of justice for such county.

§ 2. The sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, and of all prisoners in such jail, and may appoint a jailor under him, for whose conduct he shall be responsible.

§ 3. It shall be the duty of the sheriff and jailor to receive from constables and other officers, all persons who shall be apprehended by such constables or other officers, for offences against this state, or who shall be committed to such jail by any competent authority; and if any sheriff or jailor shall refuse to receive any such person or persons, he shall be adjudged guilty of a misdemeanor, and, on conviction, shall be fined at the discretion of the court.

§ 4. It shall not be lawful for any sheriff or jailor to confine or keep debtors or criminals together in the same room, but they shall be confined and kept separate and apart from each other, in distant rooms, when practicable.

§ 5. Female prisoners shall in like manner be confined and kept in apartments separate and apart from male prisoners.

§ 6. Every person who shall be committed to the common jail within any county in this state, by lawful authority, for any offence or misdemeanor, if he shall be convicted thereof, shall bear the expense of carrying him or her to the said jail, and also of his or her support while in jail, before he or she shall be discharged; and the property of such person shall be subjected to the payment of such expenses, and shall be bound therefor, from the time of his commitment, and may be levied on and sold, from time to time, under the order of the circuit court, to satisfy such expenses.

§ 7. The attorney prosecuting for and on behalf of the state in such county, may, by and with the advice and consent of the circuit court, discharge from imprisonment any person convicted of an offence below the grade of felony, and holden only for the payment of fine and costs, who hath no property or means of satisfying the same.

§ 8. Before any such person shall be discharged, he shall take the oath, and surrender his property and effects, as required by law in the case of insolvent debtors; and the property and effects which may be surrendered, shall be first applied to the payment of the fine and costs for which he was imprisoned.

§ 9. Whenever any person, committed to jail upon any criminal process under any law of this state, shall declare on oath that he is unable to buy or procure necessary food, the sheriff or jailor shall provide such prisoner with food, for which he shall be allowed a reasonable compensation, to be fixed by law; and if from the inclemency of the season, the sickness of the prisoner, or other cause, the sheriff

shall be of opinion that fuel, additional clothes or bedding, are necessary for such prisoner, he shall furnish the same, for which he shall be allowed a reasonable compensation.

§ 10. The expenses of imprisonment of any criminal prisoner, such as accrued before conviction, shall be paid in the same manner as the other costs of prosecution are directed to be paid, and those which accrue after conviction, shall be paid as is directed by the act regulating criminal proceedings.

§ 11. Every sheriff and jailor, and other person or persons whatsoever, to whose custody or keeping any person or persons shall be committed by virtue of any writ or process, or for any criminal offence, except on conviction for felony, shall permit and suffer him, her or them so committed, at his, her or their will and pleasure, to send for and have any necessary drink or food, from what place, and whom they please, and also to have and use such bedding, linen and other things, as he, she or they shall think fit, without detaining the same, or any part thereof, or enforcing or requiring him, her or them to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her or them in using thereof, or relating thereto.

§ 12 It shall be the duty of the grand jury at each term, or a committee to consist of at least three members thereof, to visit the jail of their county, and examine the condition thereof, and enquire into the treatment of the prisoners and make report thereof to the court.

§ 13. It is hereby made the special duty of the circuit court, at each term, to enquire and see that all prisoners, civil and criminal, are humanely treated.

§ 14. When any person is confined in jail on execution or mesne process, or on surrender by his bail in any civil suit, and property or money of the person imprisoned cannot be found sufficient to pay for his maintenance, the plaintiff, at whose suit such person may be imprisoned, shall pay for his maintenance at the rate of twenty-five cents per day, to be paid to the sheriff or jailor, to furnish such prisoner with provisions, to the full amount thereof.

§ 15. In case the said plaintiff shall refuse, by himself, agent or attorney, to pay the money as aforesaid, and shall be in arrear for two weeks, the sheriff or jailor may discharge the prisoner, and recover the same, together with his costs, before any justice of the peace having jurisdiction thereof, in the same manner as other debts are collected before a justice of the peace.

§ 16. The plaintiff shall always be entitled to recover from the debtor in an action of debt, or on promise, the full amount of such money he may have paid for his maintenance, out of any property that he may thereafter possess.

§ 17. It shall be the duty of the keeper of the jail in every county within this state, to receive into his custody any prisoner or prisoners who may be, from time to time, committed to his charge, under the authority of the United States, and to safely keep every such prisoner or prisoners, according to the warrant or precept of such commitment, until he or they shall be discharged by due course of laws of the United States.

§ 18. The keeper of every jail aforesaid, shall be subject to the same pains and

penalties, for any neglect or failure of duty herein, as he would be subject to by the laws of this state for the like neglect or failure in the case of a prisoner committed under the authority of the said laws.

§ 19. The United States shall pay for the use and keeping of such jails, at the rate of one dollar per month for each person that shall, under their authority, be committed thereto, and also to the jailer such fees as he would be entitled to for like services rendered in virtue of the existing laws of this state, during the time such prisoner shall be therein confined, and shall support such of said prisoners as shall be committed for offences.

§ 20. Whenever the sheriff of any county in this state shall be of opinion that the jail of his county is insufficient to secure the prisoners that shall be confined therein, it shall be his duty to give notice thereof to the county court, and the said court, if they cannot immediately repair the same, may, if they deem it expedient, allow any sum not exceeding one hundred and fifty dollars per annum for the pay of a deputy jailor.

§ 21. Such deputy shall be appointed by the sheriffs, and shall be under their sole direction, and be removable by them at pleasure.

§ 22. Whenever any sheriff shall have in his custody any person or persons charged with any felony of this state, and the jail of his county shall be insufficient, or if there shall be no jail in his county, he may, with the sanction of any of the judges of the circuit, or any two justices of the county court of his county, employ a guard sufficient for the guarding and safe keeping of such prisoner or prisoners in his own county; the said guard not to exceed, however, in any instance, more than three persons.

§ 23. The expenses of said guard to be audited and paid as other county expenses.

§ 24. It shall be lawful for the sheriff of any county of this state, when there shall happen to be no jail, or where the jail of such county shall be insufficient, to commit any person or persons in his custody, either on civil or criminal process, to the nearest jail of some other county; and it is hereby made the duty of the sheriff or keeper of the jail of said county, to receive such person or persons so committed as aforesaid, and him, her or them safely keep, subject to the order or orders of the circuit judge for the county from whence said prisoner was brought.

§ 25. It shall be the duty of the sheriff, so committing any person or persons as aforesaid for any criminal offence, forthwith to notify the circuit judge for the circuit where such person or persons so committed is or are to be tried, of the committing of such person or persons to the jail of such other county, and transmit, at the same time, to such circuit judge, a copy of the day and cause of the caption and detention of such person or persons; whereupon it shall be the duty of such circuit judge, within fifteen days next preceding the first day of the circuit court of the county where such person or persons is or are to be tried, to issue a writ or writs of *habeas corpus*, directed to the sheriff or keeper of the jail of the county where such person or persons is or are committed, commanding him or them to have the body or bodies of such person or persons thus committed, together with

the day and cause of his, her or their caption and detention, before the circuit court of the said county for the trial of such offences, on the first day of the next term of the said court.

§ 26. It shall be the duty of the said sheriff or keeper of the jail, to bring, or cause to be brought, the said person or persons thus committed as aforesaid, on the day and at the place mentioned in the said writ.

§ 27. Any sheriff or keeper of the jail as aforesaid, failing or neglecting to make return as aforesaid, and to bring the body or bodies of such person or persons according to the command in the said writ, shall be deemed guilty of a contempt to the said court, and shall be liable to be attached and be committed to the jail of the county, there to remain, without bail or mainprize, until he shall obey said writ; and shall, moreover, forfeit to the prisoner or party grieved, a sum not exceeding five hundred dollars, to be apportioned according to the nature, aggravation, and circumstances of the case, and the injury which the party aggrieved may sustain thereby, to be recovered by the prisoner or party grieved, his executors or administrators, in an action on the case, founded upon this statute.

§ 28. The said sheriff or keeper of the jail may, also, in the discretion of the said court, be removed from office, and rendered incapable of holding or executing the same thereafter.

§ 29. The sheriff, for committing any prisoner as aforesaid, or for executing any writ of *habeas corpus* under this act, shall be entitled to the like fees as are provided by law for similar services.

§ 30. In all cases where a person is committed from another county, for a criminal offence under this act, such county, or the prisoner, or the state, shall pay the expenses in the same manner as if the commitment had been in the county where the offence was committed; and in civil suits, the plaintiff or defendant shall pay the expenses in the same manner as if the imprisonment had taken place in the county where the suit was commenced.

§ 31. The sheriff may be imprisoned in the jail of his own county, and, for the time that he shall be confined, the coroner shall have the custody, rule, keeping and charge of the said jail, and shall, by himself and his sureties, be answerable for the faithful discharge of his duties in that office.

Approved, February 26th, 1835.

JUDGMENTS AND DECREES.

An act regulating judgments and decrees.

- Sec. 1. Lien of judgments and decrees in the supreme court, extent of
 2. Lien of judgments and decrees in the circuit and county courts, extent of.
 3. Lien shall commence from the rendition of the judgment or decree, and continue for three years, subject to be revived.
 4. Sale under junior judgment, shall pass the title, subject to prior liens.
 5. Money arising from such sale, how applied.

- SEC. 6.** Plaintiff, or his legal representative, may sue out a *scire facias* to revive judgment or decree.
7. *Scire facias* upon whom to be served, how directed and executed.
 8. If defendant cannot be found, order of publication to be made.
 9. The order shall be published in some newspaper; when and how.
 10. Upon service or publication of the *scire facias*, &c., judgment or decree to be revived.
 11. If one or more plaintiffs die, judgment survives, when to the executor, &c., and when to the heir.
 12. In each of the preceding cases, how execution may be sued out.
 13. If several defendants, and some die, judgment, &c., survives, and against whom.
 14. How execution may be issued in each of the cases mentioned in the preceding section.
 15. How such judgments or decrees may be revived.
 16. Executions in such cases, how they may be sued out.
 17. Executor or administrator who is a party, die, &c., judgment, &c., revived against the administrator *de bonis non*.
 18. Plaintiff receiving satisfaction, to acknowledge the same; in what manner.
 19. Satisfaction may be entered by the plaintiff, his attorney of record, or agent.
 20. If made before the court to be entered on the record; if in vacation, how to be done.
 21. If made by an agent, his authority to be filed with the clerk.
 22. Acknowledgment so made, shall forever discharge the judgment or decree.
 23. If a person receiving satisfaction refuses, after request, to acknowledge the same, on notice given, party may apply to the court to have satisfaction entered.
 24. Court may order satisfaction to be entered; effect of.
 25. Costs attending the same by whom paid, and how recovered.
 26. In recording judgments and decrees, margin to be left.
 27. What entries to be made thereon by the clerk.
 28. Docket of judgments and decrees to be kept by the clerk.
 29. Clerk to enter therein all final judgments and decrees; when and how.
 30. What facts such docket shall contain, and how entered and noted.
 31. Penalty on the clerk for failing to comply with the provisions of the four preceding sections.
 32. Decree for conveyance of land to be recorded in the recorder's office, &c.
 33. Construction of the term "real estate," as used by this act.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Judgments and decrees obtained in the supreme court, shall, upon the filing of a transcript thereof in the circuit court of any county in the judicial district for which the court is held, be a lien on the real estate of the person against whom such judgment or decree is rendered, situate in the county in which such transcript is filed.

§ 2. Judgments and decrees rendered by the circuit and county courts shall be a lien on the real estate of the person against whom they are rendered, situate in the county for which the court is held.

§ 3. Liens shall commence on the day of the rendition of the judgment or decree, and shall continue for three years, subject to be revived as hereinafter provided.

§ 4. The sale of lands under a junior judgment, shall pass the title of the defendant subject to the lien of all prior judgments or decrees then in force.

§ 5. The money arising from such sale shall be applied to the payment of the judgment under which it may have been made.

§ 6. The plaintiff, or his legal representative, may, at any time before the expiration of the lien, sue out a *scire facias* to revive the same.

§ 7. The *scire facias* shall be served on the defendant or his legal representatives, terre-tenants or other person occupying the land, and may be directed to, and executed in, any county in this state.

§ 8. If the defendant cannot be found, the court may make an order, setting forth briefly the nature of the case, and requiring all persons interested to shew cause why such judgment or decree should not be revived, and the lien continued, on or before the third day of the next term of such court.

§ 9. The order shall be published in some newspaper printed in this state, for three weeks, the last insertion to be two weeks before the commencement of the term at which the parties are required to appear.

§ 10. If upon service or publication of the *scire facias*, the defendant, or any of his creditors, do not appear and shew cause against reviving the judgment or decree, the same shall be revived, and the lien continued for another period of two years, and so on, from time to time, as often as may be necessary.

§ 11. If one or more plaintiffs in a judgment or decree shall die, before the same is satisfied or carried into effect, the judgment or decree, if for money, or concerning personal property, shall survive to the executors or administrators of such deceased party, and if concerning real estate, to his or their heirs or devisees.

§ 12. In each of the preceding cases, execution may be sued out in the name of the surviving plaintiff or plaintiffs, for the benefit of himself or themselves, and the legal representatives of the deceased party; or the judgment or decree may be revived in the name of such legal representatives and surviving plaintiffs, and execution sued out by them jointly.

§ 13. Where there are several defendants in a judgment or decree, and some of them die before the same is satisfied or carried into effect, the judgment or decree, if for money or personal property, shall survive against the executors or administrators of such deceased party; and if concerning real estate, against his heirs or devisees.

§ 14. In each of the cases mentioned in the preceding section, execution may be issued in the name of the surviving plaintiff or plaintiffs, for the benefit of himself or themselves, and the legal representatives of any deceased plaintiff or plaintiffs, or in the name of the surviving plaintiff or plaintiffs, and the representatives of any deceased plaintiff or plaintiffs, against any surviving defendant or defendants.

§ 15. Such judgment or decree may be revived against the representatives of any or all such deceased defendants, by *scire facias*, in the name of the surviving plaintiff, and the representatives of such as are deceased.

§ 16. Executions may be sued out against the surviving defendant or defendants and the representatives of such deceased defendants, or such of them as are made parties jointly.

§ 17. If an executor or administrator be plaintiff or defendant in a judgment or decree, and shall die, resign or be dismissed before the same is satisfied or carried into effect, the judgment or decree may be revived by or against the administrator, *de bonis non*, in manner aforesaid.

§ 18. When any judgment or decree is satisfied otherwise than by execution, the party in whose favor the same was rendered shall, immediately thereafter, enter an acknowledgment of satisfaction thereof in the court where the same was obtained, or before the clerk of such court in vacation.

§ 19. Satisfaction may be entered by the plaintiff in person, by his attorney of record, or by his agent, duly authorized in writing, under the hand and seal of the plaintiff.

§ 20. If the acknowledgment is made in court, it shall be entered of record; if made before the clerk in vacation it shall be entered on the minutes, signed by the party making it, and attested by the clerk.

§ 21. When made by an agent, his authority shall be filed in the office of the clerk of the court where the acknowledgment is made.

§ 22. The acknowledgment so made, shall forever discharge and release the judgment or decree.

§ 23. If a person receiving satisfaction of a judgment or decree, shall refuse, within a reasonable time after request of the party interested therein, to acknowledge satisfaction on the record, or cause the same to be done, in the manner pointed out by this act, the person so interested may, on notice given, apply to the court to have the same done.

§ 24. The court may thereupon order the satisfaction to be entered by the clerk, with the like effect as if acknowledged as aforesaid.

§ 25. The costs attending the same shall be recovered of the party refusing, by execution, as in other cases.

§ 26. The clerks of courts of record, in recording judgments or decrees, shall leave a space or margin on the record, for entering a memorandum of the satisfaction or setting aside of such judgment or decree.

§ 27. When satisfaction of a judgment or decree shall be acknowledged, or entered by order of the court, or satisfaction shall be made by execution, or such judgment or decree shall be set aside, the clerk shall enter upon the margin of the judgment or decree, a memorandum of the disposition thereof, the date, the book and page in which the evidence is entered or recorded.

§ 28. The clerks of courts of record shall keep in their several offices, a well bound book, for entering therein an alphabetical docket of all judgments and decrees.

§ 29. They shall, during every term, or within thirty days thereafter, enter in such docket all final judgments and decrees rendered at such term, in alphabetical order, by the name of the person against whom the judgment or decree was entered.

§ 30. Such docket shall contain, in columns ruled for that purpose, 1. The name of the parties. 2. The date. 3. The nature of the judgment or decree. 4. The amount of the debt, damages and costs. 5. The book and page in which it is entered. 6. A blank column for entering a note of the satisfaction or other disposition thereof.

§ 31. Any clerk failing to comply with the provisions of the four preceding sections, shall forfeit and pay any sum not exceeding one hundred dollars, at the discretion of the court of which he is clerk, for the use of the county.

§ 32. In all cases where any court of chancery shall decree a conveyance of real estate, or that any real estate pass, the party in whose favor the decree is established, shall cause a copy thereof to be recorded in the office of the recorder

of the county wherein the lands passed or to be conveyed lie, within one year after such decree or conveyance is made; and if such decree be not so-recorded, it shall be void as to all subsequent purchasers, without notice.

§ 33. The terms "real-estate," as used in this act, shall be construed to include all estate and interest in lands, tenements and hereditaments, liable to be sold upon execution.

Approved, March 19th, 1835.

JURORS.

An act concerning grand and petit jurors.

- Exc. 1.** Courts may direct jurors to be summoned.
2. Qualification of grand jurors.
 3. Grand jurors to be summoned six days before the term; how and by whom summoned.
 4. Non-attendance of grand juror after he is qualified, others to be sworn.
 5. Grand juror may be indicted by the jury of which he is a member; proceedings.
 6. Qualification of petit jurors.
 7. Grand or petit juror, when he may be challenged and discharged for want of qualification.
 8. Exception not to be allowed after the jury are sworn.
 9. Who exempt from serving.
 10. Service to be equalized; persons of ill-fame, &c., to be avoided; grand juror not to serve on petit jury at the same term.
 11. Penalty for non-attendance, unless a satisfactory excuse be offered.
 12. Penalty on officers receiving reward to excuse any person from service.
 13. Peremptory challenge allowed; eighteen jurors to be returned, if required.
 14. Court has power to order a special jury; duty of the sheriff, and right of the parties in such case.
 15. When and under what circumstances elisor to be appointed by the court; his duties and compensation.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. All courts before whom juries are required, may order the sheriff or other officer to summon a sufficient number of jurors.

§ 2. Every grand juror shall be a citizen of the state, resident in the county, over twenty-one years of age, be a house-holder or freeholder, and otherwise qualified.

§ 3. Every grand juror shall be summoned by the civil officer, either personally, or by a writing left at the dwelling of such juror, six days before the first day of the court.

§ 4. In case of the non-attendance of any grand juror, after he shall have been qualified, the court may cause another to be sworn.

§ 5. Any grand juror may be indicted or presented by the grand jury of which he is a member; but when any complaint shall be lodged against any grand juror, the foreman shall inform the prosecuting attorney of the same, and if on examination there are grounds for proceeding against such juror, he shall inform the court thereof, and the court shall discharge the juror and cause another to be sworn, if necessary.

§ 6. Every petit juror shall be a free white male citizen of this state, resident in the county, above the age of twenty-one years, and not otherwise disqualified.

§ 7. If any person be summoned as a grand or petit juror, who is not qualified as required by law, he may be challenged and discharged, upon such challenge being verified according to law, or by his own oath.

§ 8. No exception against any juror, on account of his citizenship, non-residence, state or age, or other legal disability, shall be allowed after the jury are sworn.

§ 9. No person exercising the functions of a clergyman, practitioner of physic, attorney at law, clerk or other officer of a court, ferry-keeper, overseer of a road, constable, or judge of any court of record, or any person above the age of sixty-five years, shall be compelled to serve on a jury.

§ 10. Service on juries shall be equalized, as nearly as practicable, among the citizens liable to be summoned on juries; and all officers shall avoid persons of ill fame, or those who are under the undue influence of either party, and grand jurors shall not be compelled to serve on a petit jury during the same term.

§ 11. If any person, summoned as a grand or petit juror, fail to attend, he shall be fined not exceeding ten dollars, unless a satisfactory excuse be offered.

§ 12. If any civil officer, directly or indirectly, take, accept or receive any money, reward or other thing to excuse any person from serving or being returned to serve on any jury, or under that pretence, he shall forfeit one hundred dollars for every such offence, one half to the state, and the other half to the party suing for the same, to be recovered with costs, by an action of debt, in any court having cognizance thereof.

§ 13. In all civil and criminal trials by jury, either party may challenge, peremptorily, three jurors, and either party may require the officer to return eighteen in the first instance.

§ 14. The court shall have power to order a special jury for the trial of any civil cause; in such case the sheriff shall summon eighteen jurors, according to the order of the court, and make out and deliver to each party or his attorney, a list of the jury so summoned, and each party shall have the right to strike off three of the names on such list.

§ 15. If any party to a cause, his attorney or agent, shall make affidavit that he fears said party will not have a fair and impartial jury to try said cause, on account that the sheriff and coroner are personally unfriendly to, or prejudiced against, the said party, or his attorney in said cause, it shall and may be lawful for the court before which such cause is pending, to appoint some disinterested and impartial person, who shall act as elisor, and proceed to summon a fair and impartial jury, for which service he shall receive the same compensation as now is, or hereafter shall be, allowed to sheriffs for summoning special juries.

Approved, March 17th, 1835.

JUSTICE OF THE PEACE.

An act to provide for the election of justices of the peace, and to prescribe their powers and duties.

- Sec. 1. Not exceeding four to be elected in each township, except, &c.
2. Clerk of a circuit court, or his deputy, not eligible.
 3. Justice in office, to remain till his commission expire, and his successor elected and qualified.
 4. Vacancies to be filled by election; by whom ordered, &c.
 5. Who eligible to the office of justice of the peace.
 6. By whom commissioned, and the tenure of their offices.
 7. In the order for holding an election, time and place, and vacancy to be filled, to be specified.
 8. Order and notice of election to be put up in the township; when and how.
 9. Elections, how conducted; returns of, how made.
 10. In case of a tie or contested election, how decided.
 11. Duty of the county court when they ascertain who are elected; certificate of election, how made out, to be delivered, &c.
 12. Clerk to endorse on the back of certificate, that the same to be void if the justice do not qualify, &c.
 13. Justice to qualify, and take oath, within twenty days, &c.; form of the oath.
 14. Certificate and oath to be recorded; when and where; what deemed an acceptance and what a refusal of the office.
 15. Clerk to certify to the governor the acceptance of commission by the justice; when.
 16. When a township is divided, effect of, on justice of the original, who falls in the new township.
 17. In what cases justices have power and jurisdiction throughout the counties.
 18. Failing to give security if required, under the preceding section, may be committed.
 19. Recognizance taken for keeping the peace, or good behavior, to be certified to court.
 20. Justice not to act as such until his commission has been recorded.
 21. Penalty for acting in violation of the preceding section; and all acts void.
 22. Cases in which a justice may punish as for contempt.
 23. Punishment as for contempt; what it shall be.
 24. Not to be punished until the party is heard in his defence; warrant may issue, &c.
 25. Record of proceeding on conviction for contempt, to be made up; how.
 26. Warrant of commitment for contempt; what facts to contain.
 27. Power of justices to grant subpoenas for witnesses to the circuit or county court, &c.
 28. Also for witnesses before referees, arbitrators, and taking depositions.
 29. Convicted of infamous crimes, shall be removed from office.
 30. Resignation; how made and addressed.
 31. Resigning, or other disqualification, docket papers, &c., to be delivered to the clerk.
 32. Clerk to give person delivering the same a receipt, and the same to be delivered to some other justice of the township.

Be it enacted by the general assembly of the state of Missouri, as follows.

§ 1. Each municipal township in this state shall be entitled to four justices of the peace, (except when an additional number is allowed by law,) to be elected and commissioned in the manner hereinafter provided.

§ 2. No clerk of the circuit court, or his deputy, shall hold or exercise the office of justice of the peace.

§ 3. Each justice of the peace now in office, shall continue to act as such until the expiration of his commission, and until his successor shall be duly elected and qualified.

§ 4. Whenever a vacancy shall occur in the office of justice of the peace, the same shall be filled by election, and to that effect the county court, or the clerk thereof in vacation, shall immediately order an election to be held by the township in which such vacancy shall have occurred, for the purpose of filling the same.

§ 5. No person shall be eligible to the office of justice of the peace, who is not a citizen of the United States, who shall not have been an inhabitant of this state twelve months, and of the township for which he is chosen six months next before his election, if such township shall have been so long established; but if not, then of the township from which the same shall have been taken.

§ 6. Justices of the peace are to be commissioned by the county court, and shall hold their offices for four years, and until their successors are elected and qualified.

§ 7. The court or clerk, when making an order for an election, shall specify the time and place of holding the same, and what vacancy is to be filled.

§ 8. The court shall cause such order to be put up, at least fifteen days before the election, in three public places in the township, together with a notice requiring the qualified voters of such township to attend at the time and place mentioned, and vote for some person to fill the vacancy.

§ 9. The election of justices of the peace, shall in all, respects, be conducted as other elections, and the returns made as for other state officers.

§ 10. Whenever two or more persons shall have an equal number of votes for justice of the peace for any township, or there is a contested election, the county court shall decide the same.

§ 11. The county courts, as soon as they ascertain who are elected to act as justices of the peace in their respective counties, shall cause certificates thereof to be made out, and; under the seal of the court, signed by the president, and witnessed by the clerk, who shall immediately cause the same to be delivered to the persons entitled thereto.

§ 12. The clerk shall endorse on the back of every certificate that the person, for whom it is intended, shall qualify according to law, within twenty days after the receipt of the same, and in default thereof such certificate shall be void.

§ 13. Every justice of the peace, shall, within twenty days after the receipt of his certificate of election, take an oath to support the constitution of the United States, and of this state, and faithfully demean himself in office.

§ 14. Every person who receives a certificate of election as a justice of the peace, shall, within thirty days thereafter, and before entering upon the discharge of his duties, cause the same, together with the oath required by this act endorsed thereon, to be recorded in the office of the clerk of the county court, which shall be deemed an acceptance of such appointment; and in case of his failing so to do, it shall be deemed a refusal thereof.

§ 15. The clerk of the county court, when he records the certificate of election of any justice of the peace, in the manner pointed out by this act, shall certify to the governor the acceptance of such commission.

§ 16. When a township shall be divided, and any justice of the peace of the original township shall fall into the new township, he shall continue to discharge the duties of justice of the peace, until his commission expire, as if the township had not been divided.

§ 17. Justices of the peace shall have power and jurisdiction throughout their respective counties, as follows:

First, Jointly and severally, to cause to be kept, all laws made for the preservation of the peace.

Second, To cause to come before them, or any of them, persons who break the peace, and commit them to jail, or bail them, as the case may require.

Third, To arrest and cause to come before them, persons who attempt to break the peace, or who are not of good fame, and compel them to give security for their good behavior, or to keep the peace, or both.

§ 18. If such persons refuse to give security, they shall be committed to prison until they find the same.

§ 19. Every recognizance so taken for the keeping of the peace, or for good behavior, shall be certified to the next circuit court of the county.

§ 20. No person commissioned as justice of the peace, shall, under any pretence whatever, be permitted to act as justice of the peace, until his commission shall have been recorded.

§ 21. Any person who shall act in violation of the preceding section, shall, upon conviction thereof, by indictment, be fined in any sum not exceeding one hundred dollars, and all acts done by him shall be null and void.

§ 22. In the following cases, and in no others, a justice of the peace may punish as for contempt, persons guilty of the following acts:

First, Disorderly, contemptuous, insolent behavior towards such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceeding, which shall tend to interrupt such proceeding, or to impair the respect due to his authority.

Second, Any breach of the peace, noise or other disturbance, tending to interrupt the official proceedings of such justice.

Third, Resistance, unlawfully offered to any person, in the presence of the justice, to the execution of any lawful order or process, made or issued by him.

§ 23. Punishments for contempts in the foregoing cases may be by fine, not exceeding twenty dollars, or by imprisonment in the county jail not exceeding two days, at the discretion of the justice; but no person shall remain in prison for the non-payment of a fine.

§ 24. No person shall be punished for a contempt, before a justice of the peace, until an opportunity shall have been given him to be heard in his defence, and for that purpose the justice may issue a warrant to bring the offender before him.

§ 25. Upon the conviction of any person for a contempt, the justice shall make up a record of the proceedings, on such conviction, stating therein the particular circumstances of the offence, and the judgment rendered thereon.

§ 26. The warrant of commitment for any contempt, shall set forth the particular circumstances of the offence, or it shall be void.

§ 27. Justices of the peace are empowered to grant subpoenas for witnesses in

all cases cognizable before the circuit or county courts, and in all cases cognizable before justices of the peace.

§ 28. And in all matters submitted to referees and arbitrators, and in all cases where it may be necessary for the taking depositions.

§ 29. Every justice of the peace who shall be convicted of bribery, perjury, or any other infamous crime, or convicted of any wilful misdemeanor in office, by indictment, shall be removed from office.

§ 30. All resignations of justices of the peace shall be in writing, and addressed to the county court, or the clerk thereof in vacation.

§ 31. Whenever a justice of the peace shall resign, move out of his township, or be otherwise disqualified, he shall immediately thereafter deliver to the county court or clerk thereof, all dockets, records, books, papers and documents, appertaining to his office, or relating to any suit, matter, or controversy, committed to him in his official capacity.

§ 32. The clerk of the county court shall give the person delivering him such docket and papers, a receipt therefor, and shall immediately thereafter cause the same to be delivered to some justice of the peace of the township in which the vacancy happened.

This act to take effect from and after the 4th July next.

Approved, March 20th, 1835.

JUSTICES' COURTS.

An act to establish justices' courts, and to regulate proceedings therein.

ART. I. Of the jurisdiction of justices courts.

ART. II. Of the commencement of suits, and the service and return of process.

ART. III. Of the appearance and pleadings of the parties, and of adjournments.

ART. IV. Of witnesses and depositions.

ART. V. Of judgments of non-suit, and by default, and of trials.

ART. VI. Of judgments and filing transcripts thereof, and of the stay of executions.

ART. VII. Of executions and proceedings thereon.

ART. VIII. Of appeals and proceedings thereon in the circuit court.

ARTICLE I.

Of the jurisdiction of justices courts.

- SEC. 1. Justice of the peace authorized to hold courts for the trial of actions in the two next sections enumerated.
2. Exclusive jurisdiction in civil cases.
 3. Concurrent jurisdiction with the circuit court in civil cases.
 4. Suit in the circuit court, properly cognizable before justice, may have judgment, but shall pay cost.
 5. Enumerated cases in which justice shall not have cognizance.
 6. Justices' jurisdiction co-extensive with the county.
 7. In what township, actions, either on summons or warrant, to be brought; if the defendant is a non-resident, &c., where brought.
 8. Actions by attachment, in what township brought.
 9. Several defendants, jointly liable, residing in different townships, how the suit may be brought; suit on attachment and property in different townships, how it may issue.
 10. Where there is no justice, or all in the township interested, &c., where and how suit to be brought.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Every justice of the peace is authorized to hold a court for the trial of all actions in the two next sections enumerated, and to hear, try, and determine the same according to law and equity.

§ 2. Every justice of the peace shall have jurisdiction over the following actions and proceedings:

First, Actions of debt, covenant and assumpsit, and all other actions founded upon contract, when the debt or balance due, or damages claimed, exclusive of interest, shall not exceed ninety dollars.

Second, Actions of trespass and trespass on the case, for injuries to persons or to real or personal property, wherein the damages claimed shall not exceed twenty dollars.

Third, All actions for any penalty not exceeding ninety dollars, given by any statute of this state; and,

Fourth, To take and enter judgment on the confession of a defendant, where the amount confessed shall not exceed the amount for which a justice is authorized to render judgment in an action.

§ 3. Justices of the peace, and the circuit courts, shall have concurrent jurisdiction over the following actions:

First, All actions on bonds and notes, for the payment of any sum of money exceeding ninety dollars, exclusive of interest, and not exceeding one hundred and fifty dollars.

Second, All actions of trespass and trespass on the case, for injuries to persons, or to personal or real property, wherein the damages claimed shall exceed twenty and not exceed fifty dollars.

§ 4. If any suit, properly cognizable before a justice of the peace, be brought in any court of record, the plaintiff may recover judgment therein, but the costs of such suit shall be adjudged against him.

§ 5. No justice of the peace shall have cognizance,

First, Of any action against any rightful executor or administrator, or any corporation; nor,

Second, Of any action of detinue or replevin; nor,

Third, Of any action of slander, malicious prosecution or false imprisonment; nor,

Fourth, Of any action where the title to any lands or tenements shall come in question, except an action of trespass.

§ 6. Every justice of the peace shall have jurisdiction co-extensive with the county for which he shall be elected or appointed.

§ 7. Every action, cognizable before a justice of the peace, instituted by summons or warrant, shall be brought before some justice of the township, either,

First, Wherein the defendant resides; or,

Second, Wherein the plaintiff resides, and the defendant may be found; but if the defendant in any action is a non-resident of the county, or

has absconded from his usual place of abode, the action may be brought before some justice of any township where he may be found.

§ 8. Every action instituted by attachment, shall be brought before some justice of the township wherein the property of the defendant may be found.

§ 9. If there are several persons jointly liable to a suit, residing in different townships in the same county, the suit may be brought in any such township against all such persons; and if any defendant in a suit instituted by attachment, has property in several townships in the same county, such attachment may be issued against the property of such defendant, wherever it may be found in the county.

§ 10. Whenever there shall be no justice within the township where any suit, cognizable before a justice, ought to be brought, or, wherever all the justices of such township are interested in any such suit, or otherwise disqualified by law from trying the same, every such suit may be brought before some justice of any adjoining township in the same county.

ARTICLE II.

Of the commencement of suits, and the service and return of process.

- Sec. 1. Justice to appoint one day in each month for the return of summons, &c.
2. Justice to keep a docket; what he shall enter therein.
3. Items enumerated in the preceding section, &c., to be entered in the docket; how and in what manner the entries to be made; justice may make other entries; when, &c.
4. By what kind of process suits may be commenced; voluntary appearance by agreement may be entered.
5. Non-resident plaintiff to give security for costs, if required, or suit to be dismissed.
6. Instrument of writing upon which suit is brought, signed by the defendant, to be filed with the justice before process issues.
7. If the instrument be alleged to be lost or destroyed, how plaintiff to bring suit.
8. Proceedings, if any lost instrument of writing be relied on in any suit or set-off.
9. In suits on account, bill of items to be filed before process issues.
10. Process to run in the name of "The State of Missouri," to be dated, &c., and signed by the justice.
11. In cases not specially provided for, process to be a summons; to what constable directed, and what it shall command him to do.
12. The form of the summons.
13. Proceedings where plaintiff has a joint cause of action against several persons in different townships; summons, how directed and served.
14. Service of summons, when and how executed.
15. Justice shall issue a warrant in a civil suit on affidavit of the plaintiff; when, &c.
16. To what constable warrant to be directed; shall command the constable to take the defendant, &c.
17. Form of the warrant.
18. How to be served, returned, &c.; when to be returned before another justice.
19. Defendant taken on warrant, how long he may be detained in custody.
20. Justice may deputize persons to serve process in certain cases; how to be done; power, duty and fees of such person.
21. After suit commenced, defendant pays debt and costs, suit to be discontinued; if prosecuted further, plaintiff to pay all further costs.
22. Return of constable on process executed by him, how to be made.
23. Penalty on constable if he fail to execute and return process, or make false return, &c.

§ 1. Every justice of the peace shall appoint one day in each month for the return of all summons by him issued, and every summons shall be made returnable on such day, except in cases where it is otherwise specially provided.

§ 2. Every justice of the peace shall keep a docket, in which he shall enter,

First, The titles of all causes commenced before him.

Second, The time when the first process was issued against the defendant, and the particular nature thereof.

Third, The time when the parties appeared before him, either without process or upon the return of process.

Fourth, A brief statement of the nature of the plaintiff's demand, and the amount claimed, and (if any set-off was pleaded,) a similar statement of the nature of the set-off, and the amount claimed.

Fifth, Every adjournment, stating at whose request and at what time.

Sixth, The time when the trial was had, stating whether the same was by a jury, or by the justice.

Seventh, The verdict of the jury, and when rendered.

Eighth, The judgment rendered by the justice, and the time of rendering the same.

Ninth, The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt, damages and costs, as the same was endorsed on the execution.

Tenth, The fact of an appeal having been made and allowed, and when made and allowed.

§ 3. The several items in the preceeding section enumerated, together with all other entries specially required by this act to be made in the docket, shall be entered under, or opposite to, the title of each cause to which they respectively relate, and in addition thereto, the justice may enter any other proceeding had before him in the cause, which he shall think it useful to enter in such docket.

§ 4. Suits may be instituted before a justice, either by the voluntary appearance and agreement of the parties, or by process; and the process for the institution of a suit before a justice shall be either a summons, a warrant against the person, or attachment against the property of the defendant.

§ 5. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs before the institution of the suit; and whenever a suit has been instituted by a non-resident of the county, the justice *shall*, on the application of the defendant, and *may*, without such application, order the plaintiff to give security for the costs, and if the plaintiff refuse to comply with the order, the justice shall dismiss the suit.

§ 6. Whenever any suit shall be founded on any instrument of writing, purporting to have been executed by the defendant, such instrument shall be filed with the justice, before any process shall be issued in the suit.

§ 7. But if such instrument be alleged to be lost, or destroyed, it shall be sufficient for the plaintiff to file with the justice, the affidavit of himself, or some other

credible person, stating such loss or destruction, and setting forth the substance of such instrument.

§ 8. If any suit, or set-off, be founded upon any lost or destroyed instrument of writing, the party relying upon such lost or destroyed instrument, shall be required, upon the trial or hearing of the cause, to prove such loss or destruction, either by his own oath, or by other competent testimony; and if upon such trial or hearing, it appears the same was intentionally put away or destroyed, the demand, or set-off, founded on such instrument, shall be rejected.

§ 9. In every suit founded on an account, a bill of the items of such account shall be filed with the justice, before any process shall be issued in the suit.

§ 10. All proces sissued by justices of the peace, shall run in the name of "The state of Missouri," be dated on the day it is issued, and shall be signed by the justice granting the same.

§ 11. In all cases not otherwise specially provided for, the process in all suits shall be a summons, and every summons shall be directed to the constable of the township in which the justice who granted the same resides, (except where it is otherwise specially provided) and shall command him to summon the defendant to appear before the justice who issued the same, at a time and place to be named in the summons, not less than six nor more than forty days from the date thereof, to answer the complaint of the plaintiff.

§ 12. The summons may be in the following form:

"The state of Missouri, to the constable of — township, in — county, greeting: We command you to summon —, to appear before the undersigned, one of the justices of the peace of — township, in — county, —, on the — day of —, 18—, at ten of the clock in the forenoon, at —, in the same township, to answer the complaint of —. Given under my hand, this — day of —, 18—. A. B. justice."

§ 13. If any plaintiff files with the justice the affidavit of himself or some other credible person, stating that such plaintiff has a joint cause of action against several persons, inserting their names therein, and that such persons reside in different townships in the same county, specifying therein the township in which they respectively reside, and that the plaintiff desires to bring a joint action against them, the summons shall be directed to any constable of the township in which such defendants are alleged to reside, and the direction of such summons may be in the following form: "The state of Missouri, to any constable of the township of — and in the county of —, greeting." Every summons so directed may be served by any of the constables therein described, in all the townships to which such summons is directed.

§ 14. Every summons shall be served at least fifteen days before the day of appearance therein mentioned, on all sums in which the circuit court and justices of the peace have concurrent jurisdiction, and six days where they have not, and shall be executed, either,

First, By reading the same to the defendant; or,

Second, By delivering a copy thereof to the defendant; or,

Third, By leaving a copy of such summons at the usual place of abode of the defendant, with some white person of the family above the age of fifteen years.

§ 15. A justice of the peace shall issue a warrant in every case where he is satisfied from the affidavit of the plaintiff, or of any other person, that the plaintiff has a subsisting and unsatisfied cause of action against the defendant, and that the defendant is about to remove from the county, or to abscond from his usual place of residence, or that the plaintiff will be in danger of losing his demand, unless such warrant be granted.

§ 16. A warrant shall be directed to the constable of the township wherein the justice resides, and shall command him to take the defendant, and bring him forthwith before the justice who issued the same, at a place to be named in such warrant, to answer the complaint of the plaintiff.

§ 17. The warrant may be in the following form:

“The state of Missouri, to the constable of — township, in — county, greeting: We command you to take —, and bring him forthwith before the undersigned, one of the justices of — township, in — county, at —, in the same township, to answer the complaint of —. Given under my hand this — day of —, 18—. A. B., justice.”

§ 18. A warrant shall be served by arresting the defendant and taking him forthwith before the justice who issued the same; if such justice be, on the return thereof, absent, or unable to try the cause, or it be made to appear to the justice, by the affidavit of the defendant, that such justice is a material witness for the defendant in the cause, or is near of kin to the plaintiff in suit, stating therein in what degree, the constable shall forthwith take the defendant to the nearest justice in the same township, who shall take cognizance of the cause, and proceed therein as if the warrant had been issued by himself.

§ 19. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the constable, until the justice shall direct his release; but in no case shall the defendant be detained longer than six hours, from the time he shall be brought before the justice, unless within that time the trial of the cause be commenced, or unless it be delayed at the instance of the defendant.

§ 20. Every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the suit, to execute the same, by an endorsement upon such process to the following effect: “At the request and risk of the plaintiff, I authorize — to execute and return this writ. E. F., justice of the peace;” and the person so empowered, shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

§ 21. If, at any time after the commencement of a suit, the defendant pay to the constable the full amount of the claim, and the costs which have then accrued, the

suit shall be discontinued; or, if it be further prosecuted, the plaintiff shall pay all costs that may accrue after such payment.

§ 22. Every constable serving any process authorized by this act, shall return thereon in writing, the time and manner of the service, and shall sign his name to such return.

§ 23. If any constable fail to execute any process to him delivered, and make due return thereof, unless for good cause, or make a false return, such constable, for every such offence, shall pay to the party injured ten dollars, and all the damages such party may have sustained by reason thereof, to be recovered in an action of debt founded upon this statute.

ARTICLE III.

Of the appearance and pleadings of the parties, and of adjournments.

- Sec. 1.** Plaintiff over 21 years of age may appear and conduct his suit by himself or agent.
2. Next friend to be appointed to bring suit for infant; how appointed; liable for costs.
3. Defendants over 21 years of age may defend suits, either in person or by agent.
4. After service and return of process on infant defendant, guardian to be appointed; how, &c.
5. Guardian for defendant not liable for costs; consent of next friend and guardian to be filed with the justice.
6. Agents how appointed; their authority may be verbal or written; how proved.
7. Summons returned duly served, justice to proceed to trial; when, &c.
8. On the appearance of both parties before the justice, brief verbal statement of the nature of plaintiff's demand may be required, &c.
9. Defendant may, in all cases, set-off demands against the plaintiff, except where the demand exceeds justice's jurisdiction, or on instruments executed by the plaintiff, and assigned, &c.
10. To entitle defendant to set-off any demand, how he shall proceed.
11. If the instrument intended to be set-off, be alleged to be lost or destroyed, how defendant to proceed.
12. Judgment, &c., how awarded, if defendant's set-off be less, or equal, or more than plaintiff's demand.
13. Judgment, &c., how rendered against executors or administrators, if defendant's set-off exceeds their demand.
14. In trespass, if title to land is drawn in question, proceedings to be certified to the circuit court.
15. How to proceed in the cause in the circuit court; plaintiff's proof, defendant's plea.
16. When the justice may adjourn a cause; how long, &c.; cause on warrant not to be adjourned; when.
17. When and how long justice may adjourn a cause on the application of either party, or by consent of both parties.
18. Cause not to be adjourned on application of either party, unless upon affidavit, &c.; how and by whom made.
19. Adjournment to be made for a reasonable time at the cost of the applicant.
20. Suit on warrant adjourned by consent, or on application of the plaintiff, defendant to be discharged from custody; suit to proceed as on summons, &c.
21. If adjourned on application of defendant, to remain in custody, or give recognizance, &c.
22. Recognizance given on prior adjournment, new recognizance on subsequent adjournment need not be given unless required by the justice, or bail on the first recognizance.
23. In what cases plaintiff may recover on suits brought on such recognizance.

§ 1. Any plaintiff in any suit, except persons under twenty-one years of age, may appear and conduct his suit either in person, or by agent.

§ 2. No suit shall be instituted by an infant plaintiff, until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who will consent thereto in writing, to be named by such plaintiff to act as his next friend in such suit, who shall be responsible for the costs therein.

§ 3. Every defendant in a suit, except persons under twenty-one years of age, may appear and defend the same in person or by agent.

§ 4. After the service and return of process against an infant defendant, the suit shall not be any further prosecuted, until a guardian for such defendant be appointed; upon the request of such defendant, the justice shall appoint some person, who will consent thereto in writing, to be the guardian of the defendant in the defence of the suit, and if the defendant shall not appear on the return day of such process, or if he neglect or refuse to nominate such guardian, the justice may, on the motion of the plaintiff, appoint any discreet person as such guardian.

§ 5. The consent of such next friend or guardian shall be filed with the justice — the guardian for the defendant shall not be liable for any costs in the suit.

§ 6. A party authorized to appear by agent, may appoint any person to act as such agent, and the authority of the agent may be either written or verbal, and shall, in all cases where the justice requires proof, be proven either by the agent himself, or other competent testimony, unless admitted by the opposite party.

§ 7. Upon the return of a summons duly served, the justice shall wait three hours after the time specified in such writ for the appearance of the parties, unless they shall sooner appear.

§ 8. When both parties first appear before the justice, either upon the return of process, or upon their voluntary appearance without process, the justice shall, on the application of the defendant, and may without such application, require of the plaintiff a brief verbal statement of the nature of his demand.

§ 9. A defendant may set-off any demand which he has against the plaintiff, in all cases where such set-off is allowed by the statute of this state regulating set-off, except in the two following cases:

First, Where the demand to be set-off exceeds the jurisdiction of a justice's court; or,

Second, Where it is founded upon an instrument of writing, executed by the plaintiff and assigned to the defendant, and it shall not be made to appear on the trial of the cause that the defendant had, before the commencement of the suit, given the plaintiff notice of such assignment.

§ 10. To entitle a defendant to set-off any demand, he must give notice thereof in court, either verbal or written, before the jury is sworn, or the trial submitted to the justice; and when the set-off is founded upon an instrument of writing executed by the plaintiff, or by his testator or intestate, or upon an account, he must, at the time of giving such notice, file with the justice, such instrument. or a bill of the items of such account.

§ 11. If such instrument be alleged to be lost or destroyed, it shall be sufficient for the defendant, to file with the justice an affidavit similar to that required of a plaintiff upon instituting a suit in a justice's court, on a lost or destroyed instrument of writing.

§ 12. If the amount of the set-off, duly established, be equal to the plaintiff's debt, judgment shall be entered for the defendant with costs; if it be less than the

plaintiff's debt, the plaintiff shall have judgment for the residue only, with costs; and if it be more than the plaintiff's debt, the defendant shall have judgment for the excess, with costs, and execution shall be awarded and be subject to the same stay as upon a judgment in a suit brought by such defendant.

§ 13. Whenever a set-off is established in a suit brought by executors or administrators, exceeding the demand of the plaintiff, the judgment shall be against them, in their representative character, and shall be evidence of a debt established, but no execution shall issue thereon.

§ 14. If in a suit for trespass upon any lands or tenements, the defendant, before the jury is sworn, or the trial submitted to the justice, justify the trespass by a plea of title, the justice shall immediately make an entry thereof in his docket, shall cease all further proceedings in the case, and certify and return to the circuit court of the same county, a transcript of all the entries made in his docket relating to the case together with all the process and other papers relating to the suit and filed therein, in the same manner and within the same time as upon an appeal.

§ 15. Upon the filing of the proceedings and papers in the office of the clerk, the court shall become possessed of the cause and proceed therein to final judgment as upon an appeal; but upon the trial in such court, the plaintiff shall only be required to prove himself entitled to, or in possession of, the lands or tenements, on which the trespass is alleged to have been committed, and no other bar to the action shall be pleaded by the defendant, except the plea of title.

§ 16. A justice of the peace, without the application or consent of either party, may, if it be necessary, adjourn a cause, not exceeding forty days for any one adjournment; but a justice shall in no case adjourn a cause commenced by warrant, upon his own motion.

§ 17. A justice of the peace, on the application of either party, with good cause shewn, may adjourn a cause not exceeding sixty days for any one adjournment, and may adjourn for a longer period, with the consent of both parties.

§ 18. No adjournment shall be allowed upon the application of a party, unless such party satisfy the justice, by his own oath or affidavit, or the oath or affidavit of some other person, that he cannot safely proceed to trial for want of some material testimony or witness; that he has used due diligence to obtain the same, and that if an adjournment be allowed, he will be able to procure such testimony or witness in time to be used upon the trial.

§ 19. Every such adjournment shall be for such reasonable time as will enable the party to procure such testimony or witness, not exceeding sixty days, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

§ 20. If a cause commenced by warrant be adjourned on the consent of both parties, or on the application of the plaintiff, the defendant shall be discharged from custody, but the cause shall not be discontinued by such discharge; and at the adjourned day, the same proceedings shall be had as on the return of a summons duly served.

§ 21. But if such cause be adjourned upon the application of the defendant, he shall continue, during the time of the adjournment, in the custody of the constable,

unless he shall enter into a recognizance before the justice, with such security as the justice approves, in a penalty sufficient to secure the plaintiff's demand and costs, conditioned, that if judgment be given in the suit against him, and execution be issued against his person, he will render himself upon such execution before the return day thereof; or, in default thereof, that he or his security will pay the judgment so recovered.

§ 22. If any such recognizance shall have been given upon any prior judgment, [adjournment] it shall not be necessary to enter into a new recognizance upon a subsequent adjournment, unless such recognizance be required by the justice, or by the bail of the defendant in such prior recognizance.

§ 23. In any suit brought upon such recognizance, the plaintiff shall not be entitled to recover unless he shew an execution upon the judgment obtained in the suit, in which such adjournment was had, duly issued within ten days after the time when the same could have been issued against the person of the defendant, and a return thereon that such defendant could not be found.

ARTICLE IV.

Of witnesses and depositions.

- Sec 1. Subpœna valid for witness in the county, or out of the county, if within 20 miles of the place of trial.
2. Subpœna, how and by whom served.
 3. Witness subpœnaed fails to attend, &c., attachment, on oath of party, &c., may issue &c
 4. Attachment, to whom issued; how executed; fees and costs on, by whom paid.
 5. Penalty to the county on witness subpœnaed, who fails to attend; proceedings of the justice to judgment and execution thereon, to be paid by constables into the county treasury.
 6. Witness may appear and show cause against the imposition of such fine; when, &c.
 7. Witness in such case, also liable to the party; who had him subpœnaed, to all damages, &c.
 8. Either party in a civil suit, by giving notice, may take depositions; before whom taken, &c.
 9. Deposition not to be taken, unless notice of time and place of taking same be given; when, how, &c.
 10. Notice how served, and upon whom; if the party reside out of the county; how notified.
 11. Deposition how taken and certified; if taken out of the state, how certified.
 12. Depositions taken under this act, to be read on all trials; when and under what circumstances

§ A subpœna, issued by a justice of the peace, shall be valid to compel the attendance in a justice's court of a witness being in the same county where the cause is to be tried; or being in an adjoining county, and within twenty miles of the place of trial.

§ 2. A subpœna may be served either by a constable or by any other person, and it shall be served by reading the same to the witness, or by delivering to him a copy thereof.

§ 3. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person duly subpœnaed to appear before him in a suit, shall have failed, without just cause, to attend as a witness in conformity to such subpœna, and the party in whose behalf such subpœna was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness.

§ 4. Every such attachment may be directed to any constable of the county in which the justice resides, and shall be executed in the same manner as a warrant;

and the fees of the officer for issuing and serving the same, shall be paid by the person against whom the same shall have been issued, unless he shew reasonable cause, to the satisfaction of the justice, for his omission to attend, in which case the party requiring such attachment shall pay all costs of such attachment and the service of the same.

§ 5. Every person duly subpœnaed as a witness, who shall not appear, shall forfeit for the use of the county in which he is subpœnaed to appear (unless some reasonable excuse shall be shewn on his oath, or the oath of some other person) such fine, not exceeding ten dollars, as the justice shall think reasonable to impose, and the justice shall make an entry in his docket of the conviction and of the cause thereof; at the expiration of thirty days from the entry of such conviction, shall be deemed a judgment in all respects at the suit of such county, and execution shall be issued thereupon as upon other judgments in a justice's court, and the constable shall pay the fine, when collected to the treasurer of the county.

§ 6. The person upon whom such fine shall be imposed may, at any time before the expiration of the thirty days, appear before the justice and shew cause against the imposition thereof; and upon the hearing of such cause, the justice may remit or mitigate such fine.

§ 7. Every person subpœnaed as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpœnaed, for all damages which such party may have sustained by his non-appearance.

§ 8. Either party, in any civil suit depending before a justice, may, upon notice, cause the deposition of any witness therein to be taken by any judge or justice of the peace of this state, or by any judge or justice of the peace of the state or county wherein such witness may be.

§ 9. No such deposition shall be taken, unless notice in writing of the time and place of taking the same shall have been previously served on the other party, three days before the taking thereof, with one additional day for every twenty-five miles of distance from the place of such service to the place of taking.

§ 10. Such notice may be served in like manner as an original summons, and the service may be on the party or his agent in the suit, and when such party resides out of the county and has no agent in the suit therein, the service of such notice may be by filing a copy thereof with the justice before whom the suit is pending.

§ 11. The deposition shall be taken and certified according to the statute of this state regulating the taking of depositions, and shall be sealed up and returned so sealed to the justice before whom the suit, in which it is taken, is pending; and when such deposition is taken without this state, the official character of the officer by whom it is taken shall be certified under the seal of the state or country where such deposition is taken, or under the seal of some court therein.

§ 12. The justice shall allow every deposition taken and returned according to the provisions of this act, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally in court, could have been

received, but no such deposition shall be read on the trial unless it appear to the justice that the witness whose deposition is offered,

First, Is dead, or resides out of the county; or,

Second, Is unable to, or cannot safely, attend before the justice, on account of sickness, age, or other bodily infirmity; or,

Third, Has gone out of the county without the consent or collusion of the party offering the deposition.

ARTICLE V.

Of judgments of non-suit, and by default, and of trials.

- SEC. 1. Judgment by default, when to be rendered against the defendant; judgment, when to be given for the defendant, though plaintiff appear; judgment of non-suit against the plaintiff, when.
2. In cases not specially provided for, if plaintiff, &c., do not appear, judgment of non-suit to be entered.
3. Judgment by default and of non-suit may be set aside; application for, when and how made; proceedings of the justice in such cases, and his duty.
4. If such judgment be set aside, notice of time and place of new trial to be made out and served on the adverse party; when, how, &c.; fees for, allowed.
5. Suits to be determined on the return of process, unless adjourned.
6. When both parties appear, justice to hear the allegations and proofs of each; cause to be determined according to right.
7. Trial of suit on contracts to be determined on its merits; consideration of bond or note may be impeached; when, how, &c.
8. Before the trial of a cause is commenced, either party may demand a jury.
9. Jury to consist of six, but the parties may agree upon a less number.
10. Justice to issue summons for a jury to the constable of the township; what the summons shall contain.
11. How the summons shall be executed by the constable; list of jurors to be certified with the summons, if a sufficient number cannot be had from the pannel, others to be summoned.
12. If the summons be not returned, or a jury obtained, as by the preceding section, new summons to issue.
13. Oath to be administered by the justice to each juror; form of the oath.
14. After the jury are sworn, they shall sit together and hear the proofs of the parties, &c.
15. Witness objected to as incompetent, to be determined by the justice; witness to be sworn; form of the oath.
16. Either party may be examined as a witness on suits on contract; after such examination, no further evidence to be given.
17. Either party may, in suits upon contract, have the other party subpoenaed as a witness; if he fail to attend, other party may be examined.
18. Instrument of writing signed by the opposite party, when to be received as a set-off, unless denied on oath by affidavit, &c.
19. Preceding section not to apply to cases of set-off against executor or administrator, &c.
20. When the jury agree, their verdict to be delivered publicly; to be entered on the justice's docket.
21. If jury cannot agree, they may be discharged; new summons to issue, when; justice may enter judgment on the evidence before him; when, &c.
22. Penalty on persons summoned as a juror who fails to attend; how collected and appropriated.

§ 1. When a defendant who has been duly served with process, and when a defendant who has once appeared to a suit, the trial of which has been adjourned shall neglect to appear within three hours after the return of the process, or the adjourned time, the justice shall proceed in the cause in the following manner:

First, If the suit be founded upon an instrument of writing, filed with the justice at the commencement of the action, and purporting to have been executed by the other party, and the demand of the plaintiff is liquidated by such instrument, the justice shall, whether the plaintiff appear or not, render judgment against the defendant, by default, for

the amount which shall appear by such instrument to be due to the plaintiff, after allowing the proper discounts for all payments endorsed thereon, with costs.

Second, If the suit be not founded on an instrument of writing, as is declared in the preceding clause of this section, and the plaintiff appears in person, or by his agent, the justice shall proceed to hear his allegations and proofs, and shall determine the cause as the very right thereof shall appear from the testimony; and if it appear from such testimony that the plaintiff is entitled to recover, judgment shall be rendered by default, against the defendant for so much as the testimony shews the plaintiff entitled to, together with costs; if it do not appear that the plaintiff ought to recover, judgment shall be given for the defendant as upon a verdict against the plaintiff.

Third, If the plaintiff fail to appear, except where the suit is founded upon an instrument of writing, as is declared in the first clause of this section, the justice shall render judgment of non-suit against the plaintiff, with costs.

§ 2. In all cases not otherwise specially provided for, if the plaintiff fail to appear in person, or by agent, within three hours after the time appointed for the trial of the cause, the justice shall render judgment of non-suit against him, with costs.

§ 3. Every justice of the peace shall have power, on the application of the party aggrieved, or his agent, and for good cause shewn, to set aside judgment of non-suit and by default, upon such terms as shall be just. Every such application shall be made within ten days after the rendering of the judgment, and if in the meantime any execution has been issued, the justice may revoke the same in the manner hereinafter provided for revoking an execution after an appeal has been allowed, and with the like effect. The justice shall, in all cases, make an entry in his docket of every such application, and of the day on which it was made, together with his orders thereon.

§ 4. If any such judgment be set aside and a new trial granted, the justice shall fix a time for such trial, and make out, under his hand, a notice to the opposite party, stating the fact that such judgment has been set aside, and specifying therein the time and place fixed for the trial; the notice shall be served on the party, or his agent in the suit, six days before the trial, and shall be executed and returned in like manner as a summons; and the same fees shall be allowed therefor.

§ 5. Every suit instituted by summons or warrant, shall be determined on the return of the process duly served, unless the cause be adjourned.

§ 6. When both parties appear before the justice in person, or by agent, at the time appointed for the trial of the cause, the justice shall proceed to hear the allegations and proofs of the parties, and to determine the suit as the very right of the case shall appear.

§ 7. On the trial of all suits upon contracts before any justice of the peace, or in any circuit court, by appeal or otherwise, whether brought by the original claim-

ant, or any persons for his use, or by the payee or obligee of any bond or note, or his assignee, it shall be the duty of said justice, or court, to hear and determine such cause on its merits, and to hear parole, or other legal evidence, to impeach the consideration or validity of any bond or note; and if it shall be ascertained by the justice, or court, or verdict of the jury, (if one be required) that the consideration of such bond or note has failed in whole or in part, judgment shall be given according to the finding of the justice or court, or the verdict of the jury, notwithstanding the defendant may hold a warranty or other instrument of writing on the payee or obligee of said bond or note, purporting to be an agreement to make good the consideration of said bond or note, if the same should fail.

§ 8. Before the justice shall commence an investigation of the merits of the cause by an examination of witnesses, or the hearing of any other testimony, either of the parties may demand of the justice that the cause be tried by a jury.

§ 9. The jury shall consist of six persons, but the parties may agree upon any number of jurors less than six, to try the cause, and in that case the jury shall consist of such number, not exceeding six, as the parties may agree upon.

§ 10. The justice shall issue a summons directed to the constable of the township wherein the cause is to be tried, commanding him to summon six (or such less number as the parties may have agreed upon) good and lawful men of the township, qualified to serve as jurors in the circuit court of the same county, who shall be no-wise of kin to either party, nor interested in the suit, to appear before such justice at a time and place to be named therein, to make a jury for the trial of the action between the parties named in such summons.

§ 11. The constable shall execute such jury summons fairly and impartially, and shall not summons any person whom he has reason to believe is biassed or prejudiced for or against either of the parties; he shall summon the jurors personally, and shall make a list of the persons, which he shall certify and annex to the summons and return to the justice. If a sufficient number of competent jurors cannot be obtained from the pannel returned, the constable shall immediately summon others to serve in their place.

§ 12. If the constable, to whom the jury summons shall have been delivered, do not return the same as thereby required, or if a full jury be not obtained in the manner declared in the preceding sections, the justice shall issue a new jury summons.

§ 13. To each juror the justice shall administer an oath, well and truly to try the matter in difference between — plaintiff, and — defendant, and unless discharged (by the justice) a true verdict to give, according to the evidence.

§ 14. After the jury are sworn, they shall set together and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence.

§ 15. If a witness, on being produced, shall be objected to as incompetent, such objection shall be tried and determined by the justice. Every person offered as a witness, before any testimony shall be given by him, shall be duly sworn or affirmed, that the evidence he shall give, relating to the matter in issue between — plain-

liff, and — defendant, shall be the truth, the whole truth, and nothing but the truth.

§ 16. If there shall be no evidence given to establish any demand founded upon contract, or to establish any set-off, or if the evidence given be insufficient for that purpose, the justice may, upon the application of the party offering such demand or set-off, order the opposite party to be sworn as a witness in relation thereto; if the party thus required refuse to testify, the justice shall allow the party offering the demand or set-off to be sworn and examined in relation to the same matter. After an examination of either party, no further evidence shall be given in relation to such demand or set-off.

§ 17. Either party, in any suit founded on contract, may cause the opposite party to be subpœnaed as a witness in the cause, in the same manner and with the like effect as any other person. If the party, after being duly subpœnaed, fail to attend the trial personally, and such failure be not accounted for, the justice may allow the other party to be sworn and examined as a witness in all cases and with like effect as if such subpœnaed party had been personally present and had refused to testify.

§ 18. If any suit or set-off be founded upon any instrument of writing, purporting to have been executed by the opposite party, and the same shall have been filed with the justice according to the preceding provisions of this act, such instrument shall be received in evidence on the trial, unless the party, before the jury is sworn, or the trial submitted to the justice, charged to have executed the same, shall deny the execution thereof on oath, taken before such justice, or by an affidavit filed with the justice and taken before any court or officer authorised to administer oaths.

§ 19. The preceding section shall not be construed to authorize any instrument of writing to be received in evidence, without proof of its execution, against an executor or administrator, or any other person representing the person charged to have executed such instrument.

§ 20. When the jurors have agreed on their verdict, they shall deliver the same to the justice, publicly, who shall enter it on his docket.

§ 21. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, after having been out a reasonable time, cannot agree on their verdict, he may discharge them, and shall issue a new jury summons, unless the parties consent that the justice may render judgment upon the evidence already before him, which, in such cases he may do, unless they consent that the trial upon a new hearing of the evidence shall be by the justice.

§ 22. Every person who shall be duly summoned as a juror and shall not appear, nor render a reasonable excuse for his default, shall be subject to the same fine, to be prosecuted for and collected with costs in the same manner, and applied to the same use, as herein-before provided in respect to a person subpœnaed as a witness and not appearing.

ARTICLE VI.

Of judgments and filing transcripts thereof, and of the stay of executions.

SEC. 1. Judgment by confession may be entered by the justice.

2. In what cases and when judgment by confession may be rendered.

- SEC. 3. One judgment may be set-off against another, on reasonable notice given; when, how, &c.
4. If the judgment proposed to be set-off be rendered before another justice, how the party shall proceed.
 5. If one judgment is set-off against another, justice to make an entry thereof in his docket; duty of justice in such cases; set-off not allowed on transcript, &c., to be so certified.
 6. On affidavit of either party, before trial is submitted, &c., that the justice is a material witness or of kin, &c.; cause may be discontinued without costs.
 7. In what cases judgment of non-suit may be rendered with costs against the plaintiff.
 8. In what cases judgment with costs shall be rendered for the defendant.
 9. In what cases judgment with costs shall be rendered for the plaintiff.
 10. In what cases the justice shall forthwith render judgment, &c.; in what cases allowed three days for final decision.
 11. Judgment for more than justice's jurisdiction, party may remit, &c., and take judgment for the residue.
 12. Stay of execution upon a judgment.
 13. To entitle such person to stay of execution, recognizance to be entered into, and how.
 14. Form of the recognizance.
 15. If the debt is not paid at the expiration of such stay, how the execution to issue; proceedings and return of the officer thereon.
 16. On the return of the execution, if bail has paid the money, he is entitled to judgment on motion; motion, when to be made, &c.
 17. If judgment be stayed after execution issued, such execution how to be revoked.
 18. Transcripts may be filed, to be entered by the clerk in the docket of circuit court judgments and decrees; time of filing to be noted by the clerk.
 19. Lien of such judgment from the filing of such transcript; its extent, and how to be carried into effect.

§ 1. A justice of the peace may enter a judgment by confession of the defendant in any case where the amount confessed shall not exceed the amount for which a justice is authorized to render judgment in an action.

§ 2. No confession shall be taken, or judgment rendered thereon, unless the following requisites be complied with:

First, The defendant must personally appear before the justice.

Second, The confession must be in writing, signed by the defendant, or by some person by him thereto lawfully authorized, and filed with the justice.

§ 3. If there be mutual justices judgments between the same parties, upon which the time for appealing has elapsed, and on which there is no existing execution, one judgment, on the application of either party, and reasonable notice of such application to the adverse party, may be set-off against the other, by the justice before whom the judgment against which the off-set is proposed may be.

§ 4. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off must produce before the justice a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that there is no appeal or existing execution thereon, and that such transcript was obtained for the purpose of being set-off against the judgment to which it is offered as a set-off; the justice granting such transcript shall make an entry thereof in his docket, and all further proceeding on such judgment shall be stayed, unless such transcript be returned, with the proper justice's certificate thereon, that it has not been allowed in set-off.

§ 5. If any justice shall set-off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment

rendered by another justice to be set-off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off; if he shall refuse such set-off, he shall so certify on the transcript, and return the same to the party who offered it.

§ 6. If upon the appearance of the parties on the return of process in any case, (except when the defendant shall have been arrested by warrant,) the defendant shall, before the jury is sworn, or the trial submitted to the justice, make affidavit that the justice before whom the same is pending is a material witness for such defendant, without whose testimony he cannot safely proceed to trial, or that he is near of kin to the plaintiff, stating therein in what degree, judgment shall be entered that the cause be discontinued, but without costs against either party.

§ 7. Judgment of non-suit, with costs, shall be rendered against the plaintiff in the following cases, in addition to the cases specially provided for:

First, If he withdraw his action.

Second, If he be non-suited upon the trial.

§ 8. Judgment for the defendant, with costs, shall be rendered, whenever a trial or hearing has been had, and no sum shall be found by the verdict of the jury, or by the decision of the justice, in favor of the plaintiff.

§ 9. Judgment for the plaintiff, with costs, shall be rendered, whenever a trial or hearing has been had, and any sum shall be found by the verdict of the jury or decision of the justice, in favor of the plaintiff.

§ 10. In cases where a plaintiff shall be non-suited or withdraw his action, and where judgment shall be confessed, and in all cases where a verdict shall be rendered, or the defendant shall be in custody at the time of hearing the cause, the justice shall forthwith render judgment and enter the same in his docket. In all other cases, he shall render judgment, and enter the same in his docket, within three days after the cause shall have been submitted to him for his final decision.

§ 11. If any sum be found in favor of a party, either by the verdict of a jury or upon a hearing of the cause before the justice, exceeding the sum for which the justice is authorized to give judgment, such party may remit and release the excess and take judgment for the residue.

§ 12. The execution upon a judgment rendered by a justice of the peace, may be stayed in the manner hereinafter provided, and for the following periods of time, to be calculated from the date of the judgment:

First, If the judgment be for any sum not exceeding ten dollars, exclusive of costs, one month.

Second, If it be for any sum above ten dollars, and not exceeding thirty dollars, exclusive of costs, two months.

Third, If it be for any sum above thirty dollars, exclusive of costs, four months; but if all the parties to the judgment agree upon any other period of time, the stay shall be for a time so agreed upon.

§ 13. To entitle any person to such stay of execution, some responsible person, to be approved by the justice and not being a party to the judgment, must, within five days after the rendering of the judgment, enter into a recognizance before the

justice, to the adverse party, in a sum sufficient to secure the payment of the judgment, conditioned to be void upon such payment, at the expiration of the stay.

§ 14. Such recognizance must be signed by the party entering into the same, and may be in the following form: "I —, acknowledge myself indebted to — in the sum of — dollars, to be void upon this condition: Whereas, — obtained a judgment before —, a justice of the peace of — township, in — county, on the — day of, —, 18—, against—, now, if such judgment shall be paid at the expiration of — months from the time it was rendered, this recognizance shall be void.
A. B."

§ 15. If at the expiration of such stay, the judgment be not paid, the execution shall issue against both principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and in his return shall state what amount of the money collected by him upon the execution was collected from the bail, and the time when the same was received.

§ 16. After the return of such execution, the bail shall be entitled, upon motion, to a judgment before the justice for the amount collected from him in satisfaction of such execution, with interest thereon at ten per centum per annum, and such return of the officer shall, upon such motion, be evidence of the facts therein stated. No such motion shall be made after the expiration of three months from the return day of the execution.

§ 17. If a judgment be stayed in the manner above prescribed, after an execution shall have been issued thereon, the justice shall revoke such execution in the same manner and with like effect as he is hereinafter directed to revoke an execution after an appeal has been allowed.

§ 18. Every justice, on the demand of any person in whose favor he shall have rendered judgment for more than ten dollars, exclusive of costs, shall give to such person a certified transcript of such judgment, and the clerk of the circuit court of the same county in which the judgment was rendered, shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of circuit court judgments and decrees, and shall note therein the time of the filing of such transcript.

§ 19. Every such judgment, from the time of such filing of the transcript thereof, shall have the same lien on the real estate of the defendant in the county as a judgment of the circuit court of the same county, shall be equally under the control of the circuit court, and shall be carried into execution in the same manner and with the like effect as the judgments of such circuit court; but no execution shall be sued out of the circuit court thereon, until an execution shall have been issued by a justice, and returned, that the defendant had no goods or chattels whereof to levy the same,

ARTICLE VII.

Of executions and proceedings thereon.

- SEC. 1. Execution to issue, as hereinafter prescribed, upon demand.
2. Execution to what constable issued; when to be dated, when returnable, and against what property to issue, &c.
 3. Execution against the goods, chattels and body of the defendant, what it shall command the constable to do.
 4. Form of such execution.
 5. Against the goods and chattels of the person, form of as above, omitting the clause of *capias*.
 6. Debt, damages and costs, &c., to be stated on the back of the execution, and entered in the docket before it issues, time of the receipt of an execution to be endorsed by the officer.
 7. In what cases justice may issue execution to the constable of another township.
 8. Executions may be renewed by endorsement on the old execution; how made and effect of; entry of renewal to be made on the docket.
 9. Notice of sale under execution, how and when to be given.
 10. Sale to be at public vendue to the highest bidder; constable to be ready to pay over the money at the return day of the execution.
 11. Officer not to purchase, directly or indirectly, at his own sale; such sales void.
 12. Garnishees may be summoned by the officer; in what cases, and when; proceedings of the justice in such cases.
 13. Defendant, when to be taken in execution; to be committed to jail until discharged, &c.
 14. Property levied on, claimed by a third person, constable to summon a jury to appear, &c.
 15. Constable to administer oath to jurors; how to be administered; jury to be judges of the law and the fact.
 16. If the jury find the property to belong to the defendant, effect of; if for the claimant, effect of; costs, how paid.
 17. Persons summoned as jurors in such cases, failing to attend, how to be proceeded against
 18. Constables to give receipts for judgments, &c., when the money is tendered; extent and effect of the receipt; remedy of the party against the constable, same as if collected on execution.
 19. Payment of money upon a judgment to a justice, not good, unless by consent of the person to whom it is coming.
 20. In what cases justice to issue summons against constable who has received money, &c.
 21. In what manner the summons to issue; when and how executed and returned.
 22. If the constable fail to appear, or appearing, fail to show cause, &c., how the justice shall proceed; no stay allowed, but appeal may be taken.
 23. Party injured, may have the above remedy, or suit against him and security; proceedings, &c.

§ 1. Upon every judgment rendered by a justice, execution shall be issued by such justice in the manner hereinafter prescribed, at any time upon demand.

§ 2. The execution shall be directed (except where it is otherwise specially provided,) to the constable of the township where the justice resides, shall be dated on the day it is issued, and be made returnable within thirty days from the date; it shall be against the goods and chattels of the person against whom the same is issued, and against the goods, chattels and body of such person, when specially required.

§ 3. The execution against the goods, chattels and body of the person against whom the same is issued, shall command the officer to levy the debt, damages and costs of the goods and chattels of such person, and for want of sufficient goods and chattels, to take the body of such person and convey him to the common jail of the county, there to remain until the debt, damages and costs are paid, or he be otherwise discharged according to law.

§ 4. Such execution may be in the following form: "The state of Missouri, to the constable of — township, in the county of —, Greeting: Whereas, —, on the — day of —, 18—, obtained judgment before the undersigned, justice of the peace of the township of —, in — county, against —, for — dollars, for his debt and damages (or damages) and also for — dollars for his costs,

YOU are therefore commanded to levy the same, of the goods and chattels of the said —, according to law; and for want of sufficient goods and chattels, you are commanded to take the said —, and convey him to the common jail of the county, and deliver him to the sheriff or keeper thereof, who is hereby required to receive and safely keep him until the debt damages and costs are paid, or he be otherwise discharged according to law: You are further commanded to return this writ to the undersigned justice, within thirty days from the date. Given under my hand, this — day of — 18—. A. B., justice."

§ 5. The execution against the goods and chattels of the person against whom the same is issued, shall command the officer to levy the same of the goods and chattels of such person, and may be in the form prescribed in the preceding section, omitting the clause against the body.

§ 6. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, an account of debt, damages and costs, and of the fees due to each person, separately, and the officer receiving such execution shall endorse thereon the time of the receipt of the same.

§ 7. In all cases where it shall be suggested to the justice that the defendant resides out of the township where the judgment was rendered, or that he has not sufficient goods and chattels therein to satisfy such judgment, the justice shall issue the execution, directed to the constable of any township in the same county wherein the defendant or his goods and chattels are suggested to be.

§ 8. If any execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time, by the justice issuing the same, by an endorsement thereon to that effect, signed by him and dated when the same shall be made. If any part of such execution has been satisfied, the endorsement of renewal shall express the sum due on the execution; every such endorsement shall renew the execution in full force, in all respects, for thirty days, and no longer, and an entry of such renewal shall be made in the docket of the justice.

§ 9. The constable, after taking goods and chattels into his custody, by virtue of an execution, shall, without delay, give public notice by at least three advertisements, put up at three public places in the township, of the time and place, when and where, they will be exposed to sale; such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

§ 10. At the time and place so appointed, if the goods and chattels be present for the inspection of the bidders, the officer shall expose them to sale at public vendue, to the highest bidder; he shall return the execution, and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

§ 11. No constable or other officer shall, directly or indirectly, purchase any goods or chattels at any sale made by him upon execution; but every such sale shall be absolutely void.

§ 12. If the execution be against the goods and chattels only, and there is not sufficient whereon to levy, the constable shall, upon the demand of the plaintiff, summon in writing, as garnishees, such debtors of the defendant in the execution

as may be named to him by the plaintiff, or his agent, to appear before the justice at the return day of such execution, to answer such interrogatories as may be exhibited against them, touching their indebtedness to such defendant; and the like proceedings shall be had therein, before the justice, to final judgment and execution; as in suits instituted by attachment in a justice's court.

§ 13. If the execution be against the goods, chattels and person, and there are not sufficient goods and chattels whereon to levy, the officer shall take the body of the person against whom the execution shall have been issued, and convey him to the common jail of the county, the sheriff or keeper whereof is hereby required to receive and safely keep him, until the debt, damages and costs be paid, or he be thence discharged by due course of law.

§ 14. If a constable levy an execution on any goods or chattels, and any person other than the defendant in the execution claims such property, the constable may summon six persons, competent to serve as jurors in a justice's court, to assemble at such time and place in the township as he shall direct, not exceeding ten days from the time he is notified of such claim, to try the right of property between the defendant in the execution and such claimant.

§ 15. The constable shall administer an oath to each of the jurors, well and truly to try and determine the right of property between the claimant and defendant in the execution, to the goods and chattels in controversy, and report their decision to the constable. The constable may administer the oaths to the witnesses proposed to be examined. The jury shall be the judges of the law and the fact.

§ 16. If the jury find the goods and chattels to be the property of the defendant in the execution, the verdict shall, as against the claimant, justify the officer in selling such goods and chattels. If the verdict is for the claimant, the plaintiff in the execution shall pay the costs of the trial; if it is against the claimant, the costs shall be paid by such claimant, and the constable and witnesses shall be entitled to the like fees as for similar services in a justice's court.

§ 17. If persons summoned as jurors upon such inquests fail to appear, or, appearing, refuse to serve, the constable shall forthwith summon others in their place, and shall have the same power to fine every such person that a justice of the peace has in respect to jurors summoned to attend before him. If any person so fined, neglect to render to the constable a reasonable excuse for his failure or refusal, within thirty days from the time of the imposition of such fine, the constable shall proceed to levy the same, together with the costs, of the goods and chattels of the person fined, as upon a justice's execution, and shall pay, as soon as the same shall be collected, to the treasurer of the county, for the use of such county.

§ 18. The constable of the township shall receive all money that may be tendered to him in payment of any judgment obtained before a justice of the peace of such township, and shall give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid, and the payment shall be valid against the judgment, and upon the production to the justice of the receipt therefor, shall be credited thereto. The person entitled to the money paid, shall have

the like remedies against the constable and his securities, for the recovery thereof, as if such money had been collected by the constable on execution.

§ 19. No payment of money upon a judgment made to the justice, either before or after execution thereon, shall be valid against such judgment, nor credited thereto, unless paid with the consent of the person to whom the same is due.

§ 20. In the following cases the justice shall, upon the demand of the party injured, or his agent, issue a summons against any constable to whom any execution has been delivered, or who has received any money upon any judgment of such justice, whether with or without execution:

First, If the constable fail to make return of the execution according to the command thereof;

Second, If he make a false return;

Third, If he fail to have any money, by him collected on execution, before the justice, on the return day thereof, ready to be paid over to the persons entitled thereto, or the receipts of such persons therefor;

Fourth, If he fail to pay over upon demand, to the person entitled thereto, or his agent, any money by him received in payment of any judgment.

§ 21. Such summons shall require the constable to appear before the justice at a place and time to be specified therein, not exceeding six days from the time of issuing the same, and shew cause why execution shall not issue against him for the amount due upon the execution, or for the amount received by him upon the judgment, according to the nature of the cause. The summons shall be served at least three days before the return day thereof, and may, in other respects, be executed in like manner as an original writ of summons.

§ 22. If the constable fail to appear, or, appearing, fail to shew good cause to the contrary, the justice shall render judgment against him for the amount due by the execution, or for the amount received by him without execution, according to the nature of the case, together with interest thereon at the rate of one hundred per centum per annum, from the time such execution ought to have been returned, or from the time such money ought to have been had before the justice, ready to be paid over to the parties entitled thereto, or from the time the money received on a judgment, without execution, was demanded by the party entitled thereto, or his agent. Upon such judgment there shall be no stay of execution, but an appeal may be had as in other cases and with like effect.

§ 23. The party injured may proceed against the constable in the manner above directed, or may institute a suit against him, and his securities on his official bond, and in such suit shall be entitled to the like recovery as upon a summons against the constable; and suits on such bond may be brought before a justice of the peace, where the amount claimed does not exceed ninety dollars.

ARTICLE VIII.

Of appeals and proceedings thereon in the circuit court.

- SEC. 1. Persons aggrieved by the judgment of the justice may appeal, &c.
2. Proceedings before appeal on judgment by default can be taken.
 3. No appeal to be allowed unless certain requisites be complied with.
 4. Recognizance, how executed; form of the recognizance.
 5. Appeal allowed, entry of to be made on the docket; further proceedings of the justice suspended, if execution has issued, certificate of appeal to be granted, &c.
 6. On the production or service of such certificate on the constable, &c., property or body of the debtor to be released.
 7. Justice to return transcript of proceedings, &c., to the first day of the next circuit court.
 8. On such return being filed in the clerk's office, court to be possessed of the cause; proceedings.
 9. Upon appeal allowed, circuit court may, by rule and attachment, compel a return of papers by the justice.
 10. In what cases and how the circuit court may compel justice to allow appeal, return papers, &c.
 11. In what cases and how the circuit court may compel justice to amend his return.
 12. Appeal not to be dismissed if there is no recognizance, or a defective recognizance, if the appellant will enter into recognizance, &c., and pay costs.
 13. Appeal allowed ten days before court, to be tried at the first term, unless continued for cause.
 14. Notice of appeal to be given, when and how served; if the appellee resides out of the county, how served.
 15. Cause not to be dismissed for want of notice, but may be continued by the appellee at the cost of the appellant.
 16. Same cause of action tried before the justice, to be tried on appeal; no set-off not pleaded before the justice shall be pleaded in the circuit court, if summons was served on the person of the defendant.
 17. Judgment to be entered against the appellant and security, on affirmance or trial anew, if judgment be against the appellant.
 18. Execution on such judgment to be paid by the principal, and if not, then by the security; officer to endorse on his return by whom paid.
 19. Remedy of the security against the principal by motion; motion when to be made; return of the officer, evidence on such motion.

§ 1. Any person aggrieved by any judgment rendered by a justice of the peace, except a judgment of non-suit, may, in person or by his agent, make his appeal therefrom to the circuit court of the same county where the judgment was rendered.

§ 2. But no appeal can be taken from a judgment by default unless, within ten days after the rendering of such judgment, application shall have been made to the justice, by the party aggrieved, to set the same aside, and such application shall have been refused.

§ 3. No appeal shall be allowed in any case, unless the following requisites be complied with:

First, The appeal must be made within ten days after the judgment rendered, or, when the judgment is by default, within ten days after the refusal of the justice to set aside the default and grant a new trial.

Second, The applicant, or some person for him, together with one or more securities to be approved by the justice, must, within the time prescribed in the first clause of this section, enter into a recognizance before the justice, to the adverse party, in a sum sufficient to secure the payment of such judgment, and the costs of the appeal, conditioned that the applicant will prosecute his appeal with due diligence to a decision; and that if on such appeal the judgment of the justice be affirmed, or if on a trial anew in the circuit court, judgment be

given against him, he will pay such judgment, and that if his appeal be dismissed he will pay the judgment of the justice, together with the costs of the appeal.

§ 4. Such recognizance must be signed by the parties entering into the same and be attested by the justice, and may be in the form following: "We the undersigned — and —, acknowledge ourselves indebted to — in the sum of — dollars, to be void upon this condition: Whereas, — has appealed from the judgment of —, a justice of the peace, in an action, between — plaintiff, and — defendant; now, if on such appeal, the judgment of the justice be affirmed, or if on the trial anew in the circuit court, judgment be given against the appellant, and he shall satisfy such judgment, or if his appeal shall be dismissed and he shall pay the judgment of the justice, together with the costs of the appeal, the recognizance shall be void. A. B., C. D. Atteste, G. H., justice."

§ 5. Upon an appeal being made according to the foregoing provisions, the justice shall allow the same, and immediately make an entry of such allowance in his docket, and all further proceedings on the judgment before the justice shall be suspended by the allowance of the appeal; and if in the meantime, execution shall have been issued, the justice shall give to the appellant a certificate that an appeal in the cause has been allowed.

§ 6. On such certificate being presented to the constable holding the execution, he shall forthwith release the property and body of the defendant that may have been taken in execution; and if the appellant shall have been committed to jail, the jailor, upon the service of the like certificate on him, shall release the appellant from imprisonment.

§ 7. On or before the first day of the circuit court next after the appeal shall have been allowed, the justice shall file in the office of the clerk of such court a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the suit and filed with the justice.

§ 8. Upon the return of the justice being filed in the clerk's office, the court shall be possessed of the cause, and shall proceed to hear, try and determine the same anew, without regarding any error, defect, or other imperfection in the proceedings of the justice.

§ 9. Upon an appeal being made and allowed, the circuit court may, by rule and attachment, compel a return by the justice of his proceedings in the suit, and of the papers required to be by him returned.

§ 10. If a justice fail to allow an appeal in the cause, where the same ought to be allowed, the circuit court, on such fact satisfactorily appearing, may, by rule and attachment, compel the justice to allow the same, and to return his proceedings in the suit, together with the papers required to be returned by him.

§ 11. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may, by rule and attachment, compel him to amend the same.

§ 12. No appeal allowed by a justice shall be dismissed on account that there is no recognizance, or that the recognizance given is defective, if the appellant

will, before the motion to dismiss is determined, enter before the circuit court into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all the costs that shall be incurred by reason of such defect or omission.

§ 13. All appeals allowed ten days before the first day of the term of the circuit court, next after the appeal allowed, shall be determined at such term, unless continued for cause.

§ 14. If the appeal be not allowed on the same day on which the judgment is rendered, the appellant shall serve the appellee, at least ten days before the first day of the term at which the cause is to be determined, with a notice in writing, stating the fact that an appeal has been taken from the judgment therein specified; the notice may be served in like manner as an original writ of summons, and when the appellee does not reside in the county, and has no agent in the suit therein, the service may be by leaving a copy of such notice with the justice.

§ 15. If the appellant fails to give notice of his appeal in a cause where such notice is required, the cause shall, on the application of the appellee, be continued as a matter of course, until the succeeding term, at the cost of the appellant; but no appeal shall be dismissed for want of such notice.

§ 16. The same cause of action, and no other, that was tried before the justice shall be tried in the circuit court upon the appeal; and no set-off shall be pleaded in the circuit court, that was not pleaded before the justice, if the summons was served on the person of the defendant.

§ 17. In all cases of appeals from a justices' court, if the judgment of the justice be affirmed, or if on a trial anew in the circuit court the judgment be against the appellant, such judgment shall be rendered against him and his securities in the recognizance for the appeal.

§ 18. If upon an execution being issued upon such judgment, the principal shall not pay such execution, and the officer cannot find sufficient property of such principal to satisfy the same, such execution shall be enforced against the securities; and the officer shall specify in his return, by whom the money was paid, and the time thereof.

§ 19. After the return of an execution, satisfied in whole or in part out of the property of the security, such security shall be entitled to a judgment, upon motion, against the principal, for the amount so paid by him, together with interest thereon at ten per cent. per annum from the time of the payment. Such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence, upon the hearing of such motion, of the facts therein stated.

Approved, March 21st, 1835.

JUSTICES' COURTS,
IN CASES OF BREACH OF THE PEACE.

An act to define the jurisdiction, and regulate the proceedings of justices' courts, in cases of breach of the peace.

- Sec. 1.** Assaults, batteries and affrays not indictable, cognizable before justice of the peace
2. Certain offences not cognizable before justice of the peace, but shall be punished by indictment.
 3. On complaint made, justice to issue warrant for offences cognizable before him; by whom to be executed.
 4. Offences in the last section, committed within the knowledge of the justice, warrant to issue and proceedings; such offences committed, &c., in his presence, how to proceed.
 5. Persons arrested under this act, justice to hear the complaint in a summary way.
 6. Cause may be postponed by the justice; defendant to give recognizance; condition of the recognizance.
 7. Failing to give recognizance, to be committed to jail.
 8. In case of breach of recognizance, the same to be certified to the circuit court; proceedings.
 9. In the progress of the trial, if the justice believe the cause is not cognizable before him, how he shall proceed.
 10. Justice to summon injured party, and others who may be material as witnesses on the trial.
 11. Trials to be by jury; if they find the defendant guilty, what shall be the fine.
 12. Proceedings commenced on complaint of injured party, his name to be entered on the docket as prosecutor; costs to be paid by the prosecutor and by the county; in what cases.
 13. In case of convictions, judgment to be entered for fine and cost, may be committed; &c., or issue execution to the use of the county.
 14. Defendant in execution may take the benefit of the insolvent debtors' act; costs, how paid; proceedings, &c.
 15. Appeals may be taken; affidavit to be filed; recognizance to be entered into, and how.
 16. Appeals taken, when to be returned to the first, and when to the second term of the circuit court.
 17. When appeal is perfected, witnesses to be recognized; duty of justice to certify proceedings, &c.
 18. Cause to be docketed and tried at first term, unless continued; costs to abide the trial.
 19. Appeal not taken on the day of rendering judgment by the justice, judgment to be affirmed.
 20. If judgment be affirmed, or on conviction, judgment to be for fine and costs in both courts against defendant and securities.
 21. If judgment be not satisfied, execution when to issue; out of what property to be satisfied.
 22. Process and proceeding not specially provided for, to be governed by the law regulating justices' courts in civil cases.
 23. Justice to certify amount of fine to the county treasurer; duty of the county treasurer, constable, and the county court, in such cases.
 24. Penalty on officers refusing to perform duties required by this act; also on persons refusing to aid in arresting offenders.
 25. Fines and penalties under this act, how they may be recovered.
 26. When justice continues a cause, witnesses present need not be summoned, but may be verbally notified to attend, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Hereafter, no assault, battery, or affray, shall be indictable; but all such offences shall be prosecuted and punished in a summary manner, before justices of the peace, as hereinafter provided.

§ 2. The jurisdiction of justices of the peace shall not extend to trial or punishment in any case of riot, rout, or unlawful assembly, nor to any assault or battery which, by the then existing laws, may be punished by imprisonment, or corporal punishment, or by a fine exceeding one hundred dollars, but all such offences shall be punished by indictment.

§ 3. Whenever a complaint shall be made to a justice of the peace, on the oath or affirmation of any person competent to testify against the accused, that an assault, battery, affray, or other breach of the peace, has been, or is about to be committed, the justice shall forthwith issue a warrant for the arrest of the offender,

which warrant shall be executed by the sheriff of the county or constable of the township, or by some competent person specially deputed by the justice for that purpose.

§ 4. If any justice of the peace shall have personal knowledge that any of the offences mentioned in the last section, is [are] about to be committed, he shall issue his warrant and proceed as is directed in that section; and if any such offence is committed, threatened, or attempted in his presence, he shall immediately arrest the offender, or cause it to be done, and for this purpose no warrant or process shall be necessary, but the justice may summon to his assistance any sheriff, coroner, or constable, and all other persons there present, whose duty it shall be to aid the justice in preserving the peace, arresting and securing the offenders, and all such as obstruct or prevent the justice, or any of his assistants, in the performance of their duty.

§ 5. When any person shall be brought before a justice of the peace under the provisions of this act, it shall be the duty of the justice to hear and determine, in a summary mode, the complaint alleged against the defendant.

§ 6. Upon good cause shewn, the justice may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into recognizance with sufficient security, conditioned that he will appear before the justice at the time and place appointed, then and there to answer the complaint alleged against him.

§ 7. If the defendant shall fail or refuse to enter into recognizance, the justice shall commit him to the common jail of the county, there to remain until the day fixed for the trial of the complaint alleged against him.

§ 8. In case of the breach of any recognizance entered into as aforesaid, the same shall be certified and returned to the circuit court, to be proceeded on according to law.

§ 9. If in the progress of any trial before a justice of the peace, under the provisions of this act, it shall appear that the accused ought to be put upon his trial for an offence not cognizable before a justice of the peace, the justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases exclusively cognizable before the circuit court.

§ 10. In all cases arising under this act, it shall be the duty of the justice of the peace, acting in the case, to summon the injured party, and all others whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment if necessary.

§ 11. All trials before a justice of the peace under this act, shall be by a jury of twelve competent men, who, if they find the defendant guilty, shall assess the fine to be paid by him, which shall not be less than one dollar, nor more than one hundred dollars, according to the nature of the offence.

§ 12. Where proceedings are commenced under the provisions of this act, on the information or complaint of the injured party, his name shall be entered by the justice on his docket, as prosecutor, and if the defendant shall be discharged or

acquitted, may be adjudged to pay costs; in other cases of discharge or acquittal, the costs shall be paid by the county.

§ 13. In all cases of conviction under the provisions of this act, the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution on the judgment to the use of the county.

§ 14. Any defendant who shall be committed or taken in execution on such judgment, may, at any time after ten days actual imprisonment in jail, take the benefit of the laws for the relief of insolvent debtors, and on taking the oath and complying with the other requisitions of said law, may be discharged; and in that case the county shall pay the costs of the prosecution, and charges of imprisonment, and for the amount thereof shall be a privileged creditor of the defendant, entitled to be first satisfied out of his property and effects.

§ 15. Any person convicted under this act may appeal to the circuit court, if he shall, on the day of the rendition of the judgment, file an affidavit, stating that he verily believes himself aggrieved by the verdict and judgment, and also enter into recognizance, with sufficient sureties, householders of the county, which recognizance shall be in the form and with the condition required in appeals from a justice of the peace in civil cases.

§ 16. All appeals taken fifteen days or more before any term of the circuit court of the county, shall be returnable to that term, but if taken within fifteen days next before the commencement of a term, shall be returnable to the second term.

§ 17. When an appeal is taken and perfected according to this act, it shall be the duty of the justice to cause all material witnesses to enter into a recognizance in the sum of fifty dollars each, conditioned for their appearance to testify in the cause at the term to which the appeal is returnable, and shall, on or before the first day of such term, file in the office of the clerk of the circuit court, a copy of the entries on his docket, with a copy of the process and affidavit of appeal, and the original recognizances of the defendant and witnesses, duly certified.

§ 18. The clerk of the circuit court shall enter the cause on his docket, and if the appeal be regularly taken, the cause shall be heard on the merits at the return term, unless good cause be shewn for a continuance, and the costs in both courts shall abide the event of the trial in the circuit court.

§ 19. If the appeal be not taken and perfected on the day of rendering judgment by the justice, the judgment shall be affirmed.

§ 20. If the judgment of the justice shall be affirmed, or upon a trial in the circuit court the defendant shall be convicted, and any fine assessed, judgment shall be rendered for such fine and the costs, in both courts, against the defendant and his securities.

§ 21. If the judgment of the circuit court be not satisfied in thirty days after the rendition thereof, execution may issue against the defendant and his securities for the fine and costs aforesaid, which shall be made out of the property of the defendant, if sufficient thereof be found, if not, then out of the property of said securities.

§ 22. In all cases not specially provided for by this act, the process and proceedings before the justice shall be governed by the laws regulating proceedings in justices' courts in civil cases.

§ 23. It shall be the duty of the justice before whom any conviction may be had under this act, if there be no appeal, to make out and certify, and, within ten days after the date of the judgment, deliver to the treasurer of the county, a statement of the case, the amount of the fine, and the name of the constable charged with the collection thereof, and the county treasurer shall charge the constable with the amount of such fine; and unless the same be paid into the county treasury within thirty days after the date of the judgment, the county court shall, at their next term, ten days notice being given to the constable in default, render judgment against him for the amount due, and twenty per centum thereon, making, however, proper deductions for insolvencies; on which judgment, execution shall be issued, and the proceeds paid into the county treasury.

§ 24. Any justice of the peace, sheriff, coroner, or constable, who shall wilfully neglect or refuse to perform any duty enjoined on him by this act, shall be deemed guilty of a misdemeanor in office, and shall moreover pay the sum of fifty dollars; and any person who shall, when summoned to aid in arresting or securing an offender, refuse to give such assistance, shall pay five dollars.

§ 25. Fines and penalties incurred under this act, in cases not otherwise provided, may be recovered before any justice of the peace by action of debt.

§ 26. When a trial, under the provisions of this act, shall be continued by the justice, it shall not be necessary for the justice to summon any witness who may be present at the continuance, but said justice shall verbally notify such witnesses as either party may require, to attend before him to testify in the cause, on the day set for trial, which verbal notice shall be as valid as a summons.

Approved, January 20th, 1835.

LANDLORDS AND TENANTS .

An act concerning landlords and tenants.

- SEC. 1. Executor or administrator of tenant for life, may recover rents; when.
2. Remedy by action, &c., for the rents dependant upon the life of another.
 3. Freehold estate in rents in right of the wife, may be recovered after her death as though she were living.
 4. Remedy for rents in arrear, upon lease for life.
 5. Remedy of executor or administrator the same as the person deceased, for rents due at the time of his death.
 6. Tenant in possession served with summons in ejectment, to give notice to landlord, &c.; penalty for failure.
 7. Tenant giving notice of intention to quit, and failing to do so, liable for double rent.
 8. Double rent in such case, how and when to be recovered.
 9. Tenants or persons holding under them, after the termination of their term, and after demand and notice given, liable for double rent.
 10. No relief in equity against any recovery had under the preceding section.
 11. Attournment of a tenant to a stranger void, except in certain cases.
 12. Landlord may recover in an action on the case for use and occupation, under an agreement not made by deed.

13. If a parol demise, &c., appear on the trial of such action, to be evidence of the amount of damages to be recovered.
14. Landlord has a lien upon the crop grown, &c., upon the premises for the rents, to continue for eight months.
15. Ejectment may be brought if half year's rent be in arrear, and landlord have a right to re-enter.
16. Summons in such action, how it may be served.
17. Service of the summons shall stand instead of a demand for the rent, and of re-entry on the premises.
18. Recovery of the demised premises and costs, when.
19. If before judgment in such action the rent and ~~and~~ costs be tendered, &c., further proceedings to cease.
20. If rent and costs be unpaid for six months after writ of possession executed, and no bill filed for relief, &c., lessee barred.
21. Provision and reservation in favor of mortgagees of lease in such cases.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The executors or administrators of any tenant for life, who shall have demised any lands or tenements so held, and shall die on or before the day when any rent on such demise shall become payable, may recover, *First*, If such tenant for life die on the day, the whole rent. *Second*, If he die before the day, such proportion of the rent as shall have accrued before his death.

§ 2. Every person entitled to any rents dependant upon the life of any other, may, notwithstanding the death of such other person, have the same remedy by action for the recovery of all arrears of such rent that are due and unpaid at the death of such other person, as he might have had if such other person was in full life.

§ 3. Every person having in right of his wife any freehold estate in any rents, may, if such rent is due and unpaid at the time of the wife's death, have the same remedy by action for the recovery of such arrears as he might have had if the wife was in full life.

§ 4. Any person having any rent due upon any lease for life, may have the same remedy by action for the recovery thereof, as if such lease were for years.

§ 5. The executors or administrators of any person, to whom any rent shall have been due and unpaid at the time of the death of such person, may have the same remedy by action against the tenant, his executors or administrators, for the recovery thereof, that their testator or intestate might have had.

§ 6. Every tenant on whom a summons in ejectment to recover the tenements held by him shall be served, shall forthwith give notice thereof to the person or the agent of the person of whom such tenant holds, under the penalty of forfeiting to such person the value of three years rent of the premises occupied by him.

§ 7. If any tenant shall give notice in writing of his intention to quit the premises held by him, at a time specified in such notice, and shall not deliver up the possession thereof at such time, such tenant, his executors or administrators, shall, from thenceforward, pay to the landlord, his heirs or assigns, double the rent reserved during all the time such tenant shall so continue in possession.

§ 8. Such double rent shall be recovered in the same manner, at the same time that the single rent is recoverable.

§ 9. If any tenant for life or years, or if any other person who may have come into the possession of any lands or tenements under, or by collusion with such

tenant, shall wilfully hold over the same, after the termination of such term, and after demand made, and notice in writing given, requiring the possession thereof by the person entitled thereto, such person so holding over shall pay to the person so kept out of possession double the yearly value of the lands or tenements so detained, for all the time he shall keep the person entitled out of possession.

§ 10. There shall be no relief in equity against any recovery had at law under the preceding section.

§ 11. The attornment of a tenant to a stranger shall be void, and shall not in anywise affect the possession of his landlord, unless it is made, *First*, With the consent of the landlord; or, *Second*, Pursuant to, or in consequence of, a judgment at law or a decree in equity; or, *Third*, To a mortgagee after the mortgage has been forfeited.

§ 12. A landlord may recover in an action on the case, a reasonable satisfaction, for the use and occupation of any lands or tenements held by any person under an agreement not made by deed.

§ 13. If a parol demise or other agreement, not by deed, by which a certain rent is reserved, appears in evidence on the trial of such action, the plaintiff shall not on that account be debarred from a recovery, but may make use thereof as evidence of the amount of damages to be recovered.

§ 14. Every landlord shall have a lien upon the crop grown upon the demised premises in any year, for the rent that shall accrue for such year, and such lien shall continue for eight months after such rent shall become payable, and no longer.

§ 15. Whenever a half year's rent, or more, is in arrear from a tenant, the landlord, if he has a subsisting right by law to re-enter for the non-payment of such rent, may bring an action of ejectment to recover the possession of the demised premises.

§ 16. If the summons in such action cannot be served in the ordinary mode provided by law, it may be served by affixing a copy of the declaration and summons on a conspicuous part of the demised premises, where it may be conveniently read.

§ 17. The service of the summons in such action of ejectment shall be deemed and stand instead of a demand of the rent in arrear, and of a re-entry on the demised premises.

§ 18. If upon the trial of such action it is proved, or upon judgment by default it appears to the court by affidavit, that the plaintiff had a right to commence such action according to the provisions of this act, he shall have judgment to recover the possession of the demised premises and costs.

§ 19. If the defendant, before judgment is given in such action, either tenders to the landlord or brings into the court, where the suit is pending, all the rent then in arrear and all costs, all further proceedings in the action shall cease.

§ 20. If the rent and costs remain unpaid for six months after execution upon such judgment in ejectment is executed, and no bill for relief in equity is filed within that time, the lessee and his assigns, and all other persons deriving title

under the lease from such lessee, shall be barred from all relief in law or equity, (except for error in the record or proceedings) and the landlord shall, from thenceforth, hold the demised premises discharged from the lease.

§ 21. A mortgagee of such lease, not in possession of such demised premises, who, within six months after execution of any judgment in ejectment is executed, shall pay all rent in arrear, and all costs, and the charges incurred by the landlord, and shall perform all the agreements which ought to be performed by the first lessee, shall not be affected by the recovery in ejectment.

Approved, March 19th, 1835.

LAWS.

An act concerning laws.

ART. I. Common law and British statutes.

ART. II. Of the authentication of statutes without the approval of the governor.

ART. III. Of the taking effect, and of repealing acts.

ARTICLE I.

Common law and British statutes.

Sec. 1. Common law and statutes of England declared in force.

2. Punishment by the common law limited; British statutes for punishment of crimes, &c., not in force.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The common law of England, and all statutes and acts of parliament made prior to the fourth year of the reign of James the first, and which are of a general nature, not local to that kingdom, which common law and statutes are not repugnant to, or inconsistent with, the constitution of the United States, the constitution of this state, or the statute laws in force for the time being, shall be the rule of action and decision in this state, any law, usage or custom, to the contrary notwithstanding.

§ 2. Punishment, by virtue of the common law, shall in nowise be other than fine and imprisonment, and such fine shall not exceed one hundred dollars, and the term of such punishment [imprisonment] shall not exceed two months; nor shall any of the British statutes for the punishment of crimes or misdemeanors be in force in this state.

ARTICLE II.

Of the authentication of statutes, without the approval of the governor.

Sec. 1. How authenticated, if the governor disapproves.—State constitution, art. 3., sec. 10.

2. Laws not returned by the governor, how authenticated.

§ 1. When a bill, that has passed both houses of the general assembly, shall be returned by the governor without his signature, and with objections thereto, and upon a reconsideration shall pass both houses by the constitutional majority, it shall be authenticated as having become a law, by a certificate endorsed thereon, or attached thereto, in the following form: "This bill having been returned by the governor with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, it has become a law, this — day of —." Which, being signed by the president of the senate, and speaker of the house of representatives, shall be deemed a sufficient authentication thereof; and the bill shall be again presented to the governor, to be by him deposited with the laws in the office of the secretary of state.

§ 2. Every bill which has passed both houses of the general assembly, and shall not be returned by the governor within ten days, having thereby become a law, shall be authenticated by the governor causing the fact to be certified thereon by the secretary of state, in the following form: "This bill having remained with the governor ten days (Sundays excepted) and the general assembly being in session, it has become a law, this — day of —. J. B., secretary of state."

ARTICLE III.

Of the taking effect, and of repealing acts.

SEC. 1. Law repealing former act, being itself repealed, not to revive former act, nor to effect suits commenced under such act.

2. Laws hereafter passed, take effect ninety days after the passage, unless otherwise provided.

§ 1. When any law repealing any former act, clause or provision, shall be itself repealed, it shall not be construed to revive such former act, clause or provision, unless it be expressly otherwise provided; nor shall any act, repealing any former act, clause or provision, be construed to abate, annul, or in anywise effect any proceedings had or commenced under, or by virtue of the law so repealed, but the same shall be as effectual, and be proceeded on to final end and termination, as if the repealing act had not passed, unless it be otherwise expressly provided.

§ 2. All acts of the general assembly hereafter passed, shall take effect at the end of ninety days after the passage thereof, unless a different time is therein appointed.

Approved, March 14th, 1835.

LAWS.—REVISED STATUTES.

An act concerning the revised statutes.

SEC. 1. Edition of the revised statutes authorized to be published and distributed.

2. Contents of the revised statutes.

3. Acts passed during the present session and continued in force, and not to be published in the revised statutes

- Sec. 4.** *Missile law, how published, distributed, &c.; by whom published, and on what terms.*
5. Constitution of U. States and of this state, with their amendments, to be published with revised statutes; head notes of contents to be at the head of each chapter or article, &c.; date of passage of each law, &c.
 6. Statute laws to be alphabetically arranged in the publication, &c.; complete index to the whole.
 7. How laws to be published; type for the body of the work, index, &c.
 8. Superintendent appointed to direct publication of the revised statutes, his duties; expenses, how paid; secretary of state may receive portion of the laws, &c.
 9. Vacancy in the office of superintendent, how supplied.
 10. Secretary of state to copy the laws, &c., and furnish them to the superintendent.
 11. When revised statutes are printed and bound, shall be delivered to the secretary of state, to be distributed, &c.
 12. Revised statutes, how they shall be distributed to the officers of the general and state governments, and certain state officers.
 13. What number of copies to be transmitted to clerk of the circuit court of each county for distribution.
 14. Four hundred copies to be distributed, &c., according to representation, to be sold at cost.
 15. For laws received clerk to execute to secretary of state duplicate receipts therefor.
 16. Clerk to distribute the laws deposited with him as required, taking receipts therefor, &c.
 17. The two copies to each clerk, one to be for the use of his office, the other for the use of the court.
 18. Officer receiving copy, &c., if he die, resign, &c., copy to be returned, &c., to be delivered to the successor.
 19. Laws not returned as required by the preceding section, penalty; duty of the clerk in such case.
 20. Acts passed at the present session and not to be published in the revised statutes, how published and distributed.
 21. Acts mentioned in the preceding section to be delivered to the secretary of state.
 22. Copies of the above to be delivered by the secretary of state to certain officers.
 23. Copies of revised statutes, &c., that remain after distribution, &c., to be preserved by secretary of state.
 24. Construction of the term "heretofore," and the term "hereafter," when used in any statute.
 25. Construction of words importing plural number.
 26. Construction of words importing the singular number, or the masculine gender.
 27. Rules prescribed in the two last sections, to what cases they shall apply.
 28. Construction of repugnant provisions contained in the revised statutes.
 29. The act concerning crimes and punishments, and to regulate proceedings in criminal cases, to take effect, when, &c.
 30. What acts shall be repealed after first day of December next, (1835.)
 31. What acts to take effect from and after the fourth day of July next, (1835.)
 32. What acts shall be repealed from and after that time.
 33. All acts of a public, permanent and general nature, &c., repealed on the first of December next.
 34. Last section not to be construed to repeal certain acts.
 35. Acts of a local, private or temporary nature, not repealed, but shall expire by their own limitation.
 36. Acts repealed not to affect any act done, right accrued, &c., but shall be as effectual as if the act had not been repealed.
 37. Offences committed, fine, penalty or forfeiture incurred, not to be affected by repeal, &c., but trial, &c., as though act had not been repealed.
 38. Actions, prosecutions, &c., pending at the time of repeal, &c., proceedings, how conducted.
 39. Offence committed before, but convicted after taking effect of criminal code, how the prisoner may be punished.
 40. Certain act repealed.
 41. When this act takes effect, to be published with the revised statutes.

Be it enacted by the general assembly of the state of Missouri, as follows.

§ 1. There shall be published and distributed in the manner hereinafter provided, an edition of two thousand five hundred copies of the revised statutes of this state.

§ 2. The revised statutes shall contain all acts of a public, general and permanent nature, passed during the present session of the general assembly, except as hereinafter excepted, and such as were before passed and are continued in force by the thirty-fourth section.

§ 3. The acts passed during the present session, which are continued in force and not to be published in the revised statutes, are the following: "An act to ascertain the northern and southern boundary line of this state." "An act authorizing persons owning paper-mills in this state, to peddle for rags without license." "An

act providing for a call of a convention.” “An act supplemental to an act to provide for the call of a convention.” “An act for the relief of aliens.” All acts of incorporation. All acts for the appropriation of money. All memorials and joint resolutions. All special acts organizing new counties, establishing or changing county lines, establishing or removing seats of justice. All special acts, providing for laying out state roads. All other acts of a private, local or temporary nature.

§ 4. Three thousand copies of the act concerning the militia shall be separately published, in small pica type, in a separate pamphlet, by the printer publishing the private and local acts, on the same terms and under the same rules and regulations; twenty-five hundred copies of which shall be distributed among the militia officers, and five hundred copies shall be distributed to the civil officers, in the manner the journals are to be distributed. This section to supersede a resolution passed for that purpose, and that said act be not published in the revised code.

§ 5. The constitution of the United States and of this state, and the amendments thereto, shall be prefixed to, and published with, the revised statutes. At the head of each chapter or article, there shall be brief notes of the contents of the several sections or clause thereof, in numerical order. At the end of each act, the date of the passage and taking effect thereof shall be noted, unless specified in the act, omitting the signature of the governor, president of the senate, and speaker of the house of representatives.

§ 6. The statute laws shall be alphabetically arranged in the publication, under proper heads or titles, with such notes of reference and explanations as may be necessary, and a complete index to the whole.

§ 7. The edition of the laws hereby authorized, shall be printed on good paper, the body of the work on small pica type, the notes and index on brevier or minion, and shall be published in one volume of super-royal octavo size, well bound and lettered. The printer shall not be restricted to the number of fifteen hundred em's to a page in the publication of the revised statutes, but a proper quantity of matter shall be put on a page, under the direction of the superintendent.

§ 8. The committee appointed to direct and superintend the publication of the revised statutes, shall arrange the order of publication, prepare the notes and index, examine and correct the proof sheets; and the expenses attending the same shall be audited by the auditor and paid out of the contingent fund of the general assembly. The secretary of state may receive such portion of the laws and journals as it may be more convenient to distribute therefrom, at the office of the printer executing the same.

§ 9. If any vacancy occur in the office of superintendent of the printing of the revised statutes, the governor shall appoint some other person to discharge the duties required by this act.

§ 10. The secretary of state shall copy all the statute laws passed at the present session, and hereby directed to be published with the revised laws, and furnish them to the superintendent in such order and at such time as he may direct.

§ 11. As soon as the revised statutes are printed and bound, as required by this act, they shall be delivered to the secretary of state, who shall cause the same to be distributed and disposed of as in the next section is provided.

§ 12. The revised statutes shall be distributed as follows:

First, To the secretary of state of the United States, for the use of the general government, five copies.

Second, To the executive of each state and territory of the United States, for the use of their respective governments, three copies.

Third, To the governor, auditor of public accounts, state treasurer, secretary of state, attorney general, circuit attorneys, warden of the penitentiary, judges of the supreme and circuit courts, for the use of their respective offices, each, one copy.

§ 13. The secretary of state shall transmit to the clerk of the circuit court of each county, a sufficient number of copies, to be distributed among the officers of the county, allowing one for each justice of the county court, justice of the peace, sheriff, coroner and constable, within the county, and two for the office of each clerk of a court of record.

§ 14. Four hundred copies of the revised statutes shall be distributed to the clerks of the circuit courts, in proportion to their representation in the general assembly, for sale at cost, to be determined by the superintendent.

§ 15. The clerks of the circuit courts, on receiving the revised laws for distribution, shall execute and deliver to the secretary of state, duplicate receipts therefor.

§ 16. The several clerks of the circuit courts shall distribute the laws deposited with them to the persons entitled thereto, according to the foregoing provisions, on application to him for that purpose, and take receipts for the copies so distributed; but in no case shall any officer be entitled to more than one copy for his own use, although he may hold several offices.

§ 17. Of the two copies to be delivered to each clerk of a court of record, one shall be for the use of the clerk in his office, and the other for the use of the court of which he is clerk.

§ 18. Upon the expiration of the term of service, resignation or removal from office, of any officer who shall have received a copy of the laws, he shall deliver such copy to the clerk of the circuit court of his county; and in case of the death of any such officer, his personal representatives shall return such copy to the clerk, and the copy so returned shall be delivered by the clerk to the successor of such officer.

§ 19. If any of the laws required to be returned by the last section, shall not be returned within three months after the vacancy happens, the delinquent shall forfeit ten dollars, to be recovered by action of debt, in the name and to the use of the state, and the clerk of the circuit court of the county in which any such delinquencies shall happen, shall prosecute a suit for the penalty.

§ 20. Five hundred copies of all acts passed, or which may be passed, at the present session of the general assembly, not heretofore directed to be published among the revised statutes, shall be published and distributed in the manner pre-

scribed by an act to provide for the publication of the laws and journals, and for other purposes, approved eighth February, eighteen hundred and twenty-five, except that instead of marginal notes at the side, there shall be at the head of each chapter or article, brief notes of the contents of the several sections thereof, in numerical order.

§ 21. The copies of the laws mentioned in the last section shall be delivered to the secretary of state.

§ 22. The secretary of state shall cause to be delivered to the governor, auditor of public accounts, state treasurer, attorney general, circuit attorneys, each, one copy, and to each clerk of a court of record two copies, one of which shall be for the use of the court, and the other kept in the office of the clerk.

§ 23. All the copies of the revised statutes, and of the other laws, which shall remain after the distribution hereby directed, shall be preserved in the office of the secretary of state, subject to the order of the general assembly.

§ 24. Whenever the term "heretofore" occurs in any statute, it shall be construed to mean any time previous to the day when such statute shall take effect; and whenever the term "hereafter" occurs, it shall be construed to mean the time after the statute containing such term shall take effect.

§ 25. Whenever in any statute, words importing the plural number are used in describing or referring to any matters, parties or persons, any single matter, party or person shall be deemed to be included, although distributive words may not be used.

§ 26. When any subject matter, party or person is described or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included.

§ 27. The rules prescribed in the two last sections shall apply in all cases, unless it be otherwise specially provided, or unless there be something in the subject or context repugnant to such construction.

§ 28. For the purpose of construction, the revised statutes passed at the present session of the general assembly shall be deemed to have been passed on the same day, notwithstanding they may have been passed or taken effect at different times; but if any provisions of different statutes are repugnant to each other, that which shall have been last passed shall prevail, and so much of any prior provisions as is inconsistent with such last provision shall be deemed repealed thereby.

§ 29. The act concerning crimes and their punishments, and the act to regulate proceedings in criminal cases, passed at the present session, shall take effect on the first day of December next, instead of the time specified in an act declaring the time at which laws shall take effect.

§ 30. From and after the first day of December next, the following acts shall be repealed:

First, An act concerning crimes and punishments, approved twelfth of February, eighteen hundred and twenty-five.

Second, An act to regulate proceedings in criminal cases, approved fourteenth January, eighteen hundred and twenty-five.

Third, An act to amend an act concerning crimes and punishments, approved thirtieth of December, eighteen hundred and twenty-six.

Fourth, An act supplementary to an act concerning crimes and punishments, approved fifth January, eighteen hundred and twenty-nine.

Fifth, An act supplementary to the laws concerning crimes and misdemeanors approved twelfth January, eighteen hundred and thirty-one.

Sixth, An act supplementary to the several acts concerning crimes and punishments, approved twelfth of January, eighteen hundred and thirty-one.

Seventh, An act supplementary to an act to regulate proceedings in criminal cases, approved thirtieth December, eighteen hundred and thirty.

Eighth, An act to change the manner of trying slaves for misdemeanors and certain crimes, approved the eighteenth January, eighteen hundred and thirty-one.

Ninth, An act to provide for a change of venue in criminal cases, approved fourth of January, eighteen hundred and thirty-three.

Tenth, An act to provide for the establishment of a public hospital in the city of St. Louis, approved eighteenth January, eighteen hundred and thirty one.

§ 31. The following acts shall take effect from and after the fourth day of July next:

First, An act to provide for electing two members to congress from this state.

Second, An act respecting clerks.

Third, An act creating the office of county surveyor and defining the duties thereof.

Fourth, An act to regulate elections.

Fifth, An act to provide for the election of justices of the peace.

Sixth, So much of the act for levying, assessing and collecting the revenue, as provides for the election of assessors.

§ 32. From and after the fourth day of July next, all acts of a general permanent nature, which were in force at the commencement of the present session, and which are repugnant to the laws put in force at that time by the preceding section shall be repealed.

§ 33. All other acts of a public, permanent and general nature, in force at the commencement of the present session of the general assembly, and not herein required to be continued in force, shall be repealed on the first day of December next, except as in the next section specified.

§ 34. The last section shall not be construed to repeal any of the provisions of either of the following acts:

First, An act to provide for the final settlement of the business of the several loan offices, approved eighth February, eighteen hundred and twenty-five.

Second, An act supplementary to the last mentioned act, approved January twenty-third, eighteen hundred and twenty-nine.

- Third*, The several acts published in the revised edition of the laws, in the year eighteen hundred and twenty-five, under the head, "seat of government."
- Fourth*, All acts passed since the year eighteen hundred and twenty-five, supplementary, or in addition to, the last mentioned acts, or relative to the seat of government or any public buildings, or the commissioner thereof.
- Fifth*, All acts providing for the sale, or disposition of the lands or public property of the state.
- Sixth*, An act declaring a part of the river Aux Cuivre a public highway.
- Seventh*, An act declaring a part of Salt River a navigable stream.
- Eighth*, An act to protect the fisheries in the county of St. Louis, and Cuivre township, in St. Charles county.
- Ninth*, An act concerning commons, approved second December, eighteen hundred and twenty-four.
- Tenth*, The laws now in force on the subject of printing.
- Eleventh*, An act establishing and regulating inspections of tobacco, approved the seventeenth January, eighteen hundred and twenty-five.
- Twelfth*, An act prescribing the emblems and devices of the great seal of the state of Missouri, approved eleventh January, eighteen hundred and twenty-two.

§ 35. All acts of a private, local or temporary nature, in force at the commencement of the present session of the general assembly, shall not be repealed by the provisions of this act, but shall continue in force or expire according to their respective provisions and limitations.

§ 36. The repeal of any statutory provision by this act shall not affect any act done, or right accrued or established, or any proceedings, suit or prosecution had or commenced in any civil case, previous to the time when such repeal shall take effect, but every such act, right and proceeding, shall remain as valid and effectual as if the provisions so repealed had remained in force.

§ 37. No offence committed, and no fine, penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, shall be affected by such repeal, but the trial and punishment of all such offences, and the recovery of such fines, penalties and forfeitures, shall be had in all respects as if the provision had remained in force.

§ 38. No action, plea, prosecution or proceeding, civil or criminal, pending at the time any statutory provision shall be repealed, shall be affected by such repeal, but the same shall proceed in all respects as if such statutory provision had not been repealed, except that all such proceedings had after the time of taking effect of the revised statutes shall be conducted according to the provisions of such statute, and shall be in all respects subject to the provisions thereof, so far as they are applicable.

§ 39. If any person shall, after the taking effect of the act concerning crimes

and their punishments, passed at the present session, be convicted of any offence committed before that time, he may openly pray the court before which the conviction is had, that sentence be pronounced agreeably to the provisions of said act for the like offence, in which case the court shall pronounce such sentence as would have been pronounced if the offence had been committed after the taking effect of the act before-mentioned.

§ 40. An act passed at the present session, entitled "an act declaring the time at which laws shall take effect," is hereby repealed.

§ 41. This act shall take effect from its passage, and shall be published with, and as a part of, the revised statutes.

Approved, March 21st, 1835.

LEAD FURNACES.

An act directing the fencing and enclosing of furnaces for the smelting of lead.

SEC. 1. Furnaces to be inclosed; in what manner

2. Penalty for neglect; liability to party injured, how damages to be sued for.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. That the owners or occupiers of every furnace, or other works, used for the smelting of lead in this state, which now are, or hereafter shall be, erected therein, shall be obliged, and they are hereby required to keep the same enclosed with a good and lawful fence, for the distance of at least ten yards from any part of said furnace, or works, and in such manner as to prevent horses, cattle, or other stock, from having access within the said inclosure; and also to keep and maintain the said fences and enclosures in good order and repair, for and during the term of six months after such furnace or works have been last made use of for the smelting of lead.

§ 2. If any such owner or occupier of any furnace, or other works for the smelting of lead, shall fail or neglect to make such enclosure, or to keep the same in repair for the term of six months after the said furnace or works have been last used as aforesaid, he, she or they, so neglecting or failing, shall forfeit and pay the sum of one dollar for each and every day that the said enclosure around the said furnace or works shall not have been so made and kept in repair, to be recovered with costs before any justice of the peace, by any person owning stock in the vicinity of such furnace, liable to be injured by licking thereat, who will sue for the same, and shall also be liable to the party injured by such neglect, or refusal, for the value of any horse, cattle, or other stock of any kind that may be killed by licking at the said furnaces or works, or within the said distances of ten yards therefrom, to be recovered with costs in any court having competent jurisdiction to try the same: Provided, That if any person, on his ceasing to occupy any furnace or works, shall leave the same enclosed according to the the provisions of this act, he shall

not be liable to pay the fine or damages by this act imposed, unless it shall appear that the said owner or occupier removed or pulled down said fence, or caused the same to be done.

Approved, December 13th, 1834.

LEGISLATURE.—MEETING.

An act fixing the time of meeting of the general assembly.

Sec. 1. General assembly to meet third Monday in November, 1835, and every two years thereafter.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The general assembly of this state shall meet on the third Monday of November, in the year one thousand eight hundred and thirty-six, and on the third Monday of November, every second year thereafter.

Approved, February 26th, 1835.

LEGISLATURE.—VACANCIES.

An act to fill vacancies in the general assembly.

Sec. 1. Resignation of members how made; vacancies during the session, to be certified to the governor.

2. Governor to issue writs of election in all cases of vacancy.

3. Writs of election, how directed in certain cases.

4. Election to supply vacancies, how held; duty of sheriff.

5. District or county altered or divided, and new district entitled to elect a member, in such case election to fill vacancy, in what district to be held.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. If any member elected to either house of the general assembly shall resign in the recess thereof, he shall address and transmit his resignation, in writing, to the governor; and when any such member shall resign during any session, he shall address his resignation, in writing, to the presiding officer of the house of which he is a member, which shall be entered on the journals; in which case, and in all cases of vacancies happening or being declared, during any session of the general assembly, by death, expulsion or otherwise, the presiding officer of the house in which such vacancy shall happen, shall immediately notify the governor thereof.

§ 2. Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house, during the recess, he shall, without delay, issue a writ of election to supply such vacancy.

§ 3. When any vacancy shall happen in the senate, for a district composed of more than one county, the writ of election shall be directed to the sheriff of the county first named in the law establishing the district; and when such vacancy shall happen in a senatorial district, which shall have been divided or altered after

the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the county first named in such old district; and when any vacancy shall happen in either house, for any county which shall have been divided after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the old county.

§ 4. The sheriff, to whom any writ of election shall be delivered, shall cause the election to supply such vacancy to be held within the limits composing the county or district at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county or district may lie, who shall cause copies of such notice to be put up, and the election to be held accordingly in such parts of their respective counties as composed a part of the old county or district for which the election is to be held at the last preceding general election; and the returns shall be made, and the certificate of election granted, in all things as if no division had taken place.

§ 5. When any district or county shall be so altered or divided, during the term for which a member shall be elected, and the new district or county shall be authorized to elect their member before the expiration of the term of the former member, in that case the election to fill the vacancy shall be held for the district or county as it shall remain after such alteration or division, and not as it was at the last preceding general election.

Approved, March 2nd, 1835.

LEGISLATURE.—PETITION.

An act respecting notice of petitions to the general assembly.

Sec. 1. Petitioners to change county lines, erect new counties, or remove seats of justice, to give notice when and how.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. No petition or petitions shall, after the end of this session of the general assembly, be finally acted upon, which prays for the change of any county lines, the erection of new counties, or the removal of the seat of justice in any county, or which may effect the rights and interests of any person or persons, unless such petitioner or petitioners shall give three weeks notice in some newspaper printed in this state, at least two months before such person or persons shall present their petition or petitions to the general assembly.

Approved, February 26th, 1835.

LEGISLATURE.—PROCEEDINGS.

An act to regulate proceedings of the general assembly in certain cases.

- SEC. 1. Joint meeting, how organized.
2. President of the senate to preside; by what rules governed; power to punish for disorderly behavior.
 3. Any member guilty of disorderly behavior, how punished.
 4. When and in what cases persons guilty of disorderly behavior may be ordered into custody.
 5. Disturbing committee of either house, or joint committee, punishable by the house.
 6. Depositions may be taken and read before either house, &c.: when.
 7. Commissions how and by whom issued, and depositions taken and returned.
 8. Power of each house, or both houses, to issue writs and process, &c.,
 9. Subpœnas to be issued, &c., process by whom issued, by whom attested, how and by whom executed.
 10. Compensation of witnesses.
 11. Costs and expenses to be paid out of the contingent fund, or by the party charged, if convicted.
 12. Each house to control its own contingent expenses; how adjusted and certified.
 13. Joint expenses how adjusted and certified; warrant to be drawn by the auditor, &c.
 14. Majority of all present, necessary to determine elections; certificate, &c., to be granted.
 15. Power to administer oaths.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. When, by the laws or constitution of this state, a joint meeting of the senate and house of representatives is required, they shall assemble, with their clerks, on the day and at the hour previously agreed on for that purpose, in the hall of the house of representatives.

§ 2. When assembled, the president of the senate shall preside, and such meeting shall be governed by such standing rules as shall have been adopted for that purpose by the concurrence of both houses; they shall have power to punish any person, other than a member, for disorderly or contemptuous behavior in their presence, by fine and imprisonment, in the same manner and to the same extent, as either house may do for like conduct before them, by the constitution of this state.

§ 3. Any member of either house who shall be guilty of disorderly behavior in the presence of such meeting, may be punished by the house of which he is a member, in the same manner as if the offence were committed in the presence of such house.

§ 4. If any person, whether a member or not, shall be guilty of any disorder in the presence of either house or a committee of the whole, or in joint meeting of both houses, while in session, the presiding officer of such house or joint meeting, or chairman of the committee of the whole, may order such person into immediate custody; and the sergeant-at-arms, or the door-keeper, shall immediately take such person into custody and detain him until the further order of the house, joint meeting, or committee of the whole, before which the offence was committed.

§ 5. If any person, whether a member or not, shall disturb the proceedings of any committee of either house, or be guilty of disorder in their presence, the house appointing such committee may punish such person as if the like offence were committed in the presence of such house; and if such disorder or offence be com-

mitted before a joint committee of both houses, the president of the senate shall issue process, and both houses in joint meeting proceed thereon.

§ 6. In cases not otherwise provided for by law, depositions may be taken and read in either house, or before a committee thereof, or before both houses in joint meeting, in all cases where the taking and reading depositions would be allowed in any cause pending before any court of law.

§ 7. When necessary, the presiding officer of the house in which they are required, or of a joint meeting, may issue commissions to take such depositions as a court of law; and the proceedings in taking and returning depositions shall be the same as may be prescribed by law for taking depositions to be read in any court of law.

§ 8. Each house, or both houses in joint meeting, may cause to be issued necessary writs and process to summons and compel any person charged with any offence, whereof they have jurisdiction, to appear before them, or any committee thereof, and carry into execution their orders and sentences, and to summon and compel the attendance of witnesses, in as full a manner as any court of law and with like effect.

§ 9. Subpœnas for witnesses shall be issued at the request of any member of either house, or the party accused, or any member of any committee; and all process awarded by the house of representatives, and subpœnas and other process for witnesses whose attendance is required therein, or before any committee thereof, shall be under the hand of the speaker, and attested by the chief clerk, and shall be executed by the sergeant-at-arms, or a special messenger; and all such process awarded by the senate, or in a joint meeting of both houses, shall be under the hand of the president, and attested by the secretary or chief clerk, and executed by their sergeant-at-arms, or a special messenger.

§ 10. Every witness attending either house, or a committee thereof, or a joint meeting of both houses, being summoned, shall have the same fees and travelling allowance as for the time being shall be allowed by law to witnesses for their attendance, to be paid as other costs.

§ 11. The fees of all officers and witnesses before either house, or a joint meeting, and all other costs and expenses arising therein, shall be paid out of the contingent fund of the house in which the proceedings are had, or if had in joint meeting of both houses, then out of the contingent fund of the general assembly, unless the party charged be adjudged to pay the costs and expenses, in which [case] he shall pay them, and payment thereof may be enforced by execution.

§ 12. Each house shall control its own contingent expenses; and when any account, properly chargeable to the house of representatives, shall be adjusted and allowed according to the rules of that house, a certificate thereof shall be granted, signed by the speaker and attested by the chief clerk; and when any account or demand for contingent expenses of the senate shall be allowed according to the rules of that house, a certificate thereof shall be granted, signed by the president and attested by the secretary.

§ 13. All joint expenses shall be controlled by their concurrent vote, and shall be ascertained and adjusted according to their joint rules; a certificate thereof shall be issued, signed by the president and countersigned by the secretary of the senate, and every such certificate shall specify the amount due, on what account, and the fund out of which it is to be paid; and the auditor of public accounts, on the delivery of such certificate to him, shall draw his warrant therefor accordingly, as in case of other demands against the state.

§ 14. In all elections made by either house, or by joint vote of both houses, the votes of a majority of the members present shall be necessary to a choice; and when such election shall be by joint vote, the president of the senate shall grant the person elected a certificate, which, in all cases where a commission is required, shall be sufficient to authorize the granting such commission.

§ 15. The president of the senate, and speaker of the house of representatives, may administer all oaths and affirmations to the officers of their respective houses; and the president of the senate, speaker of the house of representatives, a chairman of the committee of the whole, or a chairman of any standing or select committee of either house, may administer oaths and affirmations to witnesses in any case under their examination.

Approved, February 20th, 1835.

LEGISLATURE.—COMPENSATION.

An act to fix the pay of the general assembly and their officers.

- SEC. 1. Compensation of president of the senate and speaker of the house of representatives, and also of the members.
2. In cases of sickness, after arrival at the place of meeting, compensation to continue.
3. Compensation of secretary of the senate, chief clerk, &c., other clerks, door-keeper and serjeant-at-arms.
4. Certificates for compensation, how granted and issued.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Each member of the general assembly shall receive three dollars for each day he shall attend the house of which he is a member, and shall receive three dollars for every twenty-five miles which he must travel in going from his residence to the place of meeting, and returning thence, estimating the distance by the most usual road; the president of the senate and speaker of the house of representatives shall each be entitled to receive four dollars and fifty cents for each day he shall attend, and the same allowance for travelling as members.

§ 2. If the president of the senate, speaker of the house of representatives, or any member, after his arrival at the place of meeting, be unable to attend by reason of sickness, he shall be entitled to his daily allowance in the same manner as when in attendance.

§ 3. The secretary of the senate, and the chief clerk of the house of representatives, shall each receive five dollars per day, including two days after the adjournment of the general assembly; and every other clerk employed by either house

shall receive three dollars per day, and the door-keeper of each house three dollars per day, and the sergeant-at-arms of each house shall receive one dollar per day, while employed by the house, and such fees as shall be allowed for the service of process by the house by which he is appointed.

§ 4. When any member or officer of either house shall present his account for his compensation, and the same shall have been allowed according to the rules of the house to which he belongs, a certificate thereof shall be granted, specifying the amount and on what account, and directing that the same be paid out of the appropriations made for the pay of the general assembly; which certificate, in the case of a member or officer of the senate, shall be signed by the president and attested by the secretary; and in case of a member or officer of the house of representatives, it shall be signed by the speaker and attested by the chief clerk; and upon the presentation of such certificate to the auditor of public accounts, he shall draw his warrant on the treasurer for the amount.

Approved, February 20th, 1835.

LIMITATION.

An act prescribing the time of commencing actions.

- ART. I. Of the time of commencing actions relating to real property.
 ART. II. Of the time of commencing actions for the recovery of any debt or damages, or of any personal property, or of any penalty or forfeiture given by any statute of this state.
 ART. III. General provisions concerning the commencement of suits, and the persons and cases exempted from the operation of this act.
 ART. IV. Of the presumption of payment arising from the lapse of time.

ARTICLE I.

Of the time of commencing actions relating to real property.

- SEC. 1. Actions not to be commenced for lands, &c., after the lapse of twenty years, unless it appear, &c.
 2. When an entry upon lands, tenements, &c., shall be deemed sufficient or valid as a claim.
 3. Right of person to possession not to be impaired, by descent cast in consequence of the death of the person in possession.
 4. Saving to persons under certain disabilities the right to make entry or bring action after disability removed.
 5. If person under disability die, when, and within what time, his heirs may make entry or bring action.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. No action for the recovery of any lands, tenements or hereditaments, or for the recovery of the possession thereof, shall be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within twenty years before the commencement of such action.

§ 2. No entry upon any lands, tenements or hereditaments, shall be deemed sufficient or valid as a claim, unless an action be commenced thereupon within one year after the making of such entry, and within twenty years from the time when the right to make such entry descended or accrued.

§ 3. The right of any person to the possession of any lands, tenements or hereditaments shall not be impaired or affected by a descent cast in consequence of the death of any person in possession of such estate.

§ 4. If any person entitled to commence any action in this article specified, or to make any entry, be, at the time such title shall first descend or accrue, either,

First, Within the age of twenty-one years; or,

Second, Insane; or,

Third, Imprisoned on any criminal charge, or in execution upon some conviction of a criminal offence, for any term less than life; or,

Fourth, A married woman,

The time during which such disability shall continue shall not be deemed any portion of the time in this article limited for the commencement of such suit, or the making such entry, but such person may bring such action, or make such entry after the time so limited, and within ten years after such disability is removed, but not after that period.

§ 5. If any person entitled to commence such action, or to make such entry, die during the continuance of any disability specified in the preceding section, and no determination or judgment be had of the title, right or action to him accrued, his heirs may commence such action or make such entry after the time in this article limited for that purpose, and within ten years after his death, but not after that period.

ARTICLE II.

Of the time of commencing actions for the recovery of any debt or damages, or of any personal property, or of any penalty or forfeiture given by any statute of this state.

- SEC. 1. Actions of debt founded on writing, &c., assumpsit on writing for money, &c., to be brought in ten years.
2. Actions for debt, penalties, trespass upon real or personal property, account, detinue, trover or trespass on the cases not otherwise provided for, to be brought within five years.
 3. Actions upon accounts for goods, wares, &c., store account, assault and battery and false imprisonment, within two years.
 4. Actions of replevin, and for slander, to be commenced within one year.
 5. Saving to persons under certain disabilities the right to bring action after disability removed.
 6. If person under disability die, when and within what time his executor or administrator may bring action.
 7. Construction of this article in certain cases, if the defendant be out of the state before, or depart after the cause of action accrues.

§ 1. The following actions shall be commenced within ten years after the cause of such action accrued, and not after:

First, All actions of debt founded on any writing, whether sealed or unsealed.

Second, All actions of assumpsit founded on any writing for the direct payment of money.

§ 2. The following actions shall be commenced within five years after the cause of such action accrued, and not after:

First, All actions of debt founded upon any contract or liability, and not in this act otherwise specially limited, nor brought upon any judgment or decree of any court.

Second, All actions for the recovery of any penalty or forfeiture given by any statute of this state.

Third, All actions of trespass upon real or personal property.

Fourth, All actions of account, detinue, assumpsit, trover or trespass on the case, not in this act otherwise limited.

§ 3. The following actions shall be commenced within two years after the cause of such action accrued, and not after:

First, All actions on open accounts for goods, wares and merchandize, sold and delivered.

Second, All actions for any article in a store account.

Third, All actions for assault and battery.

Fourth, All actions for false imprisonment.

§ 4. The following actions shall be commenced within one year after the cause of such action accrued, and not after:

First, All actions of replevin.

Second, All actions for slanderous words spoken.

§ 5. If any person entitled to bring an action in this article specified, at the time the cause of action accrued, by either,

First, Within the age of twenty-one; or,

Second, Insane; or,

Third, Imprisoned on a criminal charge, or in execution under a sentence of a criminal court, for a term less than for his natural life, or,

Fourth, A married woman,

Such persons shall be at liberty to bring such actions within the respective times in this article limited, after such disability is removed.

§ 6. If any person entitled to bring any action in this article specified, die before the expiration of the time herein limited for the commencement of such suit, if such cause of action shall survive to his representatives, his executor or administrator may, after the expiration of such time, and within one year after such death, commence such action, but not after that period.

§ 7. If at the time when any cause of action specified in this article accrues against any person, he be out of this state, such action may be commenced within the times herein respectively limited, after the return of such person into the state; and if after such cause of action shall have accrued, such person depart from and reside out of this state, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action.

ARTICLE III.

General provisions concerning the commencement of suits, and the persons and cases exempted from the operation of this act.

- SEC. 1. Alien or citizen of any country at war with the United States, time not to be computed under this act during such war.
2. Preceding section not to apply to actions for penalties or forfeitures given by law.
3. Further saving in cases of non-suit, judgment arrested or reversed; actions in such cases may survive, and against whom.

SEC. 4. If defendant die after suit commenced and before judgment, if action survives, when and against whom new suit may be brought.

5. Suit abated by death of plaintiff, in what cases, within what time, and by whom new suit may be brought.
6. Suit stayed by injunction, time during which it is in force not to be computed.
7. Disability under this act not to avail, unless it existed at the time the right accrued.
8. Cases in which, by the act of the defendant, limitation shall not extend.
9. Two or more disabilities, all must be removed before limitation shall attach.
10. This act not to extend to actions limited by other statutes.
11. This act to apply only to cases accruing after this act takes effect.

§ 1. Whenever any person shall be disabled to prosecute in the courts of this state, by reason of his being an alien subject, or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed any part of the respective periods limited in the preceding articles of this act for the making of an entry, or the commencement of any action.

§ 2. The preceding section shall not apply to actions for any penalty or forfeiture given by any statute of this state.

§ 3. If any action shall have been commenced within the times respectively prescribed in the preceding articles of this act, and the plaintiff therein suffer a non-suit, or, after a verdict for him, the judgment be arrested, or, after a judgment for him, the same be reversed on appeal or error, such plaintiff may commence a new action, from time to time, within one year after such non-suit suffered, or such judgment arrested; or reversed and if the cause of action survive or descend to his heirs, or survive to his executors or administrators, they may, in like manner, commence a new action within the time herein allowed to such plaintiff.

§ 4. If any action shall have been commenced within the times respectively prescribed in the preceding articles of this act, and the defendant in such suit die before judgment, and if the right of action be such as survives against the representatives of the defendant, the plaintiff may commence a new action against the heirs, executors or administrators of such defendant, as the case may require, within one year after such death; or if no executors or administrators be appointed within that time, then within one year after letters testamentary or of administration shall have been granted to them.

§ 5. When an action commenced within the time prescribed by law shall abate by reason of the death of the plaintiff, if the right of action survive to his representatives, his executor, or administrator, may, within one year after such death, commence a new action, if the cause of such action would otherwise survive; and if any action so commenced by an executor or administrator abate by the death of the plaintiff, a new action may be commenced by the administrator of the same estate, at any time within one year after such abatement.

§ 6. Whenever the commencement of any suit shall be stayed by an injunction of any court of equity, the time during which such injunction shall be in force shall not be deemed any portion of the time in this act limited for the commencement of such suit.

§ 7. No person shall avail himself of any disability enumerated in this act, unless such disability existed at the time his right of action or of entry accrued.

§ 8. If any person, by absconding or concealing himself, or by any other improper act of his own, prevent the commencement of any action in this act specified, such action may be commenced within the times herein respectively limited after the time the commencement of such action shall have ceased to be so prevented.

§ 9. When there are two or more disabilities existing at the time the right of action or entry accrued, the limitation herein prescribed shall not attach until all such disabilities be removed.

§ 10. The provisions of this act shall not extend to any action which is, or shall be, otherwise limited by any statute, but such action shall be brought within the time limited by such statute.

§ 11. The provisions of this act shall not apply to any actions commenced, nor to any cases where the right of action or of entry shall have accrued before the time when this act takes effect, but the same shall remain subject to the laws now in force.

ARTICLE IV.

Of the presumption of payment arising from the lapse of time.

SEC. 1. Judgments and decrees, presumed to be satisfied after the lapse of twenty years, how and when repelled.

2. Sealed instruments of writing, for payment of money, presumed to be paid after lapse of twenty years, presumption how repelled.

§ 1. Every judgment and decree of any court hereafter rendered or made, shall be presumed to be paid and satisfied after the expiration of twenty years from the time of giving such judgment or decree; and every judgment and decree rendered or made at the time this act shall take effect, shall be presumed to be paid and satisfied after the expiration of twenty years from the time this act shall take effect; but in any suit at law or equity, in which the party against whom such judgment or decree was rendered, or his heirs or personal representatives, shall be a party, such presumption may be repelled by proof of payment, or of written acknowledgment of indebtedness, made within twenty years, of some part of the amount recovered by such judgment or decree. In all other cases it shall be conclusive.

§ 2. Every sealed instrument of writing, for the payment of money hereafter made, shall be presumed to be paid and satisfied after the expiration of twenty years from the time such action shall accrue; and every sealed instrument of writing, for the payment of money heretofore made, shall be presumed to be paid and satisfied after the expiration of twenty years from the time this act shall take effect and such right of action shall accrue, but such presumption may be repelled by proof of payment of some part, or by proof of a written acknowledgment of such right of action within that period.

Approved, March 16th, 1835.

LOST MONEY AND GOODS.

An act respecting lost money and goods.

- SEC. 1. Persons finding money, goods, &c., to make affidavit of the fact, &c., within ten days, before a justice of the peace.
2. Justice may summon three householders to appraise the same.
 3. Duty of appraisers; two lists of appraisement to be made out, &c.; one delivered to the finder and one to the justice.
 4. Justice to file such list; finder to transmit copy to the clerk of the county court within fifteen days.
 5. Advertisements, within what time and where to be put up by the finder.
 6. Proceedings, if no owner appear within forty days; duty of the finder, and when the property shall vest in him.
 7. If the owner appear within one year and prove property and pay charges, property to be restored to him.
 8. If the finder fail to restore such money, or property, or the value, the owner may recover the same; how.
 9. Finder failing to make discovery, penalty.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. If any person find any money, goods, or other valuable thing, worth more than ten dollars, the owner of which is unknown, he shall, within ten days, make an affidavit before some justice of the county, stating when and where he found the same, that the owner is unknown to him, and that he has not secreted, withheld or disposed of any part of the same.

§ 2. Such justice shall then (if necessary) summon three disinterested householders to appraise the same.

§ 3. Such appraisers, or two of them, shall make two lists of the valuation and description of such property, money or other valuable thing, and sign and make oath to the same, and shall deliver one of the lists to the finder and the other to the justice of the peace.

§ 4. The justice shall file such list, and the finder shall transmit a copy of the same to the clerk of the county court within fifteen days.

§ 5. The finder shall set up at the courthouse door, and four other public places in the township, a copy of such valuation within ten days.

§ 6. If no owner appear and prove the money or property within forty days, and the value exceed twenty dollars, the finder shall, within thirty days, cause a copy of the description to be inserted in some newspaper in this state for three weeks, and if no owner prove the property within one year after such publication, the same shall vest in the finder.

§ 7. If within one year any owner appear and prove the property and pay all reasonable charges, the finder shall restore the same to him.

§ 8. If the finder fail to restore such money or property, or the appraised value thereof, the owner may recover the same by action in any court having jurisdiction.

§ 9. If any person find any money, property, or other valuable thing, and fail to make discovery of the same, as required by this act, he shall forfeit to the owner double the value thereof.

Approved, March 10th, 1835.

L O T T E R I E S .

An act for the entire abolition of lotteries.

Sec 1. Lotteries, and devices in the nature of lotteries, abolished.

2. Penalty on persons engaged for the sale of lottery tickets, or in any manner evading the provisions of this act
3. This act not to extend to lotteries now authorized by any law of this state.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. After the first day of January, one thousand eight hundred and thirty-six, all and every lottery and lotteries, and device and devices in the nature of lotteries, shall be utterly and entirely abolished.

§ 2. After the day aforesaid, any person who shall sell or expose to sale, or cause to be sold or exposed to sale, or shall keep on hand for the purpose of sale, or shall advertise or cause to be advertised for sale, or shall aid or assist, or be in any wise concerned in the sale or exposure to sale of any lottery ticket or tickets, or any share or part of any lottery ticket, in any lotteries, or device in the nature of a lottery, within this state or elsewhere; and any person or persons who shall advertise, or cause to be advertised, the drawing of any scheme in any lottery, or device in the nature of a lottery, and shall be convicted thereof in any court of competent jurisdiction, shall, for each and every such offence, forfeit and pay a sum not less than five hundred dollars, and not exceeding ten thousand dollars; or be sentenced to undergo an imprisonment not exceeding six months, at the discretion of the court or jury who may try the same.

§ 3. The foregoing provisions shall not be construed to extend to any lottery, or the sale of any ticket in any lottery; now authorized by any law of this state.

Approved January 24th, 1835.

M A R K S A N D B R A N D S .

An act to regulate marks and brands.

Sec. 1. Owners of horses, cattle, &c., to have a mark and brand.

2. A description to be delivered to, and recorded by, the clerk.

3. At what age to brand and mark.

4. Disputes concerning mark or brand, how decided.

5. Not more than one mark or brand to be used in the same family.

6. Penalty for using mark or brand not recorded, or permitting more than one to be used.

7. Penalty to alter or deface mark or brand; prosecution for, within what time commenced.

8. Penalty for mis-marking or mis-branding

9. Persons killing hogs or cattle in the woods, to show head and ears to justice or two householders; penalty for neglect.

10. Penalty for concealing offences in the two preceding sections; construction as to costs, &c.

11. Minors, &c., may have marks and brands for stock coming by descent, gift or devise.

12. Appropriation of penalties under this act, and how recovered.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Every person who hath horse, cattle, hogs or sheep, shall have a mark and brand, different from the mark and brand of his neighbors.

§ 2. Every person shall deliver to the clerk of the county court a description of his mark or brand, who shall record the same in a book to be kept for that purpose.

§ 3. Every person shall brand his horses or mules over eighteen months old, and mark all his hogs and sheep over six months old, and mark or brand his cattle over twelve months old.

§ 4. If any dispute shall arise concerning any mark or brand, it shall be decided by the record of the clerk.

§ 4. No person shall use more than one mark or brand for his stock; and no minor, living with his parent or guardian, shall use any mark or brand other than that of his parent or guardian, nor shall any apprentice or servant use any mark or brand other than that of his master.

§ 6. If any person use any mark or brand, other than the one recorded, or use more than one mark or brand, or suffer his child, ward, apprentice, or servant to use a separate mark or brand for any stock, he shall forfeit the stock so branded or marked, and the value thereof.

§ 7. If any person alter or deface the mark or brand of any other person, for every horse and every head of other stock whose mark or brand he shall alter or deface, [he] shall forfeit not exceeding one hundred dollars. Such prosecution shall be instituted within six months after the discovery of the offence.

§ 8. If any person wilfully, and with intent to defraud, mis-mark or mis-brand any horse or other stock, not his own, he shall forfeit five dollars over and above the value thereof.

§ 9. If any person kill any hog or sheep, or any head of neat cattle running at large, he shall, within three days, show the head and ears of such hog, and the hide, with the ears of such sheep or cattle, to some justice of the peace or two respectable householders, under the penalty of ten dollars.

§ 10. If any person see another person in the commission of any of the offences mentioned in the two preceding sections, and shall not give information thereof, within ten days thereafter, to some justice of the peace, he shall forfeit ten dollars: but this section shall not be so construed as to subject the person giving information to any costs in the event of the acquittal or discharge of the person charged, if the court or justice shall be of opinion there was probable cause for giving such information.

§ 11. Nothing in the fifth or sixth sections of this act shall extend to any stock which shall descend to any minor, servant or apprentice, by the gift or devise of any person, other than his guardian or master; but the brands and marks of such minor, apprentice or servant, shall be recorded as other marks and brands.

§ 12. All penalties imposed by this act may be recovered for the use of the county in which the offence is committed, by indictment or by civil action, in any court having jurisdiction.

Approved, February 26th, 1835.

MARRIAGE CONTRACTS.

An act concerning marriage contracts.

- SEC. 1. To be in writing, sealed and acknowledged, or proven.
2. How acknowledged, or proved and certified.
 3. Acknowledged or proved, to be recorded; in what counties.
 4. When deposited for record, to impart notice, &c.
 5. Shall not affect third person until delivered for record.
 6. If duly acknowledged, certified and recorded; received in evidence.
 7. And if lost, &c., a copy duly certified, evidence.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. All marriage contracts whereby any estate, real or personal, is intended to be secured or conveyed to any person or persons, or where said estate may be effected in law or equity, shall be in writing, sealed and acknowledged by each of the contracting parties, or proved by one or more subscribing witnesses.

§ 2. Marriage contracts shall be acknowledged or proved before a court of record, or some judge, justice, or clerk of a court of record, of the state in which the contract is executed, which acknowledgment or proof shall be taken and certified in the same manner as deeds of conveyances for land are, or shall be required by law to be acknowledged or proven and certified.

§ 3. When any marriage contract shall be acknowledged or proved, it shall be recorded, with the certificate of proof or acknowledgment, in the office of the recorder of every county in which any estate in the county thereby intended to be conveyed or affected, shall be situate or may be found.

§ 4. When a marriage contract is deposited in the recorder's office, for record, of any county, it shall (as to all property effected thereby, where the same is deposited) impart full notice to all persons of the contents thereof.

§ 5. No marriage contract shall be valid or affect any property, (except between the parties thereto, and such as have actual notice thereof,) until it shall be deposited for record with the recorder of the county wherein such property is situated or found.

§ 6. Marriage contracts, duly proved or acknowledged, certified and recorded, shall be received in evidence in any court of this state, without further proof of their execution.

§ 7. When it shall appear to the court that a marriage contract, duly acknowledged, or proved and recorded, is lost, or is not in the power of the party wishing to use it, a copy thereof, duly certified under the hand and seal of the recorder, may be received in evidence.

Approved, January 22d, 1835.

MARRIAGES.

An act regulating marriages.

- Sec. 1. Marriage in law, a civil contract; assent of parties is essential.
2. Within what degrees marriages declared to be incestuous and void; extends to illegitimate as well as legitimate children.
3. Marriage of white person with negro or mulatto, illegal and void.
4. Penalty on whoever shall contract marriage in fact, or solemnize marriage, contrary to the two preceding sections.
5. Marriage without the state, if valid when contracted, shall be valid in this state.
6. Who may perform the ceremony of marriage in this state.
7. Males under the age of 21, and females under 18, not to be joined in marriage without consent of parent or guardian.
8. Certificate of consent of parent or guardian to be registered and filed in the office of recorder; penalty for joining minor in marriage, without consent &c., and how recovered.
9. Persons authorized to solemnize matrimony, to keep record of marriages, and file certificate of marriage with the recorder; penalty for neglect
10. Recorder to register certificates of marriage; fees of recorder; penalty for neglect.
11. Religious societies may solemnize matrimony according to their own rules; their duty in such cases.
12. Record of marriages and copies certineo, &c., evidence.
13. Penalty for making false return of marriage, &c., or recorder making false entry of return, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Marriage is considered in law as a civil contract, to which the consent of the parties capable in law of contracting is essential.

§ 2. All marriages between parents and children, including grand parents and grand children of every degree; between brothers and sisters, of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, are declared to be incestuous, and absolutely void. This section shall extend to illegitimate as well as to legitimate children and relations.

§ 3. All marriages of white persons with negroes or mulattoes, are declared to be illegal and void.

§ 4. Whoever shall contract marriage in fact, contrary to the prohibitions in the two sections next preceding, and whoever shall solemnize any such marriage, shall be deemed guilty of misdemeanor, and shall, upon conviction, be punished by fine or imprisonment, or both, at the discretion of the jury which shall try the cause; or, if the conviction be by confession, or on demurrer, at the discretion of the court.

§ 5. All marriages contracted without this state, which would be valid by the laws of the country in which the same were contracted, shall be valid in all courts and places within this state.

§ 6. Every judge and justice of the peace, and every licensed or ordained preacher of the gospel, may perform the ceremony of marriage in this state.

§ 7. No judge, justice of the peace, preacher of the gospel, or other person, shall join in marriage any male under the age of twenty-one years, or female under the age of eighteen years, unless the parent or guardian, or other person under whose care and government such minor may be, shall be present and give consent thereto, or unless the minor applying shall produce a certificate in writing, under

the hand of the parent or parents, or guardian, or if such minor has no parent or guardian, then under the hand of the person under whose care and government he or she may be, which certificate shall be proved to be genuine by the oath or affirmation of a person of full age and discretion, who was present at the signing of the same, and affixed his or her name thereto.

§ 8. Any person who shall marry any minor, by virtue of a certificate proved as above, shall register the same in a book to be by him kept for the purpose, and, within three months, shall transmit the certificate to the recorder of the county in which the marriage was solemnized, to be filed and recorded in his office; and if any such person shall join in marriage any minor, without first having such certificate, or the presence and consent of the parent or guardian, or other person having the care and government of such minor, such person shall forfeit three hundred dollars, to be recovered, with costs of suit, by action of debt, in any court having cognizance thereof, by the parent, guardian, or person having charge of such minor, the one half of the said forfeiture to the use of the county, and the other half to the use of the person who shall prosecute for the same.

§ 9. Every person having authority to join others in marriage, shall keep a record of all marriages solemnized before him, and, within three months, transmit a certificate of every marriage (containing both christian names and surnames) to the recorder of the county in which the marriage took place; and if any person shall neglect or refuse to make return of all the marriages solemnized before him, within the time above required, he shall, for every offence, forfeit the sum of fifty dollars, to be recovered, with costs, by the recorder or any person who will prosecute for the same, by action of debt, in any court having cognizance thereof.

§ 10. The recorders of the several counties in this state shall record all such returns of marriages in a book to be kept for that purpose, within one month after receiving the same, for which he shall be allowed, for every entry, fifty cents, to be paid by the person married, to the person who shall perform the ceremony, and by him transmitted to the recorder; and if any such recorder shall refuse or neglect to record, within the said time, any such return to him made, he shall forfeit one hundred dollars, to be recovered, with costs, by any person who will prosecute for the same, by action of debt, in any court having cognizance thereof.

§ 11. It shall be lawful for every religious society to join together in marriage such persons as are of the said society, according to the rites and customs of the society to which they belong; the clerk or keeper of the minutes, proceedings, or other book of the religious society wherein such marriages shall be had, or if there be no such clerk or keeper of the minutes, then the moderator or person presiding in such society, shall make out and transmit to the recorder of the county a certificate of the marriage, and the same shall be recorded in like manner as is provided in the ninth and tenth sections of this law.

§ 12. The book of marriages to be kept by the respective recorders, and copies thereof, certified by the recorder under his official seal, shall be evidence in all courts.

§ 13. If any person authorized to solemnize any marriage shall wilfully make a false return of any marriage, or pretended marriage, to the recorder, or if the recorder shall wilfully make a false record of any return of a marriage to him made, such person so offending shall be [deemed] guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, at the discretion of the court.

Approved, February 20th, 1835.

MERCHANTS.

An act to license and tax merchants.

SEC. 1. Who deemed a merchant.

2. Penalty for dealing as a merchant, without license.
3. Tax of fifteen dollars for every six months, to be levied and collected on each merchant's license.
4. Merchants when they apply for license, to render, on oath, account of goods received, &c.
5. On account rendered and tax paid, license to be granted by the collector.
6. Not authorized to carry on the business of merchandizing at more than one place at the same time.
7. Shall not sell wine or ardent spirits under such license, in less quantity than one gallon; penalty for so doing.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Every person, or co-partnership of persons, who shall deal in the selling of goods, wares or merchandize, at any store, stand or place occupied for that purpose, is declared to be a merchant.

§ 2. No person or co-partnership shall deal as a merchant without a license first obtained, according to law; and every person or co-partnership so offending, shall forfeit to the state not less than fifty nor more than five hundred dollars for every offence.

§ 3. There shall be levied and collected on every merchant's license, a tax of fifteen dollars for every period of six months.

§ 4. In order to enable the collectors of the revenue to ascertain the amount of tax upon taxable merchandize, according to law, every merchant, at the time of applying for license, shall make out and deliver to the collector of the revenue a full and fair written aggregate statement, verified by oath or affirmation, of all taxable merchandize received for sale at his store, stand, warehouse, or other place of business, within six months next preceding.

§ 5. The collector of the revenue for the proper county shall grant a merchant's license for the term of six months, to any person or co-partnership who may apply for the same, upon the delivery of the written statement above required, and payment of the tax upon the license, and the tax laid by law upon the value of the merchandize, together with the clerk's fee of fifty cents for issuing the same.

§ 6. No such license shall authorize any person to carry on the business of merchandizing in any other county than that in which the license was granted, nor at more than one place in the proper county at one time.

§ 7. No such license shall authorize any merchant to sell wine or ardent spirits in less quantity than one gallon, nor in any quantity to be drunk at his store, stand, warehouse, or other place of business; and every merchant who shall offend against the provisions of this section, shall forfeit to the county the sum of fifty dollars for each offence.

Approved, March 17th, 1835.

MILLS AND MILLERS.

An act concerning mills and millers, and the rates of toll.

Sec. 1. What deemed public mills.

2. Water mills built under order of court, &c., deemed public mills, shall grind four days in the week.
3. Grinding to be in turn, &c., but owners of ox, horse or steam mills, may grind their own grain.
4. Rates of toll for every public mill.
5. Duty of owner of mill where bolting machine is turned by hand.
6. Millers accountable for safe keeping of grain, &c.; to deliver flour, meal, &c., to owner, agent or servant
7. Millers not accountable for accidental loss, nor for bags or casks not branded.
8. Rates of toll to be set up in the mill; when and how.
9. Millers to give due attendance to their customers.
10. Millers to keep at public mills, sealed measures.
11. Penalty on owner or occupier of public mill, for violation of this act; how recovered

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. All grist mills which grind for toll, are hereby declared public mills.

§ 2. Every water grist mill that has heretofore or shall hereafter be built and established on any water course, by authority of any statute or lawful order of any court, is hereby declared to be a public mill, and shall grind for customers at least four days in each week.

§ 3. All grain brought to a public mill shall be ground in turn as the same shall be brought, and shall be ground as well as the nature and condition of the mill will permit; but nothing in the preceding provisions shall be so construed as to prevent the owners or occupiers of ox, horse, or steam mills, from grinding their own grain.

§ 4. The owner or occupier of every public mill shall be entitled to toll all grain ground thereat according to the following rates. 1st. If a water or steam mill, the one eighth part and no more. 2nd. The owner or occupier of any horse or ox mill, the one fifth part, when the owner or occupier of such mill finds the team for grinding the same, and when the team shall be furnished by the owner of the grain and with consent of the owner or occupier of the mill, the toll shall be the same as is allowed to the owner or occupier of a water mill, or steam mill, and no more.

§ 5. When the bolting machine of any mill shall be so constructed as to require to be turned by hand, the owner or occupier of the mill shall only be bound to permit the owner of the grain to use the same, in order to comply with the second clause of the last preceding section.

§ 6. The owner or occupier of a public mill shall be accountable for the safe keeping of all grain received for the purpose of being ground, and shall, when

called for, deliver the flour, meal, hominy, or malt, made therefrom, together with the bags or casks in which the grain was received, to the owners, or the agents or servants of such owners.

§ 7. The last preceding section shall not be so construed as to charge the owner or occupier of a public mill, or make him liable for the loss of grain, bags or casks, where such loss shall happen without the fault or neglect of such owner or occupier, or by inevitable accident; but no such owner or occupier of a mill shall pay for any bags or casks that are not branded or marked with the owner's name.

§ 8. There shall be set up and kept in every public mill, by the owner or occupier thereof, in some conspicuous place therein, a statement of the rates of toll for grinding, as established by law, at least three months in each year.

§ 9. The owner or occupier of a public mill shall, when his mill is in repair and fit for business, give due attendance to his customers and assist in loading and unloading all grain which shall be brought by them for the purpose of being ground, and the material which shall be made thereof.

§ 10. There shall always be kept at a public mill, by the owner or occupier thereof, a half bushel and a peck measure, tried and sealed by the clerk of the county courts and proper toll dishes for such measures.

§ 11. For every breach of any of the provisions of this law, by the owner or occupier of a public mill, he shall forfeit and pay to the party aggrieved by such breach, ten dollars, to be recovered by action of debt, with costs.

Approved, March 19th, 1835.

MILLS AND MILL DAMS.

An act concerning mills and mill dams.

- Sec. 1. Person who is the proprietor of the land on both sides of a water course, may erect a dam; when.
2. Owning the land only on one side of the stream, may erect a dam; when.
3. In case where the person owns the land on both sides of the stream, petition to be filed.
4. What facts shall be set forth in the petition.
5. When the person owns the land on one side of the stream only, petition to be filed; what facts it shall contain, &c.
6. Upon filing the petition, writ of *ad quod damnum* to issue; what it shall contain, &c.
7. Duty of the sheriff; facts to be enquired of by the jury.
8. Where land is only owned by petitioner on one side of the stream, what further facts to be enquired of, &c.
9. Before taking the inquest in such case, proprietor of the one acre, &c., to be notified, and how; power of the sheriff.
10. Inquest to be in writing and signed by the jurymen; duty of the sheriff in making return, &c.
11. Duty of the court on return of inquest; persons concerned to be summoned.
12. Summons in such case, how served.
13. Upon view of such inquest returned, and other evidence, when and in what cases court shall not permit dam to be erected.
14. Upon such view, court to give permission to erect a dam; when,
15. The acre of land condemned, shall be vested in petitioner by decree of court.
16. The order and decree authorized by the two preceding sections, &c., subject to conditions.
17. What those conditions are.
18. Mill dam, &c., destroyed, three years given to rebuild; reservation in favor of persons under disability.
19. Non-compliance in building, &c., where land of another has been decreed by the court, land to revert.
20. Dams may be raised by permission of the court, under the proceedings allowed by this act.

- Sec. 21.** Effect and extent of inquest of jury and order of court in such case.
22. Penalty on person building or raising dam without authority of law.
23. Dams, stoppages, &c., not made according to law, deemed public nuisances and dealt with accordingly.
24. Persons having authority to build dam, &c., by this act, failing, &c., owner of the land on the opposite side may build, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Any person may erect a dam across any water course, not being a navigable stream, if such person is the proprietor of the land through which the water course runs, at the point where he proposes to erect his dam, by proceeding as in this law provided.

§ 2. Any person being the owner in fee simple of only the land on one side of a water course, including part of the bed of such water course, at the point where he proposes to erect a dam, may, nevertheless, erect such dam by proceeding as in this law is provided.

§ 3. In the case supposed in the first section, the person proposing to erect a dam shall file his petition for that purpose in the circuit court of the county in which he proposes to erect his mill, or other machinery in connection with the dam.

§ 4. The petition shall set forth, 1st. A description of the land and an abstract of his title thereto. 2nd. The name of the water course, and a description of the point at which he proposes to erect his dam. 3d. The altitude of the dam which he proposes to erect thereat; and, 4th. The kind of mill or other machinery which he proposes to connect with the dam.

§ 5. In the case supposed in the second section, the person proposing to erect a dam shall also file his petition as in the third section is provided; and, in addition to the requirements of the fourth section, shall set forth, 1st. The name and place of residence of the proprietor of the land on the other side of the water course whereon he would abut his dam. 2nd. On what side of the water course he proposes to erect his mill, or other machinery in connection with the dam; and the petition shall be filed in the county within which he proposes to erect such mill or other machinery.

§ 6. Upon filing of the petition, it shall be the duty of the court to cause a writ of *ad quod damnum* to be issued under the seal of the court, to be directed to the sheriff, commanding him to summon twelve fit persons of his county to meet at the place where it is proposed to erect a dam, on a day to be named in the writ, then and there to enquire by the said jury touching the matters contained in the petition, a copy of which shall accompany the writ.

§ 7. It shall be the duty of the sheriff to attend with the jury, on the day and at the place appointed, and upon full examination enquire by said jury, 1st. What will be the amount of damage to each proprietor by reason of inundation consequent upon the erection of the dam as proposed. 2nd. Whether the mansion house of any such proprietor, or the out houses, curtilages or gardens thereunto immediately belonging, or orchard, will be overflowed thereby. 3d. Whether and to what extent ordinary navigation and fish of passage will be obstructed by such erection, and whether and by what means the same may be prevented or diminished. 4th. Whether the health of the neighborhood will be materially annoyed in consequence of such erection.

§ 8. In the case supposed in the second section, the sheriff shall further enquire by the jury the value of one acre of the ground on the opposite side of the water course, to include the place where the petitioner would abut his dam, or build his mill or other machinery, and the sheriff shall, with the assistance of the jury, set the same apart by metes and bounds.

§ 9. In such case, the sheriff shall notify the proprietor of the land whereof one acre is prayed for, of the time and place when and where he will take the inquest of the jury, if such proprietor be in his county, and if not, he shall set up such notice at the house of the tenant of such land, and if there be no tenant thereof, then he shall set up such notice at some conspicuous place on the land. In discharging the foregoing duties, the sheriff shall have power, with the jury, to go into and act in an adjoining county when necessary.

§ 10. The inquest of the jury shall be reduced to writing, and, being signed by each of the jurymen, shall be returned by the sheriff, together with the writ and a statement of the manner in which he executed it, into the court whence it issued, without delay.

§ 11. The court shall, on the return of the inquest, cause the proprietor of the land, one acre whereof shall have been prayed for, and the several persons, proprietors of land, found by the inquest returned to be liable to damage, to be summoned to appear in the same court, on a day to be named in the summons, and shew cause, if any they have, why the party petitioning should not have permission to erect his dam.

§ 12. If such proprietors reside in the county in which the lands lie, the service of the summons shall be as in ordinary cases; but if not resident in the county, then the service shall be by setting up a copy at the house of a tenant on the land, or if there be no tenant, then at some conspicuous place on the land.

§ 13. If upon a view of the inquest returned by the sheriff, and other evidence, if any such shall be produced, it shall appear to the court that the mansion house of any proprietor, or the out houses, curtilages or gardens thereto belonging, or orchard, will be overflowed, or that the health of the neighborhood will be materially annoyed by the stagnation of waters consequent upon the erection of the proposed dam, the court shall not permit such dam to be erected.

§ 14. If on such view it shall appear to the court that none of the evils provided against in the last preceding section are likely to ensue, the court shall then consider whether, all circumstances weighed, [it] is reasonable that the permission to erect the dam, as prayed for, should be given, and thereupon enter an order, giving permission or not, accordingly.

§ 15. Where the party petitioning shall have prayed for an acre of land whereon to abut his dam, the court shall include in their order granting permission to erect the dam, a decree; vesting such acre of land and the title thereof in the party petitioning, his heirs and assigns, forever.

§ 16. The order and decree authorized by the two last preceding sections, and the rights and privileges thereby granted, shall in all cases be upon, and subject to, the conditions hereinafter expressed.

§ 17. 1st. Such conditions in reference to the obstructions to fish of passage, as the court shall think proper to impose. 2nd. That all damages and valuations made and assessed by the jury, shall be paid. 3d. That the dam and mills, or other machinery, shall be commenced within one year, and the same shall be finished and ready for business within three years from the date of the order of permission.

§ 18. That whenever the dam and mill, or other machinery, shall be destroyed or materially impaired, the same shall be rebuilt or repaired within three years thereafter; but if the owner of such dam and mill shall be an infant, of unsound mind, feme covert, or imprisoned at the time such dam and mill shall be destroyed or materially impaired, then within three years after the disability is removed.

§ 19. In case of non-compliance with any of the conditions concerning building, rebuilding or repairing, where the land of another shall have been decreed by the court for the purpose of an abutment, the same shall revert to, and revest in, the original owner or his legal representative.

§ 20. Any owner of any dam and mill, or other machinery, erected in virtue of this or any previous law, may raise his dam by permission of the court under and by the same proceedings, regulations and conditions hereinbefore provided.

§ 21. The inquest of the jury, or the order and permission of the court founded thereupon, shall not bar any prosecution or action which any person would have had in law, had this law not been made, except for such injuries as were actually foreseen and estimated by the jury.

§ 22. Any person who shall build or raise any dam, or any other stoppage or obstruction in, or across, any water course, without first obtaining permission from the court of the proper county according to law, and shall thereby work any injury to any other person, shall forfeit to the party injured double damages for such offence, to be recovered by action on the case.

§ 23. All dams, stoppages or obstructions, not made according to law, shall be deemed to be public nuisances, and may be dealt with as such.

§ 24. If any person or his legal representatives, to whom permission to erect a dam in virtue of this law shall have been given, shall fail to build, rebuild or repair the same, together with the mill, or other machinery connected therewith, according to the requirements of this law, or the conditions of the permission, it shall be lawful for any person owning the land on one side of the water course, at the point where such dam was erected, or below, to build a dam and mill, or other machinery thereon, as if no such permission had been given, without incurring any liability on account of backing the water on such dam.

Approved, March 14th, 1835.

MORTGAGES.

An act concerning mortgages.

- Sec. 1.** Petition to foreclose may be filed; when, &c.; facts to be set forth.
2. Petition, where to be filed if any part of the property be real estate; if personal estate, to be commenced as other personal actions.
 3. Summons to issue, to what county, and how to be served.
 4. Summons returned not found, alias summons to issue.
 5. Defendant, whose name is unknown, order of publication to be made as in suits at law.
 6. Person claiming an interest in the property, may be made defendant by motion; pleadings, issue and trial.
 7. Judgment by default, when; proceedings in such case.
 8. If on trial any debt be found, judgment and order of sale thereon to be made.
 9. Upon such order, special writ of *feri facias* to issue; what it shall contain.
 10. Proceedings on execution as in other cases.
 11. If mortgage be for real estate, to what county *feri facias* to be directed; if for personal property, where directed.
 12. If mortgaged property do not satisfy the amount, execution may issue as in actions at law.
 13. Mortgagee receiving satisfaction, to acknowledge it on margin of the record, or by deed.
 14. Receiving satisfaction and refusing to acknowledge it, penalty.
 15. Such acknowledgment or deed of release, duly acknowledged and recorded, its effect.
 16. If property is redeemed by payment to the officer, certificate to be granted, acknowledged and recorded; its effect.
 17. Mortgage upon lease-hold for twenty years, how to proceed; for less than twenty years, how to proceed.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. All mortgagees of real estate, and mortgagees of personal estate, where the debt secured amounts to fifty dollars or more, may file a petition in the office of the circuit court against the mortgagor, and the actual tenants or occupiers of such real estate, (if any,) setting forth the substance of the mortgage deed, and praying that judgment may be rendered for the debt, and that the equity of redemption may be foreclosed, and the mortgaged property may be sold to satisfy the amount due.

§ 2. If any part of the property be real estate, the petition may be filed in any county where any part of the mortgaged premises are situated; if it be exclusively personal estate, it may be filed, and proceedings commenced as in other personal actions.

§ 3. The clerk shall issue a summons to the defendant to answer the petition, and if the defendants reside in different counties, a separate summons shall be directed to each county, including all the defendants therein, and the service and return of such summons shall be made as in actions at law. A copy of the petition shall accompany every such summons.

§ 4. If a return be made on such summons, that any defendant cannot be found, an alias summons may be issued to the same or any other county.

§ 5. Defendants whose names are unknown, may be sued, and orders of publication may be made as in suits at law.

§ 6. Any person claiming an interest in the mortgaged property, may be made defendant to any such proceedings on motion, and may plead any lawful plea in avoidance, or bar of the deed or debt, and issue shall be made and tried as in actions at law.

§ 7. If any person summoned or notified as aforesaid, do not appear at the time

required, judgment may be rendered by default, and proceedings had thereon as in at law.

§ 8. If, upon trial, it be found that any part of the mortgage money is unpaid, and that the petitioner is entitled to recover the same, the court shall render judgment for the debt, interests and costs, and shall make an order that the mortgaged property be sold (describing it as in the mortgage,) to satisfy the amount found due, with interest thereon until paid.

§ 9. Upon such order, a special writ of *feri facias* shall be issued, directed to the sheriff, and shall refer to the order of sale, and command the sheriff, that, of the real and personal estate in such order mentioned, he cause to be levied the debt, damages and costs, with interest thereon from the date of the judgment, (to be specially stated,) and that he have the money before the court at the return of the writ.

§ 10. Such writs shall be returnable as executions, and the advertisement, sale and conveyance of real or personal estate, under the same, shall be made as under ordinary executions.

§ 11. If such mortgage be for real estate, such writ of *feri facias* shall be directed to the county in which the same is situated, and if it be for personal property, it may be directed into any county.

§ 12. If the whole of the mortgaged property do not sell for a sum sufficient to satisfy the amount due, an execution may be issued against the defendant as in ordinary action at law.

§ 13. If any mortgagee, his executor, or administrator, or assignee, receive full satisfaction of any mortgage, he shall, at the request of the person making satisfaction, acknowledge satisfaction of the mortgage on the margin of the record thereof, or deliver to such person a sufficient deed of release of the mortgage.

§ 14. If any such person thus receiving satisfaction, do not, within three months after requested, acknowledge satisfaction on the margin of the record, or deliver to the person making satisfaction a sufficient deed of release, he shall forfeit to the party aggrieved any sum not exceeding the mortgaged money, to be recovered in any court of competent jurisdiction.

§ 15. Such acknowledgment of satisfaction thus made, or such deed of release duly acknowledged and recorded, shall have the effect to release the mortgage, and bar all actions brought thereon, and revest in the mortgagor, or his legal representatives, all title to the mortgaged property.

§ 16. If such mortgaged property be redeemed by payment to the officer before the sale, such officer shall make a certificate thereof, and acknowledge the same before some officer authorized to take the acknowledgment of deeds for lands, and such certificate shall be recorded in the office in which the mortgage is recorded and shall have the same effect as satisfaction entered on the margin of the record.

§ 17. Mortgages of leasehold estates of, or for, a longer term than twenty years, shall be proceeded on as mortgage of real estate, and for a shorter term as on personal estate.

Approved, March 20th, 1835.

NE EXEAT.

An act regulating writs of ne exeat.

- Sec. 1. By whom granted.
2. Petition to be filed and sworn to, before writ granted.
 3. Court or judge, &c., who grants writ, to endorse on petition penalty of bond, &c., by defendant.
 4. Not to issue until complainant give bond; condition of the bond.
 5. Defendant in the writ may sue on such bond; when and what damages he shall recover.
 6. Writ to be returnable to the circuit court; how issued.
 7. Writ to be accompanied by the petition, and a summons for the defendant to appear, &c.
 8. Defendant served with the writ, to give bond; condition of the bond.
 9. Temporary absence no breach of condition.
 10. The security in the bond may surrender the principal; in what manner.
 11. Writ may be granted where time of payment or performance has not arrived; oath of party in such case.
 12. Petition in such case shall state certain facts, to be supported by affidavit and other proof; writ granted, &c.
 13. Writ returnable to the next circuit court.
 14. On return of the writ, motion to dissolve may be made.
 15. Jury may be empaneled to try the issue; plea, issues, &c., to be made; cause how disposed of.
 16. When petitioner shall have his costs; if matter of bill be of chancery jurisdiction, how determined.
 17. If the matter be within the exclusive jurisdiction of a court at law, how court shall proceed.
 18. If the debt be not due, or time for performance of contract not come, at the return of the writ, proceedings of the court in such case.
 19. Defendant may show performance of his contract.
 20. If defendant files his answer on oath, denying his intention to remove, &c., proceedings of the court in such case.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The supreme and circuit courts, and any judge thereof in vacation, and the county court, or any two justices thereof in vacation, may grant writs of ne exeat.

§ 2. A petition, with an affidavit to the truth of the allegations therein, shall be filed before any writ of ne exeat shall be granted.

§ 3. The court or judge who grants any writ of ne exeat, shall endorse on the petition in what penalty bond and security shall be required of the defendant.

§ 4. Before any such writ issues, the court or judge shall take bond of the complainant to the adverse party, with sufficient security, conditioned that he will prosecute his petition with effect, and reimburse to the defendant all damages and costs which he shall sustain by the writ.

§ 5. Any defendant to any writ of ne exeat may bring suit on such bond, and if it appear that the writ of ne exeat was prayed for without just cause, he shall recover damages as in other penal bonds.

§ 6. All writs of ne exeat shall be returnable to the circuit court of the proper county, and, when issued by a judge in vacation, or two justices of the county court, may be under his or their hand, or the judge may direct the clerk of the circuit court to issue the writ, and to take bond of the complainant as above required.

§ 7. The writ of ne exeat shall be accompanied by the petition, and a summons for the defendant to appear in the circuit court and answer the petition.

§ 8. When the defendant shall be served with the writ, he shall give bond with security in the sum endorsed on the petition, conditioned that he will not depart from the state without leave of the court, and that he will render himself in execu-

tion to answer any judgment or decree which may be rendered against him, and if he do not give such security he may be committed to jail.

§ 9. No temporary departure of the defendant from the state shall be a breach of the bond, if he return before personal appearance shall be necessary to answer or perform any judgment, order or decree of court.

§ 10. The security for the defendant may surrender the defendant in discharge of himself, before the bond shall be forfeited, in the same manner that bail may surrender their principal and obtain a discharge.

§ 11. Where there shall be contracts for the payment of money or property, or covenants to be performed, and the time for payment or performance has not arrived, the party having a right to the contract or covenant may make oath that he has a just cause of demand, and that he has reason to believe that the party bound is about to leave this state, without an intention of returning thereto to reside; that the obligation is yet undue, and that at the time of making the contract he did not know of the party's intention to remove, not to return before such contract or obligation would become due, and that the party has failed to satisfy said contract, a writ of ne exeat may issue as aforesaid, to stay such person in the state until the time has expired, at or before which the contract was to be complied with.

§ 12. The petition shall state the cause of action and circumstances of the case, and the complainant shall produce satisfactory proof to the court or judge granting the writ, by affidavit or otherwise, that there is reason to apprehend that the defendant is about to remove out of the state, not to return, and if the court or judge be satisfied that injustice would be done without such writ, it shall be granted.

§ 13. The writ of ne exeat shall be returnable to the next term of the circuit court of the proper county.

§ 14. Upon the return of the writ of ne exeat the defendant may move to dissolve the writ on account of its being improperly obtained, or any other good cause.

§ 15. The court may empanel a jury to try any issues of fact that may arise, particularly whether the petition be true or false, and the parties shall plead and join issue at the first term, and the cause shall be disposed of as other causes are.

§ 16. If the petition be found true, the complainant shall have his costs; and if the subject matter of the bill be the object of chancery jurisdiction, then the court shall finally determine the same as in other chancery cases.

§ 17. If the subject matter be exclusively the subject of jurisdiction of a court at law, the court may require of the defendant bond and security that he will not depart from the state within such time as the court will direct, which shall be sufficient to enable the complainant to bring suit at law and have process served thereon.

§ 18. If the debt be not due, or the time for the performance of the contract has not come, at the return of the writ of ne exeat, the court shall only determine whether the proceedings are according to this act, and the cause shall be continued till the time when the contract is to be performed, after which the court shall dispose of the case as other cases.

§ 19. After the time has come when the contract was to have been performed, the defendant may show that the contract has been performed, and, if so found, judgment shall be rendered in his favor.

§ 20. If the defendant file his answer with the judge granting the writ in vacation, or in the office of the court to which the writ is returnable in term time, denying, on oath, his intention of removing from the state, not to return, and otherwise satisfy the court or judge of his ability and intention to pay the debt when due, or comply with the contract at the time specified for its performance, the court or judge may dismiss the writ of ne exeat, and the party shall be discharged without security.

Approved, January 26th, 1835.

NEGROES AND MULATTOES.

An act concerning free negroes and mulattoes.

- SEC. 1. Who deemed a mulatto.
2. Not permitted to carry arms, without license from a justice of the peace.
 3. Possessing arms, &c., contrary to this act, to be seized; may be forfeited; proceedings in such case.
 4. Free negro or mulatto, over seven and under twenty-one years of age, to be bound out by the county court.
 5. How the courts shall proceed in such case; liability and rights of apprentice, master or mistress in such case.
 6. Clerk to keep register of such apprentice; his duties; register to be kept free for inspection, &c.
 7. Not citizens of some other state, prohibited from settling in this state.
 8. If they have qualifications required by this act, county court may grant them license to reside in this state.
 9. To whom and when such license shall be granted.
 10. On application to the county court for license, when and upon what evidence they may be granted.
 11. Such license shall be issued according to the order of court; what shall be stated in the license.
 12. To be authenticated by seal of court; abstract of license to be registered; certificate of registry to be endorsed on the license.
 13. Privileges granted by such license to the person holding the same, and his or her children.
 14. Free negro or mulatto having license, moving from one county to another, his duty; duty of clerk in such case.
 15. Fees of clerk under this act; fees to be paid by applicant.
 16. Those whose right to freedom accrued without this state, but who recovered freedom in the state, subject to this act.
 17. For what offence license to be forfeited, and treated as though none had been granted.
 18. Duty of sheriff, coroner and constable, in reference to free negroes or mulattoes in his county, without license, &c.
 19. When and in what cases justice to issue his warrant to bring free negro or mulatto before him.
 20. Negro or mulatto brought before the justice, proceedings if court or justice is not satisfied that he is free.
 21. When brought before the court or justice, but appears to be a free person, proceedings, &c.
 22. Penalty and proceedings if the prisoner do not comply with the provisions of the last section.
 23. If such person be hired out by the sheriff, person hiring to give bond; condition of the bond.
 24. Free negro or mulatto not entitled to reside in this state; time allowed to depart after order; penalty on failure.
 25. Penalty on person to hire, employ or harbor free negro or mulatto, not entitled to reside in this state, except as in next section, &c.
 26. Construction as to the provisions of this act in certain cases.
 27. Penalty on person bringing free negro or mulatto to this state, not having certificate of citizenship.
 28. Preceding section not to extend to masters of vessels, nor to persons travelling into or through the state.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Every person, other than a negro, of whose grandfathers or grandmothers any one is or shall have been a negro, although all his or her other progenitors, ex-

cept those descending from the negro, shall have been white persons, who shall have one fourth or more negro blood, shall be deemed a mulatto.

§ 2. No free negro or mulatto shall be suffered to keep or carry any firelock, or weapon of any kind, or any ammunition, without a license first had and obtained for the purpose, from a justice of the peace of the county in which such free negro or mulatto resides, and such license may be granted and revoked by any justice of the peace of the county.

§ 3. Any gun, fire-lock or weapon of any kind, or ammunition, found in the possession or custody of any free negro or mulatto, not having a license as required by the last preceding section, may be seized by any person, and upon due proof thereof made before any justice of the peace of the county in which such seizure shall have been made, shall, by order of such justice, be forfeited to the person making the seizure, for his own use.

§ 4. The several county courts are authorized and required to cause to be brought before them, all free negroes and mulattoes, between the ages of seven and twenty-one years, found within their county, and bind them out to be apprentices or servants, until they arrive at the age of twenty-one years; but no colored apprentice shall be placed in company with a free white apprentice, to be taught any trade or occupation, except by the consent of the parents or guardian of such white apprentice.

§ 5. The courts shall proceed in such cases in the same manner as is directed by law in binding out children chargeable to the county; and the apprentice or servant so bound, and his master or mistress, shall be subject to the same control, obligations and responsibilities, and shall have the same rights and remedies, in all respects, as are or shall be declared by law in cases of bound apprentices.

§ 6. Each clerk shall keep a register of all such bound negro and mulatto apprentices and servants, and enter therein the name, age and personal appearance of such servants and apprentices, the name, residence and occupation of the master or mistress, and the date of the binding, which register shall be kept open to the inspection of all persons, at reasonable hours.

§ 7. Hereafter no free negro or mulatto, other than a citizen of some one of the United States, shall be permitted to reside within this state, unless he obtain a license, or otherwise acquire a right to reside within the state, according to the provisions of this act.

§ 8. The several county courts within their respective counties, are authorized to grant a license to any free negro or mulatto, possessing the qualifications required by this act, to reside within the state.

§ 9. Such license shall not be granted to any free negro or mulatto, except,
First, Such as were residents of this state on the seventh day of January, in the year of eighteen hundred and twenty-five, and continue to be such residents at the taking effect of this act.

Second, Such as shall have been emancipated or born free within this state.

Third, Such as have been, or shall be, bound to service as apprentices or servants, according to the laws of this state, and shall have faithfully served out their term of service.

Fourth, The husband or wife of a slave held and owned within this state, the parties having been married before the passage of this act, with the consent of the master or mistress of the slave.

Fifth, The husband or wife of a slave lawfully brought into this state by the owner, after the passage of this act, the parties having been married by the consent of the owner of the slave before such slave shall have been brought into the state.

§ 10. When a free negro or mulatto shall make application to a county court for a license, and shall produce satisfactory evidence that he is of the class of persons who may obtain such license, as specified in the last preceding section, that he is of good character and behavior, and capable of supporting himself by lawful employment, the court may grant him a license to reside within the state.

§ 11. Such license shall be issued according to the order of the court, describing the applicant by his name, age, size, personal appearance and occupation, and shall authorize him to reside within the state so long as he shall be of good behavior, and no longer.

§ 12. Every such license shall be authenticated by the seal of the court, and the clerk, before delivering the same to the applicant, shall enter in a register to be kept for that purpose, an abstract of all licenses so issued, and shall endorse on the license a certificate of such registry.

§ 13. Every license issued and registered according to the foregoing provisions, shall, until the same is revoked and annulled according to law, authorize the person therein named and described, and his or her children under the age of twenty-one years, to reside within this state.

§ 14. When any licensed free negro or mulatto shall remove from one county to another, within this state, he shall produce his license to the clerk of the county court of the county into which he shall so remove, and such clerk shall register the same and endorse thereon a certificate of such registry.

§ 15. The several clerks shall be entitled to receive for each license issued under the provisions of this act, fifty cents, and for each registry of any such license twelve and a half cents, to be paid by the applicant.

§ 16. Every free negro or mulatto, whose right to freedom shall have accrued without this state, although he may have recovered his freedom by suit within the same, shall be treated as if he had been actually free at the time of coming or being brought into this state, and as such shall be subject to the provisions of this act.

§ 17. If any negro or mulatto, having a license to reside within this state, shall be convicted of any felony or infamous crime, or of keeping a gaming house, bawdy house, or disorderly house, such license shall be revoked and annulled, and such negro or mulatto shall thereafter be treated in all respects as if no license had been granted.

§ 18. It shall be the duty of every sheriff, coroner and constable, whenever he shall know, or have cause to believe, that there is in his county any negro or mulatto acting as a free person, who is not authorized to reside within this state, to apprehend such negro or mulatto and take him before some justice of the peace.

§ 19. Whenever any justice of the peace shall receive satisfactory information that any negro or mulatto, not entitled to residence in this state, is within his county, he shall issue his warrant to apprehend and bring such negro or mulatto before him.

§ 20. Whenever any negro or mulatto shall be brought before a justice of the peace, or shall appear before any court or magistrate, in any of the cases mentioned in this act, such court or magistrate, unless satisfied that such negro or mulatto is free, shall commit him as a runaway slave, or otherwise, according to the circumstances of the case, to be dealt with according to law.

§ 21. If any negro or mulatto, brought before a justice of the peace, shall appear to be a free person, and shall not establish a right to reside within this state, by producing a license, granted pursuant to the provisions of this act, or a certificate attested by the seal of some court of record, evidencing that he is a citizen of the United States, or one of them, the justice shall adjudge him to pay a fine not less than ten dollars, and not exceeding one hundred dollars, and order the defendant to stand committed until the fine and costs are paid, and immediately thereafter to depart the state.

§ 22. Whenever any person committed under the provisions of the last section, shall not comply with the judgment of the justice, before the term of the county court next holden in the county, such court shall cause him to be brought before it, and if he shall not then establish his right to reside within the state, the court, in its discretion, may order him to receive not less than ten nor more than twenty lashes, and immediately depart the state, or may order the sheriff to hire out such person for such time as shall be sufficient to raise from the hire, the fine and costs and the expenses of imprisonment.

§ 23. The sheriff hiring out any such negro or mulatto, shall take from the person hiring him, a bond to the county in the sum of five hundred dollars, with such security as the sheriff shall approve, conditioned that the person hiring will pay the hire, and during the term, (to be specified on the bond,) keep the person hired employed in his own service, and provide him with sufficient diet, clothing and lodging, and not permit or suffer him to go at large and deal as a free person.

§ 24. Every free negro or mulatto, not entitled to reside within this state, shall be allowed three days, and one day additional for every twenty miles he must necessarily travel, to depart this state, after any order to depart, discharge from arrest or service, and if he shall remain in the state longer, he shall be proceeded against as provided for in the first instance.

§ 25. Every person who shall hereafter hire, employ or harbor any free negro or mulatto, not entitled to reside within this state, knowing him to be prohibited to remain in the state, except in the cases in the next section specified, shall forfeit and pay five dollars for each day such negro or mulatto shall be so harbored, hired

or employed by him, to be recovered in the name and to the use of the county, by action of debt.

§ 26. The provisions of this act shall not be construed to extend to any negro or mulatto employed on board any vessel, or as a wagoner or messenger, or as the servant of a traveller, while in the actual employment of a person not a resident of this state, so that such negro or mulatto do not remain in the state for a longer period than three months.

§ 27. If any person shall bring into this state any free negro or mulatto, not having a certificate of citizenship as required by this law, such person shall forfeit for every such offence the sum of one hundred dollars, to be recovered by indictment, to the use of the county.

§ 28. The last preceding section shall not extend to masters of vessels who shall bring into the state any free negro or mulatto, employed on board or belonging to such vessel, and who shall, during the whole of his stay in this state, be employed on board or belong to such vessel, and depart therewith; nor to any person travelling into or through this state, having any free negro or mulatto with him as a servant, and who shall, during the whole of his stay in this state, remain in his service and depart the state with him; but no such free negro or mulatto shall be permitted to remain in this state for a longer period than six months at a time.

Approved, March 14th, 1835.

NOTARIES PUBLIC.

An act respecting notaries public.

- Sec. 1. Appointment and duration of office.
2. Power to administer oaths and affirmations in the exercise of their notarial office.
 3. Their powers and duties.
 4. To keep record of official acts; to give certified copies of records in his office, when required.
 5. In case of death, resignation, &c., books and papers, how disposed of.
 6. To provide a notarial seal; shall authenticate his acts, &c., therewith.
 7. Before entering on the duties of his office, to take oath, to be endorsed on his commission, and give bond; condition of the bond.
 8. Bond, commission and oath, to be recorded; bond, where to be filed; may be sued on; by whom.
 9. Limitation of action against notary or his securities.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The governor shall appoint and commission, in each county, as occasion may require, one or more notaries public, who shall hold their offices four years.

§ 2. They may administer oaths and affirmations in all matters incident or belonging to the exercise of their notarial office.

§ 3. They may receive the proof or acknowledgments of all instruments of writing relating to commerce or navigation, receive and authenticate acknowledgments of powers of attorney, make declarations and protests, and certify the truth thereof, under their official seals, concerning all matters by them done by virtue

of their offices, and shall have all the powers and perform all the duties of register of boatmen.

§ 4. Every notary shall keep a fair record of all his official acts, and, if required, shall give a certified copy of any record in his office, to any person, upon the payment of the fees therefor.

§ 5. If any notary die, resign, be disqualified, or remove from the county, his record, and all his public papers, shall, within thirty days, be delivered to the recorder of the county, to be delivered to his successor, when qualified.

§ 6. Every notary shall provide a notarial seal, containing his name, surname, office and place of residence, and he shall authenticate all his acts, attestations and instruments therewith.

§ 7. Every notary, before entering on the duties of his office, shall take the oath of office which shall be endorsed on his commission, and shall give bond to the state, in the sum of five hundred dollars, with two securities, conditioned for the faithful performance of the duties of his office.

§ 8. Such bond, commission and oath, shall be recorded in the recorder's office of the county, and the bond shall be filed with the secretary of state, and may be sued on by any party injured.

§ 9. No suit shall be instituted against any such notary, or his securities, more than three years after such cause of action accrues.

Approved, March 14th, 1835.

OATHS AND AFFIRMATIONS.

An act concerning oaths and affirmations.

- SEC. 1. Usual mode of administering oaths by laying hand on and kissing the gospel, to be observed, except in cases otherwise provided.
2. If the person desire it, he may swear with uplifted hand, and how.
 3. Persons conscientiously scrupulous of swearing or taking an oath, may declare or affirm, and how.
 4. Peculiar mode of administering oath may be adopted by court, or magistrate, in addition to the forms here laid down; when.
 5. Persons believing in other than the Christian religion, to be sworn according to their peculiar ceremonies.
 6. Who admitted to be sworn.
 7. Witnesses not required to swear as to their religious belief, but may be proved by other competent testimony.
 8. Construction of the last section as to power of court or magistrate, in case of infants, persons of weak intellect, &c.
 9. By whom and where oaths and affirmations may be administered, and take affidavits and depositions.
 10. To be sworn according to this act, or any form authorized by law, deemed to be lawfully sworn; swearing falsely, &c., deemed guilty of perjury.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The usual mode of administering oaths now practised, by the person who swears laying his hand on and kissing the gospels, shall be observed in all cases in which an oath is or may be required by law to be administered, except in the cases herein otherwise provided.

§ 2. Every person who shall desire it, shall be permitted to swear with uplifted hand, in the following form: "You do solemnly swear."

§ 3. Every person who shall declare that he has conscientious scruples against taking an oath, or swearing in any form, shall be permitted to make his solemn declaration or affirmation in the following form: "You do solemnly declare and affirm."

§ 4. Whenever the court or magistrate, by whom any person is about to be sworn, shall be satisfied that such person has any peculiar mode of swearing, connected with, or in addition to, either of the forms in this act mentioned, which is more solemn and obligatory in the opinion of such person, the court or magistrate may adopt such mode of swearing.

§ 5. Every person believing in any other than the christian religion, shall be sworn according to the peculiar ceremonies of his religion, if there be any such ceremonies, instead of any of the modes hereinbefore prescribed.

§ 6. Every person believing in the existence of a supreme being who will punish false swearing, shall be admitted to be sworn, if otherwise competent.

§ 7. No person shall be required to declare his belief in the existence of a supreme being, or that he will punish false swearing, or his belief or disbelief of any other matter as a requisite to his admission to be sworn as a witness, or otherwise; but the belief or unbelief of every person offered to be sworn as a witness, may be proved by other and competent testimony.

§ 8. The last section shall not be construed to prevent any court or magistrate, before whom an infant or a person apparently of weak intellect shall be produced as a witness, from examining such person, to ascertain his capacity and the extent of his religious or other knowledge, nor to prevent the court or magistrate from enquiring what are the peculiar ceremonies observed by him in swearing, which he deems obligatory.

§ 9. Every court and judge, justice and clerk thereof, and all justices of the peace, shall respectively have power to administer oaths and affirmations to witnesses and others, concerning any thing or proceeding depending before them respectively, and to take affidavits and depositions within their respective districts, circuits and counties.

§ 10. In all cases in which an oath or affirmation is required, or authorized by law, the same may be taken in any of the forms in this act prescribed, in the several cases hereinbefore specified; and every person swearing, affirming, or declaring in any such form, or any form authorized by law, shall be deemed to have been lawfully sworn, and to be guilty of perjury for corruptly and falsely swearing, affirming, or declaring, in the same manner as if he had sworn by laying his hand on the gospels and kissing them.

Approved, January 20th, 1835.

OFFICERS.

An act to recover public records.

- Sec. 1.** In case of resignation, removal from office, death, &c., of any officer, &c., books, papers, &c., to be delivered to his successor; penalty for neglect, and how recovered.
2. Warrant may be issued, by whom, on affidavit, to compel delivery of records, books, &c.
 3. Power and duty of the officer executing such warrant.
 4. Penalty on officer for neglect or refusal to serve and return warrant.
 5. Party aggrieved by issuing such warrant, may be restored; proceedings in such case.
 6. Private persons having possession of public records, books, &c., to deliver them up; proceedings in case of refusal.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. If any civil, or military officer, having any records, books or papers, appertaining to any public office, or any court, shall resign, or his office shall be vacated, he shall deliver to his successor all such records and papers; and where such officer shall die, his executors or administrators shall deliver such records, books and papers to his successor. If any such officer, or the executors or administrators of such officer, shall fail to deliver said records, books or papers, he or they shall forfeit not more than one thousand, nor less than one hundred dollars, to be recovered by action of debt or indictment, to the use of the county, and shall pay to any person injured by the detention of such records, books, or papers, all damages which may accrue to him, to be recovered by action on the case.

§ 2. If any person, whose office has become vacated, or his executors or administrators, shall fail to deliver any record, book or paper to the person entitled to the same, any judge of the supreme or circuit court, upon affidavit of any credible person, setting forth the facts, may issue his warrant, directed to some sheriff or coroner, commanding him to seize all the records, books and papers appertaining to said office, and deliver them to the proper officer named in such warrant.

§ 3. The officer executing any such warrant, may break open any doors, trunks or places, in which any records, books or papers named in such warrant may be, or in which he may suspect them to be, and may arrest any person who shall resist the execution of such warrant, and carry him, her, or them, before some judge or justice of the peace, to be dealt with for obstructing the execution of process.

§ 4. Any officer, to whom any such warrant may be directed and delivered, who shall fail to execute or return the same, or to perform any duty required of him, shall forfeit not more than one thousand, nor less than one hundred dollars, to be recovered by indictment, or action on the case, to the use of the county.

§ 5. Any person aggrieved by any such warrant, may apply to any judge of the supreme or circuit court, who, upon affidavit of the applicant that injustice has been or is about to be done by such warrant, shall issue a citation to all persons interested, commanding them to appear before him, at a place and time named in the citation, which shall be served by the sheriff or coroner. The judge may enforce obedience to such citation by attachment, and shall proceed in a summary manner, and determine according to right and justice, and may issue his warrant

for the restoration of any book, record or paper, found to have been improperly seized.

§ 6. If any private person shall have or obtain possession of any books, records or papers, appertaining to any public officer, he shall deliver them to the officer entitled to the same; and if he fail to do so, he shall be proceeded against in all respects as is provided for in cases of officers by this act,

Approved, December 18th, 1834.

PARTITION.

An act to provide for the partition of land.

- Sec. 1. Joint tenants, tenants in common, and coparceners, may petition circuit court for partition.
2. Petition to be verified by affidavit; contents of petition.
3. Person having interest, as specified in the last section, or entitled to dower, may be made a party.
4. If in certain cases the names of the parties cannot be named, it shall be so stated in the petition.
5. Copy to be served on all parties not petitioning, together with notice that the same will be presented.
6. Notice of such application to be directed to all parties by name, that are known, and general to those unknown.
7. Parties to be notified by publication; when and how.
8. Upon presentation of such petition, and proof of service, &c., and notice or publication, &c., court to proceed.
9. When person may appear and be made party on application, by making affidavit, &c.
10. Pleadings and proceedings, special pleas, notice of special matters, &c.
11. Replications and further pleadings may be had according to the practice in actions at law; proceedings, &c.
12. Trial of issues, bills of exception taken, new trials granted and pleadings amended as in actions at law.
13. Persons notified not appearing, default to be entered, but petitioners to exhibit proofs of their title.
14. Court to ascertain the rights of the parties and give judgment of partition.
15. When judgment of partition is rendered, court to appoint commissioners to make partition.
16. Commissioners, before proceeding to their duties, to be sworn; how, &c.; oath to be certified, filed, &c.
17. To make partition, if same can be done, without prejudice to the owners; in which case, facts to be reported to the court.
18. Duty of commissioners in making partition; surveyors may be employed.
19. Report of partition to be made to the court; its contents.
20. To be proved or acknowledged as other deeds, to entitle them to be recorded; to be filed with clerk, &c.
21. Court may, for good cause, set aside the report and appoint new commissioners, &c.
22. Judgment on confirmation of report; its effect.
23. Copy of report and judgment of confirmation duly certified, &c., to be recorded in the recorder's office.
24. When premises, or part of them, may be ordered to be sold.
25. In the order of sale, the terms, time, place of sale, credit and securities to be taken, to be specified.
26. Notice of time, place and terms of sale by commissioners, how given.
27. Mode of conducting sale, if the premises consist of distinct buildings, or the land can be divided to advantage.
28. Purchases by commissioners and guardians, void.
29. Report of sale, how to be made; its contents.
30. Order for conveyances on confirmation of sale.
31. Conveyances so executed, to be proved and recorded; their effect.
32. Proceeds of sale, how to be divided and paid.
33. Shares of absent and unknown owners, how invested.
34. Joint tenants, and tenants in common for life or years, may compel partition.
35. Partition of lands devised, not to be made contrary to intention of testator.
36. Guardians to act for their wards.
37. Guardian *ad litem* may be appointed.
38. Security to be required of guardian *ad litem*.
39. Vacancies in office of commissioner, how supplied.
40. Compensation of commissioners.
41. Upon all final judgments, appeals and writs of error allowed.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Where any lands, tenements or hereditaments shall be held in joint tenancy, tenancy in common, or coparcenary, it shall be lawful for any one or more of the parties interested therein, to present a petition to the circuit court of the county wherein such lands, tenements or hereditaments lie, (or where any tract of land is divided by a county line, then the court of either of the counties in which the lands may lie,) for a division and partition of such premises, according to the respective rights of the parties interested therein, and for a sale thereof, if it shall appear that partition cannot be made without great prejudice to the owners.

§ 2. The petition shall particularly describe the premises sought to be divided or sold, and shall set forth the rights and titles of all parties interested therein, so far as the same are known to the petitioner, including tenants for years, for life, by the courtesy or in dower, and of persons entitled to the reversion, remainder or inheritance, and of every person who, upon any contingency, may be or become entitled to any beneficial interest in the premises; and such petition shall be verified by affidavit.

§ 3. Every person having any such interest as is specified in the last section, whether in possession or otherwise, and every person entitled to dower in such premises, if the same has not been admeasured, may be made a party to such petition.

§ 4. In case one or more such parties, or the share or quantity of interest of any of the parties, be unknown to the petitioner, or be uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or the remainder shall be contingent, so that such parties cannot be named, the same shall be so stated in the petition.

§ 5. A copy of such petition, with notice that the same will be presented to the court on some certain day in term, or as soon thereafter as a hearing can be had, shall be served four weeks previous to such term, on all the parties interested in the lands or tenements, who shall not have joined in the petition, and on the guardians of such as are minors or of unsound mind.

§ 6. The notice of such application shall be directed to all the parties by name, whose names are known, whether their interests are known or are uncertain, contingent or unknown, and general to all others unknown, having any interest in such premises.

§ 7. If any of the parties having such interest are unknown, or if any of the known parties reside out of the state or cannot be found therein, and such facts be made to appear to the court by affidavit, a notice of the application, describing the premises and of the object of the petition, shall be published once a week, for eight weeks successively, in some newspaper printed in or nearest to the county in which the proceeding is had; or instead thereof, as to any known absent parties, the petition and notice may be served on them personally, out of this state, and in either case notice shall be deemed sufficient.

§ 8. Upon the presentation of such petition, and due proof being made of the

service thereof with notice, or the publication, as required by the preceding provisions, the court shall proceed therein as hereinafter directed.

§ 9. Any person having an interest in the premises sought to be divided or sold, whether such interest be present or future, vested or contingent, though not made a party in the petition, may appear and be made a party on application for that purpose, accompanied by an affidavit of such interest.

§ 9. Any party appearing, may, within the time prescribed for pleading in actions at law, or within such time as the court may allow for that purpose, plead, either separately or jointly with one or more co-defendants, any special matter as a defence, or that the defendants, or any of them, did not hold the premises together with the petitioners at the time of the commencement of the proceedings, as alleged in the petition; and under such last mentioned plea, the defendant pleading it may give notice of any special matter to sustain such plea, and may give evidence thereof on the trial, as if the same had been specially pleaded.

§ 11. Replications and further pleadings may be had between the parties respectively, according to the practice of the court in actions at law, until an issue or issues of law or fact be joined between the parties, or some of them.

§ 12. All issues shall be had, and the like proceedings for the trial thereof shall be had, and bills of exception may be taken, new trials granted, and pleadings amended, in the same manner as in actions at law.

§ 13. If any of the parties, duly notified by personal service or publication according to the foregoing provisions, shall not appear and plead within the time allowed for that purpose, the default shall be entered, but the petitioners shall nevertheless exhibit the proofs of their title.

§ 14. The court shall ascertain from the evidence in case of a default, or from the confession by plea of the parties if they appear, or from the verdict by which any issue of fact shall be determined, and shall declare the rights, titles and interest of the parties to such proceedings, petitioners as well as defendants, so far as the same shall have appeared, and shall determine the rights of the parties in such lands, tenements or hereditaments, and give judgment that partition be made between such of them as shall have any right therein, according to such rights.

§ 15. Whenever any judgment of partition shall be rendered, the court shall, by rule or order, appoint not less than three, nor more than five respectable freeholders, residents of the county in which the premises to be divided, or the greatest part thereof in value, shall be situate, to make the partition so adjudged, according to the respective rights and interests of the parties, as the same were ascertained and determined by the court; and on such rule or order, the court shall designate the part or shares which shall remain undivided, for the owners whose interest shall be unknown and not ascertained.

§ 16. The commissioners, before proceeding to the execution of their duties, shall be sworn or affirmed before some judge or justice of the peace, honestly and impartially to execute the trust reposed in them, and to make partition as directed by the court, which oath or affirmation being subscribed by the commissioners and

certified by the judge or justice, shall be filed with the clerk of the court, at or before the coming in of the report of such commissioners.

§ 17. The commissioners shall forthwith proceed to make partition according to the judgment of the court, unless it shall appear to them, or a majority of them, that partition of the premises cannot be made without great prejudice to the owners, in which case they shall make report of such fact to the court in writing, under their hands.

§ 18. In making partition, the commissioners shall divide the lands and tenements and allot the several portions and shares thereof to the respective parties, quality and quantity relatively considered by them, according to the respective rights and interests of the parties so adjudged by the court, designating the several shares and portions by metes and bounds, and may, when necessary, employ a surveyor and assistants to aid them therein.

§ 19. The commissioners shall make a full and ample report of their proceedings in writing, signed by them, or a majority of them, specifying therein the manner of executing their trust, and describing the lands divided and the shares allotted to each party, with the quantity of each share, the boundaries, courses and distances, and the items of their charges.

§ 20. The report shall be proved or acknowledged before some officer authorized to take the proof of deeds, in the same manner that deeds are required to be proved or acknowledged to entitle them to be recorded, and shall be filed in the office of the clerk of the court.

§ 21. Upon good cause shewn by any of the parties, the court may set aside the report and appoint new commissioners, as often as may be necessary, who shall proceed in like manner as hereinbefore directed.

§ 22. If no such cause be shewn, the report shall be confirmed, and judgment shall thereupon be given, that such partition be firm and effectual forever; and such judgment shall be binding and conclusive on all parties to the proceeding and their representatives, and all other persons claiming under any of them by right derived after the commencement of the proceeding.

§ 23. A copy of such report and of the judgment, if confirmed, duly certified by the clerk of the court, shall be recorded in the office of the recorder of the county in which the estate divided is situate.

§ 24. If the commissioners so appointed shall report to the court, that the lands, tenements or hereditaments, of which partition shall have been directed, are so situate, or that any lot, tract or portion thereof, is so situated, that partition thereof cannot be made without great prejudice to the owners of the same, the court may, if satisfied that such report is just and correct, make an order that the commissioners sell the premises so situated, at public auction, to the highest bidder.

§ 25. The court making any such order of sale, shall therein direct the terms and conditions, time and place of sale, the credit, if any, and the securities to be taken.

§ 26. The commissioners shall give notice of the time, place and terms of any sale to be made by them, for the same time, and in the same manner as is required by law on sales of real estate by sheriffs on execution.

§ 27. If the premises consist of distinct buildings, farms, tracts, or lots of land, they shall be sold separately; or where any tract of land or lot can be divided for the purpose of sale, with advantage to the parties interested, it may be so divided and sold in parcels.

§ 28. No commissioner, nor any person for his benefit, shall purchase, or be directly or indirectly interested in the purchase of any of the premises sold, nor shall any guardian of any minor or person of unsound mind, party to the proceedings, purchase or be interested in the purchase of any of the lands, the subject of the proceedings, except for the benefit or in behalf of his ward, and all sales contrary to the provisions of this section shall be void.

§ 29. After completing such sale, the commissioners shall report their proceedings to the court, on their oath, with a description of the different parcels of the land sold, the name of the purchaser, and the price bid by him, which report shall be filed in the court.

§ 30. If such sales be approved and confirmed by the court, an order shall be entered, directing the commissioners, or a majority of them, to execute conveyances pursuant to such sales, and the commissioners shall execute such conveyances accordingly.

§ 31. The conveyances so executed shall be acknowledged or proved and recorded in the same manner as other conveyances of lands, and shall be a bar, both in law and equity, against all persons interested in such premises, who shall have been parties to the proceedings, and against all other persons claiming from such parties or either of them.

§ 32. The proceeds of every such sale, after deducting the costs and expenses of the proceedings, shall be divided among the parties whose rights and interests shall have been sold, in proportion to their respective rights in the premises, and shall be paid to them, their guardians or legal representatives, by the commissioners.

§ 33. Where any of the parties, whose interests have been sold, are absent from the state, without any legal representatives in this state, or are not known or named in the proceedings, the court shall direct the shares of such parties to be invested in public stock of the United States, or of this state, or loaned out in trust, on bond and mortgage upon unincumbered real estate, of at least double the value of such investment.

§ 34. All joint tenants and tenants in common, who now hold or hereafter shall hold, jointly or in common, for years or for life, or lives, and all joint tenants or tenants in common, where one or more of them having or shall have estates for years or for life, or for lives, with the other or others of them who have or shall have estates of inheritance or in fee, and each of them, shall, in every such case, have the like remedy for the partition of any lands, tenements or hereditaments, so held by them in joint tenancy or tenancy in common, and in all respects subject to the like proceedings as herein-before prescribed in other cases.

§ 35. No partition or sale of lands, tenements or hereditaments, devised by any

last will and testament, shall be made under the provisions of this act, contrary to the intention of any such testator, expressed in such will and testament.

§ 36. The guardians of all minors, and persons of unsound mind, appointed according to law, shall be and are hereby authorized, in behalf of their respective wards, to do and perform any matter or thing respecting the division of any lands, tenements or hereditaments, as herein directed, which shall be binding on such ward, and deemed as valid, to every purpose, as if the same had been done by such ward after his disabilities are removed.

§ 37. It shall be lawful for said circuit court, for any of the purposes intended by this act, and before or after any proceeding by virtue thereof, to appoint a guardian for any minor, whether such minor reside in or out of this state, and such guardian, for all the purposes of this act, shall have the same power as any general guardian.

§ 38. It shall be the duty of the said court, on appointing any guardian as aforesaid, to any minor entitled to monies arising from the sale as aforesaid, to require of such guardian a bond to the state, with such security as the court shall deem sufficient, conditioned for the faithful discharge of the trust committed to him, and to render a just and true account of such guardianship, in all courts and places where thereto required.

§ 39. In case of the death, resignation, neglect or refusal to act, of any of the commissioners to be appointed as aforesaid, before the duties, trust and services hereby required of them shall be completed, the court, or judge thereof in vacation, may appoint another commissioner or commissioners, who shall be vested with the like powers and authority as if he or they had been originally appointed.

§ 40. The commissioners to be appointed in pursuance of this act, shall be entitled to receive from the person or persons making application for partition as aforesaid, the sum of one dollar and fifty cents for every day they shall be employed in effecting such division.

§ 41. On all final judgments to be given upon any such partition being made, or upon a sale of the premises mentioned in any petition, it shall be lawful for any of the parties to such judgment to appeal, or bring a writ of error thereon, within the same time and under the restrictions and regulations as in other cases.

Approved, February 20th, 1835.

PATROL.

An act concerning patrols.

- SEC. 1. To be appointed by the county court in each township; to serve one year.
2. Company to consist of how many; to take oath.
- 3, & 4. Duty of patrol.
5. When slaves found; to be whipped.
6. Patrol exempt from certain duties.
7. Captain of patrol to be notified.
8. This act not to affect slaves going to or from divine worship on the sabbath.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The county courts shall, from time to time, when to them it shall seem proper, appoint in each township in their respective counties a company of patrol, to continue in office one year.

§ 2. The company shall consist of one discreet person, to be called the captain of the patrol, and as many others under his direction as the county court shall deem it necessary to appoint, who shall severally be sworn to perform the duties assigned them by this act.

§ 3. The patrol so appointed, shall patrol as many hours in each month as the court appointing them shall direct, not less than twelve hours in each month, within the bounds assigned to them.

§ 4. The patrol shall visit negro quarters, and any other places suspected of unlawful assemblages of slaves.

§ 5. Any slave found at such assembly, or who shall be found strolling about from one plantation to another, without a pass from his or her master, mistress or overseer, shall receive any number of lashes, at the discretion of the patrol, not exceeding ten; or if taken before a justice of the peace, such slave shall receive any number of lashes, at the discretion of the justice, not to exceed thirty.

§ 6. Persons appointed as patrols and performing the duties as such, shall be exempt from serving on juries and performing militia duty, for the term they may continue to perform the duties as patrol.

§ 7. The captain of the patrol shall be notified of his appointment by the appointing court, and shall be furnished by the same with a list of his men, who shall be subject to the orders of the captain, according to the provisions of this act.

§ 8. This act shall not be so construed as to prevent or affect any slave, directly going to, or returning from, divine worship on the sabbath.

Approved, March 7th, 1835.

PEDLERS.

An act to license and tax pedlers.

- SEC. 1. Who declared to be a pedler.
2. Not to deal as such without license; no two or more to deal under the same license, nor sell wine, &c.
 3. Contents of license.
 4. License to be obtained by written application to collector.
 5. Rates of state tax to be levied and paid on license every six months.
 6. License may be taken out for less than six months; when and how.
 7. Penalty for dealing as a pedler without license, or contrary to the terms of his license.
 8. Penalty for refusing to submit license for inspection when demanded.
 9. Duty of sheriff, collector, &c., and proceeding against persons dealing as pedlers, contrary to this act, or refusing to produce license when demanded.
 10. Party brought before justice under preceding section, his duty in such case.
 11. Limitation of suits for penalties under this act.
 12. Clock pedlers to obtain license, and how.
 13. One hundred dollars to be levied and paid for such license every six months.
 14. Dealing as a clock pedler without license, penalty.

- Sec. 15.** Found dealing without license, duty of collector, sheriff, &c., to notify justice, who shall issue his warrant
16. Duty and proceedings of the justice, if accused be found guilty of the offence charged.
17. Duty of owners of paper mills pedling without license.
18. Agent of such owners pedling, &c., to be furnished with certain papers.
19. Appropriation of penalties and forfeitures under this act.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Whoever shall deal in the selling of goods, wares or merchandize, other than of the growth, produce or manufacture of this state, by going from place to place to sell the same, is declared to be a pedler.

§ 2. No person shall deal as a pedler without a license from the collector of the county in which he may wish to deal as such, and no two or more persons shall deal under the same license, either as partners, agents or otherwise; and no pedler shall sell wine or distilled spirits.

§ 3. Every license shall state the manner in which the dealing is to be carried on, whether on foot, or with one or more beasts of burden, or the kind of cart or carriage, or if on the water, the kind of boat or vessel to be employed.

§ 4. Any person may obtain a pedler's license by a written application to the collector of the revenue for any county, stating therein the manner in which he intends to carry on his trade, (as in the third section,) and by paying the amount appropriate to such a license.

§ 5. There shall be levied and paid on all pedlers licenses (except clock pedlers) a state tax at the following rates, for every period of six months:

First, If the pedler travel and carry his goods on foot, three dollars:

Second, If one or more horses, or other beasts of burden, ten dollars.

Third, If in a cart or other land carriage, twenty dollars.

Fourth, If in a boat or river vessel, fifty dollars.

§ 6. If any person wishes to peddle goods in a boat or other vessel on the water, for a less time than six months, he can do so by taking out a license (as before provided) at the rate of ten dollars for every thirty days, to be specified in the license.

§ 7. Every person who shall be found dealing as a pedler, contrary to the provisions of this law, or contrary to the terms of any license which may have been granted to him, shall forfeit, if a foot pedler, the sum of ten dollars; on one or more beasts of burden, thirty dollars; in a cart or other land carriage, sixty dollars; in a boat or other vessel, one hundred and fifty dollars.

§ 3. Every pedler shall, upon the demand of any sheriff, collector, constable or citizen householder of the county, produce his license, and allow the same to be read by the person making the demand, and in default thereof, shall forfeit the sum of ten dollars.

§ 9. Every sheriff, collector and constable shall, and every citizen householder of the county may, apprehend and detain any person found dealing as a pedler contrary to the provisions of this law, or who shall fail to produce his license on demand as aforesaid, and may convey the offender, without any unnecessary delay, before any justice of the peace of the county in which he shall be apprehended, or

the justice may, upon legal information, issue his warrant for the arrest of the offender, as in other cases.

§ 10. It shall be the duty of such justice to cause all such accusations to be tried as other similar cases are triable before him, and no delay shall be allowed, unless at the request of the accused, and on good cause shewn.

§ 11. No suit or prosecution shall be brought for the enforcement of any penalty or forfeiture imposed by this law, more than six months after the commission of the offence charged.

§ 12. No person shall peddle clocks without a special license for that purpose, which license may be obtained in the same manner and by the same means above provided in case of pedlers of merchandize.

§ 13. There shall be levied and paid on every clock pedler's license, for the term of six months, one hundred dollars.

§ 14. Every person who shall be found dealing as a clock pedler, without a license granted according to this law, may be indicted for such offence, and upon conviction shall be fined not exceeding four hundred dollars, and imprisoned until the fine and costs shall be paid or secured.

§ 15. When any person shall be found dealing as a clock pedler, without a license as aforesaid, it shall be the duty of every assessor, collector, sheriff and constable of the proper county, and every citizen householder, may give information thereof to some justice of the peace of the county without delay. The justice shall issue his warrant, directed to any sheriff or constable of the county, and cause the offender to be arrested and brought before himself, or any other justice of the peace of the county.

§ 16. If upon examination, the justice shall find the accused guilty of the offence charged, he shall require him to enter into recognizance, with sufficient security, for his appearance at the next term of the circuit court, on the first day thereof, to answer to any indictment which may be preferred against him; and in default of such recognizance, the justice shall commit the offender to the common jail of the county.

§ 17. The owner or owners of any paper mill within this state, may obtain from the county court of the county in which the mill is situate, a certificate under the seal of the court, stating the fact of the ownership, which certificate shall authorize such owners, by themselves or by agents, to peddle merchandize throughout the state, in exchange for rags to be used in the manufacture of paper.

§ 18. Every such agent shall be furnished with an authentic copy of the certificate required in the preceding section, with his appointment as such agent endorsed thereon.

§ 19. All penalties, forfeitures and fines imposed by this law, shall be paid into the treasury of the county in which the offence was committed.

Approved, February 26th, 1835.

PENAL BONDS.

An act to regulate actions on penal bonds.

- Sec. 1.** Condition of bond to be set out in declaration; may assign breaches, &c.
2. What may be plead in bar of such action.
 3. Damages and costs paid before judgment, suit to be discontinued.
 4. Judgment to be entered for the sum really due, with costs.
 5. Action for breach of condition, other than the payment of money, specific breaches to be assigned.
 6. Jury to assess damages for breach, &c.
 7. Judgment by default, &c., enquiry of damages to be awarded by the court.
 8. In such action, if the plaintiff recover, verdict for damages to be entered; judgment how to be entered.
 9. Execution on such judgment; its contents.
 10. If the amount directed to be levied be satisfied, effect of, but the judgment shall remain; when, &c.
 11. When further breaches occur, *scire facias* to issue upon the judgment, to shew cause, &c.
 12. Proceedings to ascertain damages in such cases; judgment how entered.
 13. Effect of execution on the judgment; judgment to remain as security for further breaches.
 14. If jury find assignment of breaches not true, a bar to further suit by *scire facias* or otherwise, for the same breaches.
 15. Persons prosecuting suits to their own use on official bonds, &c., fact to be stated in the process; pleadings, &c.
 16. Pleadings and proceedings on such suit.
 17. Judgment for defendant in such action, when it shall be a bar, and against whom.
 18. Any other person aggrieved, may sue on such bond in like manner; its effect.
 19. Persons who recover judgment, may sue second time on same bond; when.
 20. No *scire facias* to be brought on judgment on such official bond, by the same or any other relator, &c.
 21. Suits and judgments in favor of such relator, same liability as though he were nominal plaintiff and liable for costs as such.
 22. Suits not barred nor affected on plea made by surety, unless accompanied by certain allegations, &c.
 23. If it appear that such security has paid or is liable to pay equal to what he is liable for by the bond, he shall be released and judgment entered in his favor.
 24. If the liability of security in damages, is not equal to his liability in the bond, the amount of damages shall be allowed to him in estimating his liability in the action.
 25. Judgment against principal and security on official bond, how to be satisfied.
 26. Several judgments, in all, more than the liability of security, how court to proceed.
 27. Several executions, and the money made not sufficient to pay all, how to be apportioned.
 28. Who may bring suits, and against whom suits under this act may be brought.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. In all actions brought upon bonds, on which there is a condition or defeasance, by which the same is to become void on the payment of a less sum, the plaintiff shall set out the condition in his declaration, and may assign as many breaches as he may think proper.

§ 2. The defendant in such action may plead payment of the principal sum, and interest due by the condition of such bond, before the commencement of such action, in bar thereof, although the payment was not strictly according to such condition.

§ 3. Whenever any action shall be pending on any such bond, the defendant may, at any time before judgment rendered in such action, pay to the plaintiff, or bring into court for the plaintiff's use, the principal sum and interest due on such bond, together with the costs in such action, and thereupon such action shall be discontinued.

§ 4. If judgment be recovered on any such bond, such judgment shall be rendered

for the sum of money really due according to such condition, with interest and costs, and execution shall issue thereon accordingly.

§ 5. When an action shall be prosecuted in any court of law, upon any bond for the breach of any condition other than for the payment of money, or shall be prosecuted for any penal sum, for the non-performance of any covenant or written agreement, the plaintiff, in his declaration, shall assign the specific breaches for which the action is brought.

§ 6. Upon the trial of actions, if the jury find that any assignment of such breach is true, they shall assess the damages occasioned by the breach, in addition to their finding, or any other question of fact submitted to them.

§ 7. If in such action the plaintiff shall obtain judgment upon demurrer, by confession or default, or *nil dicit*, the court shall make an order therein, that the truth of the breaches assigned be enquired into, and the damages sustained thereby be assessed at the same or the next term, and the court shall proceed thereon in the same manner as in other cases of enquiry of damages.

§ 8. In every such action, if the plaintiff recover, the verdict assigning the damages shall be entered on the record, and judgment shall be rendered for the penalty of the bond, or for the penal sum forfeited, as in other actions of debt, together with costs of suit, and with a further judgment that the plaintiff have execution for the damages so assessed, which damages shall be specified in the judgment.

§ 9. The execution on such judgment shall be in the usual form in actions of debt, reciting the recovery, and directing the sheriff to levy the amount of damages so assessed, (which amount shall be stated,) with interest thereon from the time of such assessment, and the costs of such suit.

§ 10. If the amount so directed to be levied shall be collected, or otherwise paid or satisfied, the real and personal estate and body of the defendant shall be exonerated from further liability for the damages so assessed; but the judgment rendered shall remain as a security for any damages that may be thereafter sustained by the further breach of any condition of such bond, or the non-performance of any other covenant or written agreement by the defendant, the performance of which was secured by such penal sum.

§ 11. Whenever such farther breaches shall occur, the plaintiff, or his personal representative, may have a *scire facias* upon such judgment, suggesting such breaches against the defendant, and all parties bound thereby, and commanding that they be summoned to shew cause why execution should not be had upon such judgment for the amount of the damages sustained by such further breaches.

§ 12. The like proceedings to ascertain such damages, shall be had upon such writ as herein-before provided in the first instance, and if the plaintiff recover, judgment shall be rendered that the plaintiff have execution to collect the amount of damages assessed, and costs.

§ 13. The execution issued on such judgment shall have like effect and be proceeded on in all things as in the first instance; but the judgment shall remain as a security for further breaches, and so on as often as occasion may require.

§ 14. Whenever, in any action brought according to the provisions of this act, the jury shall find that any assignment of breaches is not true, the same shall be a bar to any other or further suit, by *scire facias* or otherwise, for the recovery of any damages alleged to have been sustained by occasion of the same breaches so assigned.

§ 15. In all cases where, by the laws of this state, any person is authorized to prosecute a suit to his own use on any official bond, he shall sue in the name of the state, or other obligee named in the bond, stating in the process, pleadings, proceedings and record in such action, that the same is brought in the relation and to the use of the person so suing.

§ 16. In such action, the same pleadings and proceedings shall be had as before provided in cases of suits upon bonds, with conditions other than for the payment of money, except as hereinafter otherwise provided.

§ 17. A judgment for the defendant in such action shall be a bar to any other suit that may be brought on the same official bond, by the same relator, for any delinquency or default which was assigned as a breach of the condition of such bond in the action on which such judgment was rendered.

§ 18. Any other party aggrieved may, in like manner, prosecute an action on such official bond, and the pendency of any suit, at the relation of any other person on the same bond, or a judgment recovered by or against any other person on such bond, shall not abate, or in any manner effect such suit, or the proceedings thereon, except as herein provided.

§ 19. Any person who may have recovered any judgment upon such official bond, may, in like manner, again prosecute an action on such bond, whenever he is aggrieved by any default or delinquency, other than such as shall have been the subject of the former action, and shall proceed therein as herein-before provided.

§ 20. No *scire facias* shall be brought upon any judgment rendered upon such official bond, by the same or any other relator, for any breach of the condition of the bond.

§ 21. Every suit brought upon such official bond to the use of the party aggrieved, and every judgment thereon, shall be deemed the private suit and judgment of the relator, in the same manner, in every respect, as if he were the nominal plaintiff, and such relator shall be liable to costs as other plaintiffs.

§ 22. No such suit shall be barred, nor shall the amount which the plaintiff may be entitled to recover, be affected by any plea made by any surety in such bond of a judgment recovered thereon, unless it be accompanied by an allegation, that the sureties, or some of them, have been obliged to pay the damages on such judgment, or some part thereof, for the want of sufficient property of the principal whereon to levy the same, or that they will be obliged to pay the same, or part thereof, for the same reason, nor unless such plea be verified by oath or affirmation.

§ 23. If it appear that the amount of damages so recovered, which a surety has been, or will be, obliged to pay, as specified in the last section, is equal to the amount for which such defendant shall be liable by virtue of the bond, he shall be

acquitted and discharged from all further liability, and judgment rendered in his favor.

§ 24. If it shall appear that the damages so recovered, and which such surety has been or will be obliged to pay, is not equal to the amount of his liability, the amount thereof shall be allowed to him in estimating the extent of his liability in any such action.

§ 25. Whenever a judgment shall be obtained on an official bond against principal and sureties, a direction shall be endorsed on the execution by the plaintiff or his attorney, to levy the amount, in the first place, on the property of the principal; and if sufficient property of such principal cannot be found to satisfy such execution, then to levy the deficiency on the property of the sureties.

§ 26. If several judgments be obtained at the same term, upon any official bond for damages, amounting in the whole to more than the sum for which the sureties therein shall be liable, the court shall order the monies levied on such judgments, from the property of the sureties, to be distributed to the relators, respectively, on such judgments, in proportion to the amount of their respective recoveries.

§ 27. If executions be issued upon such several judgments obtained at the same term, and sufficient money shall not be raised to satisfy all the executions, the court shall distribute the monies collected thereon, to the relators, in proportion to their respective recoveries.

§ 28. The provisions of this act, in relation to suits or official bonds, shall apply as well to suits or bonds of executors, administrators, guardians, curators and others, required by law to give bond, with condition, for the performance of any duty or trust, as to suits on bonds of officers; and the persons aggrieved may prosecute suits in the same manner, and with the like effect, and subject in all respects to the provisions herein contained, in respect to suits on official bonds, and the courts shall possess the same power in relation to such suits.

Approved, February 18th, 1835.

PENITENTIARY.

An act to establish a state penitentiary and to regulate the same.

ART. I. Of the custody and government of the penitentiary, the officers connected therewith, and their general powers, duties and compensation.

ART. II. Of the treatment and conduct of convicts, and the discipline of the penitentiary.

ART. III. Miscellaneous provisions.

ARTICLE I.

Of the custody and government of the penitentiary, the officers connected therewith, and their general powers, duties and compensation.

SEC. 1. State penitentiary at the City of Jefferson, to be under the direction of three inspectors.

2. Who shall be the inspectors of the penitentiary.

3. Any two of the inspectors to constitute a board; may do any of the acts required as such.

4, & 5. General powers of board of inspectors.

- Sec. 6. Duty to inquire into conduct of warden and other officers; their powers in such cases.
7. Inspectors may remove warden and others from office; for what causes and how warden to be removed.
 8. Inspectors to have access to prison, books, &c., pertaining to the penitentiary.
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 10. Stated meetings of the board when to be held, and special meetings, when; their duties.
 11. Biennial report to be made to the legislature; its contents.
 12. Inspectors not to hold any appointment relating to prison.
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 14. Officers of the penitentiary.
 15. Warden how appointed; tenure of his office; vacancy, how filled.
 16. Warden to give bond; its condition; where to be filed.
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 18. General duties of the warden.
 19. Duty of the warden when supplies or materials are purchased, or services rendered for the penitentiary.
 20. Penalty on officers, &c., interested in any contract, purchase or sale for, or on account of, the penitentiary.
 21. Money appropriated for the use of the penitentiary, how drawn.
 22. Warrant for, not to be drawn except upon the order of the warden.
 23. Two preceding sections not to extend to accounts of inspectors and wardens.
 24. Supplies or materials purchased, or services rendered for the penitentiary, to be paid for by the warden; how.
 25. Authority of warden in respect to suits, &c.
 26. Warden to enforce payments; may accept securities.
 27. Authority to refer controversies to arbitration.
 28. Warden to keep regular account of all monies received, paid out, &c.; his duties in such cases.
 29. On rendering such accounts, &c., money on hand to be paid into the treasury.
 30. Warden to render annual accounts to the auditor; account to be closed annually.
 31. To the several returns, accounts and inventories required by the preceding sections, affidavit to be annexed.
 32. Warden to endeavor to defray expenses of the penitentiary.
 33. Auditor to audit accounts and report to the legislature.
 34. Warden to make annual report to the governor; its contents; where to be deposited.
 35. Warden to receive persons pardoned on condition of imprisonment.
 36. Senior overseer to act in certain cases in the absence, &c., of warden.
 37. Physician and overseers, how appointed; tenure of office.
 38. Guard for the penitentiary may be employed, and by whom.
 39. Arms, &c., to be furnished them; may be dismissed by the warden.
 40. Register to be kept by physicians; its contents.
 41. Books, accounts, &c., shall be public property, and remain at the penitentiary.
 42. Copy of official reports to be kept at the penitentiary.
 43. Compensation of officers and guards.
 44. Officers to support themselves, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. There shall be maintained at the city of Jefferson, in the county of Cole, a state penitentiary, which shall be under the direction and government of three inspectors.

§ 2. The treasurer, auditor, and attorney general, shall be ex-officio inspectors of the penitentiary.

§ 3. Any two of the inspectors shall constitute a board, and may do any of the acts which the inspectors are required or authorized to do.

§ 4. The board of inspectors shall make such rules for the government, discipline and police of the penitentiary, and of the officers, guards and servants thereof, and for the punishment and employment of the prisoners therein confined, not inconsistent with law, as they may deem expedient.

§ 5. The inspectors shall have power, and it shall be their duty from time to time, to examine and enquire into all the matters connected with the government, discipline and police of the penitentiary; the punishment and employment of the prisoners therein confined; the monied concerns of the institution, and the purchases and sales of the articles provided for the penitentiary, or sold on account thereof; and they may, from time to time, require reports from the warden, or other officers of the prison, in relation to any or all said matters.

§ 6. It shall be the duty of the board of inspectors to enquire into any improper conduct which may be alleged to have been committed by the warden, or other officers of the penitentiary, and for that purpose shall have the power of a justice of the peace to issue subpoenas, compel the attendance of witnesses, and administer oaths.

§ 7. The inspectors shall have power to remove from office the warden and all other officers, guards and servants of the penitentiary; but the inspectors shall not remove the warden, except for charges of misconduct, to be entered upon their journals, nor until the warden has been furnished with a copy of such charges, and had an opportunity of being heard before them in his defence.

§ 8. It shall be the duty of the warden and other officers of the penitentiary to admit the inspectors, or any one of them, into every part of the prison, to exhibit to them, on demand, all the books, papers, accounts and writings pertaining to the penitentiary, or to the business, management, discipline and government thereof, and to render them every facility in their power to enable them to discharge their duties.

§ 9. The board of inspectors shall keep regular minutes of their meetings and proceedings, which shall be signed by them and preserved in the penitentiary.

§ 10. It shall be the duty of the board of inspectors to hold, at the penitentiary, stated meetings once in every two months, and special meetings whenever necessary; and at their stated meetings they shall inspect the penitentiary, and the convicts confined therein, listen to any complaints of oppression or misconduct on the part of the officers of the penitentiary, examine into the truth thereof, and proceed therein, when the complaint is well founded.

§ 11. At each biennial session of the general assembly, the board of inspectors shall, on or before the second Monday of such session, either make, or require the warden to make, a report in writing to the legislature, exhibiting a complete and comprehensive view of the transactions of the penitentiary during the two preceding years, the number of convicts confined therein, the various branches of business in which they have been employed, the number employed in each branch, and the profits of the state (if any) arising therefrom; such report shall also exhibit the age, sex, and place of nativity of the convicts, their term of imprisonment, the offence for which they are committed, and whether for a first or repeated offence, and when and in what court, or by whose order; and the number of convicts that have escaped, or died, or been pardoned or discharged during the two preceding years; and in case of pardon, the term unexpired of the time for which such convicts were respectively sentenced; when such pardons were granted, and the con-

ditions (if any) upon which they were granted, together with such remarks and information, in relation to the institution, as may be the result of the inspectors or warden's observation, and as they or he may deem proper to communicate.

§ 12. No inspector of the penitentiary shall be warden thereof, or hold any other appointment connected with the prison.

§ 13. No inspector, warden or other officer of the penitentiary, shall receive, under any pretence whatsoever, from any of the convicts, or from any other person on behalf of any of the convicts, any sum of money, emolument or reward whatsoever, or any article of value as a gift, under the penalty of five hundred dollars, to be recovered in the name and for the use of the state, in an action of debt, founded on this statute, or by indictment in any court having jurisdiction thereof.

§ 14. The officers of the penitentiary shall be as follows: one warden, one physician and surgeon, and as many overseers as the inspectors may deem necessary, not exceeding three.

§ 15. The warden shall be appointed at each biennial session of the general assembly, by a joint vote of both houses, and shall hold his office until his successor be appointed and qualified. If any vacancy occur in the office of warden, such vacancy shall be filled by the governor.

§ 16. The warden, before entering upon the duties of his office, shall execute a bond to this state, with sufficient securities, to be approved of by the auditor of public accounts, in the penalty of twenty-five thousand dollars, conditioned for the faithful performance of the duties of his office according to law, which bond shall be filed in the office of the secretary of state.

§ 17. The inspectors, warden, physician, and overseers of the penitentiary, shall, before they enter upon the duties of their offices, severally take the oath of office prescribed by the constitution, and such oath shall be filed in the office of the secretary of state.

§ 18. It shall be the duty of the warden,

First, To reside in the penitentiary with his family, and to be there constantly, except when attending to some necessary duty connected with his office.

Second, To exercise a general supervision over the government, discipline and police of the penitentiary, and to superintend all the business and concerns thereof.

Third, To give the necessary directions to the overseers, and to examine whether they have been careful and vigilant in the discharge of their several duties.

Fourth, To examine daily into the state of the penitentiary, and the health, conduct and safe keeping of the prisoners.

Fifth, To use every proper means to furnish the prisoners with employment, the most beneficial to the state, and the best suited to their various capacities; and,

Sixth, To purchase all the provisions, clothing, hospital stores, raw materials, and all other supplies that may be necessary for the penitentiary, and to sell all the articles manufactured therein.

§ 19. Whenever any supplies or materials for the penitentiary shall be purchased, and whenever any services shall be rendered for the penitentiary, it shall be the duty of the warden, at the time of making payment for such supplies, materials or services, to take bills therefor, and enter the same in a book, to be provided and kept for that purpose.

§ 20. No inspector, warden or other officer or person employed at the penitentiary, shall be, directly or indirectly, interested in any contract, purchase or sale, for, by, or on account of the penitentiary, under the penalty of two hundred and fifty dollars, to be recovered in the name and for the use of the state, in an action of debt, founded on this statute, or by indictment in any court having jurisdiction thereof.

§ 21. All monies in the treasury of this state, appropriated for the use of the penitentiary, shall be drawn by warrants of the auditor of public accounts upon the treasurer, in favor of the person, by name, who may have performed the services or sold the goods or other property, in payment of which such warrants may be drawn.

§ 22. No such warrant shall be drawn by the auditor, except upon the order of the warden in favor of the person, by name, who may have performed the services, or sold the goods or other property, in payment of which the warrant is to be drawn; and every such order shall be signed by the warden drawing the same, and shall express, in some general terms, the articles or services for which the same is to be drawn.

§ 23. The two preceding sections shall not extend to the accounts of the inspectors and warden for the compensation allowed to them for their services, but such accounts shall be audited and allowed, and paid out of the monies in the treasury appropriated for the use of the penitentiary, in like manner as the accounts of the other officers of the state are audited, allowed and paid.

§ 24. The warden shall pay for any supplies or materials furnished, or services rendered, for the penitentiary, out of any money in his hands belonging to the state, and shall not draw any order upon the auditor of public accounts for a warrant, to be drawn in payment of any such supplies, materials or services, if there be money in his hands sufficient to pay the same.

§ 25. All transactions and dealings on account of the penitentiary shall be conducted by, and in the name of, the warden, who shall be capable in law of suing and being sued in all courts and places, and in all matters concerning the penitentiary, by his name of office; and, by that name, the warden shall be and is authorized to sue for and recover all sums of money due from any person to any former warden of the penitentiary, or to this state, on account of the penitentiary.

§ 26. It shall be the duty of the warden to enforce the payment of debts due to the institution, as soon, and with as little expense to the state, as possible; but

he may, with the approbation of the inspectors, accept of any security from any debtor, on granting time, that may be deemed conducive to the interests of the state.

§ 27. Whenever any controversy shall arise relative to any claim or demand which any person may have against the warden, on account of the penitentiary, or relative to any claim which the warden may have against any person, on account of the penitentiary, such controversy may be referred to the arbitration of two or more persons, mutually chosen by such warden and the person with whom such controversy may exist.

§ 28. The warden shall keep a regular and correct account of all monies received by him from any source whatever, by virtue of his office, including all monies taken from convicts, or received as the proceeds of property taken from them, and including also all monies in the treasury, for which he has given orders on the auditor of public accounts to draw warrants on the treasurer, and of all sums paid by him, either in money or in orders on the auditor of public accounts, and the persons to whom, and the purposes for which, the same were paid, and shall make out and deliver to the auditor of public accounts, once every two months, on oath, a return of all the monies so received and paid by him on account of the penitentiary, during the preceding two months, specifying from whom received, and to whom paid, and on what account, and stating also the balance in his hands at the time of rendering such account.

§ 29. The warden shall, at the time of rendering the account required in the preceding section, pay into the treasury of this state, whatever balance of money may then be in his hands; and all the monies thus paid into the treasury shall be deemed and treated as money appropriated for the use of the penitentiary.

§ 30. The warden shall, annually, close his account on the first Monday in November in every year; and such warden, within ten days thereafter, shall render to the auditor of public accounts a statement of all monies received by him on account of the penitentiary, and of all monies expended by him for the use thereof, as declared in the last preceding section but one, with sufficient vouchers for the same, and also an inventory of the goods, raw materials and other property of the state, on hand, exhibiting a complete detail of the transactions of the penitentiary for the year.

§ 31. To the several returns, accounts and inventories, required to be rendered in the preceding sections, there shall be annexed an affidavit of the warden, stating that the same are correct and true, in every respect, to the best of [his] knowledge or belief.

§ 32. The warden shall use his best endeavors to defray all the expenses of the penitentiary by the labor of the convicts.

§ 33. The auditor of public accounts shall, annually, examine and audit the accounts of the warden, and, on the second Monday of every biennial session of the general assembly, lay a statement thereof before the legislature.

§ 34. The warden shall, annually, on the first Monday in November in each year, make a report in writing to the governor, exhibiting a complete and comprehensive view of the transactions of the penitentiary during the preceding year, of

the number of convicts confined therein, the various branches of business in which they have been employed, the number employed in each branch, and the profits of the state, if any, arising therefrom; such report shall also exhibit the age, sex, and place of nativity of the prisoners, their term of commitment, the offence for which the commencement [commitment] was made, and whether for the first or repeated offence, and when, and in what court, or by whose order, and the number of prisoners that have escaped, or died, or been pardoned or discharged during the preceding year, and, in cases of pardon, the term unexpired of the time for which such convicts were respectively sentenced, when such pardons were granted, and the conditions (if any,) upon which they were granted, together with such observations and information in relation to the institution, as may be the result of the warden's observation, and as he may deem proper to communicate; and such report shall be deposited in the office of the secretary of state, and be there kept.

§ 35. The warden shall, at all times, receive into the penitentiary, on the order of the governor, any person convicted of any crime punishable with death, who shall be pardoned on condition of being confined, either for life or for a term of years, in the penitentiary, and shall confine such person according to the terms of such condition.

§ 36. Whenever there shall exist a vacancy in the office of warden, or the warden shall be absent from the penitentiary, all the duties and powers of such warden, so far as the same relate to the safe keeping of the prisoners, and the discipline of the penitentiary, shall devolve upon, and be executed by, the senior overseer, until such vacancy be filled, or the warden return to the penitentiary.

§ 37. The physician and overseers of the penitentiary shall be appointed by the warden, and shall hold their offices during the warden's pleasure; a certificate of every such appointment, signed by the warden, shall be delivered to the person appointed, and an entry thereof shall be made upon the books of the prison.

§ 38. The board of inspectors shall, whenever they shall deem it necessary, authorize the warden to employ a guard for the penitentiary, to consist of so many persons, not exceeding four, as the inspectors may, from time to time, direct.

§ 39. The guards shall be furnished, from the arsenal of the state, with sufficient, arms and accoutrements, and with necessary ammunition, by the warden, and shall be subject to the command and direction of the warden, who may dismiss them at pleasure, and employ others in their stead.

§ 40. The physician shall keep a register of all the sick convicts placed under his care, stating the disease with which they are afflicted, and the date of their entering and leaving [the] hospital; also a register of all the deceased convicts, stating their names, ages, diseases, time and cause of death, and all other circumstances which he may deem necessary, which register shall always remain at the penitentiary, and be open to inspection.

§ 41. All the books of accounts, registers, returns, and other documents and papers relating to the affairs of the penitentiary, shall be the property of this state, and shall remain at the penitentiary.

§ 42. The warden shall preserve, at the penitentiary, at least one copy of all official reports made, either by the inspectors or warden, to the general assembly, and one copy of all official reports made by him to the general assembly, governor, inspectors, and auditor of public accounts.

§ 43. The officers and guards of the penitentiary shall receive the following salaries and compensations, to be paid quarter annually:

First, The warden, seven hundred and fifty dollars a year.

Second, The physician and surgeon, such sum as the inspectors shall agree to pay, not exceeding one hundred dollars a year.

Third, The overseers, such sums, respectively, not exceeding the rate of two hundred dollars per year, each, as the inspectors may deem just.

Fourth, The guards, such sums, respectively, not to exceed one hundred and thirty-two dollars per quarter, [annum,] each, as the inspectors may deem proper.

§ 44. The warden, overseers and other officers, and the guards of the penitentiary, shall support themselves from their own resources, and shall not receive any perquisites or emoluments for their services, other than the compensation provided by this act, except, that the warden shall keep his office, and reside, with his family, in the penitentiary, and shall be furnished with fuel from the stock provided for the use of the penitentiary; and the guards shall reside in the barracks provided for them, and they and the overseers may be supplied with fuel and provisions from the stock provided for the use of the prison.

ARTICLE II.

Of the treatment and conduct of convicts, and the discipline of the penitentiary.

Sec. 1. Convicts to be kept at hard labor.

2. Labor, where to be performed by convicts; convicts to be kept separately in cells at night, &c.

3. Clothing, bedding and food of convicts.

4. A bible to be furnished each convict that can read.

5. Convict, and certified copy of his sentence, to be delivered to the warden, who shall give a certificate therefor.

6. Duty of warden and overseers on arrival of convicts.

7, & 8. Money and property of convicts, how secured, and when to be paid them, &c.

9. Warden to keep journal of reception, discharge, escape and death of convicts, &c.

10. Convicts to be clothed in uniform of the penitentiary; prison allowance of food; when under a physician, what allowed.

11. Penalty for furnishing convicts with spirituous liquors, &c., without order of physician.

12. Penalty for bringing to, or carrying from prison, letters, &c.

13. Clothing and money to be furnished discharged convicts.

14. What officers and others authorized to visit prison at pleasure.

15. Duty of visitors in certain cases.

§ 1. All convicts in the penitentiary shall be confined, singly, in the cells of the prison, and shall be kept at labor during the daytime.

§ 2. The inspectors may, if they deem it conducive to the public interest, direct the labor of all or any of the convicts to be performed within the exterior walls of the prison, and without the cells thereof; but it shall be the duty of the warden to keep each convict, singly, in a cell at night, and also during the day, when unemployed.

§ 3. The clothing and bedding of the convicts shall be of coarse materials, and they shall be supplied with a sufficient quantity of wholesome food, of a coarse quality, according to the rules prescribed by the inspectors.

§ 4. The warden shall, at the expense of the state, furnish a bible to each convict who can read.

§ 5. Whenever any convict shall be delivered to the warden of the penitentiary, the officer having such convict in his charge shall deliver to the warden the certified copy of the sentence received by such officer from the clerk of the court, and shall take from such warden a certificate of the delivery of such convict.

§ 6. On the arrival of a convict at the penitentiary, he shall be examined by the warden, in the presence of as many of the overseers as can conveniently attend, in order to their becoming acquainted with his person and countenance; such convict's name, height, apparent and alleged age, place of nativity, trade, complexion, color of hair and eyes, and length of his foot, to be accurately measured, shall be entered in a book provided for that purpose, together with such other natural and accidental marks or peculiarity of feature or appearance as may serve to identify him, and, if the convict can write, his signature shall be written under the description of his person.

§ 7. The warden shall take charge of all the money and property that any convict shall have with him at the time of his entering the prison, including his clothes, and if the same is worth ten dollars or more, and be not demanded by any trustee of the estate of such convict, appointed pursuant to law, the warden shall sell the property and place the money at interest, for the benefit of such convict or his representatives.

§ 8. The warden shall keep a correct account of all such property and money, and shall pay the amount thereof to such convict, when released, or to his personal representatives; and in case of the death of such convict, without being released, if no legal representatives shall demand such property within one year, the same shall be applied to the use of the state.

§ 9. The warden shall keep a journal, in which he shall regularly enter the reception, discharge, death, pardon or escape of every convict, and all other occurrences of note, that concern the state of the penitentiary.

§ 10. The convicts shall be clothed in the uniform of the penitentiary, and shall receive the prison allowance of food, and no other; but the convicts under the care of the physician shall be allowed such diet as he may direct.

§ 11. If any person shall furnish any convict in the penitentiary with any wine, or spirituous or intoxicating fermented liquor, unless by order of the physician, he shall, on conviction thereof by indictment, be fined ten dollars, or be imprisoned in the county jail ten days; and if such person be an officer of the prison, he [shall] be forthwith dismissed.

§ 12. No person, without the consent of the warden, shall bring into, or convey out of, the prison, any letter or writing to, or from, any convict; and whoever shall violate the provisions of this section, shall, on conviction thereof by indictment

be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding thirty days, or be both fined and imprisoned.

§ 13. Whenever any convict shall be discharged, either by pardon or otherwise, the warden shall furnish to such convict necessary clothing, not exceeding ten dollars in value, and such sum of money, not exceeding four dollars, as the warden may deem necessary and proper.

§ 14. The following persons shall be authorized to visit the penitentiary at pleasure, namely: the governor, lieutenant-governor, members of the general assembly, judges of the supreme court and circuit courts, attorney general, auditor of public accounts, treasurer, secretary of state, and circuit attorneys; and no other person shall be permitted to enter within the walls of the prison, except by the special permission of the warden, or under such regulations as the inspectors shall prescribe.

§ 15. Any visiter who shall discover any abuse or infraction of law, or oppression, shall make the same known to the inspectors, and if any of the inspectors are implicated, such visiter shall make the same known to the governor.

ARTICLE III.

Miscellaneous provisions.

- SEC. 1.** Convicts under the laws of the United States to be received into the prison.
2. If such prisoner escape or attempt to escape from prison, how punished.
 3. Liability of the warden for neglect or violation of duty toward such prisoner.
 4. Convicts considered important witnesses, to be brought up by *habeas corpus* to testify.
 5. In what cases he shall be examined as a competent witness.
 6. Inspectors, warden, officers and guards, exempt from military duty and serving on juries.
 7. Provisions for retaking convicts who escape.
 8. In what cases the warden shall have authority of a sheriff over the power of the county.
 9. Inspectors and warden, when to enter on the duties of their offices.
 10. Governor to fill vacancy, if there be one at that time.
 11. Person sentenced to penitentiary prior to 1st January, 1836, how disposed of until that time.
 12. This act takes effect from its passage.

§ 1. The warden shall receive into the penitentiary and safely keep therein, subject to the discipline of the prison, any criminal convicted of any offence against the laws of the United States, sentenced to imprisonment therein by any court of the United States, sitting within this state, until such convict shall be discharged by due course of law; the United States supporting such convict, and paying the expenses attendant upon the execution of such sentence.

§ 2. In case any such prisoner shall escape, or attempt to escape out of the penitentiary, he shall be liable to the like punishment as if he had been committed by virtue of a conviction under the authority of this state.

§ 3. The warden shall be liable to the like penalties and punishment for any neglect, or violation of duty, in respect to the custody of any such prisoner, as if such prisoner had been committed by virtue of a conviction under the authority of this state.

§ 4. Whenever any convict confined in the penitentiary shall be considered an important witness in behalf of this state, upon any criminal prosecution against any other convict, by the attorney general, or circuit attorney conducting the same, it shall be the duty of any judge of the court in which the prosecution is pending, to grant, upon the affidavit of such attorney general or circuit attorney, a *habeas corpus* for the purpose of bringing such person before the proper court, to testify upon such prosecution.

§ 5. Such convict may be examined upon such prosecution, and shall be considered a competent witness against any fellow convict, for any offence actually committed whilst in prison, and whilst the witness so offered shall have been confined in the penitentiary.

§ 6. The inspectors, warden, and all the officers and guards of the penitentiary, shall, during their continuance in office, be exempt from serving on juries, and from military duty.

§ 7. Whenever any convict confined in the penitentiary shall escape therefrom, it shall be the duty of the warden to take all proper measures for the apprehension of such convict, and for that purpose he may offer and pay a reward, not exceeding fifty dollars, for the apprehension and delivery of such convict.

§ 8. The warden shall, in all cases of alarm or danger at the penitentiary, have the authority of a sheriff over the power of the county in which the prison is situate.

§ 9. The first inspectors and warden, elected or appointed in pursuance of this act, shall enter upon the duties of their respective offices on the first day of January, eighteen hundred and thirty six, and not before, and shall not receive any salary or compensation for any services rendered before that time.

§ 10. If on the first day of January, eighteen hundred and thirty-six, there be any vacancy in the office of inspector or warden, the governor shall immediately make appointments to fill every such vacancy, and the persons so appointed shall hold their offices until the next biennial session of the general assembly, and until their successors be appointed and qualified.

§ 11. If any person be sentenced in any court, prior to the first day of January, eighteen hundred and thirty-six, to imprisonment in the penitentiary, the court in which such conviction shall be had, shall direct such convict to be detained in the county jail until the first day of January, eighteen hundred and thirty-six; and the time during which such convict shall continue in the county jail, after his conviction, shall be deemed a part of the term of his imprisonment in the penitentiary.

§ 12. This act to take effect from and after its passage.

Approved, March 18th, 1835.

PERPETUATING TESTIMONY.

An act concerning perpetuating testimony.

SEC. 1. In what cases depositions may be taken to perpetuate testimony.

2. Dedimus to be granted, by whom; affidavit to be filed; its contents.
3. To be issued by the clerk under the seal of the court; to whom directed.
4. Notice of time and place of taking depositions to be given, &c.; to whom.
5. If person interested be a married woman or minor, upon whom notice to be served.
6. Notice how served on persons residing without the state.
7. Witnesses may be summoned to give testimony.
8. If it appear to the justice or clerk, that notice has been given, testimony to be reduced to writing, &c.
9. Answers of witnesses to be reduced to writing, and how, and subscribed by the witness.
10. Justices or clerks may adjourn the taking depositions from day to day.
11. Depositions how certified and to whom delivered.
12. When the same shall be sent by mail or otherwise.
13. Duty of the clerk to whom such depositions are returned.
14. In what cases depositions taken, recorded, certified, &c., may be read in evidence.
15. If corner of land be in a decayed or perishable condition, survey may be made; when.
16. Duty of the surveyor when making the survey in placing corner posts or stones, &c.
17. Plat and certificate of such survey to be made out; its contents.
18. Corners destroyed or obliterated by time or accident, may be perpetuated by testimony; how.
19. Proceedings of justices to get county surveyor and witnesses before them for that purpose.
20. Justices when and where to proceed to examination of witnesses touching the existence or situation of such corners.
21. Justices, in taking such examination, may adjourn from day to day.
22. Examination to be reduced to writing, signed, certified, &c. and delivered to the county surveyor.
23. Notice how given, in taking such depositions, to appear in the certificate of justice.
24. When county surveyor to make survey and plant stone or post at each of the obliterated or decayed corners; how governed in making survey.
25. Plat and certificate to be made out; its contents.
26. Plats and certificates made under this act, to be recorded by surveyor; originals and depositions to be delivered to recorder.
27. Plats and certificates, and depositions, to be recorded by recorder; when and how. and to whom delivered.
28. Plats and certificates, and depositions, taken and certified; when to be taken and received as evidence.
29. Costs attending proceedings under this law, how paid.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The depositions of witnesses to perpetuate testimony may be taken where any person is a party, or expects to be a party, to a suit pending or about to be commenced in any court of this state, and the object is to perpetuate the remembrance of any fact, matter or thing relating to the boundaries of land, or to the improvements of lands, the name or former name of water courses, the name or former name of any portion or district of country, or regarding the ancient customs, laws or usages of the inhabitants of this country, as far as may relate to the future settlement of land claims, or touching pedigree, title to slaves, or any other matter or thing necessary to the security of any estate, real or personal, or any other personal right.

§ 2. A dedimus shall be granted to take such depositions by any judge of the supreme or circuit courts, on petition in writing, supported by the affidavit of the applicant, setting forth the facts intended to be proved, the names of the individuals whose testimony is desired, and the place or places of their residence.

§ 3. The dedimus shall be issued by the clerk of the court over which the judge granting the same presides, and being witnessed by such clerk, and the seal of his court, shall be directed to any two justices of the peace, or to any clerk of the supreme or circuit court, being in the county where such testimony is to be taken, requiring such justices or clerk to take the depositions of the witnesses therein named.

§ 4. The party applying for the dedimus shall give notice in writing of the time and place of taking such depositions, to every person who may be known to be interested, his or their attorney or agent, at least thirty days before the taking of the same, and a copy of the petition and affidavit, upon which the dedimus was granted, shall accompany such notice.

§ 5. In case the person interested be a married woman, the notice shall be served on the husband; if a minor, on the guardian of such minor, and a guardian *ad litem* may be appointed by the judge granting the dedimus, where there is no guardian.

§ 6. The publication of such notice, in some newspaper printed in this state, at least three weeks consecutively, the last insertion to be fifteen days before the day of taking the depositions, shall be a sufficient notice to all persons residing without the state.

§ 7. The justices or clerk may issue summons to such witnesses, requiring them to appear and testify at a time and place therein named, and may enforce obedience thereto by attachment.

§ 8. The justices or clerk shall attend at the time and place appointed for taking such depositions; and if it shall appear to such justices or clerk, that notice has been given as is required by this act, such justices or clerk shall then and there reduce to writing all the questions put to the witnesses by the party desiring such depositions, as also all the questions put by all and every person attending, who shall feel interested, who shall have liberty to examine and cross-examine the witnesses.

§ 9. Such justices or clerk shall also reduce to writing all the answers of the witnesses to such questions as shall be put to them, and all such questions and answers shall be written in the English language, or the language of the witness, if he do not understand the English language, and being distinctly read to such witness, shall be sworn to and subscribed by such witness.

§ 10. The justices or clerks shall have power to adjourn, from day to day, the taking of such depositions, where the same shall be necessary.

§ 11. The justices or clerks taking such depositions, shall attach thereto his or their certificate, stating the time and place where such depositions were taken, that the witnesses were duly sworn as to the truth of their depositions, and that they subscribed the same, and shall enclose them, together with the dedimus and the evidences of notice, and the whole being carefully sealed up, shall be delivered by the justices, or one of them, or clerk, to the clerk of the circuit court of the county in which the property or matter is situated or belongs, to which such depositions relate.

§ 12. If any justice or clerk, taking such depositions, reside at such distance from the clerk's office, where such depositions properly belong, as to prevent an imme-

diate delivery of such depositions by such justices or clerk, then it shall be lawful to send the same by mail or otherwise.

§ 13. The clerk of the circuit court of the county where such depositions properly belong, shall, on receiving the same, endorse the manner of their transmission to him, and shall immediately, in his *ex officio* capacity of recorder, record the depositions with the accompanying papers, and his certificate as to the manner of their transmission, and shall make his certificate on the back of the depositions, that the same, together with the accompanying papers, naming them, were by him duly recorded, and deliver the original depositions and accompanying papers to the party on whose petition the dedimus issued.

§ 14. Depositions taken and certified in conformity to the preceding provisions of this law, or duly certified copies of the record of such depositions, may be used and read as evidence in any case to which they relate, 1st. If the deponent be dead; 2d. If he be unable to give testimony by reason of insanity or imbecility of mind; 3d. If he be rendered incompetent by judgment of law; 4th. If he be removed, so that his testimony cannot be obtained; but all legal exceptions may be taken and allowed to the reading of such depositions on any trial at law or in equity, in which the same may be offered in evidence.

§ 15. Any person or persons, their agent or attorney, owning or being interested in any tracts of land within this state, any corner or corners of which shall be in a decayed or perishable condition, may require the surveyor of the county to make a survey thereof.

§ 16. Such county surveyor shall cause to be planted, by the person requiring such survey, at each of such decayed corners, a stone or post, such surveyor noting particularly the situation and condition of the original corner trees called for in the original survey, and all the places of notoriety over or by which the lines of such survey may pass.

§ 17. Such surveyor shall make out a plat and certificate of such survey under his hand, noting the names of the chainmen, marker and other persons present at the planting of any corner stone or post, and noting also the variation from the original lines at the time of making such survey.

§ 18. When the corner or corners of any survey shall have been destroyed or obliterated by time or accident, the owner or owners of such survey, or of any other lands, the title of which may be affected by the loss of such corner, may call on two disinterested justices of the peace of the county in which the land shall be situated, for the purpose of establishing such corners by testimony.

§ 19. Such justices are required, upon application, to issue their warrant to any constable or sheriff of the county, to cause to come before them, at a place on the survey, and on a day to be designated in the warrant, the county surveyor and such witnesses, as well without as within the county, as the person demanding such warrant, or other person interested, may require.

§ 20. Such justices shall, on the day appointed, proceed to the place designated, and there, in the presence of the county surveyor, examine the witnesses summoned and others attending, touching the existence or situation of such destroyed

or obliterated corners, or any other matter in relation to the entry or survey of such land, or of the corners or boundaries of any adjoining land, when the same may be necessary or conducive to the accomplishment of the object of the applicant.

§ 21. Such justices shall have power to adjourn from day to day, when the same may be necessary to the accomplishment of the examination.

§ 22. Such justices shall reduce the examinations of the witnesses to writing, which shall be signed and sworn to by the deponents, and being certified and signed by the justices, shall be by them delivered to the county surveyor.

§ 23. The same notice shall be given previous to taking depositions under the five last preceding sections of this law, in all respects, as is required to be given by the fifth and sixth sections thereof; and satisfactory evidence of such notice shall be required by the justices before they shall proceed to take the same, all of which shall appear in their certificate annexed to the depositions.

§ 24. The county surveyor shall, if required by the party owning or being interested in such survey, make a survey thereof, and shall cause to be planted a stone or post at each of the decayed or obliterated corners, and shall be governed in his survey, or in planting such stones or posts at the corners, by the depositions which shall have been taken and delivered to him in relation thereto.

§ 25. Such surveyor shall make out a plat and certificate of such survey, noting therein the corners at which he shall have planted stones or posts, the names of the chainmen, markers and others, present at the planting of the same, and that the same was done in accordance with the testimony contained in the depositions.

§ 26. The county surveyor, making a survey under any of the provisions of this law, shall record the plat and certificate thereof, in a book to be by him kept and provided for that purpose, and shall deliver the original, with any depositions delivered to him in pursuance of this law, duly certified, to the recorder of the county.

§ 27. Recorders of counties, to whom any plat and certificate of survey made, and depositions taken by virtue of this law, shall be delivered by a county surveyor of his county, shall record the same in a book to be by him provided and kept for that purpose, and shall deliver the originals to him at whose instances the survey was made, or depositions taken.

§ 28. Plats and certificates of survey, and depositions to establish corners, or certified copies of the record thereof, where the same have been made or taken in conformity with the provisions of this law, may be used and received in evidence in all cases, at law or in equity, to which they may relate, subject to legal exceptions.

§ 29. All fees and costs attending the proceedings under this law, shall, in the first instance, be paid by the party on whose application the same shall be had, who may recover from persons who shall use or be benefitted by the same, their equal proportion of the expense incurred in obtaining it.

Approved, February 6th, 1835.

P O O R .

An act for the relief of the poor.

SEC. 1. Who deemed, and how supported.

2. County court in their discretion to grant relief, and to whom.
3. Court, on information given, or of their own knowledge, to order support at the expense of the county.
4. Court may allow funeral expense of pauper.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. That each county in this state shall relieve, support and maintain its own poor, such as the lame, blind, sick, and other persons, who, from age or infirmity, are unable to support himself or herself, and who has resided twelve months, next preceding the time of any order being made respecting such persons, in the county, and who has not removed from another county for the purpose of imposing the charge of keeping such poor person in the county where he or she may have last lived, for the time aforesaid.

§ 2. The county court shall, at all times, use their discretion, and grant relief to all citizens who may require their intercession.

§ 3. The county court, in their respective counties, on the information of any justice of the peace of the county, where any poor person may have resided for the space of time in the first section of this act mentioned, or on the knowledge of the judges of said tribunal, or any of them, that such person is lame, blind or sick, and thereby unable to support himself or herself, or, from age or infirmity, unable to support himself or herself, shall, from time to time, and as often and for as long a time as it may be necessary [to] provide, at the expense of the county, for the support and maintenance of such poor person.

§ 4. Any county court may, in its discretion, allow such sum as it shall think reasonable for the funeral expenses of any pauper who shall die within the county.

Approved, January 29th, 1835.

 POSSE COMITATUS.

An act authorizing officers to call to their assistance the power of the county.

SEC. 1. May be called to aid ministerial officers in execution of process.

2. Penalty on person summoned and refusing to attend.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. In all cases where, by the common law, or a statute of this state, any officer is authorized to execute any process, he may call to his aid all free white male inhabitants above the age of twenty-one years, of the county in which such officer is authorized to act.

§ 2. If any such person shall refuse or neglect to obey the summons of any such officer, such person shall be fined in any sum not exceeding fifty dollars, nor less than five dollars.

Approved, December 18th, 1834.

PRACTICE AT LAW—PETITION IN DEBT.

An act for the speedy recovery of debts due on bonds and notes.

- Exc. 1. Holder of bond or note may commence suit by petition in debt.
 2. Form of petition.
 3. Petition by assignee, &c., petition with instrument filed with clerk, summons to issue; how executed.
 4. If served personally with process, trial at first term; pleadings regulated.
 5. Proceedings under this act, how proceeded in to final judgment.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Any person being the legal owner of any bond or note for the direct payment of money or property, may sue thereon in any circuit court having jurisdiction thereof, by petition in debt.

§ 2. The petition may be in the following form: "To the — circuit court — plaintiff states, that he is the legal owner of a bond, or note, (as the case may be,) against the defendant, — to the following effect, (here insert a copy of the instrument sued upon,) yet the debt remains unpaid, therefore, he demands judgment for his debt, and damages for the detention thereof, together with costs."

§ 3. If the plaintiff be the owner of the instrument sued upon, as assignee thereof, the fact of assignment shall be stated in the petition, and the statement thereof may be in the following form: "On which are the following assignments, (here insert the assignments,) by virtue of which, the plaintiff has become the owner thereof." The petition, together with the instrument sued upon, and the assignments, shall be filed in the clerk's office, and a writ of summons or *capias* may be sued out, executed and returned in the same manner, and with the like effect, as upon a declaration in the ordinary form.

§ 4. If the defendant shall have been personally served with the process, he shall plead to the merits of the action, on or before the second day of the term at which he is bound to appear, if the term shall so long continue, if not, then within such time in the term as the court shall direct; and the suit in such cases shall be determined at the same term, unless continued for good cause.

§ 5. A suit instituted in the form prescribed in this act, shall, except where it is herein otherwise provided, be proceeded in to final judgment and execution, in the same manner and with the like effect as if instituted in the ordinary form.

Approved, March 14th, 1835.

PRACTICE AT LAW.

An act to regulate the practice at law.

- ART. I. Of the commencement of suits, and the service and return of process and notices.
 ART. II. Of proceedings by, and against bail, and infants.
 ART. III. Of pleadings, interlocutory judgments, and assessment of damages.
 ART. IV. Of trials and their incidents.
 ART. V. Of the abatement of suits, and their revival; of consolidating and referring actions.
 ART. VI. Of amending pleadings and proceedings.
 ART. VII. Of new trials, arrest of judgment, final judgments, and miscellaneous provisions.

ARTICLE I.

Of the commencement of suits, and the service and return of process and notices.

- Sec. 1. How suits at law in courts of record may be instituted.
 2. Original writ not to issue until declaration is filed; how issued, and to whom delivered.
 3. Original writ when to be dated, and when returnable.
 4. Suits instituted either by summons or capias, in what cases, and where to be brought.
 5. Suits by attachment, where to be brought.
 6. Several defendants in different counties, writs how issued; suits on attachment, writ may issue to different counties; when.
 7. Several defendants, capias may issue against some, and summons against the others.
 8. The original writ in all cases, except otherwise provided, shall be a summons; its contents.
 9. When capias is granted, amount of bail to be endorsed.
 10. Not to be granted except upon affidavit; its contents.
 11. Upon liquidated demands, amount to be specified in the affidavit; in all other cases, what facts necessary.
 12. What the capias shall command the officer to do; amount of bail to be endorsed.
 13. How summons may be executed.
 14. How capias may be executed.
 15. Defendant arrested on capias, may be discharged by giving recognizance; its condition.
 16. Officer charged with the execution of capias, may be made co-defendant; in what cases.
 17. Return of all writs delivered to be executed, to be in writing and signed by the officer.
 18. How notices may be served in the commencement or progress of suits.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Suits at law may be instituted in courts of record, except where the statute law of this state otherwise provides, either,

First, By filing in the office of the clerk, a declaration, setting forth the plaintiff's cause of action, and by the voluntary appearance of the adverse party thereto; or,

Second, By filing such declaration in such office, and suing out thereon a writ of summons, or of capias, against the person, or of attachment against the property of the defendant.

§ 2. No such original writ shall be issued until the declaration be filed in the clerk's office; and the writ, when issued, shall be endorsed upon, or annexed to, the declaration, or to a copy thereof, and the declaration or copy thereof, together with the writ, shall be delivered to the officer charged with the execution of the same.

§ 3. Every such original writ shall be dated on the day it is issued, and shall be made returnable on the first day of the next term thereafter; but if the first day of

such term be within fifteen days thereafter, then such writ shall be made returnable on the first day of the second term.

§ 4. Suits instituted either by summons or *capias*, shall be brought,

First, Where the defendant is a resident of this state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and defendant may be found; or,

Second, Where the defendant is a non-resident of this state, in any county within which the defendant may be found; but no person who is a resident of this state, and who has not absconded from his usual place of abode, shall be arrested upon a *capias*, in any county other than that of which he is a resident.

§ 5. Suits commenced by attachment against the property of a person shall be brought in [the] county in which such property may be found.

§ 6. When there are several defendants in a suit instituted by summons or *capias*, and they reside in different counties, the suit may be brought in any such county, and a separate writ may be issued to each county against such of the defendants as reside therein; and when a defendant in a suit instituted by attachment has property in several counties, separate writs may be issued to every such county, and every such writ shall be endorsed upon, or annexed to, a copy of the declaration.

§ 7. When there are several defendants in a suit, a *capias* may be issued against any one or more of them that are liable thereto, and a summons shall be issued against the others.

§ 8. The original writ, in all cases where it is not otherwise provided by law, shall be a summons, which shall command the officer to be charged with the execution thereof, to summons the defendant to appear in the court on the return-day of the writ, and at a place to be specified in such writ, to answer the complaint of the plaintiff.

§ 9. A *capias* shall [be endorsed] when it is allowed by the court out of which it is to issue, or by any judge or clerk thereof, by an order in writing granting such writ, specifying the amount in which bail shall be required.

§ 10. No such order shall be granted unless the court or officer be satisfied, by the affidavit of the plaintiff, or of some other person, that the plaintiff has a subsisting and unsatisfied cause of action against the defendant, and that the defendant is about to remove out of this state, or that the plaintiff will be in danger of losing his demand unless a *capias* be allowed.

§ 11. Where the amount of the plaintiff's demand is liquidated, the amount due shall be specified in the affidavit, and in all other cases the facts and circumstances of the case shall be stated in the affidavit, so as to enable the court or officer to determine the amount in which bail ought to be given.

§ 12. A *capias* shall command the officer charged with the execution thereof, to take and safely keep the defendant, so that he may have him before the court on the return day of the writ, and at a place to be specified in such writ, to answer the

complaint of the plaintiff, and the officer issuing such writ shall endorse thereon the amount in which the defendant shall be required to give bail.

§ 13. A summons shall be executed, either,

First, By reading the declaration and writ to the defendant; or,

Second, By delivering to him a copy of the declaration and writ; or,

Third, By leaving a copy of the declaration and writ at his usual place of abode, with some white person of the family over the age of fifteen years; but in all cases where the defendant shall refuse to hear such writ and declaration read, or to receive a copy thereof, the offer of the officer to read the same, or to deliver a copy thereof, and such refusal, shall be a sufficient service of such writ.

§ 14. The officer charged with the execution of a *capias* shall execute the same by arresting the defendant, and reading to him the writ and declaration, or delivering to him a copy thereof, and committing him to the common jail of the county there to remain until discharged according to law.

§ 15. Every defendant so arrested shall be discharged from such arrest, upon his entering into a recognizance to the plaintiff, before the officer charged with the execution of the writ, with sufficient securities, in a sum equal to the sum endorsed upon the writ, conditioned, that if judgment be given against him in the suit, he will pay the amount of the recovery, or surrender himself in execution, or that the securities will do it for him; and such recognizance shall be returned with the writ.

§ 16. Every officer charged with the execution of a *capias*, may be made a co-defendant in the suit in which such writ issued, may defend the suit, and shall be liable to the like judgment therein with the original defendant, in either of the following cases:

First, Where he shall return the writ executed, and shall not have taken bail, nor shall have the defendant according to the command of the writ; or,

Second, Where he shall fail to return the recognizance of bail by him taken; or,

Third, Where the bail taken, or the recognizance thereof, shall be adjudged insufficient, and the defendant, upon being ruled thereto, shall fail to perfect the same.

§ 17. Every officer to whom any writ shall be delivered to be executed, shall make return thereof in writing, and shall sign his name to such return.

§ 18. Whenever, in the commencement or progress of any suit, it shall be necessary to serve any notice, such notice may be served, either,

First, By an officer authorized by law to serve any original process of the court, in which such suit is to be brought or may be pending; or,

Second, By any person who would be a competent witness upon the trial of such suit. Every such notice may be served in like manner as a writ of summons, and the return of such service, when made by an officer, or when made by a person other than an officer, and verified by the affidavit of such person, shall be received as evidence of the facts therein stated, subject to be repelled by contrary proof.

ARTICLE II.

Of proceedings by, and against bail, and infants.

- SEC. 1. Who shall not become bail without leave of court.
2. Sufficiency of bail to be excepted to at the return term.
3. Amount of bail may be reduced or recognizance vacated, &c., when; how to proceed in such cases.
4. Application for relief under the preceding section, when to be heard; notice to be given, and to whom.
5. If recognizance of bail be forfeited, plaintiff may have *scire facias*; to what county issued; how executed, and proceedings.
6. If two writs in succession, return the defendant not found, such second return equivalent to actual service.
7. Bail may surrender defendant, or defendant may surrender himself in execution.
8. Before what courts or officers such surrender shall be made.
9. The proceedings to effect such surrender.
10. Surrender before final judgment, new bail may be taken; if after final judgment, proceedings.
11. Suit shall not be instituted against bail, until execution against defendant be issued and returned unsatisfied, &c.
12. In action against bail, what they may plead; when entitled to a verdict.
13. If defendant shall die before return of *scire facias*, or second writ returned, &c., bail discharged.
14. Principal surrendered after suit against bail, costs to be paid by the bail.
15. Bail may have judgment on motion against the principal; when, and its extent.
16. Officer made co-defendant may have judgment against principal, when; and proceed against insufficient bail.
17. Suits by infants may be commenced and prosecuted; how.
18. Next friend for infant, by whom appointed.
19. Appointment to be made on petition of infant and consent of person to be appointed.
20. In what cases bond to be given to infant by next friend; its condition.
21. Bond to be delivered and filed with the clerk.
22. Petition for next friend to be appointed, and his consent to serve, and the order appointing him, to be filed with the clerk, &c.
23. Guardian or next friend, responsible for costs.
24. Suit against infant and process served, not to proceed until guardian be appointed.
25. By whom appointed; to be done on request of infant and consent of person appointed; shall be filed, &c.
26. Defendant fail to procure the appointment of guardian, court to appoint one.
27. No guardian appointed to defend suit shall be responsible for costs, unless for misconduct, &c.

§ 1. No attorney, solicitor, or counsellor at law or in equity, sheriff or other person concerned in the execution of process, shall become bail in any case, civil or criminal, without leave of the court.

§ 2. All questions concerning the sufficiency of bail, shall be determined during the term at which the defendant is bound to appear, and if the sufficiency thereof shall not be excepted to at that term, the bail given shall be deemed to be accepted.

§ 3. The court out of which any *capias* shall issue, [or] any judge thereof in vacation, may reduce the amount for which bail shall have been required; and the court, at any time during the pendency of the suit, if they be satisfied that bail ought not to have been required, may vacate the order allowing the *capias*, or may direct the recognizance to be cancelled, or the defendant to be discharged from imprisonment, and in every such case shall order his appearance to be accepted, and the suit to proceed, in all things, as if the original writ had been a summons.

§ 4. No application for any relief provided in the last preceding section, shall be heard, unless reasonable notice in writing of such application shall have been previously given to the adverse party, or to his attorney.

§ 5. If the recognizance of bail be forfeited, the plaintiff may have a *scire facias* thereon, and such *scire facias* may be directed to the county where the recognizance was taken, or to any county in which the defendant may be found, and shall be executed in like manner as a writ of summons; and upon any such writ being executed, such proceedings shall be had therein to final judgment as in other civil cases.

§ 6. If two such writs be sued out in succession to the county in which the recognizance shall have been taken, and both be returned that the defendant could not be found within the county, such return to such second writ shall be equivalent to an actual service thereof.

§ 7. The bail of any defendant may surrender him, or such defendant may surrender himself in exoneration of his bail, at any time before the return day of process in an original action, on the recognizance returned executed, or before the return day of a *scire facias* thereon returned executed, or before the return day of a second *scire facias*, thereon so returned, as to be equivalent to an actual service.

§ 8. Such surrender shall be made before the following courts, or officers:

First, If the surrender is made during the pendency of the original suit, it shall be made before the court where such suit is brought, or before a judge or clerk thereof.

Second, If the surrender is made after final judgment shall be given in the original suit, [it] shall be made before the court in which such judgment was given, or before a judge or clerk thereof.

§ 9. The proceedings to effect such surrender shall be as follows:

First, There shall be produced to the court or officer authorized to accept the same, two certified copies of the recognizance, upon one of which such court or officer shall endorse an order, that the defendant be committed to the custody of the sheriff of the county in which the suit is pending, or the judgment is rendered, in exoneration of his bail, which shall be delivered to such sheriff, and shall authorize him to commit and detain such defendant until he be duly discharged.

Second, Upon producing to such court, or officer, the certificate of the sheriff, that the defendant has been committed to, and remains in, his custody by virtue of such order of commitment, acknowledged before such court, or officer, by the sheriff, or proved by the subscribing witness thereto, an order shall be made requiring the plaintiff to shew cause before such court, or officer, why the bail of such defendant should not be exonerated from their liability.

Third, Upon producing proof of the service of such order on the plaintiff or his attorney, such court or officer shall hear the allegations and proofs of the parties, and, if no good cause to the contrary appear, shall endorse an order on the second certified copy of the recognizance, declaring that the bail of such defendant are discharged from their liability as such bail in the suit in which such recognizance was taken.

Fourth, To such certified copy of the recognizance of bail, shall be attached, the certificate of the sheriff herein-before required, the order to shew cause, and the proof of the service thereof, and the same shall be forthwith filed in the office of the clerk of the court, and, until so filed, the liability of such bail shall continue.

§ 10. If such surrender in exoneration of bail be made before final judgment be given in the suit in which the bail was taken, the sheriff may take new bail in the same manner, and with like effect, as in the first instance; and if such surrender be made after final judgment, and the plaintiff shall not charge the defendant in execution, within ten days after the filing of the order of discharge in the clerk's office, as provided in the last clause of the preceding section, the defendant shall be discharged from imprisonment; notwithstanding such discharge from imprisonment, after final judgment, the judgment shall continue in force against the property of the defendant, and new execution against his property may be had in like manner as if he had not been imprisoned.

§ 11. The plaintiff in the original action shall not be entitled to bring any original suit, or *scire facias*, upon the recognizance of bail, until an execution against the property and body of the defendant shall have been issued to the county in which the recognizance of bail was taken, and the same shall have been returned unsatisfied, in whole or in part, and that the defendant could not be found within the county.

§ 12. In an action against bail, they may plead, that an execution against the property and body of the defendant in the original suit was not issued as herein directed, or that it was not issued, to execute the same, in sufficient time to enable the officer to whom it was directed, or that any fraudulent or collusive means were used to prevent the service of such writ; and if any such defence be established, it shall entitle the bail to a verdict.

§ 13. When the defendant in a suit shall die at any time before the return day of any process served on the bail, or of a second writ of *scire facias* so returned as to be equivalent to an actual service, the court shall relieve such bail on the same terms as if they had surrendered their principal at the time of his death.

§ 14. When the principal shall be surrendered after the commencement of a suit against the bail, such bail shall pay all the costs which shall have been incurred therein before the surrender.

§ 15. When judgment shall be given against the bail, and they shall pay the whole or any part of such recovery, they shall be entitled, upon motion, to judgment in the same court against the principal for the amount so paid, and costs; and on such motion, and in all suits for the recovery of such money, shall recover interest thereon, at ten per centum per annum, from the time of the payment.

§ 16. When any officer shall be made a co-defendant, as herein-before provided, and judgment shall be given against him, and he shall pay the amount of the recovery, or any part thereof, such officer shall have the same remedy against the principal as the bail have in like cases; and when such officer shall have been made a co-defendant on account of the insufficiency of the bail by him taken, and judg-

ment shall be given against him, he may proceed against the bail on the recognizance, in the name of the plaintiff, to his own use.

§ 17. Suits by infants may be commenced and prosecuted, either,

First, By the guardian of such infant; or,

Second, By a next friend appointed for him in such suit.

§ 18. The appointment of such next friend shall be made by the court in which the suit is intended to be brought, or by a judge or clerk thereof.

§ 19. It shall be made on the petition, in writing, of such infant, and the written consent of the person proposed to be next friend to such infant, acknowledged before, or proved to, the court or officer making the appointment.

§ 20. Before any person shall be appointed next friend for an infant, in any suit to recover any personal property, debt or damages, he shall, if required by the officer to whom application for such appointment shall be made, execute a bond to such infant, in double the amount claimed in such suit, with such securities as shall be approved by such officer, conditioned, that such next friend shall account to such infant for all monies or property which may be recovered in such suit.

§ 21. Such bond shall be delivered to such officer before the appointment shall be made, and shall be filed in the office of the clerk of the court in which the suit is to be brought.

§ 22. The petition for the appointment of a next friend, the written consent of the person proposed to be the next friend, and the order of the appointment, shall be filed in the office of the clerk of the court where the suit is proposed to be brought, before any proceedings shall be had in the cause.

§ 23. The guardian or next friend of any infant who commenced or prosecuted a suit, shall be responsible for the costs thereof.

§ 24. After the commencement of a suit against an infant defendant, and the service of process upon him, the suit shall not be prosecuted any further until a guardian for such infant be appointed.

§ 25. Such appointment shall be made upon the request of the defendant, and on the written consent of any competent person proposed as guardian by the court in which the suit is pending, or by a judge thereof in vacation, and shall be filed in the office of the clerk of the court, before any plea by such infant shall be filed.

§ 26. If such infant defendant neglect, for one day after the first day of the term at which he is bound to appear to the suit, to procure the appointment of a guardian to defend the suit, the court shall appoint some competent person to be guardian for such infant in the defence of such suit.

§ 27. No person appointed guardian for the purpose of defending a suit against an infant, shall be liable for the costs of such suit, unless specially charged by the order of the court for some personal misconduct in such cause.

ARTICLE III.

Of pleadings, interlocutory judgments, and assessment of damages.

- Sec. 1. When process is served fifteen days before return day, defendant to appear, &c.; if less than fifteen days, when to appear.
2. Several defendants, some served with process fifteen days before return day, others not, proceedings.
3. Suits shall not be delayed longer than second term to bring in other defendants, unless by consent of those appearing.
4. No essoin or wager of law allowed, nor suit delayed by the non-age of either of the parties.
5. Suits may be prosecuted or defended in person or by attorney; warrant of attorney to appear, not necessary, except, &c.
6. Pleadings signed by the party or his attorney, time of filing to be endorsed, and if filed in term, minute to be made.
7. Pleas in abatement to be on oath.
8. Pleas when to be filed.
9. Replications and subsequent pleadings, when to be filed.
10. Pleadings filed in vacation, copies to be served, when and on whom.
11. Similiters, and joinders in demurrer, may be filed at any time without notice.
12. Time for filing any pleading may be extended by the court for good cause.
13. Person not to be prejudiced by ancient terms and forms of pleading, so that the matter fully appear, &c.
14. On demurrer filed, defect or imperfection in process, pleading, &c., if sufficient matter appear, not to be regarded, except specially expressed in the demurrer.
15. Defects, &c., mentioned in last section to be amended, except they be express in the special demurrer.
16. Demurrers may be joint and several; may be sustained as to part of the pleadings, and overruled as to the residue.
17. Pleas in abatement, dilatory pleas and demurrers, when to be determined:
18. Party having cause of action against several, may sue all or part.
19. Suit may be brought on lost instrument of writing; excuse for profent to be alleged, &c.
20. Profent to be made, and oyer given, of instruments of writing upon which declaration or pleading is founded.
21. Action of debt to recover money received contrary to any statute, what allegations sufficient in the declaration.
22. Action of assumpsit to recover money received contrary to any statute, what allegations sufficient in the declaration.
23. Trover or detinue for property received contrary to any statute, what is sufficient to set forth in the declaration.
24. Defendant may plead as many several pleas as he shall think proper, &c.
25. Extent of liability of persons sued as executor or administrator, or executor of their own wrong.
26. Payment may be plead in bar of a suit on bond, judgment, or scire facias on judgment.
27. In suits against a public officer, or persons acting under such officer, may plead the general issue and give special matter in evidence.
28. In actions against persons for acts done by authority of any statute, what and how the defendant may plead.
29. Replication of plaintiff to defendant's plea, on the issue, the whole matter to be given in evidence.
30. When court may allow plaintiff to reply several matters, &c., and defendant to rejoin several matters.
31. Defendant failing to file pleading, give notice of the same when required, judgment by default, &c.
32. Plaintiff failing to file replication, &c., give notice of the same when required, judgment of *non pros*, &c.
33. When there are several defendants, some appear and plead, and others make default, proceedings.
34. Judgment for the plaintiff by default, confession, or on demurrer, to be final if demand be liquidated.
35. If not, writ of inquiry of damages shall be made, and at what term.

§ 1. Every defendant served with process fifteen days before the return day thereof, shall appear to the suit at the return term of the writ; and when such process shall be served less than fifteen days, he shall appear at the term next after the return term of such writ.

§ 2. When there are several defendants in a suit, and some of them are served

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with the process fifteen days before the return day thereof, and others of them are not served, or not served in due time, the plaintiff may either discontinue as to all not served, and not served in due time, and proceed against those that are bound to appear, or he may continue the suit until the next term, and take new process against those that are not served.

§ 3. But, at such second term, the suit shall proceed against all who shall have been served in due time, and no further delay shall be allowed to bring in the others, unless all that appear shall consent to such delay.

§ 4. No essoin or wager of laws shall be allowed, nor shall any suit be deferred or delayed by reason of the non-age of any of the parties.

§ 5. Parties may prosecute and defend their own suits in proper person, or by an attorney or counsellor of the court, and it shall not be necessary to file any warrant of attorney to authorize any attorney to appear in any court for either party to an action brought therein, except in cases where it shall be specially required by law.

§ 6. Every declaration, and other pleadings, shall be signed by the party or his attorney, and the clerk shall endorse thereon the day upon which it shall be filed, and, if filed in term, shall make an entry thereof on the minutes.

§ 7. No plea in abatement, or other dilatory plea, not involving the merits of the action, shall be received, unless it be verified by the affidavit of the party offering the same, or some other credible person.

§ 8. Every plea to the merits of the action shall be filed on or before the sixth day of the term at which the party pleading the same is bound to appear, if the term shall so long continue, and if not, then before the end of such term.

§ 9. Replication shall be filed within thirty days after the commencement of the term at which the defendant is bound to appear; and all subsequent pleadings shall be filed within such time, and in such manner, as shall be prescribed by the rules of practice of the court.

§ 10. A copy of every replication and subsequent pleading filed in vacation, shall, within fifteen days after the filing thereof, be served on the adverse party or his attorney.

§ 11. Similiters and joinders in demurrer may be filed at any time, and without serving a copy thereof upon the adverse party, or his attorney.

§ 12. The courts, upon good cause shewn, and for the furtherance of justice, may extend the time prescribed in this act for filing any pleading upon such terms as shall be just.

§ 13. No person shall be prejudiced by the ancient terms and forms of pleading, so that the matter fully appear in the process, declaration or other pleading.

§ 14. When any demurrer shall be filed in any action, and issue be joined thereon, the court shall proceed and give judgment according as the very right of the cause and matter in law shall appear, without regarding any defect, or other imperfection in any process or pleading, so as sufficient matter appear in the pleadings to enable the court to give judgment according to the very right of the cause, unless such defect, or other imperfection, be specially expressed in the demurrer.

§ 15. If any demurrer be filed in any action, the court shall amend every such defect, or other imperfection, in any process or pleading in the last section mentioned, other than those which the party demurring shall specially express in his demurrer.

§ 16. Demurrers may be joint and several, and may be sustained as to part of the pleadings demurred to, and overruled as to the residue, according to the circumstances of the case, with like effect, and in all respects as if a separate demurrer had been filed to each pleading so demurred to.

§ 17. All pleas in abatement, and all other dilatory pleas not involving the merits of the cause, and all demurrers shall be determined during the term at which they are filed, and when filed in vacation shall be determined at the term next after the filing thereof.

§ 18. Every person that shall have a cause of action against several persons, and be entitled by law to only one satisfaction therefor, may bring suit thereon jointly against all, or as many of the persons liable as he may think proper.

§ 19. An action at law may be maintained on any instrument of writing, notwithstanding it may be lost or destroyed, and in every such action no profert of such instrument shall be required, but the party shall allege the loss or destruction as an excuse for the want of profert, and every such allegation shall be considered a material averment in the case of such party.

§ 20. When any declaration or other pleading shall be founded upon any instrument of writing charged to have been executed by the other party, or by his testator or intestate, or other person represented by such party, and not alleged therein to be lost or destroyed, profert thereof shall be made, and oyer given.

§ 21. In an action of debt brought to recover any money received by any person contrary to the provisions of any statute, it shall be sufficient for the plaintiff, without setting forth the special matter, to allege in his declaration, that the defendant is, or that his testator or intestate was, indebted to the plaintiff according to the provisions of such statute, naming the subject matter thereof, or referring to the statute in some general terms.

§ 22. If any action of assumpsit be brought for money received contrary to the provisions of any statute, it shall be sufficient for the plaintiff, without setting forth the special matter, to allege in his declaration that the same was received contrary to the provisions of such statute, referring to the same as prescribed in the last section.

§ 23. If any action of trover or detinue be brought for any property received contrary to the provisions of any statute, it shall be sufficient for the plaintiff to set forth in his declaration that such property was converted, by the defendant, or by his testator or intestate, or is unlawfully detained by the defendant, contrary to the provisions of such statute, referring to the same as prescribed in the two preceding sections.

§ 24. The defendant in any action may plead as many several pleas as he shall think necessary for his defence, subject to the power of the court to compel him

to elect by which plea he will abide in cases where he may plead inconsistent pleas.

§ 25. Persons sued as executors or administrators shall not be made personally liable in any action, nor shall persons sued as executors of their own wrong, be made liable to a greater extent than they otherwise would be by reason of any such person having pleaded any false plea.

§ 26. When any action shall be brought upon a bond, or upon a judgment, or when a *scire facias* is brought upon a judgment, the defendant may plead payment of the amount due on such bond or judgment, in bar of such action or writ.

§ 27. In every action brought against any public officer of this state, or against any person specially appointed, according to law, to execute the duties of any such public officer, for or concerning any act done by such officer or person, by virtue of his office, and in every action against any other person, who, by the commandment of such officers or persons, or in their aid or assistance, do any thing touching the duties of such office or appointment, the defendant may plead the general issue, and give the special matter in evidence.

§ 28. In every action brought against any person for any act done by authority of any statute of this state, the defendant may plead not guilty, or may make avowry, cognizance or justification of the act done, alleging therein that the same was done by authority of such statute, naming the subject matter thereof, or referring thereto in some other manner with convenient certainty, without expressing any matter contained in such statute.

§ 29. To every such plea the plaintiff may reply, that the defendant did the act complained of without authority of any statute of this state; upon the trial of any issue so joined, the whole matter may be given in evidence by both parties.

§ 30. Whenever it shall become necessary to the attainment of justice, to allow a plaintiff to reply several matters to the plea of a defendant, or to allow a defendant to rejoin several matters to the replication of a plaintiff, the court in which the action shall be pending, on the application of the party desiring so to reply or rejoin, may allow the same to be done.

§ 31. If the defendant shall fail to file his plea or other pleading, within the time prescribed by law, or the rules of practice of the court, and serve a copy thereof upon the adverse party or his attorney, when the same is required, an interlocutory judgment shall be given against him by default; but such judgment may, for good cause shewn, be set aside, at any time before the damages shall be assessed, upon such terms as shall be just.

§ 32. If the plaintiff shall fail to file his replication, or other pleading, within the time prescribed by law, or the rules of the practice of the court, and to serve the adverse party or his attorney with a copy thereof, where the same is required, judgment of *non pros* shall be given against him; but such judgment may, for good cause shewn, be set aside, at any time during the term at which it shall be given, upon such terms as shall be just.

§ 33. When there are several defendants in a suit, and some of them appear and plead, and others make default, an interlocutory judgment by default may be

entered against such as make default, and the cause may proceed against the others, but only one final judgment shall be given in the action.

§ 34. Whenever an interlocutory judgment shall be rendered for the plaintiff by default, by confession, or upon demurrer; in any suit founded upon any instrument of writing, and the demand is ascertained by such instrument, the court shall assess the damages, and final judgment shall be given thereon.

§ 35. But in all other cases of such interlocutory judgment, the damages shall be assessed by a jury empanelled in the court for that purpose, and every such enquiry of damages shall be made at the term next after the term in which such interlocutory judgment shall be rendered, unless the court direct it to be made at the same term.

ARTICLE IV.

Of trials and their incidents.

- Sec. 1. Several issues of law and fact, issues of law to be first determined.
2. Causes to be continued at the first term, to be disposed of at the second term.
3. Court may continue causes; when, and upon what terms.
4. Application for a continuance to be accompanied by affidavit.
5. Courts have power to compel party to a suit, to produce books, papers, &c., relating to the merits of such suit.
6. Proceeding to entitle a party to the order of court for the production of such books, papers, &c.
7. For what reasons such order may be vacated.
8. Party neglecting to obey such order, power of the court in such cases.
9. Limitation or extent of the power of the court in such cases.
10. Discovery, as in a court of equity, may be had by either party.
11. Discovery, how applied for.
12. Order for discovery, when to be made; party to answer, or show cause, &c.; trial to be stayed till order complied with.
13. Petition for discovery and an answer to be filed with the clerk; copy to be served on the other party; court to proceed as on bill for discovery in equity.
14. The answer to be evidence, its extent; refusing to answer facts in petition, taken as confessed and to be evidence, &c.
15. All issues of fact joined, shall be tried either by the court, a jury, or by referees; when, &c.
16. Witness, or any person who has formed or expressed an opinion, not to be sworn as a juror.
17. Imperfect counts in a declaration may be struck out on motion; where, &c.
18. Instrument of writing, &c., upon which suit is founded, to be received in evidence, unless denied on oath.
19. Preceding section not to apply to executors, administrators, or other persons in a representative capacity.
20. Bills of exception how taken; court refusing to sign the bill, to certify cause of refusal.
21. Court refusing to sign, bill may be signed by three by-standers and filed; bills filed, to be part of the record.
22. If the judges refuse to permit bill signed by by-standers to be filed, proceedings in such case.
23. Court, on appeal or writ of error, to admit as part of the record the bill of exception thus taken; when and under what circumstances.
24. Non-suit not allowed after the cause is submitted to a jury or the court.
25. When party proves, by his own oath, the loss of instrument, in order to prove its contents, adverse party may, on oath, disprove such loss, &c.
26. Bill of exchange or negotiable promissory note lost, when and how party to get the benefit of the same as though it had been produced.
27. Party to get the benefit of such recovery, bond and security to be given, &c.

§ 1. When there are several issues of law and of fact in any suit, the issues of law shall be first determined.

§ 2. Every suit that shall not be otherwise disposed of according to law, shall be continued at the term at which the defendant is bound to appear, until the next term thereafter, and, at such second term, every such suit shall be determined.

§ 3. Every court of record in which any suit is pending, may, at any term, for good cause, continue such suit until the next, or any subsequent term, and every continuance granted upon the application of either party, shall be at the cost of such party, unless otherwise ordered by the court.

§ 4. Every application by a party for the continuance of a cause, shall be accompanied by his affidavit, or the affidavit of some other credible person, setting forth the facts upon which the application is founded.

§ 5. Every court of record shall have power to compel any party to a suit pending therein, to produce any books, papers and documents in his possession or power, relating to the merits of any such suit or of any defence therein.

§ 6. To entitle a party to the production of any such books, papers and documents, he shall present a petition, verified by the affidavit of himself, or of some other credible person, to the court, or to a judge thereof in vacation, upon which an order may be granted by such court, or officer, for the production of such books, papers and documents, or that the party show cause why the prayer of the petition should not be granted.

§ 7. Every such order may be vacated by the court or officer granting the same,
First, Upon satisfactory evidence that it ought not to have been granted.

Second, Upon the party required to produce the books, papers and documents, denying on oath the possession or control thereof.

§ 8. If the party neglect to obey such order for the production of books, papers and documents within such time as the court or judge shall prescribe for that purpose, the court may non-suit him, or strike out any plea or notice of set-off, or debar him from any particular defence in relation to which such books, papers and documents, were required to be produced.

§ 9. The power of the court to compel such production of books, papers and documents, shall be confined to the remedies herein provided, and shall not authorize any other proceedings against the person or property of the party refusing to comply with the order of the court or judge.

§ 10. Either party to a suit in any court of record shall be entitled to a discovery from the other party, of all matters material to the issue in such suit, in all cases where the same party would, by the rules of equity, be entitled to the same discovery in a court of equity, in aid of such suit.

§ 11. To entitle a party to such discovery, he shall present a petition, verified by the affidavit of himself or of some other credible person, to the court, or to a judge thereof in vacation, setting forth the matter upon which his claim to the discovery is founded, the facts sought to be discovered, and such interrogatories in relation thereto, as he shall think necessary to exhibit, in order to attain a full discovery.

§ 12. The court, or any judge thereof in vacation, may, upon such petition, grant an order requiring the party from whom the discovery is sought, to answer the interrogatories exhibited in the petition, or such of them as it shall appear to the court or officer ought to be answered, or that he shew good cause in court why he should not answer the same, and may further order the trial of the suit to be stayed until the order be complied with or vacated.

§ 13. The petition and order to answer, shall be filed in the office of the clerk of the court, and a copy thereof served on the other party or his attorney, and the same proceedings shall be had on the petition, and the court may exercise the same powers therein, as would be had, or might be exercised, in a court of equity on a bill for a discovery in aid of a suit at law.

§ 14. The answer of the party to the interrogatories shall be evidence on the trial of the suit, in the same manner and with the like effect, as an answer to a bill in equity for a discovery; and if the party shall neglect or refuse to answer the interrogatories, and the petition shall, according to the course of proceeding in equity, be finally taken for confessed, the facts stated in the petition, and therein sought to be discovered, may be given in evidence upon the trial, as facts admitted by the party from whom the discovery is sought.

§ 15. All issues of fact joined in any suit, in any court of record, shall be tried either by the court, by a jury, or by referees:

First, The trial shall be by the court, when neither party shall demand a trial by jury, and the cause is not referred.

Second, It shall be by jury, when either party shall demand such trial and the cause is not referred.

Third, It shall be by referees, when the court is authorized to refer the trial, and shall have referred it accordingly.

§ 16. No witness, or person summoned as a witness, in any civil cause, and no person who has formed or expressed an opinion concerning the matter in controversy, in any such cause, which may influence the judgment of such person, shall be sworn as a juror in the same cause.

§ 17. When there are several counts in a declaration, and one or more of them are imperfect, the plaintiff, at any time before the jury is sworn, or the trial submitted to the court, may move the court, upon reasonable notice to the adverse party, to strike out such imperfect counts, and, upon such motion, no objection shall be valid, that would not be valid after a finding of the issue for the plaintiff.

§ 18. When any declaration or other pleading shall be founded upon any instrument of writing charged to have been executed by the other party, and not alleged therein to be lost or destroyed, such instrument shall be received in evidence, unless the party charged to have executed the same, deny the execution thereof, by plea, verified by affidavit.

§ 19. But the preceding section shall not be construed to authorize any instrument of writing to be received in evidence in any suit against an executor or administrator, or any other person representing the person charged to have executed such instrument.

§ 20. Whenever, in the progress of any trial, in any civil suit depending in any court of record, either party shall except to the opinion of the court, and shall write his exception, and pray the court to allow and sign the same, the person or persons composing the court, or the major part of them, shall (if such bill be true,) sign the same; and if they refuse to sign such bill on account that it is untrue, they shall certify thereon, under their hands; the cause of such refusal.

§ 21. If the judges refuse to sign any bill of exceptions, such bill may be signed by three by-standers, who are respectable inhabitants of the state, and the court shall permit every such bill (if the same be true) to be filed in the court, and every bill signed by the judges, or by the by-standers, and filed in the court; shall form a part of the record of the cause in which it is filed.

§ 22. When the judges shall refuse to permit any bill of exceptions, signed by by-standers, to be filed, and shall have certified that it is untrue, either party in the suit may take affidavits, not exceeding five in number, in relation to its truth; and such affidavits shall be taken and deposited in the clerk's office, within five days after the trial of the cause, and, on appeal or writ of error, copies of such affidavits shall be annexed to, and form a part of, the record of the cause.

§ 23. Every court, to which an appeal or writ of error shall be taken, shall admit, as a part of the record of the cause, every bill of exceptions taken therein, upon its appearing satisfactorily to such court, that the truth of the case is fairly stated in such bill, that the same was taken according to law, and that the court refused to permit such bill to be filed; and the truth of every such bill shall be tried by the affidavits required by this act to be taken and filed in the clerk's office.

§ 24. No plaintiff shall suffer a non-suit, after the cause, upon a hearing of the parties, shall have been finally submitted to a jury, or to the court setting to try the issue, for their decision.

§ 25. Whenever a party to any suit shall have been permitted to prove, by his own oath, the loss of any instrument, in order to admit other proof of the contents thereof, the adverse party may also be examined by the court, on oath, to disprove such loss, and to account for such instrument.

§ 26. In any suit founded upon any negotiable promissory note, or bill of exchange, or in which such note or bill, if produced, might be allowed as a set-off in the defence of any suit, if it appear on the trial that such note or bill was lost while it belonged to the party claiming the amount due thereon, parol or other evidence of the contents thereof, may be given on such trial, and such party shall be entitled to recover the amount due thereon, as if such note or bill had been produced.

§ 27. But to entitle a party to such recovery, he, or some other responsible person for him, shall execute a bond to the adverse party, in a penalty at least double the amount of such note or bill, with two sureties, to be approved by the court in which the trial shall be had, conditioned to indemnify the adverse party against all claims by any other person, on account of such note or bill, and against all costs and expenses by reason of such claim.

ARTICLE V.

Of the abatement of suits, and their revival, of consolidating and referring actions.

- Sec. 1. If there be two or more plaintiffs or defendants, and one of them die, suit not to abate, but to proceed for or against the survivor.
2. If plaintiff shall die, action not to abate; when, and proceedings.
 3. If but one defendant, and he shall die, suit not to abate; when, and proceedings.
 4. If party dies after verdict or plea of confession, but before judgment, how it shall be rendered.
 5. Construction of the preceding section.
 6. Executor or administrator, plaintiff dying, &c., action not to abate.
 7. Executor or administrator, defendant dying, &c., action not to abate.
 8. If female plaintiff marry before final judgment, husband to be made co-plaintiff.
 9. If female defendant marry before final judgment, husband may be made co-defendant.
 10. Action by public officer, death or resignation not to abate the suit, if the cause of action survive, &c.
 11. Orders of court under this article for substituting new person, or introducing them as co-plaintiffs or co-defendants, how made.
 12. *Scire facias* for the purpose of introducing new party, how sued out, executed and returned.
 13. Limitation of time to sue out *scire facias* in such cases.
 14. Person substituted or made co-plaintiff or co-defendant, entitled to continuance, cause to proceed as between original parties
 15. Suits, when to be consolidated.
 16. Several suits for causes of action that may be joined, costs in such cases how paid.
 17. Causes at issue may be referred to referees; when.

§ 1. If in any action there be two or more plaintiffs, and one or more of them die before final judgment, the action shall not thereby be abated, if the cause of such action survive to the surviving plaintiff or plaintiffs; and when there are two or more defendants, and one or more of them shall die before final judgment, such action shall not be thereby abated, but in either of the said cases such death shall be stated upon the record, and the action shall proceed at the suit of the surviving plaintiff, or against the surviving defendant, as the case may require.

§ 2. When there is but one plaintiff in an action, and he shall die before final judgment, such action shall not be thereby abated, if it might be originally prosecuted by the heirs, devisees, executors or administrators of such plaintiff, but such of them as might prosecute the same cause of action originally, may continue such suit upon the order of the court substituting them as plaintiffs therein.

§ 3. When there is but one defendant in an action, and he shall die before final judgment, such action shall not be thereby abated, if it might be originally prosecuted against the heirs, devisees, executors or administrators of such defendant, but such of them as might be originally prosecuted for the same cause of action, shall, on the application of the plaintiff, be made defendants in such suit by an order of the court substituting them as defendants therein.

§ 4. After a verdict shall be rendered in any action, and after a plea of confession in any suit brought, if either party die before judgment be actually entered thereon, the court may, within one term after such verdict or plea, enter final judgment in the names of the original parties.

§ 5. Nothing in the preceding section shall be construed to authorize the entry of a judgment against any party who shall have died before a verdict actually rendered against him, notwithstanding he may have died on the first or any other

day of the term at which such verdict shall have been rendered, but such verdict shall be void.

§ 6. When an executor or administrator shall be plaintiff in any suit, and, before final judgment, shall die, or cease to be such executor or administrator, the suit shall not thereby be abated, but the same may be continued by the person succeeding him in the administration of the same estate, upon an order of the court substituting the person so succeeding as plaintiff in such suit.

§ 7. When an executor or administrator shall be defendant in any suit, and, before final judgment, shall die, or cease to be such executor or administrator, the suit shall not be thereby abated, but the same may be continued against the person succeeding him in the administration of the same estate, upon an order of the court substituting the person so succeeding as defendant thereon.

§ 8. If a female plaintiff marry before final judgment, her husband, on his own application, may, by the order of the court, be made a co-plaintiff with her in the suit.

§ 9. If a female defendant marry before final judgment, her husband, either on his own application, or the application of the plaintiff, may, by the order of the court, be made a co-defendant with her in the suit.

§ 10. When an action is directed or authorized by law to be brought by, or in the name of, a public officer, his death or removal from office shall not abate the suit, if the cause of such suit survive to his successor, but the same may be continued by his successor, upon the order of the court substituting him as plaintiff therein.

§ 11. All orders authorized in this article to be made for the purpose of introducing into a suit, a new person as co-plaintiff or co-defendant with the original party, shall be made either upon the voluntary appearance of both the original parties in such suit, or after the service upon them of a *scire facias*, and all such orders made for the purpose of substituting any person as plaintiff or defendant, in the place of the original plaintiff or defendant, shall be made either upon the voluntary appearance of the adverse original party, or after the service upon such party of a *scire facias*.

§ 12. All such writs of *scire facias* may be sued out in term or vacation, may be directed to any county in the state, shall correspond, as near as practicable, with writs of summons, and be executed and returned in the same manner.

§ 13. No *scire facias*, for the purpose of substituting a person as plaintiff or defendant in any suit, in the place of the original plaintiff or defendant, shall be sued out after the expiration of the third day of the second term next after the term in which the death or disability of the original party shall be stated upon the record.

§ 14. When any person is made a co-plaintiff or co-defendant, or is substituted as plaintiff or defendant in the place of the original party, in any of the cases provided for in this article, such new party shall be entitled to a continuance of the cause until the next term; and in all such cases, where a person is made a co-plaintiff or co-defendant, or is substituted as plaintiff or

defendant in the place of the original party, the cause shall proceed in all respects as if such person had been an original party in the suit.

§ 15. Whenever several suits shall be pending in the same court, by the same plaintiff against the same defendant, for causes of action which may be joined, or whenever several suits are pending in the same court, by the same plaintiff against several defendants, that may [be] joined, the court in which the same shall be prosecuted, may, in its discretion, if it appear expedient, order such suits to be so consolidated into one action.

§ 16. When any plaintiff shall bring in the same court several suits against the same defendant, for causes of action that may be joined, and when any plaintiff shall bring in the same court several suits against several defendants that may be joined, the plaintiff shall recover only the costs of one action, and the costs of the other actions shall be adjudged against him, unless sufficient reason appear to the court for bringing several actions.

§ 17. Whenever an action shall be at issue in any court of record, such court may, with the consent of the parties thereto, in its discretion, order such cause to be referred to one or three impartial and competent men; and when it shall appear *to the court*, that the trial of such action will require the examination of a long account on either side, such court may, without such consent, make the same order of reference.

ARTICLE VI.

Of amending pleadings and proceedings.

- Sec. 1. Process, pleading, or proceeding, either in form or substance, may be amended by the court.
2. Pleadings amended in matter of substance, adverse party allowed time to answer the same.
3. Process on which defendant has been arrested, not to be amended on the return day thereof.
4. After judgment, what proceedings may be amended in affirmance of the judgment; not to be reversed or annulled.
5. Return of officers, or by any court, may be amended as to matter of form as well before as after judgment.
6. Omissions or defects in the award of any venire, may be amended or supplied.
7. Judgment on verdict not to be stayed, nor upon confession, default, *nihil dicit*, or *non sum informatus*, to be reversed for certain reasons.
8. The omissions, defects, &c., in the preceding section, may be supplied or amended; when.
9. Process, pleading, &c., not to be amended, except upon the order of the court.
10. To what actions, writs, &c., this article shall extend; shall not extend to indictments or informations.

§ 1. The court in which any action shall be pending shall have power to amend any process, pleading or proceeding in such action, either in form or substance, for the furtherance of justice, on such terms as shall be just, at any time before final judgment rendered therein.

§ 2. If such amendment be made to any pleading in matter of substance, the adverse party shall be allowed an opportunity, according to the course and practice of the court, to answer the pleading so amended.

§ 3. Process by which any action shall have been commenced, and on which any defendant shall have been arrested, shall not be amended on the return day thereof.

§ 4. After judgment rendered in any cause, any defects, imperfections in matter of form, contained in the record, pleadings, process, entries, returns, or other proceedings in such cause, may be amended and rectified by the court in affirmance of the judgment, [and] shall not be reversed or annulled; and any variance in the record from any process, pleading or proceeding, had in such cause, shall be reformed and amended according to such original process, pleading or proceeding.

§ 5. All returns made by any sheriff or other officer, or by any court or subordinate tribunal to any court, may be amended in matter of form by the court to which such returns shall be made, in their discretion, as well before as after judgment.

§ 6. Any imperfection or defect in the award of any venire, or any omission to award such venire on the record, may be amended or supplied by the court in which such record is.

§ 7. When a verdict shall have been rendered in any cause, the judgment thereon shall not be stayed, nor shall the judgment upon such verdict, or any judgment upon confession, default, *nihil dicit*, or *non sum informatus*, be reversed, impaired, or in any way affected by reason of the following imperfections, omissions, defects, matters or things, or any of them, in the pleadings, process, proceedings, or record, namely:

First, For want of any writ, original or judicial.

Second, For any default or defect of process, or for misconceiving any process or awarding the same to a wrong officer, or for the want of any suggestion for awarding process, or for any insufficient suggestion.

Third, For any imperfect or insufficient return of any sheriff or other officer, or that the name of such officer is not set to any return actually made by him.

Fourth, For any variance between the original writ, plaint and declaration, or either of them.

Fifth, For any mispleading, miscontinuance, or discontinuance, insufficient pleading, jeofail or misjoining of issue.

Sixth, For the want of any warrant of attorney by either party, except in cases of judgment by confession, where such warrant is expressly required by law.

Seventh, For any party under twenty-one years of age, having appeared by attorney, if the verdict or judgment be for him.

Eighth, For the want of any allegation or averment, on account of which omission a special demurrer could have been maintained.

Ninth, For omitting any allegation or averment without providing which, the triers of the issue ought not to have given such verdict.

Tenth, For any mistake in the name of any party or person, or in any sum of money, or in the description of any property, or in reciting or stating any day, month or year, when the correct name, time, sum or description shall have been once rightly alleged, in any of the pleadings or proceedings.

Eleventh, For a mistake in the name of any juror or officer.

Twelfth, For the want of a right venue, if the cause was tried by a jury of the proper county.

Thirteenth, For any informality in entering a judgment, or making up the record thereof, or in any continuance or other entry upon such record.

Fourteenth, For any other default, or negligence of any clerk or officer of the court, or of the parties or their counsellors or attorneys, by which neither party shall have been prejudiced.

§ 8. The omissions or imperfections, defects and variances, in the preceding section enumerated, and all others of the like nature, not being against the right and justice of the matter of the suit, and not altering the issue between the parties or the trial, shall be supplied and amended by the court where the judgment shall be given, or by the court into which such judgment shall be removed by writ of error or appeal.

§ 9. No process, pleading or record, shall be amended or impaired by the clerk or other officer of the court, or by any other person, without the order of such court, or of some court of competent authority.

§ 10. The provisions of this article shall extend to all actions in courts of law, and to all suits for the recovery of any debt due to this state, or for any debt, duty or revenue belonging to this state, and also to all actions for penalties, to all writs of *mandamus* and prohibition, to all informations in the nature of a *quo warranto*, to writs of *scire facias*, and to the proceedings thereon, but shall not extend to indictments or informations for any criminal matter, or to the proceedings thereon.

ARTICLE VII.

Of new trials, arrest of judgment, final judgments, and miscellaneous provisions.

- Sec.** 1. Motions for new trial, or arrest of judgment, when to be made; reasons for, to accompany motion.
2. Only one new trial to be allowed either party, except in certain cases.
3. If judgment be arrested, court may amend the proceedings if it could have been done before trial; cause to proceed, &c.
4. If there are several counts, and entire damages be given, verdict good, though some counts are defective.
5. Judgment not to be set aside for irregularity on motion, unless it be made within five years after judgment.
6. Writs of *scire facias* to revive judgment or recovery, at and after this act takes effect, when to be brought.
7. Persons aggrieved by any final judgment in civil suit, may appeal to the supreme court.
8. On what conditions appeal to be allowed.
9. Court to make order allowing appeal, and when allowed shall stay execution in certain cases.
10. Before the commencement of each term of the court, docket to be made out by the clerk; its contents.
11. List of causes docketed, to be posted up by the clerk in his office; when and how.
12. Clerk to issue subpoenas for witnesses, when; penalty for failing to make out docket, set up list of causes, or to issue subpoenas.

§ 1. All motions for new trials, and in arrest of judgment, shall be made within four days after the trial, if the term shall so long continue, and if not, then be-

fore the end of the term; and every such motion shall be accompanied by a written specification of the reasons upon which it is founded.

§ 2. Only one new trial shall be allowed to either party, except,

First, When the triers of the fact shall have erred in a matter of law; or,

Second, When the jury shall be guilty of misbehavior.

The costs of all new trials shall either abide the event of the suit, or be paid by the party to whom such trial is granted, according to the order of court to be made at the time of granting such new trial.

§ 3. When a judgment shall be arrested, the court shall allow the proceeding in which the error was to be amended in all cases where the same amendment might have been made before trial, and the cause shall again be proceeded in according to the practice of the court; but the party in whose proceeding the first error was, shall pay all the costs incurred thereby.

§ 4. When there are several counts in a declaration, and entire damages are given, the verdict shall be good, notwithstanding one or more of such counts may be defective.

§ 5. Judgment in any court of record shall not be set aside for irregularity on motion, unless such motion be made within five years after the time such judgment was rendered.

§ 6. Writs of *scire facias*, to revive any judgment or recovery which may have been rendered at the time this act takes effect, must be brought within ten years thereafter, and such writs, when brought to revive any such judgment or recovery rendered after the time this statute takes effect, shall be brought within ten years thereafter.

§ 7. Every person aggrieved by any final judgment, or decision of any circuit court, in any civil case, may make his appeal to the supreme court.

§ 8. But no such appeal shall be allowed, unless,

First, It be made during the term at which the judgment or decision appealed from was given; and,

Second, The appellant, or his agent, shall, during the same term, file in the court his affidavit, stating that such appeal is not made of vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

§ 9. Upon the appeal being made according to the foregoing provisions, the circuit court shall make an order allowing the appeal, and such allowances thereof shall stay the execution in the following cases, and no other:

First, When the appellant shall be an executor or administrator, and the action by or against him as such.

Second, When the appellant, or some responsible person for him, together with two sufficient sureties, to be approved by the court, shall, during the term at which the judgment appealed from was rendered, enter into a recognizance to the adverse party in a penalty sufficient to secure whatever of debt, damages and costs, have been recovered by such judgment, together with the interest that may grow due thereon,

and the costs and damages that may be recovered in the supreme court upon the appeal, conditioned that the appellant will prosecute his appeal, with due diligence, to a decision in the supreme court, and that, if the judgment appealed from is affirmed, or his appeal dismissed, he will pay whatever of debt, damages and costs have been recovered against him by the judgment of the circuit court, together with the interest that shall grow due thereon, or that he will otherwise perform the judgment of the circuit court, and that he will also pay the costs and damages that may be adjudged against him in the supreme court upon his appeal.

§ 10. Every clerk of a court of record shall, before the commencement of each term of such court, make out a docket of all causes in which an issue of fact is to be tried, and enquiry of damages to be made, a special verdict, agreed case, demurrer, or other matter of law to be argued at such term, and shall arrange such causes upon the docket in the same order in which they stand in the course of proceeding, setting a proper proportion for each day.

§ 11. Every such clerk shall put up in some convenient place in his office, at least sixty days before the commencement of each term, a list of all the causes specified in the preceding section, distinguishing therein the day on which each cause is to be tried, and shall keep such list so affixed, until the end of such term, for the inspection of parties and their attorneys.

§ 12. Every such clerk, upon the demand of any party or his attorney, and upon the payment of the legal fee therefor, shall issue subpœnas for witnesses, returnable upon the day the cause, in which the subpœnas are demanded, is set for trial, and every clerk who shall neglect or refuse to make out such docket, or to set and keep up such list of causes, or to issue such subpœnas, according to the provisions of this act, shall be fined by the court any sum not exceeding one hundred dollars for every such offence.

Approved, March 17th, 1835.

PRACTICE AND PROCEEDINGS IN CRIMINAL CASES.

An act to regulate proceedings in criminal cases.

- ART. I. Of proceedings to prevent the commission of offences.
- ART. II. Of arrest, examination, commitment and trial.
- ART. III. Of grand juries and their proceedings.
- ART. IV. Of indictment and process thereon.
- ART. V. Of the arraignment and other proceedings before trial.
- ART. VI. Of trials for offences, and proceedings incident thereto.
- ART. VII. Of the verdict and judgment, and proceedings thereon.
- ART. VIII. Of appeals and writs of error in criminal cases.
- ART. IX. Miscellaneous provisions respecting criminal cases.
- ART. X. Of the custody and management of the estates of convicts.

ARTICLE I.

Of proceedings to prevent the commission of offences.

- SEC. 1. Officers enumerated who are authorized to keep the peace.
 2, 3, 4, & 5. Proceedings to compel sureties to keep the peace.
 6. How person committed may be discharged.
 7. Recognizance, how to be disposed of.
 8. Cases in which officers and courts may require security for the peace.
 9, 10, & 11. Proceedings at court on the recognizance.
 12. When recognizance to be deemed broken.
 13, & 14. Proceedings in action on recognizance.
 15. Security to keep the peace not to be required, unless authorized by statute.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The following magistrates shall have power to cause to be kept all laws made for the preservation of the public peace, and, in the execution of that power, to require persons to give security to keep the peace, in the manner provided in this article, namely: The judges of the supreme court throughout the state; judges of the circuit courts within their respective circuits; justices of the county courts, and justices of the peace, in their respective counties; the mayors and chief officers of incorporated cities and towns, within the limits of such corporation.

§ 2. Whenever complaint shall be made in writing, and upon oath, to any such magistrate, that any person has threatened, or is about to commit any offence against the person or property of another, it shall be the duty of such magistrate to examine such complaint, and any witness who may be produced, on oath, to reduce such examination to writing, and cause the same to be subscribed by the parties so examined.

§ 3. If it appear upon such examination, that there is reason to fear the commission of any such offence by the person complained of, it shall be the duty of the magistrate to issue a warrant under his hand, with or without seal, reciting the complaint, and commanding the officer to whom it is directed, forthwith to apprehend the person so complained of, and bring him before such magistrate.

§ 4. Upon such person being brought before such magistrate, he may be required to enter into a recognizance, in such sum, not exceeding one thousand dollars, as such magistrate shall direct, with one or more sufficient securities, to appear before the circuit court, on the first day of the term next to be holden, and not depart the same without leave, and, in the meanwhile, to keep the peace toward the people of this state, and particularly toward the complainant.

§ 5. If such recognizance be given, the party complained of shall be discharged; but if he fail or refuse to find surety, it shall be the duty of the magistrate to commit him to prison, until he find the same, specifying in the warrant the cause of commitment, and the sum in which security was required.

§ 6. Any person committed for not finding surety of the peace, as above provided, may be discharged by any magistrate authorized to bind to the peace within the county, upon giving such security as was originally required of such person.

§ 7. Every recognizance to keep the peace, taken by any magistrate pursuant to the foregoing provisions, or pursuant to any other statute, shall be transmitted by such magistrate to the clerk of the circuit court of the county, on or before the first day of the term of such court, next to be holden after the taking the same.

§ 8. Every person who, in the presence of any magistrate above specified, or of any court of record, shall make any affray, or threaten to kill, or beat another, or to commit any offence against his person or property, and all persons who, in the presence of such court or magistrate, shall contend with hot and angry words, may be ordered by such magistrate, or court, without any other proof, to give such security as above specified; and in case of failure or refusal so to do, he may be committed in like manner as above provided.

§ 9. Every person who shall have entered into a recognizance to keep the peace, shall appear before the circuit court of the county at the next term, and if he fail to appear, the court shall forfeit his recognizance, and order it to be prosecuted unless reasonable excuse for the default be shewn.

§ 10. When any person shall have been bound to the peace on the complaint of another, and the complainant does not appear, the party recognized shall be discharged, unless good cause to the contrary be shewn.

§ 11. Upon the appearance of the respective parties, and in cases where there is no complaint, the court shall examine the evidence, and may either discharge the recognizance taken, or require a new recognizance, as the circumstances of the case may require, for such time as shall appear necessary, not exceeding one year.

§ 12. No recognizance to keep the peace shall be deemed to be broken, except in the case provided for in the ninth section of this article, unless the principal in such recognizance be convicted of some offence, amounting in judgment of law to a breach of such recognizance.

§ 13. Whenever evidence of such conviction shall be produced to the court in which the recognizance is filed or taken, it shall be the duty of the court to order such recognizance to be prosecuted, and the attorney general, or circuit attorney prosecuting for the circuit, shall proceed thereon accordingly.

§ 14. In the action on such recognizance, the offence stated in the record of conviction may be assigned as a breach, and such record shall be conclusive evidence of the matters therein stated.

§ 15. No security to keep the peace, or to be of good behavior, shall be required, nor shall any person be committed to prison for not giving the same, in any case except such as are prescribed or authorized by statute.

ARTICLE II.

Of arrest, examination, commitment and trial.

- Sec. 1. Officers enumerated who are empowered to act under this article.
- 2, & 3. When and how warrants for offences to be issued.
4. Warrants issued by certain officers, may be executed in any part of this state, by certain other officers in the county, &c.
5. What warrants to be endorsed; by whom, when, &c.
6. Offender escaping from one county into another, by what magistrate, and when warrant may issue.
7. When prisoner may require to be brought before magistrate of the county in which he is arrested.
- 8, & 9. Proceedings of magistrate on prisoner being brought before him.
- 10, & 11. When prisoner to be carried to county where offence was committed.
12. Before what magistrate prisoner to be brought, &c.; warrant, with return of officer, to be delivered to such magistrate.
- 13, 14, 15, 16, & 17. Manner of conducting examination of witnesses for prosecution; prisoner how examined; allowed counsel, &c.
18. Examination of prisoner's witnesses.
19. Regulations respecting the examination of witnesses; when witness is under examination, others may be excluded.
20. Evidence taken at the examination to be reduced to writing and signed by the witness.
21. When magistrate to discharge the prisoner.
22. When prosecutor and witnesses to be bound over to testify.
23. When witnesses may be required to enter into recognizance, with security, for their appearance.
24. When infants, &c., incapable of contracting are material witnesses, to procure security to enter into recognizance for their appearance.
25. Witness required to give recognizance or security, refuses the order, may be committed.
26. Prisoner to be bailed; when.
27. Prisoner, when and to what jail to be committed.
28. When committed for a bailable offence, magistrate to endorse amount of bail required.
29. Examination, recognizance, &c., to be certified and delivered to the clerk; if prisoner be committed to jail, examination, &c., to be delivered to the jailor.
30. If magistrate refuse or neglect to return examination, &c., as required by last section, how compelled.
31. Another magistrate, of the same county, may be associated on the examination, &c.
32. When a felony is committed, and the offender attempts to escape, notice to be given; pursuit to be made; by whom, &c.
33. When such offender making his escape is arrested, before what magistrate to be taken, and how proceeded against.
34. Penalty on sheriff, coroner or constable, and persons summoned to their aid, for failing to comply with preceding provisions.
35. What court or magistrate may take recognizance from persons committed to jail for bailable offence.
36. Prisoner let to bail by officer out of court, recognizance, where to be filed.
37. Prisoner let to bail by court, other than that in which offence is to be tried, recognizance to be transmitted, &c.
38. If a person charged with offence, not amounting to felony, on examination be discharged, prosecutor to pay the costs.
39. If such person be held to answer the charge, duty of the magistrate, in returning recognizance, to describe prosecutor, &c.

§ 1. The magistrates enumerated in the first section of the first article of this act, within their jurisdictions therein specified, shall have power to issue process for the apprehension of any person charged with a criminal offence, and to execute the powers and duties conferred in this article.

§ 2. Whenever complaint shall be made to any such magistrate, that a criminal offence has been committed, it shall be his duty to examine the complainant, and any witnesses who may be produced by him, on oath.

§ 3. If it appear on such examination, that any criminal offence has been committed, the magistrate shall issue a proper warrant, reciting the accusation, and commanding the officer to whom it shall be directed, forthwith to take the accused, and bring him before such magistrate, to be dealt with according to law.

§ 4. Warrants issued by any judge of the supreme or circuit court may be executed in any part of this state, and warrants issued by any other magistrate may be executed in any part of the county within which he is such officer, and not elsewhere, unless endorsed in the manner directed in the next section.

§ 5. If the person against whom any warrant, granted by a justice of the county court, justice of the peace, mayor, or chief officer of a city or town, shall be issued, escape, or be in any other county, it shall be the duty of any magistrate, authorized to issue a warrant in the county in which such offender may be, or is suspected to be, on proof of the hand writing of the magistrate issuing the warrant, to endorse his name thereon, and thereupon the offender may be arrested in such county by the officer bringing such warrant, or any officer within the county within which the warrant is so endorsed.

§ 6. When any person who shall have committed a criminal offence in one county shall escape into another, any magistrate within the county in which such offender may be found, may issue his warrant for the apprehension of such offender, and secure him for trial in the manner hereinafter directed.

§ 7. When any person charged with a criminal offence, shall be arrested out of the county in which the offence is alleged to have been committed, and such offence be not punishable with death, or by imprisonment in the penitentiary, he shall, if he request it, be taken before some magistrate of the county in which he is so arrested.

§ 8. If the offence charged in the warrant be not punishable with death, or imprisonment in the penitentiary, the magistrate before whom such prisoner shall be brought, under the provisions of the last section, may admit him to bail for his appearance before the next court having cognizance of the offence, to be held in the county where the offence is alleged to have been committed.

§ 9. When a prisoner is let to bail under the provisions of the last section, the magistrate shall certify that fact on the warrant, and deliver the same, together with the recognizance taken by him, to the officer or other person having charge of the prisoner, who shall deliver the same, without unnecessary delay, to the clerk of the court having cognizance of the offence.

§ 10. If such magistrate refuse to let such prisoner to bail, or if such bail as is required be not given, the officer, or person having the prisoner in charge, shall take him before a magistrate of the county in which the offence is charged to have been committed, as hereinafter provided.

§ 11. If the offence charged in the warrant be punishable with death, or imprisonment in the penitentiary, the officer, or the person making the arrest, shall convey the prisoner to the county in which the offence is charged to have been committed, before some magistrate therein, as in the next section is prescribed.

§ 12. Persons arrested under any warrant for any offence, shall, when no provision is otherwise made, be brought before the magistrate who issued the warrant, or, if he be absent, or his office be vacant, or if he be not authorized to act within the county in which the offence was committed, then before the nearest magistrate in such county, and the warrant, by virtue of which the arrest was made, with a proper return endorsed thereon, and signed by the officer or person making the arrest, shall be delivered to such magistrate.

§ 13. The magistrate, before whom any such person shall be brought, shall proceed, as soon as may be, to examine the complainant, and the witnesses produced in support of the prosecution, on oath, in the presence of the prisoner, in regard to the offence charged, and other matters connected with such charge, which such magistrate may deem pertinent.

§ 14. If desired by the prisoner, his counsel may be present during the examination, and may cross-examine the complainant, and the witnesses on the part of the prosecution.

§ 15. After the examination of the complainant, and the witnesses on the part of the prosecution, the magistrate shall proceed to take the examination of the prisoner, without oath, in relation to the offence charged; but before it is commenced, he shall distinctly inform the prisoner of the charge made against him, and that he is at liberty to refuse to answer any question put to him, and shall allow to the prisoner reasonable time to advise with his counsel, and, for that purpose, to send for counsel if he require it.

§ 16. None of the witnesses, for or against the prisoner, shall be present at the examination of the prisoner.

§ 17. The answers of the prisoner on his examination shall be reduced to writing by the magistrate; or under his direction, they shall be read to the prisoner, who may correct or add to them, and when made conformable to what he declared is the truth, shall be certified and signed by the magistrate.

§ 18. After the examination of the prisoner, his witnesses, if he have any, shall be sworn and examined, and he shall be allowed the assistance of counsel in such examination.

§ 19. While any witness, for or against the prisoner, is under examination, the magistrate may exclude from the place in which such examination is had, all witnesses who have not been examined, and he may cause the witnesses to be kept separate, and prevented from conversing with each other, until they all shall have been examined.

§ 20. The evidence given by the several witnesses examined, shall be reduced to writing by the magistrate, or under his direction, and shall be signed by the witnesses respectively.

§ 21. If upon the examination of the whole matter, it appear to the magistrate, either that no offence has been committed by any person, or that there is no probable cause for charging the prisoner therewith, he shall discharge such prisoner.

§ 22. If it appear that an offence has been committed, and that there is probable cause to believe the prisoner guilty thereof, the magistrate shall bind, by recogni-

zance, the prosecutor, and all material witnesses against such prisoner, to appear and testify before the court having cognizance of the offence, on the first day of the next term thereof, and not to depart such court without leave.

§ 23. Whenever such magistrate shall be satisfied, by due proof, that there is good reason to believe that any such witness will not fulfil the condition of such recognizance, unless security is required, he may order such witness to enter into a recognizance, with such security as he shall deem meet, for such appearance and attendance at such court.

§ 24. Infants and married women, and others by law incapable of contracting, being material witnesses, may be required to procure a surety, who will enter into a recognizance for their appearance and attendance, as above specified.

§ 25. If any witness so required to enter into a recognizance or give security, refuse to comply with such order, the magistrate may commit him or her to prison, until he or she comply with such order, or be otherwise discharged, according to law.

§ 26. If the offence with which the prisoner is charged be bailable, and the prisoner offer sufficient bail, a recognizance shall be taken for his appearance, to answer the charge before the court in which the same is cognizable, on the first day of the next term thereof, and not to depart such court without leave, and thereupon he shall be discharged.

§ 27. If the offence be not bailable, or sufficient bail be not offered, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law.

§ 28. Whenever any person shall be committed to jail for a bailable offence, it shall be the duty of the magistrate to endorse on the warrant of the commitment the sum in which bail was required.

§ 29. All examinations and recognizances, taken in pursuance of the provisions of this article, shall be certified by the magistrate taking the same, and delivered to the clerk of the court in which the offence is cognizable, on or before the first day of the next term thereof, except, that where the prisoner is committed to jail, the examination of himself, and of the witnesses for or against him, duly certified, shall accompany the warrant of commitment, and be delivered therewith to the jailor.

§ 30. If any magistrate refuse or neglect to certify and return, as required by the last section, any examination or recognizance by him taken, he may be required by rule of court forthwith to return the same, and in case of disobedience may be proceeded against by attachment.

§ 31. It shall be lawful for any magistrate to whom any complaint shall be made, or before whom any prisoner shall be brought, as hereinbefore provided, to associate with himself any other magistrate of the same county, and the powers and duties herein mentioned may be executed by such two magistrates so associated.

§ 32. Whenever any felony shall be committed, and the offender attempt to escape, public notice thereof shall be immediately given, at all places near where the same was committed, and pursuit shall be forthwith made after the offenders by

sheriffs, coroners and constables, and all others who shall be thereto required by any such officer, and the offender may be arrested by any such officer or his assistants, without warrant.

§ 33. When any person shall be so pursued and arrested, he shall be immediately taken before some magistrate authorized to act under the provisions of this article, who shall proceed thereon in the same manner as if the prisoner had been arrested on a warrant.

§ 34. Every sheriff, coroner or constable, who shall fail or refuse to pursue and arrest any offender, as required by the preceding provisions, shall be deemed guilty of a misdemeanor, and shall be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment; and every person summoned to aid in such duty, who shall neglect or refuse so to do, shall be fined not exceeding fifty dollars.

§ 35. Whenever any person shall be committed to jail on a warrant of commitment, by any magistrate, for a bailable offence, the recognizance, with proper security, may be taken by any court or magistrate authorized by law to issue a writ of *habeas corpus*.

§ 36. Whenever any prisoner shall be let to bail by any officer out of court, such officer shall immediately cause the recognizance taken by him to be filed with the clerk of the court in which the prisoner is recognized to appear.

§ 37. When any prisoner shall be let to bail by any court, other than that in which the offence is to be tried, it shall be the duty of the clerk of the court by which the prisoner was bailed, immediately to transmit the recognizance taken by such court to the clerk of the court in which the party bailed is required to appear.

§ 38. Whenever any person shall be brought before any magistrate, charged with a trespass against the person or property of another, not amounting to felony, on the information of the party injured, and the accused shall be discharged, the prosecutor shall be adjudged to pay the costs, and execution issue therefor.

§ 39. If in such case the accused shall be held to answer for the offence, it shall be the duty of the magistrate to make out a certificate of the name, occupation, and place of abode of the prosecutor, and return the same, with the recognizance of such prisoner, to the proper county.

ARTICLE III.

Of grand juries and their proceedings.

- Sec. 1. Grand juries, how many to be sworn; foreman to be appointed.
2. When, by whom and for what reason person summoned may be objected to as competent to serve as grand jury.
 3. No challenge to be allowed in any other cases than those specified in the last section.
 4. Foreman of the grand jury authorized to administer oaths to witnesses, brought before them to give evidence.
 5. Jury may appoint one of their body clerk; his duties.
 6. When prosecuting attorney to attend jury.
 7. When to be allowed to attend; deliberations of jury to be private.

- Sec. 8. Clerk of the court to issue subpoenas for witnesses to go before the jury; when.
9. Penalty and proceedings against witness if he fail or refuse to obey summons to appear before jury.
10. & 11. Proceedings against witness who appears before jury but refuses to testify.
12. Witness committed for contempt for refusal to testify, not to be discharged till he enter into recognizance.
13. Offence committed after jury discharged, when court may direct another jury to be summoned.
14. Sheriff to summon such grand jury; when and how; proceedings in such case.
15. What jurors may be required to disclose as to the testimony of a witness before them.
16. § 17. What they shall not be allowed to testify or disclose.
18. Court in charging jury to apprise them of the provisions of the three last sections in relation to disclosures.
19. Twelve of the grand jury to concur in finding an indictment; foreman to certify the same as a true bill.
20. When twelve do not concur, foreman to certify that such is not a true bill.
21. Indictments and presentments to be presented by the foreman to the court, &c., to be filed as record.
22. When indictment not to be preferred without a prosecutor; when it may, and proceedings.
23. Name of prosecutor, when to be endorsed by himself; when to be made by the prosecuting attorney.
24. Such indictment returned by the jury, "not a true bill" prosecutor to pay the costs.
25. Fine or penalty imposed as a punishment for an offence, and not otherwise provided for, may be recovered by indictment.

§ 1. There shall not be less than sixteen, nor more than twenty-three persons sworn on any grand jury, and, from the persons summoned to serve as grand jurors, and appearing, the court shall appoint a foreman, and may also appoint a foreman in every case where any person appointed shall be discharged or excused, before the grand jury shall be dismissed.

§ 2. Any person held to answer to a criminal charge, may object to the competency of any one summoned to serve as a grand juror, before he is sworn, on the ground that he is the prosecutor or complainant upon any charge against such person, or that he is a witness on the part of the prosecution, and has been summoned or bound in a recognizance as such; and if such objection be established, the person so challenged shall be set aside.

§ 3. No challenge to the array of grand jurors, or to any person summoned to serve as a grand juror, shall be allowed in any other cases than such as are specified in the last section.

§ 4. The foreman of every grand jury, from the time of his appointment to his discharge, shall be authorized to administer any oath, declaration or affirmation, in the manner prescribed by law, to any witness who shall appear before such grand jury, for the purpose of giving evidence in any matter cognizable by them.

§ 5. Every grand jury may appoint one of their number to be a clerk thereof, to preserve minutes of their proceedings, and of the evidence given before them, which minutes shall be delivered to the attorney prosecuting in the county, when so directed by the grand jury.

§ 6. Whenever required by any grand jury, it shall be the duty of the attorney prosecuting in the county, to attend them for the purpose of examining witnesses in their presence, or of giving them advice upon any legal matter.

§ 7. Such attorney shall be allowed at all times to appear before the grand jury on his request, for the purpose of giving information relative to any matter cognizable by them, and may be permitted to interrogate witnesses before them, when they shall deem it necessary; but no such attorney, or any other officer or person,

except the grand jurors, shall be permitted to be present during the expression of their opinions, or the giving their votes on any matter before them.

§ 8. Whenever thereto required by any grand jury, or the foreman thereof, or by the prosecuting attorney, the clerk of the court in which such jury is empanelled, shall issue subpoenas and other process to bring witnesses to testify before such grand jury.

§ 9. If any witness, duly summoned to appear and testify before a grand jury, shall fail or refuse to obey, the court shall cause compulsory process to be issued to enforce his attendance, and may punish the delinquent in the same manner and upon the like proceedings as provided by law for disobedience of a subpoena issued out of such court in other cases.

§ 10. If any witness appearing before a grand jury shall refuse to testify, or to answer any interrogatories in the course of his examination, the fact shall be communicated to the court in writing, on which the questions refused to be answered shall be stated, and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.

§ 11. If the court determine that the witness is bound to answer, and he persist in his refusal, he shall be brought before the court, who shall proceed therein in the same manner as if the witness had been interrogated and refused to answer in open court.

§ 12. If any such witness shall be committed for a contempt, on account of his refusal to testify, and shall persist in such refusal until the grand jury is dismissed, or until the expiration of his imprisonment, he shall not be discharged until he enter into a recognizance, with sufficient security, for his appearance at the next term of the court, and not to depart such court without leave.

§ 13. If any offence be committed or discovered during the sitting of any circuit court, after the grand jury attending such court shall be discharged, such court may, in its discretion, by an order to be entered on its minutes, direct the sheriff to summon another grand jury.

§ 14. The sheriff shall accordingly forthwith summon such grand jury from the inhabitants of the county, qualified to serve as grand jurors, who shall be returned and sworn, and shall proceed in the same manner, in all respects, as provided by law in respect to other grand juries.

§ 15. Members of the grand jury may be required by any court to testify whether the testimony of a witness examined before such jury is consistent with, or different from, the evidence given by such witness before such court, and they may also be required to disclose the testimony given before them by any person upon a complaint against such person for perjury, or upon his trial for such offence.

§ 16. No member of a grand jury shall be obliged, or allowed to testify or declare, in what manner he or any other member of the jury voted on any question before them, or what opinions were expressed by any juror in relation to any such question.

§ 17. No grand juror shall disclose any evidence given before the grand jury,

except when lawfully required to testify as a witness in relation thereto, nor shall he disclose the fact of any indictment having been found against any person for a felony, not in actual confinement, until the defendant shall have been arrested thereon. Any juror violating the provisions of this section, shall be deemed guilty of a misdemeanor.

§ 18. In charging grand juries, the court shall apprise them of the provisions of the three last sections in relation to disclosures, and in what cases, and under what circumstances, any disclosures may or may not be made.

§ 19. No indictment can be found without the concurrence of at least twelve grand jurors; when so found, and not otherwise, the foreman of the grand jury shall certify, under his hand, that such indictment is a true bill.

§ 20. When there is not a concurrence of twelve grand jurors in finding an indictment, the foreman shall certify, under his hand, that such indictment is not a true bill.

§ 21. Indictments found, and presentments made, by a grand jury, shall be presented by their foreman, in their presence, to the court, and shall be there filed, and remain as records of such court.

§ 22. No indictment for any trespass against the person or property of another, not amounting to felony, shall be preferred, unless the name of a prosecutor is endorsed as such thereon, except where the same is preferred upon the information or knowledge of two or more of the grand jury, or on the information of some public officer, in the necessary discharge of his duty, in which case a statement of the fact shall be made at the end of the indictment, and signed by the foreman of the grand jury.

§ 23. The name of the prosecutor shall be endorsed as such, by himself, or where his name has been certified as prosecutor, with the examination as provided by law, the endorsement may be made by the prosecuting attorney.

§ 24. If any indictment so endorsed, shall be returned by the grand jury, "not a true bill," the prosecutor shall be adjudged to pay the costs.

§ 25. In all cases where any fine or penalty is or shall be imposed by any statute of this state, as a punishment for any offence, and no other provision is made for the recovery thereof, the same may be recovered by indictment.

ARTICLE IV.

Of indictment and process thereon.

- SEC. 1. Indictments for a felony not open to inspection; when.
2. Punishment for disclosing fact that indictment is found.
3. Qualification of the two last sections.
4. In case of two indictments for the same matter, first to be quashed.
5. In what county receivers of stolen property may be indicted, &c.
6. In what counties indictments may be found for offences on board of vessels, &c.
7. In what county indictments may be found for offences committed near a boundary line of a county.
8. Allegation of property in indictment in case of several owners or partners.
9. Proceedings when wound, &c., in one county, and death in another.
10. Proceedings when wound, &c., given in this state, and death in another.
11. Proceedings when wound, &c., given in another state, and death in this state.
12. Indictments, &c., against accessories, in what counties may be had.

Sec 13. Accessories to be tried, although principal pardoned, &c.

14. When robbery and burglary may be tried in county to which property is carried.
15. Two or more charged jointly with the commission of an offence, to be included in same indictment.
16. Counts for different degrees of same offence.
17. Indictments not to be affected by certain omissions and defects.
18. Warrants on indictments, by whom to be issued.
19. Letting to bail of persons indicted, by what officers.
20. No other officers authorized to let to bail in such cases.
21. Recognizance on letting to bail, where to be filed, &c.
22. If any person abscond or flee, after indictment, &c., cause may be continued; proceedings.

§ 1. When any indictment shall be found against any person for a felony, not being in actual confinement, or held by recognizance to answer thereto, such indictment shall not be open to the inspection of any person, except the judge and clerk of the court, and the prosecuting attorney, until the defendant therein shall have been arrested.

§ 2. No judge, prosecuting attorney, or other officer of any court, shall disclose the fact of any such indictment being found, until the defendant therein shall have been arrested, or recognized to answer the same; and any person violating this provision, shall be deemed guilty of a misdemeanor.

§ 3. The two last sections shall not extend to any officer making any such disclosure by the issuing, or in the execution of any process on such indictment, or in any other way, when it shall become necessary in the discharge of any official duty.

§ 4. If there be, at any time, pending against the same defendant two indictments for the same offence, or two indictments for the same matter, although charged as different offences, the indictment first found shall be deemed to be suspended by such second indictment, and shall be quashed.

§ 5. Where any person shall be liable to prosecution as the receiver of any personal property that shall have been feloniously stolen, taken or embezzled, he may be indicted, tried and convicted in any county where he received or had such property, notwithstanding such theft was committed in another county.

§ 6. When any offence shall have been committed within this state, on board of any vessel in the course of a voyage or trip, an indictment for the same may be found, and a trial and conviction thereon had, in any county through which, or any part of which, such vessel shall be navigated in the course of the same voyage or trip, or in the county where such voyage or trip shall terminate, in the same manner, and with the like effect, as in the county where the offence was committed.

§ 7. Where an offence shall be committed on the boundary of two counties, or within five hundred yards of such boundary, or where the person committing the offence shall be on one side, and the injury be done on the other side of such boundary, the indictment may be found, and a trial and conviction thereon had, in either of such counties.

§ 8. When any offence shall be committed upon, or in relation to, any personal property belonging to several partners or owners, the indictment for such offence

shall be deemed sufficient, if it alleges such property to belong to one or more of such partners or owners, without naming all of them.

§ 9. When any mortal wound shall be given, or any poison shall be administered, or any means shall be employed in one county, by which any human being shall be killed, who shall die thereof in another county, an indictment for such offence may be found in either county; and the same proceedings shall be had thereon, in all respects, as if the offence had been commenced and consummated in the county in which such indictment shall be found.

§ 10. If any such wound or mortal injury shall be inflicted on any human being in this state, who shall die thereof in another state, an indictment may be found, and a trial and conviction thereon had, in the county in which the wound or mortal injury was given or inflicted, in all respects as if the death had happened in such county.

§ 11. If any such wound or mortal injury shall have been inflicted in another state, on any human being, who shall die thereof within the state, an indictment may be found, and a trial and conviction thereon had, in the county in which the death happened, in all respects as if the wound or injury had been inflicted in such county.

§ 12. An indictment against any accessory to any felony, may be found in any county where the offence of such accessory shall have been committed, notwithstanding the principal offence may have been committed in another county, and the like proceedings shall be had therein, in all respects, as if the principal offence had been committed in the same county.

§ 13. An accessory before or after the fact, may be indicted, tried, and punished, notwithstanding the principal felon may have been pardoned, or otherwise discharged after his conviction.

§ 14. When property stolen in one county, and brought into another, shall have been taken by burglary or robbery, the offender may be indicted, tried and convicted for such burglary or robbery, in the county into which such stolen property was brought, in the same manner as if such burglary or robbery had been committed in that county.

§ 15. When two or more persons are charged with having committed an offence jointly, all concerned shall be included in one indictment.

§ 16. When by law an offence comprises different degrees, an indictment may contain counts for the different degrees of the same offence, or for any of such degrees.

§ 17. No indictment shall be deemed invalid, nor shall the trial, judgment, or other proceedings thereon, be stayed, arrested, or in any manner effected,

First, By reason of the omission or mis-statement of the defendant's title, occupation, estate or degree, or of the county or town of his residence, where the defendant shall not be misled or prejudiced by such omission or mis-statement; or,

Second, By the omission of the words, "with force and arms," or any words of similar import; or,

Third, By omitting to charge any offence to have been contrary to a statute or statutes, notwithstanding such offence may have been created, or the punishment declared by a statute; or,

Fourth, By reason of any defect or imperfection in matters of form, which shall not tend to the prejudice of the defendant.

§ 18. A warrant or other process for the arrest of any defendant indicted, may be issued by the court in which such indictment shall have been found, or by the judge thereof, or by any judge of the supreme court, and by no other officers.

§ 19. Where the indictment is for a bailable offence, the defendant may be let to bail by the court in which such indictment is pending, or if such court be not sitting, by the judge thereof, or by any judge, or any justice of the county court of the county in which the indictment is pending.

§ 20. No court or officer, other than those specified in the last section, shall let to bail any person indicted for any offence.

§ 21. Whenever any person indicted for any offence, shall be let to bail, the officer taking the recognizance shall immediately file the same with the clerk of the court in which the indictment is pending.

§ 22. If any person indicted for a criminal offence, abscond or flee from justice, or cannot be found to be served with process, or, being let to bail, shall not appear according to the condition of the recognizance, the cause may be continued from term to term, without issuing process on the indictment, and such process may be issued at any time, on the application of the prosecuting attorney.

ARTICLE V.

Of the arraignment, and other proceedings before trial.

Sec. 1. Clerk to furnish defendant in capital cases, copy of indictment; when.

2. Defendants in cases not capital, entitled to copy of indictments on payment of fees.

3. Defendant unable to employ counsel, court to assign counsel for him; their privileges.

4. Mode of arraigning defendant on indictment, &c.

5. Dilatory pleas to be proved by affidavit or other evidence.

6. Trying foreign pleas.

7. Defendant entitled to subpoenas, and compulsory process for witnesses, as in civil cases.

8. Disobedience to any such subpoenas, how punished; liability of witness to party who had him summoned.

9. Not necessary to pay or tender fees to witnesses in criminal cases.

10, 11, & 12. Commission to examine witnesses, and proceedings thereon.

13. Examination of witnesses conditionally; proceedings in such case.

14. Change of venue, how made when indictment or prosecution is pending against the judge.

15. In what cases change of venue to be ordered on account of the judge being interested, &c.

16. Cause may be removed, if it appear that the inhabitants are prejudiced against defendant; when.

17. Order to be made on petition of defendant; how verified and supported; notice to prosecuting attorney.

18. When court may make such order for removal without application of the party for that purpose.

19. What facts shall be stated in every order for removal of a cause.

20. If such order is made in term, or by an officer out of court, proceedings in either event.

21. When such order is made, if defendant is not in custody, recognizance to be entered into, &c.

22. Recognizance may be taken; by whom, and where to be filed.

23. Order for removal, if defendant is not in custody, not effectual, unless upon certain conditions; second removal not allowed.

24. If defendant be in custody, court, or officer granting the change, to make order for removal of prisoner, &c.

25. Sheriff to obey such order; proceedings of the sheriff in such cases.

- Sec. 26. Upon order of removal, clerk to make out and transmit, &c., a full transcript of the record, proceeding, &c., in the cause.
27. Clerk of court to which cause was removed, to file the same as a record; cause how to be proceeded in.
28. How to proceed if transcript be not transmitted or received, &c., at the first term of court to which it was ordered.
29. Defendant, witnesses, &c., who are under recognizance, having notice of removal, to attend place of trial; failure to do so, deemed a breach of recognizance.
30. Order of removal made in term, deemed a notice to persons under recognizance; in other cases, notice how, by whom given, and how served.
31. Costs and expenses in the removal, by what court to be adjusted; how taxed, &c.
32. Penalty on clerk who shall neglect to perform duties enjoined on him in removal of causes.
33. Several defendants, and cause for removal only as to part, others to be tried as if no order was made.

§ 1. It shall be the duty of the clerk of the court in which an indictment against any person, for a capital offence, may be pending, whenever the defendant shall be in custody, or held by recognizance to answer thereto, to make out a copy of such indictment, and cause the same to be delivered to the defendant, or his counsel, at least forty-eight hours before he shall be arraigned on such indictment.

§ 2. Every person who shall be indicted for any offence, not capital, who shall have been arrested, or held by recognizance to appear and answer to such indictment, shall, on demand, and on payment of the fees allowed by law therefor, be entitled to a copy of the indictment, and all endorsements thereon.

§ 3. If any person about to be arraigned upon an indictment for a felony, be without counsel to conduct his defence, and be unable to employ any, it shall be duty of the court to assign him counsel, at his request, not exceeding two, who shall have free access to the prisoner at all reasonable hours.

§ 4. When any person shall be arraigned upon any indictment, it shall not be necessary to ask him how he will be tried; and if he deny the charge in any form, or require a trial, or if he refuse to plead or answer, and in all cases where he does not confess the indictment to be true, a plea of not guilty shall be entered, and the same proceedings shall be had in all respects as if he had formally pleaded not guilty to such indictment.

§ 5. No plea in abatement, or other dilatory plea to an indictment, shall be received by any court, unless the party offering such plea shall prove the truth thereof by affidavit, or by some other evidence.

§ 6. When any matter shall be pleaded to an indictment as having occurred in any other county than that in which the indictment was found, it shall be tried in the same manner as if it had been alleged to have occurred in the county where such plea is tendered.

§ 7. Every person indicted or prosecuted for a criminal offence, shall be entitled to subpœnas and compulsory process for witnesses, in like manner, and under like circumstances, as parties in civil cases.

§ 8. Disobedience to any such subpœnas shall be punished in the same manner, and upon the like proceedings, as provided by law in civil cases; and every delinquent witness shall be liable to the party at whose instance he was summoned, in the same manner, and to the same extent, as in cases of witnesses summoned in a civil suit.

§ 9. It shall not be necessary to pay or tender any fees whatever to any witness summoned on the part of the state, or on the part of the defendant, but such witness shall be bound to attend, and be liable for non-attendance, in the same manner as if the fees allowed to witnesses in civil cases had been duly paid to him.

§ 10. When any issue of fact is joined in any criminal case, and any material witness for the defendant resides out of the state, or, residing within this state, is ancient, sick or infirm, or is bound on a voyage, or is about to leave this state, such defendant may apply to the court in which the cause is pending for a commission to examine such witness, upon interrogatories thereto annexed, and such court may grant the same, upon the like proof, and on the like terms, as provided by law in civil cases.

§ 11. The court granting such commission may permit the officer prosecuting for the state to join in such commission, and to name material witnesses to be examined on the part of the state, whose personal attendance cannot be obtained for like causes.

§ 12. Interrogatories to be annexed to such commission shall be settled, and such commission shall be issued, executed and returned, in the manner prescribed by law in respect to commissions in civil cases, and the depositions taken thereon and returned, shall be read in the like cases and with the like effect as in civil suits.

§ 13. The defendant in any criminal cause may also have witnesses examined on his behalf, conditionally, upon a commission issued by the clerk of the court in which the cause is pending, in the same cases and upon the like notice to the prosecuting attorney, with the like effect, and in all respects as provided by law in civil suits.

§ 14. Whenever any indictment, or prosecution, for a criminal offence, shall be pending in any circuit court against the judge thereof, the same shall be removed to the circuit court of some county in a different circuit, upon the order in writing of the attorney general, or circuit attorney prosecuting for the circuit, or upon the order of any judge of the supreme court.

§ 15. When any indictment, or criminal prosecution, shall be pending in any circuit court, the same shall be removed by the order of such court, or the judge thereof, to the circuit court of some county in a different circuit, in either of the following cases:

First, When the judge of the court, in which the cause is pending, is near of kin to the defendant, by blood or marriage; or,

Second, When the defendant is a slave, and such judge, or a person near of kin to him, is the owner, or has any interest in such slave; or,

Third, When the offence charged, is alleged to have been committed against the person or property of such judge, or some person near of kin to him; or,

Fourth, Where the judge is in anywise interested, or shall have been counsel in the cause.

§ 16. Any criminal cause, pending in any circuit court, may be removed by the order of such court, or the judge thereof, to the circuit court of another county,

whenever it shall appear, in the manner hereinafter provided, that the minds of the inhabitants of the county in which the cause is pending are so prejudiced against the defendant that a fair trial cannot be had therein.

§ 17. Such order of removal shall be made on the application of the defendant, by petition, setting forth the facts, verified by affidavit, if reasonable previous notice of the application be given to the prosecuting attorney, and the truth of the allegations be supported by the affidavit of any credible disinterested person.

§ 18. Whenever it shall be within the knowledge of a court or judge, that facts exist which would entitle a defendant to the removal of any criminal cause, on his application, such court or judge may make an order for such removal, without any application by the party for that purpose.

§ 19. Every order for the removal of any cause, under the foregoing provisions, shall state whether the same is made on the application of the party, or on facts within the knowledge of the court or judge, and shall specify the cause of removal, and designate the county to which the cause is to be removed.

§ 20. Such order, if made in term, shall be entered on the minutes; if made by an officer out of court, shall be in writing and signed by such officer, and shall be filed by the clerk, with the petition, if any, as a part of the record in the cause.

§ 21. When such order shall be made, the defendant, if not in confinement or custody, shall enter into a recognizance, with sufficient sureties, for his appearance, to answer the charge in the court to which the cause is to be removed, at the next term thereof, and not to depart such court without leave.

§ 22. Such recognizance may be taken by the court, or judge making the order, or by any court or officer authorized by law to let to bail after indictment; and when taken out of the court in which the cause is pending, shall be filed with the clerk thereof.

§ 23. No order for the removal of a cause shall be effectual in the case of any defendant, not being in confinement or custody, unless a recognizance, taken as herein directed, be entered into in open court, or delivered with the order, and filed with the clerk of the court, nor unless such order be delivered before any juror is sworn in the cause; and in no case shall a second removal of any cause be allowed.

§ 24. If the defendant be in actual custody or confinement, the court or officer granting the order of removal, shall also make an order, commanding the sheriff to remove the body of the defendant to the jail of the county into which the cause is to be removed, and there deliver him to the keeper of such jail, together with the warrant, or process, by virtue of which he is imprisoned or held.

§ 25. The sheriff shall obey such order, without unnecessary delay, and shall endorse on the commitment or process, by virtue of which the prisoner was in his custody, the reason of the change of custody, and shall deliver such warrant, with the prisoner, to the keeper of the jail of the proper county, who shall give such sheriff a receipt therefor, and take charge of, and keep the prisoner, in the same manner as if he had been originally committed to such jail.

§ 26. Whenever any order shall be made for the removal of any cause, under the foregoing provisions, the clerk of the court in which the same is pending shall make out a full transcript of the record and proceedings in the cause, including the order of removal, the petition therefor, (if any,) and the recognizances of the defendant, and of all witnesses, and shall transmit the same, duly certified under the seal of the court, to the clerk of the court to which the removal is ordered.

§ 27. On the receipt of such transcript by the clerk of the court to which any such cause is removed, he shall file the same as a record of his court, and the same proceedings shall be had in the cause, in such court, in the same manner, and in all respects as if the same had originated therein.

§ 28. If such transcript shall not be transmitted, or shall not be received, at or before the first term of the court to which the cause is ordered to be removed, or if such transcript shall be lost or destroyed, the cause shall not, by reason thereof, be discontinued, but such transcript, or another in lieu thereof, may be transmitted and filed as required by this act, at or before the next succeeding term of such court, and proceedings thereon shall be had as if no such failure or loss had happened.

§ 29. The defendant, and all witnesses and others, who shall have entered into any recognizance to attend the trial of any such cause, having notice of the removal thereof, shall be bound to attend at the time and place of trial, in the county to which the cause is removed, and a failure to do so shall be deemed a breach of the recognizance.

§ 30. When the order of removal is made in term, it shall be deemed a notice to every person who shall have entered into a recognizance to appear at such term; in other cases, the notice shall be in writing, signed by the prosecuting attorney or clerk of the court, and served on the person, so recognized, in the manner provided by law for serving notices.

§ 31. The costs and expenses, necessarily incurred in the removal of any such cause, under the foregoing provisions, shall be adjusted and allowed by [the] court wherein the cause is tried, and shall be taxed as other costs in such cause.

§ 32. If any clerk of the circuit court shall neglect or refuse to perform any duty in relation to the removal of a cause, enjoined on him by the foregoing provisions, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered by action of debt, in the name and to the use of the state.

§ 33. When there are several defendants in any indictment or criminal prosecution, and the cause for the removal thereof exists only as to a part of them, the other defendants shall be tried, and all proceedings had against them in the county in which the case is pending, in all respects, as if no order of removal had been made as to any defendant.

ARTICLE VI.

Of trials for offences, and proceedings incident thereto.

SEC. 1. Issues of fact on indictments, how to be tried.

2. Jury of part aliens not allowed; aliens, by what jurors to be tried.
3. On indictment for criminal offence, in what cases defendant entitled to peremptory challenge of jurors.
4. Number of jurors to be summoned in criminal cases.
5. In what cases, and when list of jurors to be delivered to the defendant.
6. Grand jurors who found indictment not to be on petit jury.
7. On trial of a slave, or of a person for injury to a slave, who shall not serve as a juror.
8. Certain persons not to serve as jurors in certain cases.
9. Persons entertaining certain opinions, not allowed as jurors for offences punishable with death.
10. Witness not to be sworn as a juror if challenged for that cause; juror to disclose facts in the cause, if he know any, in open court.
11. What shall be good cause of challenge to a juror.
12. Challenges for cause, how tried; cause discovered after juror is sworn, may be discharged; when.
13. Defendants to be present at trial in person or by attorney, &c.; admitted to make proof &c.
14. & 15. Provisions in civil cases extended to criminal cases, in reference to jurors, witnesses, &c.
16. Verdicts may be set aside, and new trials on application of defendant; continuances granted to either party; when.
17. On trials for treason, what evidence of overt acts to be received; upon proof of what overt acts conviction to be had.
18. Proof necessary to sustain indictments for conspiracy.
19. Certain proof sufficient on indictments for rape, or the crime against nature.
20. On the trial of any criminal cause, the existence, constitution, &c., of any banking company, how proved.
21. Prosecutor or person injured by offence, &c., competent witness.
22. When defendants to be tried separately; when jointly.
23. Defendants may file bills of exceptions; proceedings.
24. Prisoners under indictment, when to be discharged.
25. Person indicted and held to answer on bail, when to be discharged.
26. On application for discharge under either of the two preceding sections, proceedings of the court.
27. Courts not to sum up or comment on the evidence, or charge the jury as to matter of fact, except, &c.; but may as to points of law.

§ 1. All issues of fact, in any criminal cause, shall be tried by a jury, to be selected, summoned and returned, in the manner prescribed by law.

§ 2. No alien shall be entitled to a jury of part aliens or strangers, for the trial of any indictment, but in every case the jurors shall be such only as are qualified to serve according to the laws of this state.

§ 3. The defendant in every indictment for a criminal offence, shall be entitled to a peremptory challenge of jurors in the following cases, as follows:

First, If the offence charged is punishable with death, or by imprisonment in the penitentiary, not less than for life, to the number of twenty, and and no more.

Second, If the offence be punishable by like imprisonment, not less than a specified number of years, and no limit to the duration of such imprisonment is declared, to the number of twelve, and no more.

Third, In any other case punishable by imprisonment in the penitentiary, to the number of eight, and no more.

Fourth, In cases not punishable with death, or imprisonment in the penitentiary, to the number of four, and no more.

§ 4. There shall be summoned and returned in every criminal cause, a number of qualified jurors, equal to the number of peremptory challenges, and twelve in addition.

§ 5. A list of the jurors summoned shall be delivered to the defendant, in the cases specified in the two first sub-divisions of the third section of this article, at least forty-eight hours before the trial; and in other cases, before a jury is sworn, if such list be requested.

§ 6. No person who was a member of the grand jury, or inquest, by which any indictment or presentment was found in any cause, shall serve as a petit juror on the trial of such cause.

§ 7. Upon the trial of any indictment against any slave, or against any person for an injury to a slave, neither the owner of such slave, nor any person of kin to him by blood or marriage, shall serve as a juror.

§ 8. When any indictment alleges an offence against the person or property of another, neither the injured party, or any person of kin to him, shall be a competent juror on the trial of such indictment, nor shall any person of kin to the prosecutor or defendant, in any case, serve as a juror on the trial thereof.

§ 9. Persons whose opinions are such as to preclude them from finding any defendant guilty of an offence punishable with death, shall not be allowed or compelled to serve as jurors on the trial of an indictment for any offence punishable with death.

§ 10. No witness in any criminal case shall be sworn as a juror therein, if challenged for that cause, before he is sworn; and if any juror shall know any thing relative to the matter in issue, he shall disclose the same in open court.

§ 11. It shall be a good cause of challenge to a juror, that he has formed or delivered an opinion on the issue, or any material fact to be tried; but if it appear that such opinion is founded only on rumor, and not such as to bias or prejudice the mind of the juror, he may be sworn.

§ 12. All challenges for cause may be tried by the court, on the oath of the person challenged, or by triers on other evidence, and such challenges shall be made before the juror is sworn; but if the cause of challenge be discovered after a juror is sworn, and before any part of the evidence is delivered, he may be discharged, or not, in the discretion of the court.

§ 13. No person indicted for a felony can be tried, unless he be personally present during the trial, nor can any person indicted for any other offence be tried, unless he be present, either personally or by his counsel; and every person indicted shall be admitted to make any lawful proof, by competent witnesses, or other testimony, in his defence.

§ 14. The proceedings prescribed by law in civil cases, in respect to the empanelling of jurors, the keeping them together, and the manner of rendering their verdict, shall be had upon trials on indictments and prosecutions for criminal offences, except in cases otherwise provided by statute.

§ 15. The provisions of law in civil cases, relative to compelling the attendance and testimony of witnesses, their examination, the administration of oaths and affir-

mations, and proceedings as for contempt, to enforce the remedies and protect the rights of parties, shall extend to criminal cases, so far as they are in their nature applicable thereto, subject to the provisions contained in any statute.

§ 16. Verdicts may be set aside, and new trials awarded on the application of the defendant, and continuances may be granted to either party, in criminal cases, for like causes, and under the like circumstances, as in civil cases.

§ 17. In trials for treason, no evidence shall be given of any overt act that is not expressly laid in the indictment, and no conviction shall be had upon any indictment for such offence, unless one or more overt acts be expressly alleged therein.

§ 18. In trials for conspiracy, in those cases where an overt act is required by law to consummate the offence, no conviction shall be had, unless one or more overt acts be expressly alleged in the indictment, and proved on the trial; but other overt acts, not alleged in the indictment, may be given in evidence on the part of the prosecution.

§ 19. Proof of actual penetration into the body, shall be sufficient to sustain an indictment for a rape, or for the crime against nature.

§ 20. If on the trial or other proceeding in a criminal cause, the existence, constitution or powers of any banking company or corporation, shall become material, or be in any way drawn in question, it shall not be necessary to produce a certified copy of the charter, or act of incorporation, but the same may be proved by general reputation, or by the printed statute book of the state government, or county, by which such corporation was created.

§ 21. No person shall be rendered incompetent to testify in criminal causes, by reason of his being the person injured or defrauded, or intended to be injured or defrauded, or that he would be entitled to satisfaction for the injury, or is liable to pay the costs of the prosecution.

§ 22. When two or more defendants are jointly indicted for any felony, any one defendant requiring it, shall be tried separately; in other cases, defendants jointly indicted, shall be tried separately or jointly, in the discretion of the court.

§ 23. On the trial of any indictment, or prosecution for a criminal offence, exceptions to any decision of the court may be made in the same cases and manner provided by law in civil cases, and bills of exception shall be settled, signed, sealed and filed, as now allowed by law in personal actions; and the same proceedings may be had to compel or procure the signing and sealing of such bill, and the return thereof, as in civil cases.

§ 24. If any person indicted for any offence, and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offence, which shall be held after such indictment found, he shall be entitled to be discharged, so far as relates to the offence for which he was committed, unless the delay shall happen on the application of the prisoner.

§ 25. If any person indicted for any offence, and held to answer on bail, shall not be brought to trial before the end of the third term of the court in which the cause is pending, which shall be held after such indictment found, he shall be entitled to

be discharged, so far as relates to such offence, unless the delay happen on his application.

§ 26. If when application is made for the discharge of a defendant, under either of the two last sections, the court shall be satisfied that there is material evidence on the part of the state, which cannot then be had, that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term, the cause may be continued to the next term, and the prisoner remanded, or admitted to bail, as the case may require.

§ 27. The court shall not, on the trial of the issue on any indictment, sum up or comment upon the evidence, or charge the jury as to matter of fact, unless requested so to do by the prosecuting attorney, and the defendant or his counsel, but the court may instruct the jury on any point of law arising in the cause.

ARTICLE VII.

Of the verdict and judgment, and proceedings thereon.

- SEC. 1.** When there are different degrees of the same offence, the degree of which defendant is guilty, to be specified in the verdict.
2. On conviction for robbery, theft, fraud, &c., value of property taken, &c., to be specified by jury in their verdict.
 3. Jury may assess the punishment in their verdict; when, and in what cases.
 4. In what cases, after verdict, court to assess and declare the punishment.
 5. How court to proceed where jury find a greater punishment than is allowed in such cases.
 6. How court to proceed where jury find a less punishment than is allowed by law in such cases.
 7. Court may reduce extent and duration of punishment assessed by a jury; when.
 8. Where a prosecutor is masked, jury to return in their verdict whether the prosecutor or county shall pay the costs.
 9. Power of the court to require surety of the peace, &c., from convicts.
 10. Limitation of the preceding section.
 11. When recognizance to be deemed broken in such case.
 12. Judgment of court to be fully entered in minutes.
 13. Authority of sheriff to execute sentence of imprisonment in county jail.
 14. Authority of sheriff to convey convict to the penitentiary; how to be executed.
 15. Authority of sheriff in requiring assistance in such cases; penalty on those refusing assistance.
 16. Authority of sheriff to execute sentence of death; time for executing sentence to be fixed.
 17. Court or governor may prolong or suspend execution of convict.
 18. Jury to be summoned to try the insanity of convict; when; notice to prosecuting attorney to be given.
 19. Prosecuting attorney to attend such inquiry; witnesses summoned, &c.; proceedings.
 20. Inquest, by whom to be signed; if the convict be found insane, duty of the sheriff.
 21. Inquisition to be transmitted to the governor; his power and duty in such cases.
 - 22, & 23. Proceedings to ascertain pregnancy of female convicts; duty of the sheriff.
 24. When execution of such convict to be directed; sentence may be commuted.
 - 25, & 26. Power of supreme and circuit court to order execution in certain cases.
 27. Manner of executing convicts.
 28. Costs in cases of conviction, and sentence of death, how paid.
 29. Where two or more defendants in an indictment sever in trial, costs how paid.
 30. On sentence of imprisonment in county jail, and pay a fine, not to be discharged until sentence complied with.
 31. Such fine may be commuted by a term of imprisonment, and then discharged on payment of costs.
 32. Person detained for costs in criminal case, may be discharged under the insolvent laws.
 33. Property of person charged with crime, bound for the payment of fine and costs, and from what time.
 34. Executions to be issued for fines and costs; when; how executed.
 35. All fines, upon conviction, appropriated to the county treasury and state treasury; when.

- SEC 36. In cases of acquittal, or inability to pay costs, when to be paid by the state, and when by the county.
37. But neither county or state to pay costs until execution issue against the convict, &c.
 38. When state or county is liable for costs, the same to be audited by the court, certified, &c.
 39. Such demands against the state to be delivered to the auditor; warrant to be drawn.
 40. All demands against the county, certified, &c., how obtained.
 41. When slave is convicted, to be sold to pay costs, unless owner will pay it; in what cases.
 42. If such costs be not paid, sheriff to sell slave as on execution; proceeds how applied.
 43. Convicted of capital offence, and reprieved or pardoned, to be sold to pay the costs, unless owner will pay it.
 44. Convicted of capital offence and executed, state to pay the costs.

§ 1. Upon the trial of any indictment for any offence, where, by law, there may be conviction of different degrees of such offence, the jury, if they convict the defendant, shall specify in their verdict of what degree of the offence they find the defendant guilty.

§ 2. Where the indictment charges one offence against the property of another by robbery, theft, fraud, embezzlement or the like, the jury, on conviction, shall ascertain and declare in their verdict the value of the property taken, embezzled or received, and the amount restored, if any, and the value thereof.

§ 3. In all cases of a verdict of conviction for any offence, where, by law, there is any alternative or discretion in regard to the kind or extent of punishment to be inflicted, the jury may assess and declare the punishment in their verdict, and the court shall render a judgment according to such verdict, except as hereinafter provided.

§ 4. Where the jury find a verdict of guilty, and fail to agree on the punishment to be inflicted, or do not declare such punishment by their verdict, or assess a punishment not authorized by law, and in all cases of judgment on confession, the court shall assess and declare the punishment, and render judgment accordingly.

§ 5. If the jury in any case assess a greater punishment, whether of imprisonment or fine, than the highest limit declared by law, for the offence of which they convict the defendant, the court shall disregard the excess, and pronounce sentence, and render judgment according to the highest limit prescribed by law in the particular case.

§ 6. If the jury assess a punishment, whether of imprisonment or fine, below the limit prescribed by law, for the offence of which the defendant is convicted, the court shall pronounce sentence and render judgment according to the lowest limit prescribed by law in such case.

§ 7. The court shall have power, in all cases of conviction, to reduce the extent, or duration of the punishment assessed by a jury, if, in its opinion, the conviction is proper, [and] the punishment assessed is greater than under the circumstances of the case ought to be inflicted, so that the punishment be not in any case reduced below the limit prescribed by law for the offence.

§ 8. If upon the trial of any indictment, whereon the name of a prosecutor is endorsed as such, according to law, the jury shall acquit the defendant, they shall determine and return, together with their verdict, whether the prosecutor or the county shall pay the costs, and the court shall render judgment accordingly.

§ 9. The court before which any person shall be convicted of any criminal offence, not punishable with death, or imprisonment in the penitentiary, shall have power, in addition to the sentence prescribed or authorized by law, to require such person to give security to keep the peace, or be of good behavior, or both, for a term not exceeding two years, or to stand committed until such security be given.

§ 10. The last section shall not extend to convictions for writing or publishing any libel; nor shall any such security be hereafter required by any court, upon any complaint, prosecution or conviction, for any such writing or publishing.

§ 11. No recognizance given under the provisions of the ninth section, shall be deemed to be broken, unless the principal therein be convicted of some offence, amounting, in judgment of law, to a breach of such recognizance.

§ 12. Whenever a judgment upon a conviction shall be rendered in any court, the clerk of such court shall enter such judgment fully on the minutes; stating briefly the offence for which such conviction shall have been had, and the court shall inspect such entries, and conform them to the facts.

§ 13. Whenever a sentence of imprisonment in a county jail shall be pronounced upon any person convicted of any offence, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, a transcript of the entry of such conviction, and of the sentence thereupon, duly certified by the clerk, which shall be sufficient authority to such sheriff to execute such sentence, and he shall execute the same accordingly.

§ 14. Where any convict shall be sentenced to imprisonment in the penitentiary, the clerk of the court, in which the sentence was passed, shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall, without delay, either in person, or by a general and usual deputy, cause such convict to be transported to the penitentiary, and delivered to the keeper thereof.

§ 15. Such sheriff or deputy, while conveying a convict to the penitentiary, shall have the same power and the like authority to require the assistance of any citizen of this state, in securing such convict, and retaking him, if he shall escape, as if such sheriff or deputy were in the county in which he is such officer; and all persons who shall neglect or refuse to assist such sheriff or deputy, when required, shall be liable to the same penalties as if such officer were in his own county.

§ 16. Whenever any convict shall be sentenced to the punishment of death, the court shall cause to be made out, sealed, and delivered to the sheriff of the county, a warrant, stating such conviction and sentence, and appointing a day on which such sentence shall be executed, which shall not be less than four, nor more than eight weeks from the time of the sentence.

§ 17. For good cause shewn, the court in which the conviction is had, or the governor, may prolong the time, or suspend the execution of any convict, sentenced to the punishment of death; and no other court or officer shall have such authority, except in the cases and in the manner hereinafter provided.

§ 18. If, after any convict be sentenced to the punishment of death, the sheriff shall have cause to believe that such convict has become insane, he may summon a

jury of twelve competent jurors to enquire into such insanity, giving notice thereof to the prosecuting attorney.

§ 19. The prosecuting attorney shall attend such enquiry, and may produce witnesses before the jury, and may cause subpoenas to be issued by a justice of the peace for that purpose, and disobedience thereto may be punished by the circuit court in the same manner as in other like cases.

§ 20. The inquisition of the jury shall be signed by them, and by the sheriff. If it be found that such convict is insane, the sheriff shall suspend the execution of the sentence until he receive a warrant from the governor, or from the supreme or circuit court, as hereinafter authorized, directing the execution of such convict.

§ 21. The sheriff shall immediately transmit such inquisition to the governor, who may, as soon as he shall be convinced of the sanity of such convict, issue a warrant, appointing a time and place for the execution, pursuant to his sentence, or he may, in his discretion, commute the punishment to imprisonment in the penitentiary for life.

§ 22. If after any female convict shall be sentenced to the punishment of death, the sheriff shall have reason to suspect that she is pregnant, he shall, in like manner, summon a jury of six persons, not less than three of whom shall be physicians, and shall give notice thereof to the prosecuting attorney, who shall attend, and the proceedings shall be had as provided in the nineteenth section of this article.

§ 23. The inquisition shall be signed by the jury and the sheriff; and if it appear that such female convict is quick with child, the sheriff shall, in like manner, suspend the execution of her sentence, and transmit the inquisition to the governor.

§ 24. Whenever the governor shall be satisfied that the cause for such suspension no longer exists, he shall issue his warrant, appointing a day for the execution of such convict, pursuant to her sentence, or he may, at his discretion, commute her punishment to imprisonment in the penitentiary for life.

§ 25. Whenever, for any reason, any convict sentenced to the punishment of death, shall not have been executed pursuant to such sentence, and the same shall stand in full force, the supreme court of the district, or the circuit court of the county in which the conviction was had, on the application of the prosecuting attorney, shall issue a writ of *habeas corpus*, to bring such convict before the court; or if he be at large, a warrant for his apprehension may be issued by such court or any judge thereof.

§ 26. Upon such convict being brought before the court, they shall proceed to enquire into the facts, and if no legal reasons exist against the execution of such sentence, such court shall issue a warrant to the sheriff of the proper county, commanding him to do execution of such sentence, at such time as shall be appointed therein, which shall be obeyed by the sheriff accordingly.

§ 27. The punishment of death shall, in all cases, be inflicted by hanging the convict by the neck until he be dead.

§ 28. The costs in all cases of conviction, where the convict sentenced to suffer death, and the expenses attending the execution of such sentence, shall be adjusted and taxed by the court, and paid out of the estate of such convict.

§ 29. When two or more defendants are joined in one indictment, and shall sever in the trial, the costs which shall have accrued at, and before, the severance, shall be adjudged against such of the defendants as shall be convicted; and the costs thereafter accruing in each case, shall be apportioned by the court, and adjudged accordingly.

§ 30. When any defendant shall, on a conviction, be sentenced to imprisonment in a county jail, or to pay a fine, he shall be imprisoned until the sentence is fully complied with, and all costs paid, unless he be sooner discharged in the manner hereinafter provided.

§ 31. When any person is held in custody or imprisonment for a fine imposed on a conviction for a criminal offence, as specified in the last section, the court in which the cause was tried, or the judge thereof in vacation, on the petition of the prisoner for that purpose, shall sentence him to imprisonment for a limited time in lieu of the fine, and at the expiration of such time the prisoner shall be discharged on the payment of costs, or obtaining his discharge, in the manner in the next section provided.

§ 32. Whenever any person shall be detained for the costs of a criminal prosecution, he shall be permitted to take the benefit of the laws for the relief of insolvent debtors, on making application for that purpose, and conforming to the provisions of such laws.

§ 33. The property, real and personal, of any person charged with a criminal offence, shall be bound, from the time of his arrest, or finding the indictment against him (which ever shall first happen) for the payment of all fines and costs which he may be adjudged to pay.

§ 34. It shall be the duty of the clerk of the circuit court, at the end of each term, to issue executions for all fines imposed, and the costs of conviction, in criminal cases, during the term, and remaining unpaid, which shall be executed in the same manner as executions in civil cases; and the property of the defendant may be seized and sold thereon, notwithstanding he may be in custody for the same demand.

§ 35. All fines imposed on conviction for any misdemeanor, unless otherwise specially appropriated, shall be paid into the treasury of the county in which the indictment was found; in all other cases, not otherwise directed, the fines imposed or any criminal offence shall be paid into the state treasury.

§ 36. In capital cases, and on all cases of felony, if the defendant shall be acquitted, or, if convicted, shall not have sufficient property to pay the costs, the same shall be paid by the state; in all other cases of acquittal, or inability of the defendant to pay the costs, the same shall be paid by the county.

§ 37. But neither the state nor county shall, in any case, be liable for costs, where the defendant is convicted, until an execution shall have been issued against the property of such convict, and returned unsatisfied for want of sufficient property to satisfy the same, in cases where an execution may lawfully issue; nor unless the court, in which the trial was had, shall certify that, in the opinion of such court, the costs could not be recovered.

§ 38. Whenever the state, or any county, shall become liable to pay the costs and expenses in a criminal case, the circuit court of the county in which the cause was tried or determined, shall audit and adjust the accounts for all charges, and cause the same to be certified under the seal of the court.

§ 39. The person having any demand against the state so certified, shall deliver the certificate to the auditor of public accounts, who shall draw his warrant therefor on the state treasury, to be paid out of the general contingent fund.

§ 40. All demands so certified against any county, shall be presented to the county court of such county, who shall proceed thereon as on other liquidated demands against the county.

§ 41. If a slave shall be convicted of any offence in a case, where, if the convict was a free person, he would be liable to pay costs, such slave shall be sold to satisfy such costs, unless the owner or master appear and pay the same within sixty days after they become due.

§ 42. The sheriff or officer, having the custody of such slave, shall detain him, and if the costs be not paid within the time above specified, shall proceed to sell such slave, on the same notice, in the same manner, as near as may be, as on sales of personal property under execution, and the proceeds shall be applied, first to the payment of the costs and expenses of sale, and the balance paid to the owner, on demand.

§ 43. Any slave convicted of a capital offence, who shall be reprieved or pardoned by the executive, shall be sold to satisfy the costs, unless the owner or master appear and pay the same, within the time prescribed in the forty-first section of this article.

§ 44. If a slave be convicted of any capital offence, and executed, the costs shall be paid by the state.

ARTICLE VIII.

Of appeals and writs of error in criminal cases.

- Sec. 1.** Appeals allowed to the supreme court, in all cases of final judgment.
- 2.** Writs of error upon such final judgment, are writs of right; when to issue.
- 3.** When such appeal or writ of error to operate as a stay of proceedings.
- 4.** If circuit court, or judge, refuse to make order for stay of proceedings, time shall be allowed to apply to supreme court.
- 5.** Order to stay proceedings by supreme court, &c., to be filed with the clerk; certificate of filing, &c.
- 6.** How defendant to be kept, on writ or appeal being allowed.
- 7.** When and how defendant may be let to bail.
- 8.** The condition of recognizance in such cases.
- 9.** When proceedings are stayed, clerk to make out full transcript of the record, and transmit it to supreme court.
- 10.** When proceedings are not stayed, transcript to be made out and returned on application of appellant or plaintiff in error.
- 11.** On return of such appeal or writ of error to supreme court, how to proceed.
- 12.** Judgment of supreme court, on affirmance or reversal.
- 13.** Proceedings, if new trial be ordered.
- 14.** Proceedings against defendant not appearing at new trial, &c.
- 15.** Cause remanded for new trial, proceedings.

§ 1. In all cases of final judgment rendered upon any indictment, an appeal to the supreme court shall be allowed, if applied for during the term at which such judgment is rendered.

§ 2. Writs of error, upon any such final judgment, are writs of right, and, on application therefor, shall issue of course in vacation as well as in term, out of the court in which by law they may be made returnable.

§ 3. No such appeal, or writ of error, shall stay or delay the execution of such judgment or sentence thereon, unless the supreme court of the district, or the circuit court in which the judgment was rendered, or some judge of such supreme or circuit court, on inspection of the record, shall be of opinion that there is probable cause for such appeal, or writ of error, or so much doubt as to render it expedient to take the judgment of the supreme court thereon, and shall make an order expressly directing, that such appeal or writ of error shall operate as a stay of proceedings on the judgment.

§ 4. If the circuit court, or the judge thereof, refuse such order, he shall nevertheless suspend the execution of the judgment (except as to fine and costs) if necessary; to allow sufficient time to make application to the supreme court, or a judge thereof, for such order.

§ 5. When any such order to stay proceedings shall be made by the supreme court, or by any judge in vacation, the same, together with the writ of error, if any, shall be filed with the clerk of the court in which the judgment was rendered, who shall furnish the party filing the same, with a certificate thereof, together with a copy of the order.

§ 6. If the defendant, in the judgment so ordered to be stayed, shall be in custody, it shall be the duty of the sheriff, if the order was made by the court rendering the judgment, or upon being served with the clerk's certificate and a copy of the order, to keep the defendant in his custody, without executing the sentence which may have been passed, to abide such judgment as may be rendered upon the appeal or writ of error.

§ 7. In all cases where an appeal or writ of error is prosecuted from a judgment in a criminal cause (except where the defendant is under sentence of death or imprisonment for life) any court or officer authorized to order a stay of proceedings under the preceding provisions, may allow a writ of *habeas corpus* to bring up the defendant, and may thereupon let him to bail, upon a recognizance, with sufficient securities, to be approved by such court or judge.

§ 8. The recognizance shall be conditioned, that the defendant shall appear in the supreme court, at the next term thereof to be holden for the district, to receive judgment on the appeal or writ of error and in the court in which the trial or the indictment shall have been had, at such time and place as the supreme court shall direct, and that he will render himself in execution, and obey every order and judgment which shall be made on the premises.

§ 9. When any appeal shall be taken, or writ of error filed, which shall operate as a stay of proceedings, it shall be the duty of the clerk of the circuit court to wauke out a full transcript of the record in the cause, including the bill of excep-

tions, judgment and sentence, and certify and return the same to the office of the clerk of the supreme court, without delay.

§ 10. When the appeal or writ of error does not operate as a stay of proceedings, such transcript shall be made out, certified and returned, on the application of the appellant or plaintiff in error, as in civil cases.

§ 11. No assignment of errors, or joinder in error, shall be necessary upon any appeal or writ of error in a criminal cause, issued or taken pursuant to the foregoing provisions of this article, but the court shall proceed on the return thereto, without delay, and render judgment upon the record before them.

§ 12. If the supreme court shall affirm the judgment of the circuit court, it shall direct the sentence pronounced to be executed, and the same shall be executed accordingly. If the judgment be reversed, the supreme court shall direct a new trial, or that the defendant be absolutely discharged, according to the circumstances of the case.

§ 13. If a new trial be ordered by the supreme court, as above provided, the same shall be had in the court in which the indictment was first tried; and if the defendant shall have been let to bail, or be at large, an order shall be made that he appear in the circuit court at the time and place of holding such court.

§ 14. If the defendant shall have been let to bail, after the appeal or writ of error, as herein provided, and shall fail to appear and receive judgment on such appeal or writ of error, or at any new trial that may have been ordered, the supreme court, or the court in which such new trial shall be directed, or any judge of either court, [shall] cause such defendant to be arrested, upon process to be issued for that purpose.

§ 15. The circuit court, to which any criminal cause shall be remanded for a new trial, shall proceed therein in the same manner as if such cause had not been removed into the supreme court.

ARTICLE IX.

Miscellaneous provisions, respecting criminal proceedings.

- Sec. 1. Search warrants, by whom and when to issue.
- 2, & 3. To whom to be directed; its contents.
4. To be executed by a public officer only.
5. How prisoners, vagrants, &c., may be searched for property.
- 6, to 9. Provisions for restoring property stolen to the owner.
10. When to be sold, and proceeds, after paying costs. &c., to be paid into county treasury.
11. If the thing stolen be a living animal or perishable, may be sold; proceeds, how applied.
12. Duty of officer in making sales under the last section.
13. Warrants in criminal cases, how issued.
14. Recognizance in criminal proceedings, how taken.
- 15, & 16. Carrying prisoners through another county, &c.
17. Duty of jailor in every county through which such prisoner may pass.
18. Warrant to issue by the governor to messenger to receive fugitives, &c., surrendered by the governor of another state.
19. Expenses accruing under the last section, how paid.
20. Governor may offer a reward for person charged or convicted of a felony; when.
21. Person apprehending such fugitive, his claim how audited, paid, &c.

- Sec. 22. Conditions and restrictions may be imposed by the governor in granting reprieves and pardons.
 23, 24, & 25. Limitation of prosecutions in criminal cases.
 26. Extent of, and construction of the two preceding sections.
 27. Construction and operation of limitation, where indictment has been quashed, set aside, or reversed.

§ 1. Upon complaint being made on oath, to any officer authorized to issue process for the apprehension of offenders, that any personal property has been stolen or embezzled, and that the complainant suspects that such property is concealed in any particular house, or place, if such magistrate shall be satisfied that there is reasonable ground for such suspicion, he shall issue a warrant to search for such property.

§ 2. Such warrant shall be directed to the sheriff of the county, or any constable of the township, and shall command him to search the place where such property is suspected to be concealed, in the day-time (which place shall be designated, and the property shall be particularly described in such warrant) and to bring such property before the magistrate issuing the warrant.

§ 3. If there be positive proof that any property stolen or embezzled is concealed in any particular house or place, the warrant may order the searching such house or place, in the night-time.

§ 4. Every such warrant shall be executed by a public officer, and not by any other person.

§ 5. Any magistrate who shall commit any person, charged with any offence, to jail, or by whom any vagrant or disorderly person shall be committed, may cause such person to be searched for the purpose of discovering any money or property he may have, and if any be found, the same may be taken and applied to the support of such person while in confinement.

§ 6. When property alleged to have been stolen, shall come into the custody of any sheriff, constable, or any person authorized to perform the duties of such officer, he shall hold the same subject to the order of the officer herein-after authorized to direct the disposition thereof.

§ 7. Upon receiving satisfactory proof of the title of any owner of such property, the magistrate, who shall take the examination of the person accused of stealing such property, may order the same to be delivered to such owner, on his paying the reasonable and necessary expenses incurred in the preservation of such property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property.

§ 8. If stolen property come into the custody of a justice of the peace, or other magistrate, upon satisfactory proof of the title of any owner thereof, it shall be delivered to him, on the payment of the necessary expenses incurred in the preservation thereof, to be certified by such magistrate.

§ 9. If the property stolen shall not have been delivered to the owner thereof, the court, before which a conviction shall be had for the stealing such property, may, on proof of the ownership of any person, order the same to be restored to him, on payment of the expenses incurred in the preservation thereof.

§ 10. If stolen property shall not be claimed by the owner, within six months from the time any person shall have been convicted of stealing the same, the court, or magistrate, authorized by the preceding provisions to order a restoration, may order the same to be sold, and the proceeds of the sale, after payment of the expenses of the preservation and sale of the property, shall be paid into the county treasury for the use of the county.

§ 11. If the thing stolen be a living animal, or property of a perishable nature, the court, or magistrate, authorized to order a restoration, may order a sale thereof, and the proceeds shall be applied in the same manner as herein-before directed in respect to such stolen property.

§ 12. In all cases of sale, as specified in the last section, a particular description of the property shall be made out in writing, and filed with the court or the officer making the order of sale, so that the owner may identify the same, if he shall claim the proceeds within the time before limited for making his claim.

§ 13. Warrants authorized by law to be issued in any criminal case, may be under the hand of the magistrate issuing the same, and shall be as valid and effectual, in all respects, as if sealed.

§ 14. All recognizances required or authorized to be taken in any criminal proceeding, in open court, by any court of record, shall be entered in the minutes of such court, and the substance thereof shall be read to the person recognized; all other recognizances in any criminal matter or proceeding, or in any proceeding of a similar nature, shall be in writing, and shall be subscribed by the parties to be bound thereby.

§ 15. Every officer, or other person, who shall have arrested, or have in his custody, under the authority of the laws of this state, any prisoner who is to be conveyed from one county to another, he may carry such prisoner through such parts of any county as shall be in the ordinary route of travel, from the place where such prisoner shall have been arrested, to the place where he is to be conveyed and delivered, under the process or authority by which such prisoner shall have been arrested, or is detained.

§ 16. The officer or person having such prisoner in charge, shall not be liable to arrest, on civil process, while on his route; and he shall have the like power to require any person to aid in securing such prisoner and re-taking him, if he escape, as sheriff or other officers have in their own county, and a refusal or neglect to render such aid shall be an offence punishable in the same manner as for disobedience to a summons to assist in the execution of process.

§ 17. The jailer of every county, through which such prisoner may be taken, is required to receive and safely keep such prisoner in the jail of which he has charge, when thereto requested by the officer or person having lawful charge of such prisoner, and to re-deliver him on demand of such officer or person.

§ 18. Whenever the governor of this state shall demand a fugitive from justice, from the executive of another state or territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the state, to some messenger, commanding him to receive such fugitive and convey him

to the sheriff of the county in which the offence was committed, or is by law cognizable.

§ 19. The expenses which may accrue, under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed and paid out of the state treasury, as other demands against the state.

§ 20. If any person charged with, or convicted of, a felony, shall break prison, escape, or flee from justice, and abscond, or secrete himself, the governor of this state, may, if he deem it expedient, offer any reward, not exceeding three hundred dollars, for the apprehension and delivery of such person, to the custody of such sheriff, or other officer, as he may direct.

§ 21. When any person shall apprehend and deliver such fugitive to the proper sheriff or officer, he shall take his certificate of such delivery, and the governor, on the production of such certificate, shall certify the amount of the claim to the auditor of public accounts, who shall draw on the treasury for the same.

§ 22. In all cases in which the governor is authorized, by the constitution, to grant pardons, he may grant the same with such conditions, and under such restrictions, as he may think proper.

§ 23. Any person may be prosecuted, tried and punished, for any offence punishable with death, or by imprisonment in the penitentiary during life, at any time after the offence shall be committed.

§ 24. No person shall be prosecuted, tried or punished, for any felony, (other than as specified in the last section) unless an indictment for such offence be found within three years after the commission of the offence.

§ 25. No person shall be prosecuted, tried or punished, for any offence (other than felony) or for any fine or forfeiture, unless the indictment be found, or a prosecution instituted, within one year after the commission of the offence, or incurring the fine or forfeiture.

§ 26. Nothing contained in the two preceding sections shall avail any person who shall flee from justice; and in all cases, the time during which any defendant shall not have been an inhabitant of, or usually resident within, this state, shall not constitute any part of the limitation prescribed in the preceding sections.

§ 27. Where any indictment or prosecution shall be quashed, set aside or reversed, the time during which the same was pending, shall not be computed as part of the time of the limitation prescribed for the offence.

ARTICLE X.

Of the custody and management of the estates of convicts.

Sec. 1. Convicts imprisoned for life, estate, how administered.

2, & 3. Imprisoned for less than life, trustee may be appointed; proceeding.

4. Trustee to take oath and give bond for the discharge of his duties; its contents.

5. Trustee may be removed and another appointed; when.

6. Upon taking oath and filing bond, property of convict vested in trustee, in trust, &c.

7. Power of trustee to sue and defend suits, &c.

8. Court appointing trustee, may order sale, lease, or mortgage of real estate, and hiring of slaves; when.

9. Power and duty of trustee to settle accounts between convict and his creditors; proceedings.

- Sec. 10.** What further duties may be performed by trustee, under the direction of the court.
11. Trustee, on his appointment, to give notice; its requisitions.
 12. Notice, when and how to be published.
 13. Power of trustee in certain cases, notwithstanding such notice.
 14. Controversy between trustee and creditor or debtor of such estate, may be referred; how.
 15. Court to appoint referees in certain cases; their powers, duties, compensation, &c.
 16. Trustee to convert property into money; to keep regular accounts, &c., subject to inspection.
 17. Trustee to make annual settlements; dividends declared by court to creditors.
 18. Creditors having claims not due, to receive their proportion by rebating interest, &c.
 19. Mutual credits may be set off in certain cases.
 20. Suits pending for demands, portions to be reserved, to abide event of such suit.
 21. When dividends are ordered, trustee to give notice; how dividends to be paid.
 22. Portions of estate may be set apart for maintenance of family, education of children, &c.; when
 23. When convict shall be lawfully discharged, proceedings of trustee to deliver up estate, &c.
 24. Duty of trustee if convict shall die.
 25. Transfers and settlements required by the two preceding sections, how enforced.
 26. Compensation of trustee.

§ 1. Whenever any person shall be imprisoned in the penitentiary, under a sentence of imprisonment for life, his estate, property and effects, shall be administered and disposed of in all respects as if he were naturally dead.

§ 2. Whenever any person shall be imprisoned in the penitentiary for a term less than his natural life, a trustee, to take charge of, and manage his estate, may be appointed by the circuit court of chancery of the county in which such convict last resided. or if he have no known place of abode, then by the court of the county in which the conviction was had, on the application of any of his relatives, or any relative of his wife, or any creditor.

§ 3. Upon producing a copy of the sentence, duly certified, and satisfactory evidence that such convict is actually imprisoned under such sentence, the court to which the application shall be made, may immediately appoint a fit person to be trustee of the estate of such convict.

§ 4. Every such trustee, before entering upon the duties of his office, shall take an oath, faithfully to discharge the duties thereof, and give bond in such sum, and with such security, as the court shall approve, conditioned, that he will manage and administer the estate and effects, committed to his charge, to the best advantage, according to law, and will faithfully do and perform all such other acts, matters and things, touching his trust, as may be prescribed by law, or enjoined on him by the order, sentence or decree of any court of competent jurisdiction.

§ 5. The court appointing such trustee, shall have a superintending control over him, and may, at any time, compel him to account, may remove him from his trust, for misconduct, and may appoint another person in his stead, whenever it may become necessary.

§ 6. Upon taking the oath, and filing the bond, required by this act, all the estate, property, rights in action, and effects of such imprisoned convict, shall be vested in such trustee, in trust for the benefit of creditors and others interested therein.

§ 7. Such trustee may sue for and recover, in his own name, any of the estate, property, or effects belonging to, and all debts, and sums of money due, or to become due, to such imprisoned convict, and may prosecute and defend all actions commenced by, or against, such convict.

§ 8. The circuit court of chancery, appointing any such trustee, may, at any time, order the sale, lease or mortgage, of real estate, the hiring or sale of slaves, whenever the same shall be necessary for the payment of debts, or the support and maintenance of the family, or the education of the children of such convict, and in every such order shall direct the manner and terms of sale, or other disposition to be made.

§ 9. The trustee shall settle matters and accounts between such imprisoned convict and his creditors, and may examine witnesses touching such matters and accounts, upon oath, to be administered by him; he may, under the direction of the court, compound with any person indebted to such imprisoned convict, and thereupon discharge all demands against such person.

§ 10. Such trustee may, also, under the direction of the court, redeem all mortgages and conditional contracts, and all pledges of personal property, and satisfy judgments and decrees, which may be an incumbrance on any property ordered to be sold, or he may sell such property, subject to such mortgages, pledges or incumbrances, as the court shall direct.

§ 11. The trustee, immediately upon his appointment, shall give notice thereof, and therein shall require,

First, All persons indebted to such imprisoned debtor, by a day, and at a place therein to be specified, to render an account of all debts and sums of monies by them owing, respectively, to such trustee, and to pay the same.

Second, All persons having in their possession any property and effects of such convict, to deliver the same to the trustee so appointed.

Third, All creditors of such convict, to deliver their respective accounts and demands to the trustee, by a day, to be therein specified, not less than two months from the first publication of such notice.

§ 12. Such notice shall be published, for at least three weeks, in some newspaper printed in, or nearest to, the county in which the appointment was made.

§ 13. Notwithstanding such notice, the trustee may sue for, and recover any property and effects of the convict, and any debts due to him, at any time before the day appointed for the delivery or payment thereof.

§ 14. If any controversy shall arise between the trustee and any other person, in the settlement of any demands against such convict, or of debts due to his estate, the same may be referred to three disinterested persons, who may be agreed upon by a writing to that effect, signed by the trustee and the other party.

§ 15. If such referees be not selected by agreement, they may be appointed by the court, on the application of either party, due notice of the application being given to the other; and such referees shall have the same powers, and be subject to the like duties and obligations, and shall receive the same compensation, as referees appointed by the circuit courts, in personal actions pending therein.

§ 16. The trustee shall, as speedily as possible, convert into money so much of the estate, real and personal, as shall be necessary for the purposes of the trust; he shall keep regular accounts of all money received, and other matters touching his

trust, to which creditors, and others interested, shall be at liberty at reasonable times to have recourse.

§ 17. The trustee shall annually, at such term as the court shall direct, make a full report of his proceedings to the court, and a full settlement of his accounts, and the court shall thereupon declare the dividends to be made among the creditors.

§ 18. Every person to whom such convict shall be indebted for a valuable consideration, for a sum of money not due, but payable afterwards, shall receive his proportion with other creditors, after deducting a rebate of legal interest upon the sum to be distributed, for the time unexpired of such credit.

§ 19. Where there are mutual credits between the convict and any other person, they may be set off against each other, but no set-off shall be allowed of any claim or debt which shall have been purchased by, or transferred to, the person claiming its allowance, after the conviction of the debtor.

§ 20. If at the time a dividend is made, a suit is pending to establish any demand, the proportion which would be allotted to such demand, if established, shall be reserved, with the necessary cost and expenses, to be applied according to the event of such suit.

§ 21. When any dividend shall be ordered by the court, the trustee shall immediately cause a notice thereof to be published, as before directed in relation to notices of their appointment, and shall make payments according to the order of the court.

§ 22. The court shall have power, from time to time, to make, and cause the trustee to execute, orders for the application of any portion of the proceeds of estates in their hands, for the support and maintenance of the family of such convict, and the education of his children, and to set apart, and reserve to the use of such family, any property, real or personal, when it may be done without prejudice to the rights of creditors.

§ 23. Whenever any such imprisoned convict shall be lawfully discharged from his imprisonment, the trustee, so appointed, shall deliver up to him all his estate, real and personal, and all money belonging to him remaining in his hands, after deducting a sufficient sum to satisfy expenses which may have been incurred in the execution of the trust, and his lawful commission.

§ 24. In case of the death of such convict, the trustee shall, in like manner, account with the personal representatives, and deliver to them the property and effects remaining.

§ 25. The transfers and settlements to be required to be made by either of the two preceding sections, may be enforced by the court in a summary manner, on the application of the party interested.

§ 26. The trustee shall be allowed, as a full compensation for his services, a commission at the rate of five per cent. on the whole sum which shall have come into his hands by virtue of his trust.

Approved, March 21st, 1835.

PRACTICE IN CHANCERY.

An act to regulate the practice in courts of chancery

- ART. I. Of the commencement of suits, the service and return of process.
 ART. II. Of the pleadings and exhibits, and proceedings thereon.
 ART. III. Of the issues, trial, and the incidents thereto.
 ART. IV. Of the commissioner, his duty, report and proceedings thereon.
 ART. V. Of the abatement of suits by death, marriage, or otherwise, and the revival thereof.
 ART. VI. Of the decree, and subsequent proceedings thereon.

ARTICLE I.

Of the commencement of suits, the service and return of process.

- SEC. 1. Jurisdiction of courts of chancery; how to proceed.
 2. Suits, in what county to be brought.
 3. In commencing suit, bill setting forth the complaint, to be filed in the clerk's office.
 4. Clerk to issue summons; to whom directed, when returnable, &c.
 5. Several defendants residing in different counties, summons, how issued.
 6. Summons accompanied by separate copy of the bill, how executed.
 7. Part, or all of defendants non-residents, order notifying them of commencement of suit, when, and how made.
 8. Part of defendants residents, process how issued against them.
 9. When sheriff returns, that defendant cannot be found, court to make an order as in case of non-residents.
 10. Defendants names unknown, how made parties.
 11. Order against non-resident, absent, or unknown defendants, when, and how published.
 12. Several defendants, some summoned or notified, others not, how complainant may proceed.
 13. Copy of bill, with notice of suit, may be served on a known defendant without this state; when.
 14. Such service may be made by whom; how proved to be effectual, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. In all cases where adequate relief cannot be had in the ordinary course of proceeding at law, the several courts of this state, having chancery jurisdiction, shall have power to proceed therein according to the rules, usage and practice of courts of equity, and to enforce their decrees by execution, or in any other manner proper for a court of chancery.

§ 2. Suits in equity concerning real estate, or whereby the same may be affected, shall be brought in the county within which such real estate, or a greater part thereof, is situate; and in other cases, in the county within which the defendants, or a majority of them, if inhabitants of the state, reside; or if all the defendants are not residents, then in any county.

§ 3. Every person commencing a suit in equity, shall file, in the office of the clerk of the proper court, a bill, setting forth the nature of his complaint.

§ 4. The clerk shall thereupon issue a summons returnable to the next term, and directed to the sheriff of the county in which the defendants reside, if resident in this state, requiring him to summon the defendants to appear and answer to the bill on the return day thereof.

§ 5. When there are several defendants residing in different counties, a separate summons shall be issued to each county, including all the defendants residing therein.

§ 6. Every summons shall be accompanied by a separate copy of the bill, and the service shall be by reading the bill and writ to the defendant, or delivering him a copy thereof, or by leaving such copy at his usual place of abode, with some white person of his family above the age of fifteen years. The copy accompanying the summons, shall be delivered to, or left at the place of abode of, the defendant, who shall be first summoned.

§ 7. If any complainant, or any person for him, shall file with his bill an affidavit, stating that part or all of the defendants are non-residents of the state, the court, or clerk in vacation, shall make an order directed to the non-resident defendants, notifying them of the commencement of the suit, and stating fully the substance of the allegations and prayer of the bill, and requiring them to appear on a day to be therein named, allowing sufficient time for publication, and answer the bill, or that the bill will be taken as confessed.

§ 8. If in such case, part of the defendants are residents of the state, process shall be issued against them as in other cases.

§ 9. When a summons shall be issued against any defendant, and the sheriff to whom it is directed shall make return that the defendant cannot be found, the court being first satisfied that process cannot be served, shall make an order as is required in the preceding section in case of non-resident defendants.

§ 10. If any complainant shall allege in his bill, that there are, or that he verily believes there are, persons interested in the subject matter of the bill, whose names he cannot insert therein, because they are unknown to him, and shall describe the interest of such persons and how derived, so far as his knowledge extends, and shall verify such allegations by affidavit to his bill annexed, the court or the judge, or clerk thereof in vacation, shall make an order as in case of residents, reciting, moreover, all allegations in relation to the interest of such unknown parties.

§ 11. Every order against non-residents, absent or unknown defendants, shall be published in some newspaper printed in this state, for eight weeks successively, the last insertion to be at least four weeks before the commencement of the term at which the defendants are required to appear.

§ 12. When there are several defendants, some of whom do not appear, and are neither summoned nor notified, the complainant may proceed against those, if any, who do appear, or are summoned or notified, and dismiss his bill as to the others; or he may continue the cause and proceed to bring in the other defendants, by process or publication, as the case may require.

§ 13. The complainant may cause a copy of the bill, with a notice of the suit, to be delivered to any known defendant residing or being without this state, at any place within the United States or their territories, two months before the commencement of the term at which such defendant is required to appear.

§ 14. Such service may be made by any free white person above the age of twenty-one years, who is a competent witness in the cause, and being proved by the affidavit or deposition of such person, shall be as effectual as the service of a copy of the bill and summons within this state, under the provisions of this act.

ARTICLE II.

Of the pleadings and exhibits, and proceedings thereon.

- SEC. 1. Exception, plea, demurrer, or answer, when to be filed; on failure, bill to be taken as confessed.
2. No exceptions or plea, after interlocutory decree, decree may be set aside, when, and answer or demurrer filed.
3. Exceptions, when to be argued, and proceedings thereon.
4. Several matters may be plead to the same bill; when, how, &c.
5. Costs, by whom to be paid, if plea be found for defendant, or plea found against defendant; answer to be filed, or bill taken for confessed.
6. Demurrers, when to be argued, and proceedings thereon.
7. Answers, how made, and to be on oath.
8. Defendant may exhibit interrogatories to complainant, which shall be answered, &c.; proceedings thereon.
9. Affidavits required to verify bill or answer, how, and by whom taken and certified.
10. Exceptions to answer, and interrogatories of defendant, when to be filed, and how disposed of.
11. Answer adjudged insufficient, further answer to be filed; proceedings.
12. If such answer be adjudged insufficient, defendant to pay double costs, and file answer instanter.
13. Third answer filed, adjudged insufficient, no further answer allowed; bill taken as confessed, &c.
14. Bill not to be dismissed after cross bill filed.
15. Complainant compelled to file answer to interrogatories; when.
16. Pleas and demurrers, when to be disposed of.
17. Replications to be general; when to be filed.
18. When replication is filed, cause to be at issue; stand for hearing at next term.
19. Replication not filed, cause set for hearing on bill and answer; effect of answer as evidence.
20. Answer not conclusive, if replication filed.
21. If either party rely on any record, deed, or other writing, substance to be stated, &c.; proceeding in such case.
22. Where deed or writing relied on cannot be produced, how to proceed.
23. Power of court to make order to compel production of books, papers, &c., material in a cause.
24. Either party failing to comply with such order, proceedings.
25. Pleadings to be signed, and time of filing endorsed.
26. Time of filing pleas, answers, &c., may be extended; amendments to bills, &c., may be made.
27. Exhibits to be marked, numbered, and filed.
28. Original deeds, &c., filed as exhibits, to remain on file; how long, and how withdrawn.

§ 1. Every defendant, who shall be summoned or notified according to the provisions of this act, shall file his exceptions, plead, demur or answer to the bill, within the first six days of the term at which he is required to appear, if the term shall so long continue, and if not, then before the end of the term, unless further time be given by the court; and if he fail so to do, the bill may be taken as confessed, and an interlocutory decree entered accordingly.

§ 2. No exceptions or plea shall be filed after an interlocutory decree, but if the defendant appear within the first six days of the next term after such decree is entered, and shew good cause for not before appearing, the decree may be set aside, and the defendant allowed to file his answer or demur to the bill.

§ 3. Exceptions to a bill, when filed, shall be argued and determined without delay; if any are allowed, the complainant shall pay costs, and the defendant shall plead, demur or answer the residue of the bill; but if all are overruled, the defendant shall pay costs, and plead, answer or demur to the whole bill immediately.

§ 4. Defendants may plead as many several matters to a bill, or any part thereof, as they shall think proper, so that they do not plead and demur, or plead and answer to the same part of a bill, except, that where by the rules and practice in

chancery, an answer is necessary to support a plea, such answer may be filed with the plea.

§ 5. If a plea be found for the defendant, or such plea be allowed, the complainant shall pay costs; but if the matter of a plea be found against the defendant, or the plea be overruled, he shall pay costs, and no other plea shall be filed, and he shall answer the bill, or, in default, the part unanswered shall be taken as confessed.

§ 6. Demurrers shall be considered and determined without delay, and if sustained in whole or in part, the complainant shall pay costs; if overruled, the defendant shall pay costs, and shall file his answer instanter, or, in default thereof, so much of the bill as remains unanswered shall be taken as confessed.

§ 7. Every defendant shall answer fully all allegations and interrogatories of the complainant, except such as are not required to be answered by reason of exceptions, plea or demurrer thereto allowed, and the answer shall be verified by oath or affirmation.

§ 8. Any defendant, after filing his answer, may exhibit interrogatories to the complainant, which shall be answered by him specially, on oath or affirmation, unless excepted to, and the exceptions allowed; and the complainant's answer shall be evidence in the cause, in the same manner as the defendant's answer. In default of answering such interrogatories, the bill may be dismissed.

§ 9. Affidavits, when required to verify a bill or answer, may be taken before, and certified by the clerk of, the court in which the suit is pending, or some judge or justice of the peace, the official character of such officer (if not of this state) being attested by the seal of the state, territory, kingdom or empire, of which he is an officer, or the seal of some court of record within the same.

§ 10. Exceptions to the answer and interrogatories of the defendant may be filed within four days after the filing the answer or the interrogatories, and not thereafter, and when filed shall be considered and determined, without delay; if overruled, the complainant, if allowed, the defendant, shall pay the costs.

§ 11. When an answer shall be adjudged insufficient, the defendant shall file a further answer, within such time as the court shall direct, and in default thereof the bill shall be taken as confessed.

§ 12. If such answer be filed and adjudged insufficient, the defendant shall pay double costs, and answer fully instanter, or, in default thereof, the bill shall be taken as confessed.

§ 13. If a third answer be filed and adjudged insufficient, the defendant shall pay treble costs, and no further answer shall be filed, but the bill shall be taken as confessed.

§ 14. No complainant shall be allowed to dismiss his bill, after a cross bill, without the consent of the defendant.

§ 15. The complainant shall not be compelled to file his answer to any cross bill, or interrogatories exhibited by the defendant, until the defendant shall have filed a sufficient answer to the complainant's bill.

§ 16. All pleas and demurrers shall be disposed of before proceeding on the defendant's answer.

§ 17. Replications shall be general, with the like advantages to all parties as if special, and shall be filed within four days after answer, or at any time before the cause is set for hearing on bill and answer.

§ 18. When a replication is filed, the cause shall be deemed at issue, and stand for hearing at the next term.

§ 19. If the replication be not filed within four days after answer, the cause may be set for hearing on bill and answer, in which case the answer shall be taken as true, and no evidence shall be received, unless it be matter of record referred to in the answer.

§ 20. When a complainant shall seek a discovery respecting the matters charged in the bill, the disclosure made in the answer shall not be conclusive, but, if replication be filed, may be contradicted or disproved as other testimony, according to the practice of courts of equity.

§ 21. If either party shall rely on any record, deed or other writing, the substance thereof shall be stated in his bill, answer or plea, in the same manner as is required in pleading at law, and he shall file with the bill, answer or plea, as exhibits, an authentic copy of such record, and the original deed and writing so set forth, if in his power.

§ 22. If either party cannot produce a deed or writing relied on by him, he shall so state in his bill, answer or plea, together with the reasons why he cannot produce the same, and if such reasons be sufficient, he may file the best evidence in his power, of the contents of such deed or writing.

§ 23. The court shall have power, upon sufficient cause shewn by affidavit, due notice of the application being given, to require the parties, or either of them, to produce books, deeds, or writings in their power, which are alleged to contain evidence, pertinent to the matter in controversy.

§ 24. If either party shall fail to comply with such order, and shall not satisfy the court that it is not in his power to produce the books, deeds or writing, the court may take the allegations in relation to the books, deeds and writing not produced, as confessed, or may proceed against the party in default by attachment.

§ 25. All bills, petitions, answers, exceptions, pleas, demurrers, replications and other pleadings, shall be signed by the party filing them, or his solicitor, and the clerk shall endorse thereon the date of the filing, and, if in term, note the same on the minutes.

§ 26. The courts may extend the time for answering, replying, pleading or demurring, upon good cause shewn, and may allow parties to amend their bills, petitions, answers, pleas and replications, on the payment of costs, and on such other terms as the court may think proper, so that the other party be not surprized or unreasonably delayed thereby.

§ 27. The parties shall carefully mark and number all papers and documents, relied on in any cause, and file the same as exhibits, and such papers and documents

shall not be deemed or made a part of the pleadings or record in the cause, but may be used as evidence at the hearing, if proved or admitted.

§ 23. Original deeds and other writings, relied on by either party and filed as exhibits, shall remain on file for the inspection of the other party, until the cause is at issue or set for hearing, when they may be withdrawn, copies being substituted by the party who filed the same.

ARTICLE III.

Of the issues, trial, and the incidents thereto.

- Sec. 1. Before hearing of a cause at issue, each party to set down, distinctly, allegations made, &c.; proceedings.
2. Cause when to be tried; testimony to be confined to the issues made under the preceding section.
3. Docket of causes to be made out and kept by the clerk.
4. List of causes, time for trial, &c., to be set up in clerk's office.
5. All issues and matters of fact, how tried; when, and how disposed of.
6. New trial may be ordered; when.
7. Testimony, how taken.
8. Rules of evidence.
9. Bills of exceptions allowed, &c.

§ 1. Within such time as the court shall by rule require, before the hearing of a cause at issue, each party shall set down, distinctly, the allegations made by him and denied by the other party, or which, by the course of proceeding in chancery, he is required to support by his testimony, and issues shall be made thereon accordingly.

§ 2. All causes shall be tried, heard and determined, at the term next after they are set for hearing, or put at issue by replication, unless good cause be shewn for a continuance, and at the hearing, the testimony shall be confined to the issues made up, as required by the preceding section.

§ 3. The clerk of each court of chancery shall, before the commencement of each term, make out a docket of all causes pending, in the order in which they stand in the course of proceeding, noting, briefly, the previous steps taken, each cause and the state of the pleadings, and shall, if necessary, set the causes for trial, hearing or argument, on several days, assigning a due proportion to each day.

§ 4. The clerk shall also make out a list of all causes pending at each term, specifying the day on which they are set for trial, hearing or argument, and shall keep such list set up, conspicuously, in his office, for thirty days before, and during the term, for the information of parties and their solicitors, and shall, from time to time, issue subpoenas for witnesses, and commissions to take depositions, when required.

§ 5. The trial of all issues and matters of fact shall be by jury, or if neither party require a jury, by the court, and the allegations put in issue shall be disposed of by a general or special verdict, before a final decree shall be made, except such as shall be expressly decided by the court to be immaterial or irrelevant to the merits of the cause.

§ 6. The court may award a new trial of any issue, upon good cause shewn, but not more than one new trial of the same issue shall be granted to any one party.

§ 7. The parties, respectively, may examine witnesses in open court, or take

depositions, where they are now permitted by law, or the court may direct the whole of the testimony to be taken in writing, in which case the parties shall proceed as required by law in taking depositions.

§ 8. The rules of evidence shall be the same in chancery as at law.

§ 9. Exceptions may be taken to the opinions of the court, during the progress of any cause or trial of an issue in chancery, and bills of exception shall be allowed, signed, sealed, and made a part of the record, in the same manner, and with the like effect, as at law.

ARTICLE IV.

Of the commissioner, his duty, report and proceedings thereon.

Sec. 1. Commissioner to be appointed; his duties.

2. Special commissioner may be appointed; when.

3. Commissioner to take oath before entering on his duties.

4. Proceedings before commissioner, how conducted.

5. Power of commissioner to adjourn sittings, summons and compel attendance of witnesses, and administer oaths.

6. Depositions may be read before commissioner.

7. Testimony taken, and exceptions to testimony to be reported.

8. Report, when and how made.

9. Exceptions to report, when to be filed; how proceeded on.

10, & 11. Notices required to be given by commissioner, and subpoenas, how and by whom served.

§ 1. Each court of chancery may appoint a commissioner, whose duty it shall be to audit and adjust all accounts referred to him, and to take testimony when there-to required, and make report thereon according to the order of the court.

§ 2. When the commissioner is of kin to either party, or is interested in any cause, or where it may be necessary or proper, a special commissioner may be appointed.

§ 3. Every commissioner, before entering upon the duties of his appointment, shall take an oath, that he will faithfully and impartially perform his duties as commissioner.

§ 4. When any matter shall be referred to a commissioner, or he is required to take testimony in a cause, he shall appoint a time and place for proceeding therein, and give notice thereof, in writing, to both parties, or their solicitors, and if either party, being notified, shall fail to appear, he shall proceed *ex parte*.

§ 5. The commissioner may adjourn his sittings from time to time, issue subpoenas for witnesses, and attachments to compel the attendance of such as, being summoned, fail or refuse to appear. He shall have power to administer oaths, examine witnesses, and commit such as refuse to testify.

§ 6. Depositions regularly taken in the cause, may be read in evidence before the commissioner. When accounts are referred to him, which, together with the other testimony, being heard, he shall state the account truly, according to his opinion, and, if the parties required it, also according to the views of each of them.

§ 7. All testimony taken before a commissioner, shall be reduced to writing, and if either party shall except to the competency of a witness, or the admission or ex-

clusion of evidence, the commissioner, if required, shall state the particulars of the exception in his report.

§ 8. The commissioner shall in all cases report as speedily as possible, reciting the order of the court, and shewing the notice to the parties, the time and place of stating the account or taking the testimony, and all other proceedings had, and return the same, together with the testimony taken, to the court.

§ 9. All exceptions to the report of the commissioner shall be in writing, and filed within four days, in term, after the report is filed, and shall be argued without delay. If exceptions are allowed, the matter may again be referred, with instructions, if necessary, but if the report is affirmed, the court shall proceed thereon accordingly.

§ 10. All notices required to be given by the commissioner, or others, in the progress of a cause, shall be served by reading the same, or delivering a copy to the person to be notified, and may be served by the sheriff, or other officer authorized to serve process, whose return shall be evidence of the facts therein stated.

§ 11. Such notices, and all subpoenas for witnesses in any cause, may also be served by any free white person, being a competent witness in the cause, and the affidavit of such person shall be received as evidence of the facts stated, relating to the service.

ARTICLE V.

Of the abatement of suits by death, marriage or otherwise, and the revival thereof.

- SEC. 1. Suits not to abate by death of complainant or defendant, but to proceed against surviving parties; when.
2. Not to abate by death of one or more complainants or defendants, but to proceed against survivor; when.
3. If all plaintiff's or defendants die, suit may be revived by or against legal representatives.
- 4 to 9. Proceedings to bring in representatives of deceased defendant.
10. Representatives of deceased plaintiff, how made a party; may, if necessary, amend the bill.
11. Amended bill to be answered; cause to proceed as in other cases.
12. Representatives not appearing, how surviving complainant may proceed.
13. If there be no surviving complainant, and the representatives do not appear, how to proceed.
14. When court may order suit to be revived in the name of such representatives, or dismiss the bill as to them.
15. When court may order suit to stand revived against representatives of deceased defendant.
16. How surviving defendant may proceed against such representatives; proceedings.
17. In what cases and when suit to abate on account of representatives of deceased plaintiff or defendant not made parties.
18. Husband to be made plaintiff or defendant with his wife to a suit, on his application; how and when.
19. Husband to be made party with his wife on the application of any other parties to the suit; how and when, &c.
20. Suit against public officer, trustee, &c., not to abate, but may be revived against his successor; how, when, &c.
21. Construction of this act in relation to bringing in representatives of deceased parties.
22. Representatives and others not bound by decree, where they are not parties.

§ 1. When the cause of action shall survive, no suit in chancery shall abate by the death of one or more complainants or defendants, but such death being suggested and shewn to the satisfaction of the court, the suit shall proceed in favor of, or against the surviving parties.

§ 2. When one or more of the complainants or defendants die, and the cause of action shall not survive, the suit shall abate only as to the person or persons so dying, and the surviving parties may proceed without reviving the suit.

§ 3. If all the plaintiffs or defendants in a suit in chancery die, the suit shall not thereby be abated, but may be revived in the name of the legal representatives of the deceased party.

§ 4. No bill of revivor shall be necessary to revive a suit against the representatives of a deceased defendant, but the death being suggested as herein-before provided, the court, or clerk in vacation, shall, on the petition of the complainant, issue a summons in the nature of a *scire facias*, against all persons residing in the state so to be made parties, and also make the order of publication as to all such as are non-residents, or whose names are unknown, in the same manner as is provided in the case of original defendants.

§ 5. The summons shall be served and returned, and the order published, in the same manner and with the like effect, to all intents and purposes, as is required in cases of summoning or notifying original defendants.

§ 6. If any person so summoned or notified shall not, within such time after service or notice of publication as is allowed in the case of original defendants, appear and put in an answer or disclaimer, the court may cause his appearance to be entered.

§ 7. In such cases the answer of the deceased party shall be deemed the answer of such representatives, and if there be no answer, proceeding may be had in all respects against such person as if he had been originally a defendant, and the court may, in its discretion, order the bill to be taken as confessed, or compel such representatives to answer, by attachment or otherwise.

§ 8. If the deceased party shall have answered, and the surviving party shall deem it necessary to obtain a further answer from his representatives, the petition for a revival shall state the matters as to which such further answer is required, and a copy of such petition shall be annexed to the summons, or the substance stated in the order of publication against such representatives.

§ 9. In such case, if the representatives shall not appear and put in such further answer or disclaimer, the petition may be taken as confessed, or the court may compel an answer by attachment or otherwise.

§ 10. Where a complainant shall die, and the cause of action does not survive, his representatives, on affidavit of such death, and on motion in open court, may be made complainants in the suit, and be permitted, if necessary, to amend the bill.

§ 11. The defendants may be compelled to answer such amended bill, and the cause shall proceed to issue and hearing as in other cases.

§ 12. When the representatives shall not cause themselves to be made complainants, on or before the first day of the second term after the death is suggested, the surviving complainant may proceed to make them defendants, as in cases where the representatives of a deceased defendant are made parties.

§ 13. If there be no surviving complainant, or he shall neglect or refuse to proceed against the representatives of a deceased complainant as defendants, the court, upon the petition of the original defendant, may order such representatives to shew cause, at a certain day, to be named in the order, why the suit should not

stand revived in their names, or the bill be dismissed, as far as the interest of such representatives is concerned.

§ 14. If no such cause be then shewn, the court, upon proof of reasonable service, or publication of such order, may order the suit to be revived in the name of such representatives, or dismiss the bill, as to them, with costs or otherwise.

§ 15. If a defendant shall die, and the cause of action shall not survive, and the complainant shall neglect or refuse to procure an order for the revival of the suit, the court may order it to stand revived, upon the petition of the surviving defendant, against the representatives of the deceased party.

§ 16. In such cause, the surviving defendants may proceed against such representatives, in the same manner as a complainant, to compel them to appear, abide the answer of the deceased party, or answer, if an answer be required, or have the bill or petition taken as confessed against them, and the court may, in its discretion, stay the suit as against him until such proceedings shall have been had.

§ 17. In all cases where the representatives of a deceased complainant or defendant shall not be made parties, according to the provisions of this act, on or before the third term after the suggestion of the death, the suit shall abate as to such deceased party, and the interest of his representatives therein, and the cause shall proceed in favor of, and against the survivors; but if in such case, there be no surviving complainant or defendant, the suit shall be dismissed.

§ 18. If a female party to a suit marry at any time before a final decree, her husband may, on his application, be made a complainant or defendant with her, on the order of the court in which the suit is pending, or the judge thereof, to be granted on due proof of the marriage, and after notice to such female party, and the other parties to the suit.

§ 19. Such husband may also be made a party with his wife, on the application of any other parties to the suit by petition, upon proof of the marriage, and notice to such husband and wife, and the other parties to the suit; but in such case, the husband may contest all facts in the same manner as if he had originally been made a party.

§ 20. When any public officer, trustee, guardian, curator, executor or administrator, as such, shall be a party to any suit, and shall die, resign, or be removed from his office or trust, before a final decree, the suit shall not thereby abate, but his successor may, on his own application, or on the application of any other party to the suit, be made a party, by the order of the court, in the same manner as the representatives of a deceased party as herein-before provided.

§ 21. The provisions of this act in relation to the bringing in the representatives of a deceased party, shall be construed to apply to all persons who may have become interested in the cause of action by the death of a party.

§ 22. No such representatives of a deceased party, or other person interested in the cause of action, shall be bound by any order or decree, in any cause to which they do not become, and are not made, parties.

ARTICLE VI.

Of the decree and subsequent proceedings thereon.

- SEC. 1, § 2. In what cases, and when final decree may be set aside by bill of review.
3. When, and in what time, such final decree shall stand absolute, whether notice be given or not.
 4. What shall be shown by the bill of review, and on what conditions such decree shall be set aside.
 5. If the answer be not filed, as in last section, decree made absolute.
 6. Sale or conveyance on foreclosure of mortgage not affected by setting aside decree; orders of the court in such case.
 7. Decree passing title to real estate, or personal property, may be made, and writ of possession awarded; when.
 8. Decrees for conveyance, release, &c., their effect.
 9. Courts, how to proceed to enforce obedience to orders or decrees; may punish offenders as for contempt.
 10. In what cases, and how inquiry of damages and decree thereon to be made, in lieu of performance of decree.
 11. Appeals allowed to the supreme court, how applied for.
 12. When, and within what time, supreme court or judge thereof, may grant an appeal.
 13. When, and in what cases, appeals to operate as a supersedeas.
 14. Recognizance, how and by whom entered into; its condition.

§ 1. When any interlocutory decree, taking a bill as confessed, shall be made, and a final decree entered thereon against any defendant who shall not have been summoned as required by this act, and who shall not have appeared to the suit, or have been made a party as the representative of one who shall have been summoned or appeared, such final decree may be set aside, if the defendant shall, within the time hereinafter limited, appear, and by bill of review, verified by affidavit, shew good cause for setting aside such decree as against equity.

§ 2. If the complainant shall, at any time after such final decree, serve the defendant, within any of the United States or the territories thereof, with notice of the suit and the decree thereon, and such defendant shall not, within one year after such service, bring his bill of review, the court, on proof of the service of such notice, shall make an order that the decree stand absolute.

§ 3. If such bill of review be not filed within five years after such final decree is rendered, the same shall stand absolute, whether notice thereof be given or not.

§ 4. No such decree shall be set aside, unless the bill of review either show, that there is no equity in the original bill, or contain such denials or allegations as amount to a defence to the merits, and then only on condition that the defendant answer the bill within a reasonable time, to be ordered by the court.

§ 5. If the answer is filed within the time so limited, the cause shall proceed as in other cases, if not, the decree shall be made absolute.

§ 6. No sale or conveyance upon a bill for the foreclosure or satisfaction of a mortgage, regularly made by a court of chancery, shall be affected or prejudiced by the setting aside any decree on the appearance of a defendant, as herein-before provided; but the court may, in such case, decree an account for all monies received by the complainant, by virtue of such decree, over and above the amount justly due him, with costs, if the equity of the cause require it.

§ 7. In all cases where the court may decree the conveyance of real estate, or the delivery of personal property, they may, by decree, pass the title of such property, without any act to be done on the part of the defendants, when in their

judgment it shall be proper; and may issue a writ of possession, if necessary, to put the party entitled into possession of such real or personal property, or may proceed by attachment or sequestration.

§ 8. Where an unconditional decree shall be made for a conveyance, release or acquittance, and the party required to execute the same shall not comply therewith, the decree shall be considered and taken to have the same operation and effect, and be as available, as if the conveyance, release or acquittance had been executed conformably to the decree.

§ 9. Courts of chancery may proceed by attachment against all persons who refuse obedience to any lawful order or decree, and may punish the offender by fine and imprisonment, as for a contempt, and, if necessary, proceed by sequestration for disobedience of any decree.

§ 10. When complete justice cannot otherwise be done, such courts may, on the petition of the party entitled to the benefit of a final decree, cause an enquiry to be made by a jury of the amount of damages which ought to be paid in lieu of the performance of the decree, and may render a decree for the damages so assessed, and award execution thereon.

§ 11. If any person shall deem himself aggrieved by any final decision, order or decreë of any circuit court of chancery, and such person pray an appeal to the supreme court, during the term at which the decision, order or decree is made, such appeal shall be granted by the circuit court.

§ 12. The supreme court, or any judge thereof, upon inspection of the record, may grant an appeal by special order for that purpose, at any time within two years after the making the final decision, order or decree in the cause.

13. The appeal, when the appellant is not an executor or administrator, guardian or curator, suing or sued as such, shall not operate as a stay of proceedings, unless a recognizance be entered into before the supreme or circuit court, or a judge or clerk thereof, and filed in the office of the clerk of the circuit court.

§ 14. Such recognizance shall be entered into by the appellant, or some responsible person for him, with one or more sufficient securities, to be approved by the court or judge granting the appeal, in a sum sufficient to secure the performance of the decree, and all costs and damages, if affirmed, conditioned that the appellant shall prosecute his appeal, and shall perform such decree as shall be made by the supreme court therein, and pay all damages and costs which may be adjudged against him.

Approved, March 7th, 1835.

PRACTICE IN THE SUPREME COURT.

An act to regulate the practice in the supreme court in appeals and writs of error in civil cases.

- SEC. 1. Writs of error are writs of right; when to issue out of supreme court.
2. Writs of error, when and in what cases to issue from the circuit to the county court.
 3. All writs of error, when and in what time to be brought.
 4. Several defendants, and one or more of them die, writ may be brought by the survivor.
 5. All living shall join in the writ of error, except otherwise allowed by supreme court.
 - 6, & 7. One of several parties may prosecute a writ of error, without joining others; when.
 8. Persons refusing to join, order to be made on the record to appear, &c., proceedings in such case.
 9. Copy of such order to be served on the party refusing; when and how.
 10. On the application of person named in such order, he may be permitted to join in the writ; when.
 11. Person named in such order, and served with the same, not appearing, proceedings.
 12. Persons out of the state, not joining in such writ. their rights not impaired.
 13. Persons who ought to join in a writ of error, may be permitted to do so; when, and proceedings.
 14. In what cases, and when execution to be stayed by writ of error.
 15. In what cases, and when order to be made by court or judge to stay execution on writ of error.
 16. Order to stay execution to be endorsed on the writ; when, &c.
 17. If no execution has issued, or, if issued, not fully executed, how to proceed to stay execution.
 18. Notice of writ of error to be served on the adverse party; effect of failure.
 19. Writs of error and return thereto, how made.
 20. Penalty on clerk for failing to make return of writ.
 21. Appeals, when and to what court returnable; transcript, when to be filed; on failure, proceedings.
 22. Assignment of errors, when to be filed; on failure, proceedings.
 23. Joinder in error, when to be filed.
 24. Proceedings, when one or more of plaintiffs or defendants die before joinder in error.
 25. Proceedings, when one or more of plaintiffs or defendants die after joinder in error.
 26. If all the plaintiffs die after appeal or writ of error, and before judgment, proceedings.
 27. If all the defendants die after appeal or writ of error, and before judgment, proceedings.
 28. Husband may be joined with his wife as plaintiff after appeal or writ of error; when and how.
 29. Husband may be made co-defendant with his wife before judgment; how.
 30. Statement of case and points to be made out and delivered to the judges.
 31. Exceptions not to be taken on points not decided by circuit court.
 32. Proceedings of the court on appeal or writ of error, or upon a special verdict.
 33. Upon affirmance of judgment, damages may be awarded.
 34. Court divided in opinion, judgment of circuit court affirmed.
 35. Judgments of the court, how carried into effect.
 36. Foregoing provisions to extend to appeals from decrees and decisions in chancery.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Writs of error upon any final judgment or decision of any circuit court, in all cases are writs of right, and shall issue of course out of the supreme court in vacation, as well as in term, subject to the regulations prescribed by law.

§ 2. Writs of error shall issue on demand, as a matter of right, on the final decision or judgment of the county court from the circuit court, in term time or in vacation, except in relation to probate matters, within ninety days from such decision or judgment.

§ 3. All writs of error upon any judgment or decision of any court, in any case, whether civil or criminal, shall be brought within five years after the rendering of such judgment or decision, and not after.

§ 4. If a judgment shall be rendered against several persons, and one or more of them die, a writ of error may be brought thereon by the survivors.

§ 5. If there be several persons against whom any judgment shall have been recovered, and entitled to bring a writ of error thereon, living at the time of bringing such writ, they shall all join in such writ, except where it is otherwise provided by law; and if any are omitted, the writ shall be quashed on motion of the defendant in error, made at any time before joinder in error, upon due proof of the facts by affidavit, unless one or more of such persons be allowed to proceed by the supreme court.

§ 6. To the allegations of there being other persons living who ought to join in such writ of error, if it be established or admitted, the party prosecuting such writ may answer by due proof on affidavit, that any of such persons not joined, are either incapable of consenting to join in such writ, by reason of insanity or imbecility of mind, or that their consent could not be obtained by reason of their being absent out of this state; and if the court shall be satisfied of the truth of such answer, such party shall be allowed to prosecute such writ, without joining such person, in the same manner as if they were joined.

§ 7. To such allegation, the party prosecuting the writ may also answer, by due proof on affidavit, that application has been made to any of the persons, not named in such writ, to join therein, and that they have refused, in such case the court shall stay further proceedings on such writ, and on the motion to quash the same, until an order shall have been duly served upon the person so refusing, as hereinafter provided.

§ 8. The court shall thereupon cause an order to be entered on its record, directing the persons so refusing, to join in such writ, and to appear in such court within such time as shall be prescribed therein, and there join in such writ of error and in the proceedings thereon, or to be forever precluded from bringing another writ of error on the same judgment.

§ 9. A copy of such order shall be served on the parties named therein, at least ten days previous to the time of appearance therein specified, in like manner as an original writ of summons.

§ 10. Upon the application of any person named in such order, he may be permitted to join in such writ of error, and in the proceedings thereon, upon the payment of the costs of the proceedings to bring him into court, including the motion to quash the writ of error, if it shall appear that he refused to join in such writ of error, and without just cause, and the writ and proceedings shall be amended by inserting the name of such person.

§ 11. If any person named in such order do not appear by the time there specified, and join in such writ of error, upon due proof of the service of such order, the default of such person shall be entered, and he shall thereby be forever precluded from bringing any writ of error on the same judgment, and the case shall proceed in the same manner as if such person had been named in such writ of error, and in the proceedings thereon.

or
sole de-
brought;

§ 12. When the name of any person out of this state, or incapable of giving consent to the bringing of a writ of error, shall be omitted in such writ, and the cause shall proceed without such names, the rights of such persons shall not be impaired by the judgment on such writ, but he may bring his writ of error in the same manner, separately, as if no such former writ had been brought.

§ 13. Any person who ought to join in a writ of error, may be permitted to do so on his application, on such terms as the court shall impose, and the writ and proceedings shall be amended by inserting his name, and shall proceed as in other cases.

§ 14. No writ of error shall stay the execution, unless the supreme court, or some judge thereof in vacation, be satisfied, upon an inspection of a copy of the record, that there is error therein, and shall make an order allowing such writ of error to stay the execution; and no such order shall be made by a judge in vacation, after the expiration of ninety days from the rendering of the judgment or decision complained of.

§ 15. No order allowing a writ of error to stay the execution shall be made by the supreme court, or by any judge thereof in vacation, except in the following cases:

First, where the plaintiff in error was executor or administrator in the original action, and such action was by or against him as such; or,

Second, Where the plaintiff in error, or some responsible person for him, together with two sufficient sureties, to be approved by the court or judge, shall enter into a recognizance, before such court, or judge to the adverse party, in a penalty sufficient to secure whatever debt, damages and costs have been recovered by the judgment complained of, together with the costs and damages that may be recovered in the supreme court, conditioned that the plaintiff in error will prosecute such writ with effect, and pay the money that shall therein be adjudged against him by the supreme court, or otherwise abide the judgment of such court therein.

§ 16. The court or officer allowing a writ of error to stay the execution, shall cause an order to that effect to be endorsed upon the writ, under the hand of the judge, when the same is made in vacation, and under the hand of the clerk of the court, when the same is made in term.

§ 17. If no execution be issued, the exhibition of such writ of error, so endorsed all adverse party or his attorney of record, or the clerk of the circuit court, vacate the judgment or decision complained of was rendered, shall stay the issuing any writ of execution. If any execution shall have been issued and not fully executed, upon the exhibition of such writ of error to the officer charged with the execution of such writ of execution, such officer shall proceed no further in the execution thereof, but shall return the writ, together with the reason of his not proceeding therein to the final execution thereof.

Every person suing out a writ of error, shall cause a notice thereof in writing of to be served on the adverse party, or his attorney of record, ten days be-

fore the return day of such writ. If such notice be not served, the judgment of the circuit court shall be affirmed, unless good cause for such failure be shewn.

§ 19. Writs of error shall be returned, signed by the clerk of the court to which such writs shall be addressed, under the seal thereof.

§ 20. Any clerk failing to make return of any writ to the supreme court, shall be liable to be punished by such court, on attachment, for his contempt, in the same manner as officers of other courts for disobeying the process or orders of such courts.

§ 21. All appeals taken thirty days before the first day of the next term of the supreme court, to be holden in the district where the judgment or decision appealed from was given, shall be returnable in such next term; and all appeals taken less than thirty days before the first day of such next term, shall be returnable in the second term thereafter. The appellant shall cause to be filed in the office of the clerk of the supreme court, at least ten days before the first day of the term of such court to which the appeal is returnable, a perfect transcript of the record and proceedings in the cause; if he fail so to do, and the appellee produce in court such transcript, and it appear thereby that an appeal has been allowed in the cause, the court shall affirm the judgment, unless good cause to the contrary be shewn.

§ 22. On appeals and writs of error, the appellant and plaintiff in error shall assign errors on or before the first day of the term at which such appeal and writ of error is returnable. In default of such assignment of errors, the appeal, or writ of error, may be dismissed, or the judgment affirmed, unless good cause for such failure be shewn.

§ 23. Joinders in error shall be filed within four days after the filing of the assignment of error.

§ 24. If there be several appellants or plaintiffs in error, and one or more of them die before errors are assigned, such death shall be suggested by the surviving plaintiffs, and the errors shall be assigned by them; and if one or more of several defendants die before joinder in error, such death shall, in like manner, be suggested by the survivors, and they shall plead to the assignment of errors.

§ 25. If there be two or more appellants or plaintiffs in error, and one or more of them die after errors assigned, or if there be several appellees or defendants in such error, the appeal or writ of error shall not thereby abate, but in either of such cases such death shall not be suggested on the record, and the cause shall proceed at the suit of the surviving appellant or plaintiff in error, or against the surviving appellee or defendant in error, as the case may be.

§ 26. If all the appellants or plaintiffs in error die, after the appeal taken, or writ of error brought, and before judgment rendered thereon, the executors or administrators of the last surviving plaintiff or appellant, or the heirs and devisees of the plaintiffs and appellant, in cases where they would be entitled to bring writs of error, may be substituted for such plaintiffs, and the cause shall proceed at their suit.

§ 27. If all the appellees, or a sole appellee, or if all the defendants, or a sole defendant, in a writ of error die, after the appeal taken, or writ of error brought,

and before judgment therein, the executors and administrators of such appellants or defendants, may be compelled to become parties, and join in error, in like manner as in an original suit.

§ 28. If a female appellant or plaintiff in error marry after the appeal taken or writ brought, her husband may be joined with her on his application, and his name shall thereupon be entered in the proceedings.

§ 29. If a female appellee, or defendant in error, marry after the appeal taken or writ brought, and before judgment, her husband may be made a co-defendant on his application, or the application of the adverse party.

§ 30. On appeals and writs of error, each party shall, before the argument of the cause, make out and furnish each judge with a clear and concise statement of the case, and the points intended to be insisted upon in argument.

§ 31. No exception shall be taken in an appeal or writ of error to any proceedings in the circuit court, except such as shall have been expressly decided by such court.

§ 32. The supreme court, in appeals or writs of error, shall examine the record, and award a new trial; reverse or affirm the judgment or decision of the circuit court, or give such judgment as such court ought to have given, as to them shall seem agreeable to law. When the facts in a special verdict are insufficiently found, they may remand the cause, and order another trial to ascertain the facts.

§ 33. Upon the affirmance of any judgment or decision, the supreme court may award to the appellee, or defendant in error, such damages, not exceeding ten per centum on the amount of the judgment complained of, as may be just.

§ 34. When the supreme court shall be divided in opinion, the judgment or decision of the circuit court shall be affirmed.

§ 35. The supreme court, upon the determination of any cause in appeal or error, may award execution to carry the same into effect, or may remit the record, with their decision thereon, to the circuit court from whence the cause came; and such determination shall be carried into execution by such circuit court.

§ 36. The foregoing provisions, relative to appeals and the parties thereto, shall be construed to extend to appeals from the decrees and decisions in chancery causes, in all respects, the same as to appeals from judgments and decrees in suits at law.

Approved, March 21st, 1835.

PRISON BOUNDS.

An act concerning prison bounds.

- Sec. 1. Every county court to establish prison bounds; their extent.
2. Bounds to be designated; description of, to be set up by sheriff at jail door.
 3. Sheriff to permit persons committed, to take prison bounds by giving bond and security, when; how long to remain in bounds; expenses how paid, &c.
 4. Suit on bond for passing over prison bounds; extent of judgment.
 5. Defendants in execution on such judgment, not allowed to take the bounds.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Every county court shall establish prison bounds in its county, not to exceed the area of one half mile square, and which shall include the jail, if there be any in the county.

§ 2. The court shall cause posts or other marks to be set up, when necessary, to designate the bounds, and shall cause a description of them to be entered on their record, and a copy of such description shall be kept posted up by the sheriff, in a conspicuous manner, at the jail door.

§ 3. If any person be committed to jail on mesne process or execution, in any civil suit, the sheriff shall permit him to go at large within the prison bounds, if he give bond to the sheriff, for the use of the creditor or plaintiff, with two sufficient securities, in twice the sum demanded in such process, or twice the amount of the execution, conditioned, that if such person will not pass over such bounds, before he be discharged by due course of law, such bond shall be void; but no person, who shall have been committed to jail, or taken in execution for debt, shall be permitted to remain in the prison bounds for a longer time than one year; and in all cases, the person or persons taking the benefit of the prison bounds, shall pay the expenses incurred for their own board and living.

§ 4. If suit be brought on such bond for passing over the bounds, and judgment be rendered thereon, it shall be for the amount of the former demand, with interest and costs, and execution shall issue thereon against the defendants.

§ 5. If either of such defendants be committed to jail on such execution, he shall not have the privilege of going at large within such bounds.

Approved, February 26th, 1835.

QUO WARRANTO.

An act concerning writs of quo warranto.

- SEC. 1. Information in nature of, to be exhibited; when.
2. What shall be named in the information; how to proceed.
 3. Several rights may be included in one information, by leave of court.
 4. Appearance and plea, when, and proceedings thereon.
 5. Defendant found guilty, judgment; defendant acquitted, judgment.
 6. Time may be allowed parties to plead, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. In case any person shall usurp, intrude into, or unlawfully hold or execute any office or franchise, the attorney general, or circuit attorney of the proper circuit, with the leave of any circuit court, shall exhibit to such court an information, in the nature of a *quo warranto*, at the relation of any person desiring to prosecute the same.

§ 2. The relator shall be named as such in the information against such person, as usurping, intruding into, or unlawfully holding or executing any such office or

franchise, and shall proceed thereon in such manner as is usual in cases of information in the nature of a *quo warranto*.

§ 3. If it shall appear to such court, that the several rights of divers persons, to the same office or franchise, may properly be determined on one information, the said courts may give leave to exhibit one information against several persons to try their respective rights to such office or franchise.

§ 4. Such person, against whom an information in the nature of a *quo warranto* shall be prosecuted, shall appear and plead at the same term in which the said information shall be filed, unless the court shall give further time, and such person prosecuting such information, shall proceed thereupon with the most convenient speed.

§ 5. In case any person, against whom any such information in the nature of a *quo warranto*, shall be adjudged guilty of any usurpation, or intrusion into, or unlawfully holding and executing any office or franchise, it may be lawful for the court, as well to give judgment of ouster against such person, from any of the said offices or franchises, as to fine such person for his usurpation, intruding into, or unlawfully holding and executing any such office or franchise, and to give judgment, that the relator, in such information named, shall recover his costs of such prosecution; and if judgment shall be given for the defendant in such information, he shall recover his costs against such relator.

§ 6. The court, in which any information shall be exhibited, shall allow to the relator, and the defendant, such convenient time to plead, reply, rejoin or demur, as shall seem just and reasonable.

Approved, February 5th, 1835.

RECORDERS.

An act establishing recorders offices.

- Sec. 1. Offices established; where kept; books provided.
2. Clerks of circuit courts, *ex-officio* recorders; to give bond, its condition; where deposited; when sued on, &c.
3. Penalty for officiating before giving bond.
4. Seal of court to be used; books, how paid for.
5. What instruments to be recorded; by what recorder.
6. Recorder to make an entry on the receipt of deed, &c., and give receipt.
7. Manner of recording; to certify time of receiving such instrument; where recorded, &c.
8. Index to deeds, to marriage contracts and certificates, commissions, &c., to be kept; what to contain.
9. Penalty on recorder for failing to perform the duties required by this act.
10. Fees for recording, when to be paid.

Be it enacted by the general assembly of the state of Missouri, as follows;

§ 1. There shall be an office of recorder in each county, to be styled the recorder's office, which shall be kept at the seat of justice in each county, by some competent person as recorder, who shall duly attend the service of the same, and shall provide and keep the office with good large books, well bound, wherein shall

be recorded, in a fair and legible hand, all instruments of writing, authorized or required to be recorded in the manner hereinafter provided.

§ 2. The clerks of the circuit courts shall be *ex officio* recorders in their counties; and every clerk, before entering upon the duties of his office as recorder, shall enter into bond to the state, in the sum of fifteen hundred dollars, with sufficient securities, to be approved by the judge of the court of which he is clerk, conditioned for the faithful performance of the duties enjoined on him by law, as recorder, and for the delivering up the records, books, papers, writings, seals, furniture and apparatus belonging to the office, whole, safe, and undefaced, to his successor, which bonds shall be deposited in the office of the secretary of state, and by him recorded. If any person shall be damaged by the conduct of the recorder, such person may commence an action in the name of the state, to his use.

§ 3. No recorder shall enter upon, or officiate in, his office, before he hath given such security, upon pain of forfeiting the sum of three hundred dollars, one half to the county, and the other half to him or them who shall sue for the same, by action of debt.

§ 4. The recorder shall use the seal of the court of which he is clerk, in all cases, in which his official seal is required to be affixed; the recorders shall provide suitable books for their respective offices, and keep regular and faithful accounts thereof; and it shall be the duty of the county court to audit and settle such accounts, and allow, in their discretion, such sums as shall be reasonable, to be paid out of the county treasury.

§ 5. It shall be the duty of the recorders to record, in large and well bound books, all deeds, mortgages, conveyances, deeds of trust, bonds, covenants, defeasances, or other instruments of writing, of or concerning any lands and tenements, or goods and chattels, which shall be proved, or acknowledged according to law, and authorized to be recorded in their offices; and all and every papers and documents found in their respective offices, of and concerning lands and tenements, or goods and chattels, and which were received from the Spanish or French authorities, at the change of governments; and the recorders shall record, in books to be provided for that purpose, all marriage contracts and certificates of marriages, and all commissions and official bonds, required by law to be recorded in their offices.

§ 6. When any deed, mortgage, deed of trust, conveyance, bond, commission, or other instrument of writing, authorized by law to be recorded, shall be deposited in the recorder's office for record, the recorder shall enter, in a book to be provided for that purpose, in alphabetical order, the names of the persons, and date and nature thereof, the time of delivery or deposit for record, and shall give to the person depositing the same, (if required) a receipt, specifying the particulars aforesaid.

§ 7. The recorder shall record, without delay, every deed, mortgage, conveyance, deed of trust, bond, commission, or other writing, delivered to him for record, with the acknowledgment, proofs and certificates written on, or under the same, with the plats, surveys, schedules, and other papers therein referred to, and thereto annexed, in the order, and as of the time, when the same shall have been delivered for record, by entering them, word for word, in a fair hand, noting at the foot of

such record, all interlineations and erasures, and words visibly written on erasures, and noting at the foot of the record, the day of the month and year when the instrument so recorded was delivered to him, or brought to his office for record, and the same shall be considered as recorded from the time it was so delivered; and the recorder shall certify, on or under such deed, mortgage, conveyance, deed of trust, bond, commission, or other instrument so recorded, the day, month and year, when he received it, and the book and page or pages of the book in which it is recorded, and, when recorded, deliver it to the party or his order.

§ 8. The recorder shall provide and keep, in their respective offices, a well bound book, and make and enter therein, an index, in alphabetical order, to all the books of record wherein deeds, mortgages, or other writing concerning real estate, or deeds of trust, are recorded, distinguishing the books and pages, in which every such deed or writing is recorded; which index shall contain the names of the several grantors and grantees, in alphabetical order; and in case the deed be made by a sheriff, the name of the sheriff, and the defendant in the execution, and if by executors or administrators, the name of each executor or administrator, and of the testator or intestate; and if by attorney, the name of such attorney and his constituent; and if by any commissioner, the name of such commissioner, and of the person whose estate is conveyed; and the recorder shall, in like manner, make, keep and preserve, a full and perfect alphabetical index to all the books of record in his office, wherein marriage contracts, and certificates of marriage are recorded, and a like index to all the books of record wherein commissions and office bonds are recorded, containing the names of the officers appointed, and of the obligors in any bond recorded, and a reference to the book and page where the same are recorded; and the recorder shall make a reference in said index, of all deeds, conveyances, and other writings, which may be hereafter recorded, so as to afford at all times an easy reference to such records.

§ 9. If any recorder, to whom any deed, or other writing proved or acknowledged according to law, shall be delivered for record, shall neglect or refuse to make an entry thereof, or give a receipt therefor, as required by the sixth section of this act, or shall neglect or refuse to record such deed or writing, within a reasonable time after receiving the same, or shall record any deed, or instrument of writing before another first brought into his office, and entitled to be recorded; or shall record any deed or other instrument of writing untruly, or in any other manner than as hereinbefore directed; or shall neglect or refuse to provide and keep in his office an index, as required by the preceding section, he shall pay to the party aggrieved, double damages, which may be occasioned thereby, to be recovered by action of debt, on the official bond of the recorder, or by special action on the case; and if any recorder shall wilfully neglect or refuse to perform any of the duties required of him by this act, or shall wilfully perform them in any other manner than is required by law, he shall be deemed guilty of a misdemeanor in office, and proceeded against accordingly, and shall moreover forfeit and pay, to the use of the county, a sum not exceeding three hundred dollars, to be recovered by action of debt.

§ 10. The recorder shall not be bound to make any record for which a fee may be allowed by law, until such fee shall have been paid, or tendered, by the party requiring the record to be made.

Approved, January 20th, 1835.

REPLEVIN.

An act regulating the action of replevin.

SEC. 1. In what cases maintainable.

2. No cross replevin, or for property in possession of an officer, to be brought.

3. Affidavit to be filed; its contents.

4. Command of the writ to the officer to whom it is directed.

5. Writ not to be executed until plaintiff give bond; its condition.

6. Writ to be executed by the officer; how.

7. Defendant may plead not guilty; what this plea shall put in issue.

8. Plaintiff fails to prosecute his suit with effect, value of property and damages for use of same to be assessed.

9. Against whom, and for what, judgment in such cases shall be given.

10. Remedy of sheriff on plaintiff's bond.

11. Remedy of defendant on plaintiff's bond.

12. Sheriff failing to return a bond, or returning insufficient one, liable for damages.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Whenever any goods or chattels are wrongfully taken, or wrongfully detained, an action of replevin may be brought by the person having a right to immediate possession, for the recovery thereof, and for the recovery of the damages sustained by reason of the unjust caption or detention, except as hereinafter specified.

§ 2. No cross replevin, or replevin for property in the possession of an officer, by virtue of any legal authority, shall be brought.

§ 3. No writ of replevin shall be issued, unless the plaintiff files, in the office of the clerk of the court, the affidavit of himself, or of some credible person, stating that the plaintiff is lawfully entitled to the possession of the property mentioned in the declaration, that the same was wrongfully taken, or is wrongfully detained by the defendant, and that the plaintiff's right of action has accrued within one year.

§ 4. The writ of replevin shall command the officer, to whom it is directed, to cause, (if the plaintiff gives the security required by law,) the goods and chattels mentioned in the declaration, to be delivered to the plaintiff without delay, and to summon the defendant to appear in court, on the return day of the writ, and answer the plaintiff in the premises.

§ 5. No writ of replevin shall be executed until the plaintiff enters into a bond to the officer to whom the writ is directed, with sufficient security, in double the value of the property, to be ascertained by the officer, conditioned that he will prosecute the suit with effect, and without delay, make return of the property, if return thereof is adjudged, and keep harmless the officer, ouching the replevying the property.

§ 6. Upon the receipt of the writ, and the bond required by this act, the officer shall, without delay, execute the writ, by causing the property mentioned in the declaration to be delivered to the plaintiff, and by summoning the defendant, according to the tenor of the writ.

§ 7. The defendant may plead, that he is not guilty of the premises charged against him, and this plea shall put in issue, not only the right of the plaintiff to the possession of the property mentioned in the declaration, but also the wrongful taking, and detention thereof.

§ 8. If a plaintiff in replevin fails to prosecute his suit with effect, and without delay, the court or jury shall assess the value of the property taken, and the damages for the use of the same, from the time of suing the same until return thereof shall be made, as in other like cases.

§ 9. In such case the judgment shall be against the plaintiff and his sureties, that he return the property taken, or pay the value so assessed, and also pay double the damages assessed, for the detention of the property.

§ 10. If an officer is damaged by reason of taking any property by virtue of a writ of replevin, by the direction of the plaintiff, he may maintain an action therefor, upon the bond by him taken.

§ 11. If the plaintiff violates the condition of his bond, the defendant may sue thereon, in the name of the officer, to his own use.

§ 12. If the officer fails to take a bond of the plaintiff, and return the same as required by this act, or if the bond taken is adjudged insufficient at the return term of the court, and the plaintiff fails to perfect it, if required, the officer shall be liable to the party injured for all damages by him sustained, to be recovered by action of debt on the officer's official bond, or by an action on the case.

Approved January 20th, 1835.

REVENUE.

An act to provide for levying, assessing, and collecting the revenue.

- ART. I. Of the subjects of taxation, and the rates of taxes.
- ART. II. The assessment of property for taxation.
- ART. III. Of the collection of the revenue.
- ART. IV. Of the county revenue.
- ART. V. Of the enforcement of the payment of the land tax.

ARTICLE I.

Of the subjects of taxation, and the rates of taxes:

- SEC. 1. Upon what objects tax shall be laid.
- 2. What subjects are exempted from taxation.
- 3. Rate of annual tax upon subjects mentioned in this section.
- 4. Rate of tax on subjects mentioned in this section.
- 5. Rate of tax upon all licenses, how declared.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. For the support of the government of the state, the payment of the public debt, and the advancement of the public interest, a tax shall be laid upon the following objects:

First, All free male persons, over twenty-one and under fifty-five years old.

Second, Lands and lots of ground, including the houses and improvements thereon.

Third, Leasehold interest in land, for the term of twenty years or more, as lands.

Fourth, All slaves over three years old.

Fifth, Household furniture, used by any one family, above the value of five hundred dollars.

Sixth, Pleasure carriages, kept for the use of the owner or his family.

Seventh, Horses, mares, geldings, and neat cattle, above three years old, and mules and asses, above two years old.

Eighth, Watches, with their chains, seals and other appendages, and clocks, kept to be worn or used by the owner or his family.

Ninth, Shares of stock in banks, and all other incorporate companies, except hospitals and literary institutions.

Tenth, All licenses taxable by law.

§ 2. The following subjects are exempted from taxation:

First, All free white male persons, above twenty-one and under sixty-five years old, belonging to the army of the United States.

Second, All forts, arsenals, magazines, barracks, hospitals, armories, and other needful public buildings and structures, with their furniture and equipments, and the land and lots used therewith, belonging to the United States.

Third, All lands exempted by the ordinance of the convention of this state, passed on the nineteenth day of July, one thousand eight hundred and twenty.

Fourth, All lands and other property belonging to this state.

Fifth, All court houses, jails, and other public buildings and improvements, with the furniture thereof, and the lands appertaining thereto, and used therewith, belonging to any county in the state.

Sixth, All market houses, town-halls and other public structures, with their furniture and equipments, and all public squares, and vacant lots, kept open for health, use or ornament, belonging to any city, town or village, in the state.

Seventh, All lands and lots of ground, granted by the United States, or this state, to any county, city, town, village or township, for purposes of education, until disposed of to individuals, by sale or lease.

Eighth, All school houses, and other buildings, for the purposes of education; with their furniture, equipments and apparatus, and the land appurtenant thereto, and used therewith, so long as the same shall be used for those purposes.

Ninth, All hospitals for the sick, and public poor houses, with their furniture and equipments, and the land appurtenant thereto, and used therewith, so long as the same shall be used for those purposes only.

Tenth, All churches, chapels, and other public buildings for religious worship, with their furniture and equipments, and the land appurtenant thereto, and used therewith, so long as the same shall be used for that purpose only.

Eleventh, All grave-yards, set apart and used for that purpose only.

§ 3. The annual tax laid upon the subjects mentioned in this section, shall be at the following rates:

First, All free male persons, over twenty-one, and under fifty-five years old, thirty-seven and one-half cents.

Second, Lands and town lots, including the houses and improvements thereon, and all other property, real and personal, including stock in banks, and other incorporated companies, subject to taxation by this law, the eighth part of one per cent. of the assessed value thereof.

§ 4. The tax laid upon the subjects mentioned in this section, shall be at the following rates.

First, On each conviction in a criminal cause, in a court of record, sixty-two and one-half cents.

§ 5. The rates of taxes upon all licenses, subject to taxation by law, shall be declared under their appropriate titles.

ARTICLE II.

The assessment of property for taxation.

- SEC. 1. Assessor, how, when, and by whom elected.
2. Certificate of election to be delivered by the clerk, under seal of court, to the assessor.
 3. When county court, or their clerk, to appoint assessor.
 4. Certificate of appointment, under seal of court, to be delivered to assessor thus appointed.
 5. Assessor to take oath of office, to be endorsed on his certificate; penalty for failure.
 6. Bond to be given by assessor; its condition.
 7. Duty of assessor in taking list of taxable property, except merchandize; from whom list to be taken.
 8. A list of taxable property, which the party has management of, situated in another county, to be given in.
 9. List required by the two preceding sections, what they shall contain.
 10. Assessor may require the person giving such list, to verify same by oath; when.
 11. Duty of assessor, after he has completed his assessment, in making out lists, &c.
 12. List transmitted, &c., but not received before tax book is returned, supplemental tax book to be made out.
 13. List of taxable property to be given, either on personal application, or notice by the assesor.
 14. Failing to give such list, by person applied to or notified, within ten days, property double taxed.
 15. Penalty on persons giving false or fraudulent list of taxable property; property taxed triple.
 16. When no list of taxable property is given, assessor to make out list on his own view, &c.
 17. List of lands may be delivered to the recorder, verified, &c.; its effect.
 18. Recorder to keep a registry of lands for taxation; his fees.
 19. If lands registered to be transferred, recorder to make entry of transfer in his register; when.

20. Recorder to make out copy of registry, and abstract of conveyances, and deliver them to clerk; when.
21. Tax book of the preceding year, and descriptions of land furnished by recorder, and list of the auditor, to be delivered by the clerk to the assessor, to take receipt, &c; when assessment completed, books, &c., to be returned.
22. Duty of assessor to make out complete list of taxable property, &c., to be called "the tax book."
23. Tax book, how made out; what it shall contain.
24. Property contained in the tax book, how valued, assessed, and classed.
25. Lands omitted in the assessment, when discovered, to be put in the tax book, assessed, &c.
26. Copy of assessment, signed by assessor, to be given to owner of property when demanded.
27. Copy of tax book to be returned to county court, on or before first of June, in each year.
28. County court to hear and determine appeals; notice, when to be given.
29. Tax book to remain in clerk's office for ten days before session of court of appeals, for inspection, &c.
30. Appeals, by whom and how made.
31. When clerk to take to his assistance two justices of county court, and hold court of appeals.
32. Appeals to be tried in a summary way; tax book corrected accordingly.
33. Two copies of tax book to be made out; one for collector, and one for the auditor.
34. Assessor may administer oath; in what cases.
35. Assessor may be removed, and another put in his stead; when; bond to be put in suit when removed.
36. Compensation of assessor.
37. Compensation to clerks under this article, how allowed and paid.

§ 1. There shall be elected by the qualified electors of the several counties within this state, on the first Monday in August, in every year, a county assessor; and every such election shall be conducted, in all things, according to the laws regulating the election of other county officers.

§ 2. The clerks of the respective county courts shall deliver to the persons thus elected, immediately after their election, a certificate thereof, under the seal of the respective county courts.

§ 3. If no person be elected assessor, or if the person elected fail to take the oath, and enter into the bond required of assessors, on or before the first day of January, after his election, or after the time at which such assessor ought to have been elected, or if at any time there be a vacancy in the office of assessor, the county court shall immediately appoint an assessor for that year; and in default thereof, the clerk of such court shall make such appointment in vacation.

§ 4. When an assessor shall be appointed by the county court, or by the clerk of such court in vacation, the clerk shall deliver to the person so appointed, a certificate of his appointment, under the seal of the court.

§ 5. Every assessor shall take the oath of office prescribed by the constitution; and cause the same to be endorsed on the certificate of his appointment, before entering upon the duties of his office, and in default thereof shall forfeit five hundred dollars for the use of the state.

§ 6. Every assessor, before entering on the duties of his office, shall give bond and security to the state, to the satisfaction of the court, or the clerk, if appointed in vacation, in a sum not less than one hundred, nor more than five hundred dollars, the amount to be directed by the court or clerk, as the case may require, conditioned for the faithful performance of the duties of his office, which bond shall be deposited in the office of the county court.

§ 7. Every assessor, immediately after his appointment and qualification, shall go through all parts of his county, and require every person who owns, or has the charge or management of, any property, taxable by law, except merchandize, and

being within the county, to deliver him a written list of the same; and every such person shall deliver to the assessor, a just and true list of all such property.

§ 8. In the same manner, every such person shall deliver to the assessor a just and true list of all property taxable by law, except merchandize, which he owns, or [of] which he has the charge or management, being in any other county, and not then listed and given in for taxation for that year, in such other county.

§ 9. Every list, required by the two preceding sections, shall particularly describe each tract of land contained therein, so that the same may be found and known by the description; when the land is part of the public surveys of the United States, the township and range shall be noted, and the section and fractional part, or other legal subdivision thereof, shall be stated; and in all other classes of land claims, the quantity and local position shall be set forth, and the number of the survey, and the name of the original claimant, if known to the party, shall be stated. Each town lot shall be described by the name of the city, town or village, the street or alley where situate, the numbers (if any) of the lot, and the square of which it forms a part, and the size in front and depth.

§ 10. If the assessor shall have cause to doubt the correctness of any such list, when given or tendered to him, he may require the party to verify the same by oath or affirmation.

§ 11. It shall be the duty of every assessor, as soon as he shall have completed his assessment, to make out, from the lists delivered to him, under the sixth section of this law, a distinct list for each county, in which any such taxable property may be, and transmit the same, by mail or otherwise, to the assessor of the proper county, who shall assess the same as other taxable property therein, if not before assessed for the same year.

§ 12. When the lists transmitted from one assessor to another, as required in the preceding section, shall not be received by the proper assessor, before he has made return of his tax book to the court, he shall, without delay, assess the property in such lists contained, and make return thereof to the court, in a supplemental tax book, which shall be proceeded on, as nearly as may be, as the original.

§ 13. The assessor shall require every person who owns, or has the charge or management of, any taxable property, to deliver to him the list thereof, either by personal application, or by a written notice, to be left at the residence of the party; and every such person shall deliver such list to the assessor, within ten days after such application or notice.

§ 14. If any person, being applied to, or notified as aforesaid, shall fail to deliver the required list to the assessor, in ten days, the property which ought to have been listed shall be taxed double.

§ 15. If any person shall deliver to the assessor any false or fraudulent list, the property therein specified, and all that ought to have been listed therein, shall be taxed triple; and the offender shall, moreover, be subject to indictment for the fraud, and may be fined in any sum not exceeding five hundred dollars.

§ 16. Whenever there shall be taxable property in any county, and, from any cause, no list thereof shall be given to the assessor, in proper time and manner,

the assessor shall himself make out the list on his own view, or on the best information he can obtain; and for that purpose, he shall have lawful right to enter into any lands and houses, and make any examination and search which may be necessary, and may examine the owners of the property, or any other persons, upon oath, touching the same.

§ 17. The owners of lands and town lots may deliver to the recorder of the county in which the same are situate, the descriptive lists of such lands and lots, required by the sixth and seventh sections of this article, which, being verified by the oath of the party, shall be filed in the recorder's office, and thereafter the same lands and lots need not be included in the annual lists to be delivered to the assessor.

§ 18. The recorders shall register, in a well bound book, to be kept for that purpose, alphabetically, all such descriptive lists of lands and lots delivered to him under the preceding section. The register shall be in tabular form, with suitable columns or spaces for the description of the land, the date of registry, and for noting the future transfers of the land, or any part thereof. The recorder's fee, for every registry of such list, shall be twenty-five cents, to be paid on delivery of the list.

§ 19. When any land, so registered, shall be transferred by any deed or instrument, recorded in the same office, the recorder shall, without delay, make an entry of such transfer in the proper columns of his register.

§ 20. The recorder shall, in the month of January of every year, make out a copy of the said register of the preceding year, and an abstract (in alphabetical order) of all deeds and other conveyances of land recorded in his office during the preceding year, shewing the names of the acquirers, and from whom acquired, the quantity and description of the land, and shall deliver the said copy and abstract to the clerk of the county court, and take his receipt therefor.

§ 21. The clerk of the county court shall deliver to the assessor, immediately after his appointment and qualification, in every year, the tax book of the preceding year; all copies of the register and abstracts of conveyances, furnished by the recorder of the county, and also the list of taxable lands to be furnished by the auditor of public accounts, and take his receipt therefor; and the assessor, as soon as he shall have completed his assessment, and made his tax book for the year, shall return the whole of said papers and documents to the clerk.

§ 22. The assessor, on examination and comparison of the list of property delivered by individuals, the copy of the register and abstract of conveyances furnished by the recorder, and the list of lands furnished by the auditor, shall make a complete list of all the taxable property in his county, to be called "the tax book."

§ 23. The tax book shall be in two separate parts, the one to contain the names, in alphabetical order, of all persons residing in the county, who own taxable property therein, the other to contain the names, in alphabetical order, of all persons residing out of the county, who own taxable property therein: it shall be in a tabular form, with a suitable caption, and separate columns for the names of the owners, each kind of property taxed, the assessed value of each kind, and the whole amount chargeable to each person, and such other columns as may be found necessary or convenient in practice.

§ 24. The assessor shall value and assess all the property on the tax book, according to its marketable value in cash at the time of assessment; each tract of land and town lot shall be assessed separately, and each kind of other property shall be assessed separately from every other kind; and all leasehold interests in land, for the term of twenty years and more, yet to come, shall be classed and assessed as land.

§ 25. If, by any means, any tract of land or town lot shall be omitted in the assessment of any year, or series of years, and not put upon the tax book, the same, when discovered, shall be assessed by the assessor for the time being, and placed upon his tax book, before the same is returned to the court, with all arrearages of tax, which ought to have been assessed and paid in former years, charged thereon.

§ 26. The assessor shall deliver to any owner of property assessed for taxation, upon demand, a copy of the assessment thereof, written and signed by himself.

§ 27. The assessor shall make out and return to the county court, on or before the first day of June, in every year, a fair copy of the tax book.

§ 28. The county court of each county shall, at the next regular term after the assessor shall have returned the tax book, as required in the last section, if such term be within thirty days, hear and determine all appeals from the valuation of property by the assessor; and if not within thirty days, then a separate term shall be held for that purpose, within thirty days, to be ordered by any two justices of the court, and published by the sheriff for ten days, by written or printed notices, to be set up in at least six of the most public places in the county.

§ 29. The tax book shall remain in the office of the clerk of the county court, for ten days before the session of the court of appeals, open for the inspection of all concerned.

§ 30. Every person who thinks himself aggrieved by the assessment of his property, may appeal; and every appeal shall be in writing, and shall state, specially, the grounds of the appeal, and the matter or thing complained of, and no other matter shall be considered by the court.

§ 31. If, from any cause, a session of the county court cannot be had within thirty days next after the return of the tax book by the assessor, the clerk of that court shall take to his assistance any two justices of the peace within the county, and hold a court of appeals, giving notice thereof as aforesaid.

§ 32. The court shall hear and determine all appeals in a summary way, and shall correct and adjust the tax book accordingly.

§ 33. As soon as the tax book shall be corrected and adjusted, as aforesaid, and the county tax stated thereon, the clerk of the county court shall make out two fair copies thereof (each to be authenticated by the seal of the court) one for the collector of the county, one for the auditor of public accounts, and the original roll to be kept in his office.

§ 34. Where any fact, matter or thing, is required by this article to be verified by oath or affirmation, any assessor may administer the same.

§ 35. Every assessor who shall fail to perform any duty enjoined upon him by

this law, in the time prescribed, may be removed from office, and another put in his stead by the county court; and when removed, his bond shall be put in suit.

§ 36. The compensation of each assessor shall be one dollar for every day in which he shall necessarily be employed in the public service.

§ 37. The several clerks shall be allowed such compensation for the services required of them by this article, as the auditor of public accounts shall deem just, to be audited and paid as other similar claims against the state.

ARTICLE III.

Of the collection of the revenue.

- Sec. 1. Sheriff to be *ex-officio* collector for two years.
2. To give bond and security; its condition.
 3. Refusing to give bond, his office to be vacant; proceedings in such case.
 4. Bond to be executed in duplicate; one to be recorded in county clerk's office, the other sent to auditor.
 5. Duties may be performed by deputy; his powers.
 6. Deputation, how made; may be revoked at pleasure; how.
 7. Notice of deputation and revocation to be given by the collector; how.
 8. Tax book to be delivered to collector, to give receipt therefor; collector to be charged with amount of tax book.
 9. Receipt for tax book to be endorsed on copy left with clerk, and copy sent to auditor.
 10. Collector to collect taxes specified in tax book; may sell property for same, as on execution.
 11. Goods to be sold as on execution for payment of taxes; when.
 12. Goods sold for taxes, the costs and ten per cent. to be levied for collector's trouble.
 13. Tax on convictions, fines, penalties, and forfeitures, &c., to be collected and accounted for by the sheriff.
 14. Account of fines, penalties, &c., to be kept by clerks, free for inspection of collector, &c.
 15. Fines, penalties, &c., received by sheriff, to be accounted for at each term of court.
 16. Certain officers to account for moneys which come to their hands for taxes, fines, &c.
 17. When such account and settlement is made, substance to be entered on the record, &c.
 18. When such settlement is made, duplicate copies of the record to be made out and delivered; to whom.
 19. Officers who have made such settlements, to pay over amount to collector; failure, how enforced.
 20. When amount is paid to collector, duplicate receipts to be given, and deposited with clerk of county court.
 21. Settlements of officers required to be made by this law, how enforced.
 22. Liability and penalty on officer failing to pay money found due on such settlement.
 23. Blank licenses to be delivered by the clerk to the collector, when; collector to be charged with same.
 24. Blank licenses, how made out; how filled up to make them available.
 25. Collector to settle his account of blank license at each court; proceedings.
 26. At same time, collector to settle his account of money received of certain other officers for taxes, fines, &c.; settlement to be recorded; proceedings.
 27. If collector fail to make settlement in the time and manner prescribed, how enforced.
 28. Immediately after such settlement, copy of the record thereof to be certified to the auditor.
 29. Collector to make out a list, to be called *the delinquent tax list*, and a list to be called *the list of delinquent officers*, when; what shall be stated in each list.
 30. Copy of such delinquent list to be set up at the court house door, in November, of each year.
 31. Delinquent list to be returned to court, and on settlement, amount to be allowed collector.
 32. List to be delivered to each successive collector, until the same be collected.
 33. Collector to make annual payments into the treasury; duplicate receipts taken; one deposited with auditor.
 34. Compensation of collector.
 35. Compensation to officers required, under this article, to receive and pay over money to collector.
 36. Collector, who pays into the treasury full amount of taxes, has same lien on property taxed as the state had; may collect same, &c.
 37. Delinquent list published within one year after paying full amount into treasury, amount of delinquents to be allowed and paid out of state treasury.
 38. County courts to appoint collectors until the end of the year 1836.

§ 1. Every sheriff hereafter elected, shall be ex-officio collector of the revenue within his county, for two years, commencing on the first day of January next ensuing his election.

§ 2. Every sheriff shall, each year, before entering upon the duties of his office as collector, give bond and security to the state, to the satisfaction of the court, in a sum at least double the amount of all the revenue to be collected by him, conditioned for the faithful performance of all the duties of such office.

§ 3. If any sheriff shall neglect or refuse to give bond, as required by the second section of this article, his office of sheriff shall, immediately upon such neglect or refusal, be vacant, and the county court thereupon shall immediately notify the governor of that fact, who shall forthwith appoint some suitable person to fill such vacancy, who will give such bond.

§ 4. Said bond shall be executed in duplicate; one part thereof shall be deposited and recorded in the office of the clerk of the county court, and the other part shall be sent by the clerk to the auditor of public accounts.

§ 5. The collectors of the revenue may perform their duties by deputy, and every deputy shall have the same legal qualifications as the principal.

§ 6. Every deputation shall be in writing, under the hand and seal of the principal, who may revoke the same at pleasure by a similar writing.

§ 7. The collectors shall give public notice of every deputation and revocation, made as aforesaid, by putting up said notice at the court house door of their county.

§ 8. As soon as may be, after the tax books of each year have been corrected and adjusted, and the amount of the county tax stated therein according to law, the county courts shall cause the same to be delivered to the proper collectors, who shall give receipts therefor to the clerks of the county courts, respectively, and each collector shall be charged by such clerk with the whole amount of the tax book so delivered to him.

§ 9. The collector shall also subscribe two other receipts for the tax book, endorsed upon the two other copies of the tax book, one to remain in the clerk's office, and the other to be sent to the auditor of public accounts.

§ 10. The collectors shall diligently endeavor, and use all lawful means, to collect and levy all the taxes specified in the tax books of their respective counties, and, to that end, they shall have power to seize and sell the goods and chattels of the person liable for the tax, in the same manner, and under the same restrictions, as goods and chattels are, or may be required to be seized and sold under executions, issued on judgments at law.

§ 11. But no such seizure and sale of goods shall be made until the collector has demanded payment of the tax, either by personal application to the party liable to pay the same, or by visiting his place of abode for that purpose, and the lapse of ten days without payment after such demand.

§ 12. Whenever taxes shall be levied by the sale of goods as aforesaid, in addition to the amount of the tax, the collector shall also levy the necessary costs of the proceeding, and ten per cent. on the amount of the tax, for his trouble.

§ 13. The sheriffs of the several counties shall collect, and account for all taxes

upon convictions, and all fines, penalties, forfeitures, and other sums of money, by whatever name designated, accruing to the state or any county, in virtue of any order, judgment or decree, of a court of record.

§ 14. The clerks of the several courts of record shall keep a true account of all fines, penalties, forfeitures and judgments, imposed, adjudged or rendered in favor of the state, or any county, by their respective courts, distinguishing those payable to the state, from those payable to the county, and shall keep the same open for the inspection of the judges of the respective courts, and the collector of the revenue.

§ 15. The several courts of record shall, at each regular term, cause the sheriffs of the respective counties to make a full and fair statement and settlement of all taxes, fines, penalties, forfeitures and judgments received by them, and not before accounted for and paid over.

§ 16. Whenever money shall come to the hands of any coroner, justice of the peace, constable, or any other officer, except only the state treasurer and collector of the revenue, on account of taxes, fines, forfeitures, penalties or judgments, in favor of the state or any county, such officer shall state, and settle the account thereof, before the court, under whose authority the money was received, or on whose writs, records or proceedings the same accrued, at the first regular term after the receipt of the money, in the same manner as is above required of sheriffs.

§ 17. Whenever the court shall make such settlement with any officer, the substance thereof shall be entered of record, so as to show, separately, the whole amount received by such officer, the amount of commissions allowed to him by law for collection, how much remains due to the state, and how much to the county, on what account each sum of money was received, and to what particular fund, if any, it belongs.

§ 18. Whenever any such settlement shall be made, the court shall cause duplicate copies of the record thereof to be certified and delivered, one to the collector of the revenue for the county, and the other to the clerk of the county court, and the collector shall be charged by the clerk of the county court, with the sums appearing thereby to be due to the state, and to the county, respectively.

§ 19. All officers who shall have made settlement with the courts as aforesaid, shall forthwith pay to the collector the full amount with which they stand charged on such settlement, and in default thereof, the collector, shall enforce the payment in the manner and by the means prescribed in the eight, ninth and tenth sections of this article, in regard to taxes.

§ 20. Whenever the collector shall receive the amount due from any such officer, by voluntary payment or by sale of goods, he shall give to such officer duplicate receipts for the same, stating therein the whole amount received, how much for the state, and how much for the county, and the particular fund, if any, to which the same belongs; and the officer taking such receipts, shall, without delay, deposit one of them with the clerk of the county court.

§ 21. Every officer required by this law to make settlement with the respective courts, and pay over to the collector, who shall fail to settle his account in the

time and manner prescribed, may be attached and imprisoned until such settlement shall be made to the satisfaction of the court to which he is accountable.

§ 22. And every such officer who shall fail to pay the amount found due from him on such settlement, and who shall be returned by the collector to the county court, as a delinquent, so that the collector shall be credited in his account with the amount of the delinquency, shall forfeit five per centum per month upon the amount due, from the time it ought to have been paid until collected, which may be collected by suit upon his official bond, or otherwise, according to law.

§ 23. In all cases where licenses are made taxable by law, and required to be issued by the county court, or the clerk thereof, the clerk shall, unless otherwise provided in some other law, from time to time, issue as many blank licenses of each kind as may be necessary, and deliver them to the collector, and charge him the amount thereof, specifying, in every charge, the number and amount of each kind of licenses.

§ 24. Each blank license shall be signed by the clerk, and authenticated by the seal of the court; and the collector, in granting every license, shall fill up and countersign one of the blank license delivered to him by the clerk, and no license, not so signed, countersigned and authenticated, shall be available to the party claiming to act under the same.

§ 25. The several county courts shall, at each regular term, cause the collector to settle his account of all blank licenses with which he stands charged, and, after giving him credit for all he may return, shall ascertain the amount due from him on that account, and shall cause the same to be entered of record, so as to show the amount due to the state and to the county, respectively, on each kind of licenses.

§ 26. In like manner and time, the collector shall be required to settle his account of all monies received by him from clerks, sheriffs, recorders and other officers, on account of taxes, fines, penalties and judgments; and the settlement shall be entered of record, so as to shew what is due to the state and to the county, respectively, from what officer received, from what branch of revenue, and the particular fund, if any, to which the same belongs.

§ 27. If any collector fail to make settlement in the time and manner prescribed, he may be attached, until he make such settlement to the satisfaction of the county court.

§ 28. Immediately after every settlement made by any collector with the county court, a copy of the record thereof shall be certified and sent to the auditor of public accounts.

§ 29. Whenever any collector shall be unable to collect any taxes specified on the tax book, having diligently endeavored and used all lawful means to collect the same, he shall make a list thereof, to be called the *delinquent tax list*, in which it shall be stated, the names of all persons whose taxes cannot be collected, alphabetically arranged, with the amount due from each; and a like list of all delinquent clerks, sheriffs and other officers, hereinbefore required to pay to the collectors the amount of revenue by them respectively received, to be called the *list of delinquent officers*.

§ 30. In the month of November, of every year, the respective collectors shall set up a copy of such delinquent list at the court house door of the county.

§ 31. At the last settlement of the collectors, before they are required to make their annual payments into the treasury, they shall return the delinquent list, under oath, to the county courts, and the amounts thereof, or so much as the courts shall find properly returned delinquent, shall be allowed and credited to the collectors in their settlement.

§ 32. The delinquent lists allowed to any collector, shall be delivered to his successor, who shall collect the same, if practicable, and account therefor as for the tax book, and so on to every succeeding collector, until the whole shall be collected.

§ 33. Every collector shall, annually, on or before the first Monday of December, pay into the state treasury the whole amount of revenue with which he may stand charged, deducting his commissions, and the treasurer shall give duplicate receipts for the amount paid, one of which shall be deposited with the auditor within five days after its date.

§ 34. After the year one thousand eight hundred and thirty-five, every collector shall receive, as full compensation for his services in collecting the state and county revenue, commissions as follows:

First, Upon all revenue collected on licenses, two per cent.

Second, Upon all revenue collected from clerks, recorders and other officers, two per cent. Upon all other revenue collected, as follows:

First, Upon all sums not exceeding five hundred dollars, seven per cent.

Second, Upon all sums above five hundred dollars, and not exceeding one thousand dollars, six per cent.

Third, Upon all sums above one thousand dollars, and not exceeding two thousand, four per cent.

Fourth, Upon all sums above two thousand dollars, and not exceeding three thousand dollars, three per cent.

Fifth, Upon all sums above three thousand dollars, two and a half per cent; and the collectors shall be allowed five cents for every mile they may necessarily travel in going to, and returning from, their place of residence to the seat of government, for the purpose of paying revenue into the state treasury, provided such compensation shall not be allowed for mileage, more than once in each year.

§ 35. All officers required by this article, to receive and pay over to the collectors, any part of the state and county revenue, shall receive, as a full compensation, commission on the amount received at the rate of two per cent.

§ 36. Every collector, who shall pay into the treasury the full amount of the state tax on the book, on or before the day prescribed, shall have the same lien upon the property chargeable with the taxes advanced by him, as the state would have if the taxes remained unpaid, and may proceed to collect the same, for one year after such payment into the treasury, in the same manner as other taxes are collectable, notwithstanding the appointment of another collector.

§ 37. If any collector shall, within one year after he has paid into the treasury

the full amount of the state taxes in the tax book, publish such delinquent list as is above directed, and return the same to the county court, the amount properly returned delinquent shall be allowed to him by the court, and paid out of the state treasury.

§ 38. Until the end of the year eighteen hundred and thirty-six, the several county courts shall have power to appoint collectors for their respective counties, as heretofore.

ARTICLE IV.

Of the county revenue.

- SEC. 1. County to make county levy annually; upon what subjects tax to be levied.
2. Amount of tax necessary to be raised, to be ascertained by the court and entered in the tax book.
 3. Amount to be raised, and rate of tax fixed, to be entered on the record; how.
 4. Collector, after settlement, to pay amount due into county treasury, take receipt, &c.
 5. Penalty on collector for failing to pay over county revenue.

§ 1. The several county courts are empowered to levy such sum as may be annually necessary to defray the expenses of their respective counties, by a tax upon all property and licenses made taxable by law for state purposes; but the county tax shall in no case exceed the state tax on the same subjects of taxation, for the same time.

§ 2. As soon as may be, after the tax book of each county shall be corrected and adjusted according to law, the county court shall ascertain the sum necessary to be raised for county purposes and fix the rates of taxes, on the several subjects of taxation, so as to raise the required sum, and cause the same to be entered in proper columns on the tax book.

§ 3. Whenever the county courts shall ascertain the amount to be raised for county purposes, and fix the rates of county taxes, they shall cause the same to be entered of record, so as to shew the whole amount to be raised, and the proportion which the rates of the county tax bear to the rates of the state tax, upon the same subjects of taxation.

§ 4. Every collector of the revenue, having made, settlement, according to law, of county revenue by him collected or received, shall forthwith pay the amount found due from him, into the county treasury, and the clerk of the county court shall give him a receipt therefor, under the seal of the court.

§ 5. Every collector who shall fail to make payment of the amount due from him on settlement, in the time and manner prescribed in the preceding section, shall forfeit two and a half per cent. a month, on the amount wrongfully withheld, to be computed from the time the amount ought to have been paid, until actual payment, which may be recovered by suit on his official bond, or otherwise, according to law.

ARTICLE V.

Of the enforcement of the payment of the land tax.

- SEC. 1 Taxes upon lands, &c., to be a lien until taxes are paid.
2. List of lands on delinquent tax list to be made out and certified to auditor; when.
 3. Fifteen per cent. to be added and collected on such delinquent tax list.
 4. Auditor to make out and transmit, annually, to clerk of county court and collector, a list of all such lands upon which taxes remain unpaid for three years.
 5. Such list to be recorded by recorder, and, after one year, forfeited to the state.
 6. Recording of list, and lapse of one year, full evidence that land is vested in the state; certified copies evidence, &c.
 7. Collector to cause notice of such list to be published; when, how, and contents of notice.
 8. Lands thus situated may be redeemed; when, and on payment of what fees.
 9. Payment of taxes, costs and charges, to whom to be made.
 10. If payment made to treasurer, proceedings.
 11. If receipt for such payment be delivered to auditor before list is sent to collector and clerk, same to be corrected.
 12. If such receipt be not delivered to the auditor until after he has sent his annual list, proceedings.
 13. If payment of such taxes, costs, &c., be paid to collector before he received auditor's list, proceedings.
 14. If paid to collector after he has received auditor's list, proceedings.
 15. List of lands redeemed at the treasury, to be furnished annually to clerk and collector.
 16. The amount appearing to be due to any county, may be drawn out of the treasury; how.
 17. List of lands redeemed from collector, to be certified to auditor; when; proceedings.
 18. All lands forfeited to the state, to be sold by the collector, at the court house door of the county.
 19. Sales, when to be made, and how conducted.
 20. On payment of purchase money, collector to make title to purchaser.
 21. Construction of the term "land," used in this law.
 22. No collector, or his deputy, to purchase at such sales; deeds made in such cases void.
 23. Purchaser failing to pay purchase money within five days after sale, proceeding of collector, &c.
 24. Collector to publish names of purchasers, list of lands sold, and amount of each tract; when and how.
 25. Collector to make settlement for money received on such sale, when, how, and proceedings of court in such case.
 26. Copy of such settlement to be certified to the auditor.
 27. On such settlement, collector to pay over amount due the county.
 28. The residue to be paid by the collector into the state treasury.
 29. Compensation of collector for selling lands, collecting and paying over taxes, in such cases.
 30. Penalty on collector who fails to perform duties imposed on him.
 31. The nett proceeds of lands thus forfeited, to be set apart as a fund for common schools.

§ 1. All taxes laid upon lands and town lots, whether for state or county purposes, and all penalties and interest imposed or charged for the non-payment of taxes, shall be liens upon the lands charged therewith, until payment or forfeiture, notwithstanding any change of title, by deed, judgment or otherwise.

§ 2. The collector of the revenue for each county, shall annually, on or before the first Monday of December, certify, and send to the auditor of public accounts, a description list (as in the tax book) of all lands on the delinquent tax list of his county, the tax upon which has been credited to him in his settlement with the county court.

§ 3. There shall be added to the taxes of all lands contained in such list, fifteen per cent. upon the amount thereof, to be collected on the delinquent tax list by the collectors.

§ 4. The auditor of public accounts shall, annually, on or before the first day of January in each year, certify and send to the clerk of the county court, and to the collector of the revenue for each county, a descriptive list of all such lands, the

taxes upon which have remained unpaid for three years, stating therein the amounts due for taxes, and for interest.

§ 5. The collector of the revenue, immediately after receiving such list, shall cause the same to be recorded in the recorder's office of his county, and after the lapse of one year from the day of recording the same, all the lands contained in such list shall be forfeited to the state.

§ 6. The recording of the list, and the lapse of one year, as provided in the preceding section, shall be full evidence, in all courts and places, that the title to each and every of the tracts of land and town lots contained in such list, has passed to, and vested in the state; and a copy of the record thereof, sealed and certified by the proper recorder, may be received in evidence in all cases.

§ 7. As soon as may be, after the recording of the list as aforesaid, the collector for the county shall cause the same to be published in some newspaper of general circulation, accompanied by a notice, that the lands contained therein will be forfeited to the state for the non-payment of taxes, unless the same be redeemed in one year from the time of recording the list (which time shall be stated in the notice,) and that the same will be sold for the benefit of the state.

§ 8. Every person whose lands or lots shall be subject to forfeiture as aforesaid, may redeem the same at any time before the actual forfeiture, by paying all taxes due thereon, with interest, at the rate of fifteen per cent. per annum, to be computed from the time the taxes ought to have been paid, until actual payment, and all costs occasioned by the delay.

§ 9. The payment may be made, either to the state treasurer, or to the collector of the revenue of the county in which the lands are situate, at the option of the owner.

§ 10. If the payment be made to the treasurer, he shall give duplicate receipts for the amount, one of which shall be delivered to the auditor of public accounts, who shall charge the treasurer therewith, and give to the owner of the land a certificate, stating the amount paid, and describing the land.

§ 11. If such receipt be delivered to the auditor before he has sent his annual list to the collector, and clerk of the county court, as provided in the fourth section of this article, the auditor shall correct the list by striking therefrom all lands redeemed as aforesaid.

§ 12. If such receipt be delivered to the auditor after he has sent his annual list as aforesaid, the holder of the auditor's certificate, required by the tenth section of this article, shall cause the certificate to be recorded in the recorder's office of the county in which the lands are situate, and thenceforth the liens for all taxes, interest and charges, for all previous years, shall cease, but such certificate shall be inoperative until recorded.

§ 13. If such payment be made to the collector of the revenue for the county before he has received the auditor's list, as aforesaid, he shall give duplicate receipts for the same, shewing the amount paid, and describing the land, one of which receipts shall be immediately deposited with the clerk of the county court, and, until so deposited, the receipts shall be inoperative.

§ 14. If the payment be made to the collector after he has received the auditor's list, besides depositing one of the receipts with the clerk of the county court, as above required, the party shall cause the receipt to be recorded in the recorder's office of the county, and, until so recorded, the receipt shall be inoperative.

§ 15. The auditor of public accounts shall, annually, on or before the first day of January, certify and send to the clerk of the county court, and the collector of the revenue for each county, a descriptive list of all lands which have been redeemed at the treasury during the preceding year, stating therein, separately, the amount of taxes, and of interest thereon, for the state and for the county.

§ 16. The amount so appearing to be due to any county, may be drawn for by the county court, and the draft shall be audited and paid as other liquidated claims against the treasury.

§ 17. Every collector shall, annually, on or before the first day of January, certify and send to the auditor, a list, like that required of the auditor by the fifteenth section of this article, of all lands redeemed in his county during the preceding year, and shall deposit a copy of such list with the clerk of the county court.

§ 18. All lands and town lots forfeited to the state, in virtue of this law, shall be sold by the collector of the revenue for the county, at public auction, for ready money, to the highest bidder, at the court house door of the county.

§ 19. The sales shall be made during the session of the circuit or county court, at the first term which shall happen after the lapse of ninety days from the date of the forfeiture, and shall be advertised and conducted in the same manner, as nearly as circumstances will permit, as in case of lands sold under executions issued on judgments at law.

§ 20. The collectors, on receiving the purchase money, shall make quit claim deeds for the lands sold, which shall assign and convey to the purchasers all the right, title and interest of the state, in and to the land sold.

§ 21. The term *land*, as used in this law, shall include all leasehold interest in land, for the term of twenty years or more.

§ 22. No collector, or his deputy, shall be in anywise interested or concerned in the purchase of any land, which may be sold in virtue of this law; and every deed or conveyance, by which any such land may be attempted to be conveyed to, or for the use of, any collector or his deputy, either directly or by way of trust, or any device or pretence whatever, is declared null and void, and the title to such land shall remain in the state.

§ 23. If any purchaser of land, at a collector's sale, shall fail to pay the purchase money within five days after the sale, the collector shall re-sell such land at the risk of such purchaser, giving ten days previous notice of the time and place of such re-sale; and if the land shall sell for less than was bid by the first purchaser, the difference may be recovered from him in a summary way, by motion in the circuit court, giving him ten days notice of the motion.

§ 24. Within twenty days after any sale, as aforesaid, the collector shall publish in some newspaper of general circulation in the county, a list of the lands sold,

with the names of the purchasers, and the amount for which each tract or lot was sold.

§ 25. At the first regular session of the county court, after any such sale and publication, the collector shall settle with the county court for all moneys received in virtue of such sales, which settlement shall be entered of record, so as to shew the whole amount of money received; how much belongs to the county for taxes and interest, and the amount of costs necessarily incurred by the collector, for recording and publishing the auditor's list, for advertising the sales and publishing the list thereof, and for making deeds to the purchasers, which costs shall be credited and allowed to the collector.

§ 26. As soon as may be, after such settlement, the clerk of the county court shall certify and send to the auditor of public accounts a copy of the record thereof.

§ 27. Upon every such settlement, the collector shall forthwith pay to the treasurer of the county, the amount found due to the county, as aforesaid, for taxes and interest, deducting only his commissions allowed by law.

§ 28. The residue shall be paid by the collector into the state treasury, in the time and manner prescribed by law for other revenues of the state.

§ 29. The collectors shall receive as a full compensation for all services rendered by them, in selling lands as aforesaid, and in collecting and paying over the state and county revenue arising from such sales, commissions at the rate of five per cent. on the amount so collected and paid over.

§ 30. Every collector who shall fail to perform any duty hereby imposed, in the time and manner prescribed, shall be subject to all the remedies and penalties provided in the general law on the subject of the collection of the revenue.

§ 31. The nett proceeds of the sales of land forfeited for non-payment of taxes, under the provisions of this article, after deducting taxes and penalties due the state and county, and the expenses of sale, shall be set apart as a fund for the support of common schools.

Approved, March 14th, 1835.

ROADS AND HIGHWAYS.

An act for the opening and repairing public roads and highways.

- Sec. 1. Roads, by whom established, vacated, &c.; width of roads; how to be cleared out; when to be bridged or causewayed.
2. Applications for new roads, how made.
 3. Notice of such application, when and how to be given.
 4. In what cases, and when, court to appoint three disinterested householders as viewers.
 5. Viewers to take oath, and proceed to view, lay out, and mark such road; when; not to run through enclosures; when.
 6. Copy of proceedings of viewers to be certified to court; proceedings of the court thereon; objections may be made.
 7. Any person aggrieved by road passing through their land, may remonstrate to the court; court to appoint reviewers in such cases, and a day and place for them to meet.
 8. Reviewers to meet and take an oath and proceed to discharge their duties; proceedings reported to the next court.

9. If reviewers assess damages, or report unfavorably, proceedings of court; in either event, how costs to be paid.
10. If ten householders, &c., object to the establishing a road, &c., other reviewers may be appointed; how to proceed.
11. If reviewers report against the utility of the road, same not to be established; if favorably, road to be opened; costs, how paid.
12. Application, how and to whom made, for permission to turn road, for the purpose of cultivating land.
13. Three viewers to be appointed in such cases; report of their proceedings, how and when to be made.
14. Upon report being made, in what cases court to vacate that part of road, &c.; reviewers report to be recorded.
- 15, & 16. Proceedings to change a state road.
17. When state road is opened, may be changed according to the two preceding sections; old road not to be vacated, until when.
- 18 to 22. Proceedings, when such alterations are proposed to be made, extending from one county into another.
23. Compensation to commissioners, surveyors, chain-bearers, and markers, in such cases, and costs, how paid.
24. Twelve householders of a township may petition to vacate a road.
25. Petition to be publicly read, on first day of the court to which it is presented, and continued until next court.
26. On the first day of next court, to be read again; if there be no remonstrance, road to be vacated; costs.
27. If a remonstrance be made, viewers to be appointed; how governed, &c.; judgment of court conclusive.
28. Court to lay off counties into convenient road districts; overseers to be appointed; their term of service.
29. Who liable to work on roads, at least two days in each year.
30. Road tax to be levied on real estate, including non-residents, also, upon all licenses; to be accounted for by collector; tax may be discharged in work, at seventy-five cents a day.
31. List of persons owning real estate, to be made out by proper clerk and delivered to overseer; how and when, &c.
32. Duty of clerk when he makes out the duplicate for the current year, in reference to road tax on non-residents lands.
33. Collectors to collect road tax, how; if same be not paid, non-residents lands to be sold, and how; overseer's receipt good for the tax; money in treasury to be paid to overseers.
34. Tax to be levied on town lots in incorporated towns; how collected, appropriated, &c.
35. Penalty on persons liable to work, for failing to attend and work the road, &c., when they have been notified.
36. Overseers to account for, and expend on the road, moneys received; competent witness in suits, and not liable for costs.
37. What deemed sufficient notice for hands to work on the road.
38. Persons who furnish, at request of overseer, a plough, cart, or wagon and horses, &c., to be allowed, how much.
39. Penalty on persons refusing to accept appointment of overseer; how often and how long they shall serve.
40. Road district to be assigned to each overseer, and certificate of his appointment to be forwarded; its contents; list of hands in said district to be made out by overseer.
41. Sheriff to serve appointments on overseers; to be returned and recorded.
42. Roads to be worked, how often, and when.
43. Ditches or drains may be opened on lands adjoining or near the road, when necessary.
44. Timber may be cut on land adjoining or near the road, when necessary for repairing, &c.
45. Proceedings where persons are aggrieved, by cutting such timber.
46. Posts to be set up at forks of roads, in what manner; penalty for failure; compensation to overseer in such case.
47. Penalty on persons for defacing or demolishing such post; how recovered.
48. Penalty on persons who unnecessarily obstruct roads.
49. Overseers to sue for such penalties; when, and how.
50. Further penalty on persons for permitting such obstructions to remain in the road.
51. Owner to remove obstructions out of roads running through or bordering on his plantation; how compensated.
52. Penalty on overseers failing to discharge the duties enjoined on them by this act.
53. Bridges, by whom, how, and when to be built by order of court, when part has been raised by voluntary contribution.
54. Superintendents for that purpose to take oath, and certified copy filed with clerk.
55. Notice of time and place of making contract to be given; contract to be in writing, and filed with clerk; compensation of superintendents.
56. Undertakers to give bond and security.
57. Contributions for building bridges to be applied by the court for that purpose.
58. Toll bridges may be built, when, and under what restrictions.
59. Money in treasury belonging to road fund, may be appropriated to build bridges.
60. General duties and powers of overseers, in causing hands to work, collect fines, appropriate them, &c.; to keep and render accounts on oath, pay to his successor moneys, &c.
61. Penalty on overseer failing to perform certain duties; duty of his successor, and justice, in such cases.
62. Proceedings and duty of court, where road shall, or heretofore has been established on county line.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. That all public roads and highways shall be opened and repaired agreeably to the directions of this act; and the county court shall have authority to make and enforce all orders necessary, as well for establishing and opening new roads, as to change or vacate any public road or part thereof, in their respective counties. All public roads shall be cut out not less than twenty, nor more than forty feet wide, to be determined, from time to time, by the county court ordering the opening the same, according to the supposed utility of said road. All public roads shall be cleared of trees, and limbs of trees, which may incommode horsemen or carriages, and no stump, in any public road, shall exceed eight inches in height; wet grounds and small water courses shall be causewayed or bridged, in such manner as to enable horsemen and carriages to pass with safety.

§ 2. Application for new roads shall be made by petition, signed by at least twelve householders of the township or townships in which such road is desired, three of whom shall be of the immediate neighborhood, specifying the proposed beginning, course and termination thereof.

§ 3. Notice of each intended application shall be given by advertisements, in in two or more public places in said township or townships, at least twenty days prior thereto.

§ 4. The said court, when the petition is presented and publicly read, and upon proof of notice as above, shall, if they deem the road prayed for necessary, appoint three disinterested householders of the county as viewers thereof.

§ 5. The said viewers, or a majority of them, having taken an oath or affirmation, faithfully and impartially to discharge their duties, shall proceed to view the route proposed, and, if they deem it of public utility, lay out and mark such road, on the best ground that can be obtained, not running through any person's enclosure, without the owners consent, unless a good way cannot otherwise be had.

§ 6. The said viewers, or a majority of them, shall make and certify a copy of their proceedings to the ensuing session of the court, when the same shall be publicly read; if no objection be made to such proposed highway, the said court shall cause a record thereof to be made, and order the said road to be opened and repaired, a necessary width, not exceeding forty feet, which shall thenceforth be a public highway.

§ 7. If any person, through whose land the said road may run, feels aggrieved thereby, such person may set forth his, her or their grievances, by way of remonstrance, and the said court shall thereupon appoint three disinterested householders, and assign a day and place for them to meet.

§ 8. The said householders, having had five days notice from either of the parties, shall meet and take an oath or affirmation, faithfully and impartially to discharge the duties assigned; they shall then, or on any other day prior to the next county court, to which the majority may adjourn, proceed to review the proposed road, and assess the damages, if any, which such objector or objectors will sustain

from such road being opened and continued through his, her or their lands, and shall report the same to the next county court.

§ 9. If the majority of said reviewers assess and report damages in favor of the objector or objectors, the costs and damages shall be paid out of the county treasury, if in the opinion of the county court it should be done; but if the majority report unfavorably, the objector or objectors shall pay the costs.

§ 10. If any ten householders of any township or townships, through which the proposed road may run, shall object at the time, and in the manner aforesaid, to the utility, other reviewers may be appointed, who shall proceed as before directed.

§ 11. If the majority of the said reviewers report against the utility of said road, the same shall not be established; and the petitioners shall pay the costs that shall have accrued; but if they report favorably thereto, the objectors shall pay the costs of the review, and the road ordered to be opened and recorded.

§ 12. Any person or persons wishing to cultivate land through which any road may run, may petition the county court, or any justice thereof in vacation, for permission to turn such road on his, her or their own land, or the land of any other person consenting thereto, at his, her or their expense.

§ 13. The court, or such justice, shall thereupon appoint three viewers, who shall proceed to view the same and report the respective distances and situation of the ground of the established and the proposed road, and report at the first term of said court thereafter.

§ 14. If upon the report, the county court being satisfied that the public will not be materially injured by such change, they shall order the same, and upon satisfactory assurance of said road being opened equally convenient for travellers, the county court shall vacate so much of the former road as lies between the different points of intersection, and record said reviewers report.

§ 15. Any person or persons desiring to change any state road passing through his, her or their lands, may apply for that purpose to the county court of the proper county, by petition, signed by twelve householders of the proper township or townships, particularly setting forth the part prayed to be altered.

§ 16. The said court shall thereupon appoint three disinterested householders of the proper county, as commissioners, who shall meet within twenty days thereafter, and having taken an oath or affirmation, faithfully and impartially to discharge the duties assigned, proceed to view the established and proposed road, and if justice and the public good require such alteration, they shall lay off and mark such new way, and report their proceedings in writing under their hands, to said court, which shall be filed and recorded in the clerk's office, and such alteration shall be part of said state road, and opened accordingly, and the old part vacated.

§ 17. That when any state road is opened, it may be changed agreeably to the two foregoing sections, but the old road shall not be vacated until the person or persons applying for such alteration, shall open and repair the new, full equal to the old road.

§ 18. When any alterations as aforesaid shall be proposed to extend from one county into another, twenty-four householders of either county, may file their petition, setting forth the part of the road proposed to be altered, with the clerk of the county court of the proper county, at least forty days before the term at which they may make such application; whereupon the clerk of said court shall forthwith notify the clerk of the adjacent county, in writing, that such petition has been filed, and transmit him a copy thereof; and the clerk receiving such notice and copy, shall lay the same before the county court of his county, on the first day of the next term.

§ 19. The said courts, respectively, shall appoint, on the part of each county, three disinterested householders as commissioners, and the court receiving the copy shall set a day (not under forty days) for the meeting of the respective commissioners, at the dividing line of said counties, and as near as may be, the point where the proposed road crosses.

§ 20. The clerk of the said last mentioned court, shall forthwith give written information to the sheriff of the county, where the original petition was filed, of the time and place of meeting of said commissioners, and the sheriffs of said counties shall notify, respectively, the commissioners at least ten days before the meeting of the same.

§ 21. The commissioners, appointed as aforesaid, shall meet at the time and place specified, and, after taking the proper oath or affirmation, proceed to discharge the duties assigned, being governed by the requisitions of the sixteenth section of this act, except, that the commissioners shall report their proceedings to the next term of said courts, respectively.

§ 22. If the majority of said commissioners report in favor of the alteration of said road, the said courts, upon being satisfied that the provisions of the seventeenth section of this act have been complied with, by opening the new way, shall cause so much of said road as lies in each county, to be recorded as a state road, and vacate the old one.

§ 23. The commissioners appointed under the provisions of this act, and the surveyors, chain-bearers and markers, they may necessarily employ, shall severally receive such reasonable compensation as the court may allow, which, together with all legal costs, shall be paid by the person or persons applying for such alteration.

§ 24. Any twelve householders of a township or townships, may make application to the county court, by petition signed by them, for the vacation of any road or highway as useless, and the repairing thereof an unreasonable burthen to the township or townships.

§ 25. The petition shall be publicly read on the first day of the session at which it is presented, and the matter continued, without further proceedings, to the next court.

§ 26. At the next court, in course, the same shall be again publicly read on the first day, and if no remonstrance be made thereto in writing, signed by twelve

householders, the court may proceed to vacate such road, or any part thereof, and the cost and charges shall be paid by the petitioners.

§ 27. If a remonstrance, in manner aforesaid, be made, the court shall appoint viewers, who shall be governed as those appointed in similar cases. The judgment of the court shall be conclusive in the premises.

§ 28. The several county courts throughout this state, shall lay off their several counties into convenient road districts, and number the same, and appoint some suitable person who is subject to work on public roads, as overseer of the same, who shall serve at least one year, and until he shall give the county court notice of his intention to serve no longer, and satisfy the court that his road is in good order, or unless the county court shall appoint some other person in his place.

§ 29. All able-bodied male inhabitants, over the age of eighteen years, and under the age of forty-five years, having resided in this state three months, and in the district one month, shall work on roads and public highways, at least two days in each year.

§ 30. All persons, non-residents included, being the owners of any real estate, shall pay a road tax thereon, an amount not exceeding one-half of the state tax chargeable thereon. There shall also be levied on all licenses issued by the clerk, an additional road tax, not exceeding ten per cent; and the collector shall pay the same, when collected, into the county treasury as other road taxes; but such persons may discharge the road tax thus imposed; by working under the overseer of their proper road district, at the rate of seventy-five cents per day.

§ 31. The clerks of the proper courts shall make out a list of the names of all persons holding real estate, whether by patent, deed, bond or otherwise, and annex the amount of road tax charged thereon, and deliver the same to the proper overseer, on or before the first of July, annually, and the said overseer shall hand over the same to his successor.

§ 32. The said clerk, when he makes out the duplicate for the current year, shall enter, in a separate column, the amount of road tax assessed upon real estate of all non-resident proprietors, the gross amount of which he shall certify to the treasurer, at the same time he certifies the amount of public revenue.

§ 33. The collectors of the state and county revenue of the several counties, shall collect the said road tax so assessed, as county revenue is collected; and if the same be not paid, such lands shall be sold at the time and in the manner provided for the sale of non-resident lands for state and county taxes, and pay it over, when collected, to the county treasurer of the proper county; provided, however, that said collector shall receive in payment of such road tax, the certificate or receipt of the road overseer of the proper road district, and file the same with the county treasurer, and the county treasurer shall, from time to time, pay to the several overseers of roads, the amount of road tax paid into the county treasury, for their respective road districts.

§ 34. That there shall be assessed on all town lots, in unincorporated towns, a road tax; equal to one-half of the county tax thereon, to be collected or worked

out in the same manner as is provided for lands owned by residents and non-residents, the labor to be bestowed to the improvement of the streets of said town.

§ 35. Each person made liable to work on roads and streets by this act, who fails to attend in person, or by satisfactory substitute, at the time and place appointed, with proper tools or instruments, having had three days notice thereof, or, having attended, shall spend his time in idleness, or disobey the overseer, shall forfeit seventy-five cents for each such delinquency, to be recovered by action of debt, in the name of the overseer, before any justice of the peace of the proper county.

§ 36. That said overseer shall be accountable for the sums received as aforesaid, and shall expend the same in repairing the roads in his district, and in suits brought by the overseer in pursuance of this act; he shall be a competent witness, and on any suit as aforesaid, he shall not be liable for costs.

§ 37. Where the overseer has not an opportunity of giving personal notice of the time and place allotted for such work, a written notice thereof, left at the dwelling or usual place of abode of the party, with some white person of the family, over the age of fourteen years, shall be deemed sufficient.

§ 38. Every person who shall, at the request of the overseer of his road district, furnish a plough, cart or wagon, with a pair of horses or oxen, and driver, shall be allowed for each day's work, the sum of two dollars, and for such services, with a greater or less force, in proportion.

§ 39. Any householder refusing to accept said appointment of overseer, shall forfeit and pay the sum of ten dollars, to be recovered before any justice of the peace, as other fines; provided, that no person shall be compelled to accept said appointment oftener than once in four years, or to serve as overseer for any longer time than twelve months.

§ 40. To each of the overseers appointed, the county court shall assign his road district, and cause to be forwarded to him a certificate of his appointment, setting forth the boundaries of his district, and requiring him to cause all dead or dry timber, standing within forty feet of said road and leaning towards the road, to be cut down; and the overseer shall make out a list of all hands subject to work in said road district.

§ 41. The sheriffs of the several counties shall deliver to the overseers, respectively, their appointments, and make return thereof to the clerk of said court, who shall enter the same on the record of said court.

§ 42. As often as the roads and highways within the district of an overseer, shall require opening and repairing, he shall call out the hands allotted to him, oversee and work upon, open, clear and repair.

§ 43. It shall be lawful for any overseer, or any person by his order, to enter upon any lands adjoining or laying near the road in his district, and cut or open such ditches or drains as shall be necessary for the making or preserving of said road.

§ 44. Every overseer shall have full power to enter upon any unimproved lands adjoining or near to the roads, and cut down any wood or trees, and carry off the

same, as may be necessary for making or repairing said road, doing as little damage as may be, to the owner of such land.

§ 45. If any person feels himself aggrieved by the cutting or carrying away of such timber from his, her or their lands, such person may apply to the county court, who shall appoint three disinterested householders, who, after taking the proper oath or affirmation, shall proceed to assess the damages, if any be, which shall be paid out of the county treasury.

§ 46. Every overseer shall erect and keep a post at the forks of every road and highway within his district, containing a legible inscription, directing the way, and mentioning the distance to the most remarkable place on the road, under the penalty of five dollars, to be recovered and applied as other road fines; and every such overseer shall be entitled to the sum of one dollar for every post or sign so erected, out of the road fund.

§ 47. Any person who shall intentionally demolish such post, or deface, or alter any inscription thereon, shall, for every such offence, forfeit and pay to said overseer the sum of ten dollars, if a white person, and if a black person, then the master or owner, on proof of the same, shall pay ten dollars, to be recovered before any justice of the peace of the proper county, for the use of the roads in said district.

§ 48. If any person shall obstruct any public road unnecessarily, and to the hindrance of any passengers, such person shall forfeit a sum not exceeding ten dollars.

§ 49. The overseers, respectively, shall, as often as informed of such obstructions, commence suit against the person obstructing as aforesaid, before any justice of the peace of the proper township, which shall be prosecuted as for debts of similar amount.

§ 50. Every person fined as aforesaid, shall forfeit one dollar for every day he may suffer such obstruction to remain to the hindrance of passengers, to be recovered as aforesaid.

§ 51. When a public road or highway shall run through, or border on, any plantation, and become obstructed by the falling of trees or otherwise, it shall be the duty of the owner of such plantation to remove such obstructions, so soon as the same shall come to his knowledge; for which, the overseer of such road shall give him a reasonable compensation, by a credit on his liability to work on roads.

§ 52. In all cases where the overseer shall wilfully fail or neglect to keep his road in good repair, or to faithfully appropriate monies collected or received for the use of his road, or in any manner to comply with the duties required of him by this act, he shall forfeit and pay a sum not exceeding twenty dollars, to be recovered before any justice of the peace of the proper township, for the use of his road district.

§ 53. Whenever in the opinion of the county court, the public convenience shall require that a bridge shall be built over any water course, they shall direct the overseers to build the same, if they deem it expedient, or they may appoint three resident persons of the proper township as superintendents of the building thereof;

provided, no bridge shall be thus built, unless one third of the amount necessary for building the same, be raised by voluntary subscription.

§ 54. The said superintendents shall take an oath or affirmation, before some person duly authorized to determine the same, faithfully and impartially to discharge their duties, a certified copy of which, shall be filed in the clerk's office of said court.

§ 55. The said superintendents shall advertise, in the most public places in the county, the time and place they will contract with some fit person to build such bridge, which contract shall be in writing, signed by the parties contracting, and filed in the proper clerk's office; and the court shall allow the superintendents a reasonable compensation for their services.

§ 56. Bond and security shall be required from the undertakers of such bridge, which shall be approved by the county court.

§ 57. The court may receive from individuals, subscriptions and donations, as a contribution towards the building of such bridge, which shall be applied accordingly.

§ 58. If in the opinion of the county court, it would be of public utility to have a bridge built over any river or creek, where money cannot be obtained by subscription or taxation, without oppressing the people, to build the same, they are hereby authorized to empower any individual or individuals to build the same under the rules and regulations that ferries are established; provided, the person or persons building such bridge shall always be bound to transfer the same, at any time, to the county, at ten per cent on cost, when the county shall be willing to purchase it.

§ 59. The county court may appropriate any money that may be in the county treasury, belonging to the road fund, to the building of bridges in said county.

§ 60. Each overseer shall cause all the hands in his district, to work the number of days required by law, or collect from each person seventy-five cents for each day he fails to work, and keep an exact account of the work done by each man, and money collected for the use of roads, and return an accurate copy thereof to the clerk of the county court, at the first court after the expiration of the time for which he shall have been appointed, and pay to his successor all monies collected as aforesaid, not expended upon his road. which account he shall attest under oath; provided, that in all cases when the hands allotted to any road shall have performed the number of days work required of them by law, if such road shall remain unfinished, it shall be the duty of the overseer of such road, to call the hands assigned him, to complete such road.

§ 61. If any overseer shall fail to keep or return an accurate account of the work done, or money collected as aforesaid, or shall fail to pay over to his successor the money which may remain in his hands unexpended, he shall, for each offence, pay not less than ten, nor more than thirty dollars, to be recovered in the name of the state, before any justice of the peace, by any householder in the county, for the use of his road district, which shall be paid by the justice collecting the same to the successor of said overseer, and give him therein a list of all judgments obtained by

his predecessor, not collected, who is hereby authorized to collect the same as if they were obtained in his own name.

§ 62. When any public road shall be established on a county line, or has heretofore been established, the county court in their respective counties shall cause the same to be opened and repaired in the same manner as if the whole of said road was in the limits of the county.

Approved, March 18th, 1835.

ROAD AND CANAL FUND.

An act concerning the road and canal fund.

- SEC. 1. State treasurer to draw the three per cent. fund accruing to this state from United States.
2. Such money to constitute a separate fund, called the road and canal fund; to be accounted for as such.
3. Amount received by treasurer to be reported to the auditor, stating amount and time of receipt.
4. To be divided and paid to the several counties, according to representation by last apportionment.
5. Division of the fund to be made annually or semi-annually; when.
6. Apportionment and division to be made by treasurer and auditor; notice, &c., to be given each clerk of county court.
7. Each county may draw their portion, to be put in county treasury, to constitute the county road and canal fund.
8. Such fund shall be applied by the court to constructing or improving roads, bridges or canals.
9. Liability of each member of the county court for misapplication of the fund.
10. Two or more counties may unite their funds, to construct or improve roads, bridges, or canals; when.
11. Fund may be appropriated to the objects prescribed, or loaned out at interest; how managed in such case.
12. Court to make biennial report to auditor; its contents.
13. Treasurer to open separate account with each county; what he shall state in his biennial report in respect to said fund.
14. No compensation allowed to county treasurer under this act.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The state treasurer is authorized and required, from time to time, to draw for and receive from the secretary of the treasury of the United States, all sums of money which may accrue to the state, on account of the three per cent. of the nett proceeds of the sale of the public lands of the United States, lying within the state of Missouri, according to the laws of the United States, and deposit the same in the state treasury, subject to the disposition of the general assembly, for the improvement of the country by roads and canals.

§ 2. The moneys received on the account aforesaid, shall constitute a separate fund, to be called the road and canal fund, and shall be managed, stated and accounted for, separately from the general revenues of the state.

§ 3. Whenever the treasurer shall receive any sum of money on account of the road and canal fund, he shall, without delay, report the same to the auditor of public accounts, stating the amount received, and the time of the receipt thereof.

§ 4. Until otherwise provided by law, the road and canal fund shall be divided and paid to the several counties in the state, in proportion to their right of representation in the house of representatives, according to the then last apportionment of representatives.

§ 5. The division of the fund shall be made semi-annually, if the amount in the treasury be large enough to make the share of the county having the greatest representation amount to five hundred dollars, and if not, annually.

§ 6. The apportionment and division of the fund among the counties, shall be made at the treasury, by the treasurer and auditor of public accounts, who shall, without delay, give notice thereof, and that the money is ready to be paid to the respective counties, by a letter written to the clerk of the county court of each county.

§ 7. The county courts shall have power to draw for, and receive from the state treasurer, the amount of their respective shares, which, when received, shall be placed in the county treasury, and constitute a separate fund, to be called the county road and canal fund, and shall be managed, stated and accounted for, separately from the general funds of the county.

§ 8. The county court shall have control of the county road and canal fund, and shall cause the same to be applied to the construction or improvement of roads, bridges or canals, and to no other object.

§ 9. If by order of any county court, any part of the fund shall be misapplied to objects other than roads, bridges and canals, the members of the court, present at the time of making the order and consenting thereto, shall be individually liable for the amount so misapplied, and the same may be recovered by suit, in the name of the county for the use of the said fund.

§ 10. If two or more counties (acting by their respective courts) shall think proper to unite their funds, for the construction or improvement of any road, bridge or canal, of common utility, they are authorised to do so; and any contracts which they may jointly make for the more convenient accomplishment of the common object, shall be as binding as in case of a single county.

§ 11. The several county courts may either appropriate the funds directly to the objects prescribed, or if thought best for the permanent interest of the county, may lend the same at ten per cent. interest per annum, taking care, in every instance, to require good and ample security. The interest accruing on every such loan, shall be added to, and make a part of, the fund.

§ 12. Each county court shall, biennially, make a report to the auditor of public accounts, for the information of the general assembly, containing a full and particular account of the condition of the fund; stating how the same, and every part thereof, has been applied, or disposed of; what works of internal improvement have been constructed or improved; what works have been undertaken and are in progress; the amount applied to each object; the money lent at interest, and on what security; and the amount of losses, if any.

§ 13. The treasurer shall open a separate account of the road and canal fund, with each county in the state; and, in his biennial report to the general assembly, shall set forth the condition of the fund, shewing how much has been received into the treasury since the last biennial report; how much has been apportioned and paid to each county; what counties, if any, have failed to draw their shares, and how much remains for distribution.

§ 14. No compensation shall be allowed or paid to any county treasurer for the performance of any duty in relation to the county road and canal fund.

Approved, March 7th, 1835.

SALARIES.

An act fixing the salary of civil officers.

SEC. 1. Compensation of civil officers.

2. Accounts to be presented to the auditor, and drawn for, quarterly.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The officers of state, shall receive for their services annually, the following sums:

First, The governor, the sum of fifteen hundred dollars.

Second, The judges of the supreme court, each, eleven hundred dollars.

Third, The judges of the circuit court, each, one thousand dollars.

Fourth, The secretary of state, and state treasurer, each, the sum of one thousand dollars, to include all demands against the state, for clerk hire.

Fifth, The auditor of public accounts, the sum of fifteen hundred dollars, to include all demands against the state, for clerk hire.

Sixth, The attorney general, five hundred dollars; and,

Seventh, Each circuit attorney, two hundred and fifty dollars.

§ 2. The above salaries shall be paid out of the treasury, in four equal instalments, one at the end of each quarter of a year; and the officers shall present their accounts to the auditor, who shall draw his warrant therefor, upon the treasury, to be paid out of the appropriations made for the payment of civil officers of government.

Approved, March 17th, 1835.

SALINE LANDS.

An act respecting saline lands.

SEC. 1. What lands may be disposed of at private sale; and by what subdivisions.

2. Lands, from whom and how purchased; certificates of, how made, &c.; patents to be issued; how signed, &c.

3. Treasurer to record certificate of purchase, and secretary to fix seal of state; no compensation allowed.

4. Two persons at same time apply for same land, to be put up to highest bidder.

5. Patents issued by auditor to be recorded.

6. The Elk saline and the Lamine saline, sale of, when, how, where, and by whom conducted.

7. Penalty on persons committing certain trespasses and waste, &c., on saline lands.

8. Duty of judges and justices of the peace in such cases.

9 & 10. Their powers, duties and privileges.

11. Agents may be removed, when; lands not to be leased for purpose of salt making.

12. Judges of circuit courts to give this act in charge to grand juries; duty of juries.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1 All the saline land remaining unsold, except the Elk salines, and the Lamine salines, (and the lands adjacent to the same, containing thirty-eight hundred and forty acres each,) may be disposed of at private sale, in sections, half sections, quarter sections, half quarter sections, and half of half quarter sections, and in the manner hereinafter prescribed.

§ 2. The person wishing to purchase saline lands shall pay into the treasury of this state, the sum of one dollar and twenty-five cents per acre for the tract he may wish to purchase, and the treasurer shall give to the person thus paying, a certificate, stating the amount of money received, from whom received, and the number of the tract, range and township; which certificate shall be produced to the auditor, who shall record the same in a book kept for that purpose, and shall file said certificate in his office, and make out a patent for the land mentioned in the same; granting to the purchaser, on the part of the state, the fee-simple in said land; the patent shall be signed by the governor, be under the seal of the state, and countersigned by the secretary of state.

§ 3. The treasurer, before he deliver any certificate as aforesaid, shall record the same in a book kept for that purpose; and the secretary of state shall fix the seal of state, for which services they shall receive no compensation.

§ 4. If two or more persons shall apply at the same time for the purchase of the same tract of land, the treasurer shall offer the same to the highest bidder, and the person making the highest bid shall be entitled to the land.

§ 5. All patents issued for land, in pursuance of this act, shall be recorded by the auditor in the book provided for recording the patents for seminary lands.

§ 6. The register and receiver appointed by this "act, supplementary to an act, to provide for the sale of the saline lands," approved, January nineteenth, eighteen hundred and thirty-three, shall, when required by the governor, offer at public sale, at the town of Boonville, in the county of Cooper, the Elk saline, and the Lamine saline, and the lands belonging to each, as designated in the first section of this act. Said sales shall be conducted in the same manner, and under the same rules and regulations, and titles to be made in the same manner as pointed out by the act aforesaid; and after said public sale, said lands shall be subject to private sale, as provided by this act.

§ 7. If any person attempt to work any of the salines, or settle on any of the lands attached to the salines belonging to this state, without first having obtained a license for the same, as required by this act; or shall cut, carry away, or destroy any timber, or shall carry away or destroy, or cause to be carried away or destroyed, any building, or other property belonging to the state, found or being on any of the lands belonging to this state, shall, on conviction thereof, by indictment, be fined in a sum not less than twenty dollars, nor more than three hundred dollars, at the discretion of the court, or jury, trying the same.

§ 8. All judges and justices of the peace, upon information to them on oath, or upon their own knowledge, shall cause all persons committing any of the offences aforesaid, to be brought before them, by the like process and proceedings as in

criminal cases, and cause such person to enter into a recognizance for his appearance at the next circuit court to be held in his county, and on failure, to give such recognizance to commit such offender to jail.

§ 9. The county court in counties where saline lands lie, shall appoint an agent for each saline, and the lands adjacent thereto, in their respective counties; the agent shall preserve from waste and damage the timber and buildings, and other improvements attached to said saline lands, and said agent shall cause all persons offending against this act, to be proceeded against as herein provided.

§ 10. The agent thus appointed shall have the use of the salt water, and the improvements belonging to any of the saline lands, on condition said agents will comply with the requisitions of this act; but shall not be allowed to use any timber belonging to any saline lands, except for house-hold fuel, and such rail timber as shall be necessary to repair the fences on said premises.

§ 11. The county court shall have power to remove any of said agents, whenever they shall be satisfied that they have not complied with the requisitions of this act; nor shall said court, by virtue of this act, rent or lease any salines belonging to this state, upon any conditions, for the purpose of saltmaking.

§ 12. It shall be the duty of the judges of the circuit court to give in charge this act to the grand jury at each term of the circuit court, and the grand jury shall make diligent enquiry thereto, and to present all persons offending against the provisions of this act, to said court, and the court shall direct proceedings thereon.

Approved, February 14th, 1835.

SALINE LANDS.

An act legalizing certain sales of saline lands, and authorizing additional sales thereof in lots of forty acres.

SEC. 1. Certain sales, heretofore made, legalized.

2. How sales to be made hereafter.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The sales of saline lands heretofore made at private sale, in quantities less than half-quarter sections, shall be held valid, and patents shall be issued therefor as if the same had been authorized by law.

§ 2. Hereafter all saline lands remaining unsold at the close of the public sales thereof, may be disposed of at private sales, in regular subdivisions of not less than forty acres, or the quarter of a quarter section, as in the public sales, and in all other respects according to the existing laws. This act shall take effect from the passage thereof.

Approved January 2nd, 1835.

SALTPETRE WORKS.

An act concerning saltpetre works.

- Sec. 1. To be enclosed by the owners or occupiers.
 2. Penalty for failing to comply with this act.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The owners and occupiers of saltpetre works, within this state, shall keep the same inclosed with a good and lawful fence, so as to prevent horses, cattle and other stock, that may receive injury thereby, from having access thereto.

§ 2. And every person, owner, or occupier of any saltpetre works within this state, failing to secure the same, with a good and lawful fence, from horses, cattle, and any kind of stock that may be injured by drinking the saltpetre water, shall be liable to an action of the party injured by such neglect, for double the value of the horses, cattle or other stock injured or killed by drinking the water: to be recovered in any court having competent jurisdiction to try the same.

Approved, February 4th, 1835.

 S A L V A G E.

- Sec. 1. Boats, vessels, rafts, &c., in a perishable condition, may be secured.
 2. Property to be restored on proof of ownership, and paying salvage.
 3. Salvage, how obtained from the owner; property may be detained.
 4. Oath to be taken by the taker up, before a justice of the peace, and how.
 5. Notice to be given; how.
 6. Failure to give notice, a forfeiture of salvage, and damages, to owner, &c.
 7. Not necessary to cause notice to be given in newspaper; when.
 8. Salvage of lumber, staves, or shingles.
 9. Salvage of logs, rails, firewood, or timber.
 10. Property of less value than ten dollars, how disposed of; over ten dollars, not exceeding one hundred dollars, may be sold, how; may be restored to owner before sale.
 11. Proceeds, how disposed of, and salvage paid.
 12. Owner not appearing in six months, how disposed of.
 13. If property be above the value of one hundred dollars, court or judge may order sale.
 14. Notice of sale to be given; sale, how conducted; proceeds, how disposed of.
 15. Penalty for embezzlement of property.
 16. Justice of the peace, secreting, embezzling, &c., penalty.
 17. Value of property, how ascertained; proceedings.
 18. Remedy of owner for the recovery of property taken up.
 19. Salvage on property floating from wreck, to be paid out of proceeds.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. When any boat, vessel, raft or other property, shall be lost or wrecked, and in a perishable condition, upon any river, any person may take up and secure the same, at or near the place where found.

§ 2. When any person shall set up a claim to such property, and shall prove his title to the same, by competent testimony, before any justice of the peace of the

proper county, such taker up shall restore the same to such owner, if he pays to such taker up a premium for salvage, at the rate of ten per centum upon the value of all such property.

§ 3. The taker up of such boat, vessel, raft or other property, shall be entitled to retain the same against the rightful owner, until salvage be paid, or may have and maintain an action of debt, or on the case, against such owner, for the amount of salvage due according to this act.

§ 4. Whenever any such property shall be taken up and secured, if the same exceeds the value of ten dollars, the taker up shall forthwith go before some justice of the peace of the county, and make oath that the property was wrecked or lost, without the consent of the owner, and was in a perishable condition, as he believed, and that he was not directly or indirectly instrumental in causing the property to be [so] wrecked, lost, set adrift, or placed in a perishable condition, and shall also state under oath, an exact account of the quality and quantities of such property and the time that such property was taken up, and that he has not secreted or disposed of, directly or indirectly, any part thereof.

§ 5. Within thirty days thereafter, the taker up shall insert, in some newspaper in this state, nearest the place of taking up such property, for four weeks, a correct and exact account of the time and place when and where the said property was taken up, and the description and valuation thereof, and shall also put up three advertisements to the same effect, at public places in the township where such property may have been taken up, within ten days thereafter.

§ 6. If the taker up shall fail to give public notice as aforesaid, he shall forfeit all his right to salvage, and shall forfeit to the owner of said property all such damages as the said owner may sustain in consequence thereof, to be recovered with costs, before any court having jurisdiction.

§ 7. If the amount of property taken up shall exceed one hundred dollars, it shall not be necessary for the taker up to cause notice to be given in any newspaper.

§ 8. Any person taking up any raft, when the same shall consist of lumber, staves, or shingles, the person taking up and securing, shall be entitled to receive the same salvage as is by this act allowed to persons for taking up and securing any boats, vessel or other property.

§ 9. Rafts taken up that shall consist of logs, rails, firewood or timber, the person taking up and securing the same, shall be entitled to receive for his trouble, the one-fourth part of the proceeds arising from the sale of such raft.

§ 10. When any person shall take up and secure any such property of less value than ten dollars, he may retain and dispose of the same to his own use, if the owner shall not claim the same within one year after the taking up; and when such property shall be of greater value than ten dollars, and not exceeding one hundred dollars, the justice of the peace shall, by warrant under his hand, direct the constable of his township to sell the same at public vendue, giving twenty days notice, by three advertisements put up at public places in his township, of the time and place of such sale; but the owner, on proof of ownership, before such justice of the

peace, may have restitution of his property, at any time before sale is made, on paying the salvage and costs.

§ 11. After sale, the constable shall return the warrant to said justice, with the proceeds of such sale, and the justice shall allow to the taker up his salvage according to this act, and, after paying the costs, shall retain the balance in his hands, to be paid to the owner of the property, if he applies for the same and prove his right within six months after the return of the warrant.

§ 12. If no claimant appear within six months, the justice shall pay the said money into the county treasury, taking the treasurer's receipt therefor, which receipt shall be filed in the office of the county court of the proper county, and the owner may, on bringing satisfactory proof of ownership, obtain an order from the county court of the county for the payment thereof out of the county treasury.

§ 13. If the property taken up and secured shall be above the value of one hundred dollars, the supreme and circuit courts of the state, and any judge thereof in vacation, shall have the power of ordering the sale thereof, by an order directed to the sheriff of the proper county for that purpose.

§ 14. Notice of such sale shall be given, and the sale in every respect conducted in the same manner as when property is seized on execution; and the sheriff, after paying the taker up his salvage according to this act, and the costs, shall retain the money arising therefrom in his hands, until either of the said courts, or some judge thereof, shall authorize him to pay the same over to the owner, and the sheriff for his services shall be entitled to the same fees as he is entitled to in other cases.

§ 15. If any person unlawfully detain or embezzle any property, wrecked, lost or adrift, contrary to this act, he shall be liable to pay double the value thereof to the party injured, to be recovered by action of debt or on the case, in any court having jurisdiction thereof.

§ 16. If any justice of the peace shall fraudulently secrete, embezzle or dispose of, any money or property which may come to his hand under this act, such justice shall forfeit fourfold the value thereof, to be recovered by action of debt or on the case, one half to the use of the party injured, and the other for the use of the state, in any court having jurisdiction thereof.

§ 17. When it may be necessary to ascertain the value of any boat, vessel, raft or other property, any justice of the peace of the proper county, on the application of any party concerned, by a warrant under his hand, may depute three substantial householders of the neighborhood, who, being sworn, shall assess and ascertain the value of such boat, vessel, raft or other property, and return their valuation, and be by him returned to the clerk of the circuit court, to remain in his office as a matter of record, with the warrant of the justice, which valuation, as between the parties litigant, shall be final.

§ 18. When any person shall make oath before any justice of the peace, that he has lost any property by wrecks, the rising of the water, tempest, or other accident, and that he has good cause to believe that such property so lost is secreted in possession or custody of any other person or persons, it shall and may be lawful for such justice of the peace, by warrant under his hand, to direct to the con-

stable of his township to search for and take into his possession and charge the property so secreted, and if the claimant shall prove his title to the same, in manner hereinbefore mentioned, then it shall be the duty of such constable to deliver the said property to the claimant so proving his right, he paying the fees allowed by law for similar services.

§ 19. When boats are wrecked and the cargoes found floating in barrels, hogsheads, bales, or otherwise, the party taking up and securing such cargoes or any part thereof shall be entitled to fifteen per centum, to be paid out of said goods so secured or out of the proceeds of the sale thereof, which shall be full compensation to the party who may take up the same.

Approved, March 2d, 1835:

SCHOOLS AND SCHOOLS LANDS.

An act to regulate the sale of the sixteenth sections, and to provide for organizing, regulating and perpetuating common schools.

- Sec. 1. The sixteenth sections, how, in what manner, and by whom they shall be sold.
2. To be sold in lots of forty acres; how divided.
 3. Purchase money, how secured; bonds where deposited; several school commissioners to make settlement, &c.
 4. Patents when to issue; certificate of purchase to be given by sheriff, its contents.
 5. Abstract of lands sold to be furnished to the auditor; proceedings to obtain patents after purchase money is paid.
 6. Patent to issue to purchaser on paying purchase money, if he does not wish the credit allowed, &c.
 7. Additional security may be required for the purchase money; when; failing to give it, proceedings.
 8. School districts, when and how to be organized.
 9. Money arising from the sale of lands to be loaned out by county court; loans how secured.
 10. Bonds, &c. to secure such loan, how drawn; interest when and to whom paid; to be drawn and paid out for the use of schools; when and how; county treasurer to keep accounts of principal and interest.
 11. In what cases interest to be added to the principal and constitute part of the permanent fund.
 12. In what cases additional security may be required of officers holding monies under this act; may be removed others appointed, when.
 13. County courts may order suits to be brought, when; all monies to be paid to county treasurer, duplicate receipts taken and deposited with clerk of county court.
 14. In what cases borrower to retain the money by paying the interest punctually.
 15. Duty of circuit attorney to prosecute suits.
 16. Compensation to sheriff, clerk and treasurer, under this act.
 17. Penalty and proceedings against persons committing waste or trespass on school lands.
 18. Duty of judges to give the above section in charge to the grand jury at each term; duty of grand jury.
 19. Fines, penalties and forfeitures under this act, appropriated.
 20. Each township or fractional township to compose school district; fractional township less than 100 acres, &c.
 21. Trustees of two or more townships may use their respective funds conjointly; when and how.
 22. Duty of the chairman of each of the board of trustees in such cases; report to be made to court; proceedings thereon.
 23. When two or more school districts are formed of one township, how school fund appropriated.
 24. School districts to be numbered and recorded; number may be altered when they fall into a new county, and in such case bonds, money, &c., to be transferred to their proper county.
 25. The sixteenth sections and profits, fines &c., arising from same, appropriated to use of schools, &c.
 26. Clerk and treasurer to keep accurate accounts, &c., moneys how paid out; settlements when and how made.
 27. Corporate powers of districts vested in board of trustees; first board how chosen.
 28. Who not eligible to be a trustee; trustees, after the first, how and when elected.

29. Judges for election of trustees to be appointed, place of election to be fixed; who may vote for trustees; election how held.
30. Trustees not elected as in the two preceding sections, court to appoint them; to serve until their successors qualified, &c.
31. Trustee to take oath, to be endorsed on certificate of election; tenure of office.
32. Trustees when to assemble, to choose a chairman, to fix time and place of meeting, may be convened, how.
33. Quorum how formed; general powers and duties in reference to school houses, teachers, school funds, books necessary accommodations, &c.
34. Trustees to employ teacher and keep school six months in a year, in each incorporated school district; what children to enter.
35. What branches shall be taught, no preference to teachers &c., on account of religious opinions; no regulations to control religious belief, &c.
36. If school fund not sufficient to pay teacher six months, deficit how made.
37. In what cases trustees to employ the full year; deficit, if any, to pay teacher, how made up.
38. Poll to be opened; when, for and against taxing the people of the county for benefit of education, proceedings.
39. Fines and forfeitures for the use of the state or county, appropriated for education in the county.
40. Clerk, if desired by the court, to procure a well bound book, to be entitled "Register of benefactors to common schools;" its use, purposes, &c.
41. Money received by three preceding sections, how managed, apportioned and distributed, &c.
42. When sixteenth sections are relinquished, and lands in lieu thereof to be selected, proceedings in such cases.
43. If lands are to be selected out of the county, duty of the governor to appoint some discreet person to select, &c.
44. Person appointed shall make selections, how; his proceedings reported to the governor; his compensation.
45. When such selections are made, secretary of state to certify same to circuit and county court of proper county to be recorded, and certified copy, evidence, in certain cases.
46. Sheriff of county where lands are selected, to sell same under the regulation in selling sixteenth sections; bonds, to be transmitted, &c.
47. What state officers shall *ex officio* constitute a board of commissioners for literary purposes.
48. Trustees of each school district to make biennial report to county court; contents of report.
49. County court to make biennial report to secretary of state; report when and how made.
50. Secretary to lay report before board of commissioners; duty of said board.
51. Penalty on the judges, circuit attorney, sheriff, clerks and trustees, for neglect of duties under this act.
52. Construction of power of trustees over certain village or common field lots.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. In all congressional townships in this state, in which there are fifteen free white house-holders, they shall have the right to sell their sixteenth section, and, upon a petition of a majority of them, it shall be the duty of the county court to make an order, directing the sheriff to expose the said section to sale, after giving sixty days notice, and the advertisements, shall be made and put up in the same manner, sheriffs are now required in selling lands under execution, and the court shall cause a copy of such order to be furnished the sheriff, and if said section, or any part thereof, shall remain unsold, it shall be the duty of the sheriff in each county in this state, if the county court shall deem it necessary, once in each year, to again offer said land for sale, on a credit of twelve months at the court house door of his county, and while the circuit court is in session, by giving the same notice, and in the same manner as required above, and no land shall be sold for less than one dollar and twenty-five cents per acre.

§ 2. The school lands shall be sold in lots of forty acres, and shall be divided in the same way, that the public lands of the federal government are now divided, when sold in forty acre tracts.

§ 3. The purchaser shall give a bond with good and sufficient security, payable one year after date to the county, for the use and benefit of the inhabitants of the

township, to which the lands purchased may have belonged, which bond shall bear interest at the rate of ten per centum per annum from its date until paid, which bond shall be returned by the sheriff, to the county court of the county to which the land belongs, and shall be, by the court, deposited in the office of the county treasurer. The several school commissioners shall settle with, and hand over to the county court, all bonds, mortgages, monies and interest that have accrued thereon, which shall be deposited in the county treasury.

§ 4. No patent shall be issued to a purchaser, of any lands sold under and by virtue of this act, until the full payment of the purchase money be made, but certificates of purchase, shall be issued by the sheriff to the purchaser, describing the land sold, reciting the number of acres, amount of purchase money, and the manner in which the payment is secured, and such certificate, after full and complete payment shall have been made, shall entitle the purchaser to a patent for the land so purchased.

§ 5. It shall be the duty of the county court, to make out and forward to the auditor of public accounts, an abstract of all lands sold under the provisions of this act, and, when the purchase money shall be fully paid by the purchaser, together with the interest which may have accrued thereon, agreeably to the terms of sale, the court shall make a statement to the auditor, of the tract, or tracts upon which payment has been made, and it shall be the duty of the auditor to make out in the name of the state, and agreeably to the provisions of law, patents for the lands sold, and the auditor after having recorded the patents, which he shall truly do, in a well bound book, to be kept for that purpose, shall forward the same to the said court, to be by it distributed to the persons entitled thereto, on presentation and surrender of the original certificate given to such person, which certificate, shall be filed, and forever preserved by said county court.

§ 6. Any person who has, or hereafter may purchase land as aforesaid, and does not desire a credit, as provided in this act, he shall, on paying the amount of the purchase money, be entitled to receive his patent as soon as may be, for the land purchased, in the same manner as patents are made to purchasers, as provided in this act, and the money paid, shall be loaned out at ten per cent as is prescribed in this act.

§ 7. Whenever the county court, may deem the security for the payment of any bond given for the purchase of any school land, insufficient, it may require additional security; and upon failure to give such additional security, the contract shall be considered as violated, and the court shall, forthwith, proceed to collect the amount due on account of said sale, as if no time had been given for the payment thereof.

§ 8. When the sixteenth section, or land selected in lieu thereof, belonging to any township has been sold, or so much thereof as shall amount to eight hundred dollars, the county court may incorporate the inhabitants of said township, into as many school districts as the public good may require, not exceeding four, by the name and style of, "The Inhabitants of _____ school district," and thenceforth the inhabitants of such districts, and their successors, shall be a body politic and corporate,

and as such, by that name shall be known in law, have perpetual succession, sue and be sued, plead and be impleaded. But if a majority of the inhabitants of any township, shall desire to be incorporated, before their fund shall amount to eight hundred dollars, the county court may, on their petition, be authorized to do so.

§ 9. The said court shall be authorized, and it is hereby required, to loan all the monies which may come into its possession, from the sales of such lands, for the highest interest that can be had, not exceeding ten, nor for less than six per centum per annum, and securing the same by taking good personal security, and by mortgage on real estate, situate in the county, and which letting, shall be for one year. All sums loaned under ninety dollars, may be secured by the borrower giving bond with two, or more, responsible persons as securities, who shall sign the same, and be considered in all respects as principals. For sums over ninety dollars, the obligors shall, in addition to the bond and securities, give a mortgage on real estate, the title to which, shall be clear, unincumbered, indisputable and of value, to be at least double the amount so loaned, and it shall be expressed in all bonds, that when additional security shall be required, the same shall be given to the satisfaction of the court.

§ 10. All mortgages and bonds, shall be drawn in the name of, and payable to the county, for the use and benefit of the inhabitants of the township, to which the money so loaned properly belongs; and the interest agreed on, shall be expressed in the body of the bond, and required to be punctually paid every year at the time specified, and which interest shall be paid over, annually, to the treasurer of the county, who shall, by order of the court, pay the same to the trustees, or such person, or persons of the township to which it belong, as the county court shall direct, and under such regulations, and restrictions, as the said county court may deem right, and make known, relating to the distribution of said interest, the principal remaining entire, and in no case to be diminished, and the said county treasurer shall keep an account of the principal, and interest arising therefrom, of each township separate and distinct.

§ 11. Should there be any school district with a fund upon interest, and in which the trustees may, by neglect of duty, or otherwise, fail to provide a school for one whole year, then, and in such case, it shall be the duty of the court, to incorporate the interest with their school fund, for that year, and loan the whole, which interest shall thereafter continue as a part of the permanent fund.

§ 12. When it shall appear necessary, for the better securing and managing the funds, or monies, which shall come into the hands of any officer under the provisions of this act, the county court may require additional security, in any sum they may deem right; and for any good cause, such as misapplication of the money, neglect of duty, or failure to give additional security, such as the court may think proper to accept, or to render an account, or to give the necessary information of the loans made, or business transactions committed to his care when required, the county court may remove him from office, and in that case, or in case of death or resignation, appoint another, and require bond and security as aforesaid.

§ 13. The county court is hereby authorized to direct suits to be brought, for the recovery of all contracts made by virtue of this act, when, in the opinion of the court, suits may become necessary. Any person having collected monies, or having any in his possession belonging to the school fund, and any person, who may be indebted to said fund, and wish to pay over the monies so due, shall pay the same to the treasurer of the proper county, and take duplicate receipts therefor, one of which shall be deposited with the clerk of the county court, whose duty it shall be, to charge the amount thereof to the said treasurer.

§ 14. In all cases where the sums loaned is over ninety dollars, and the borrower has given bond and personal security, together with a mortgage on real estate, as provided in the ninth section of this act, it shall be lawful for the county court, to permit such borrower to retain the money loaned, as long as the interest is punctually paid.

§ 15. It shall be the duty of the circuit attorney, of the proper judicial circuit, to prosecute all suits for the recovery of monies upon contracts made in consideration of any school funds, or for monies loaned, arising from that source, in all cases coming within the jurisdiction of the circuit court.

§ 16. The sheriff shall be allowed as his compensation, for advertising, selling, and taking bond, one per cent on the amount of sales made in pursuance of this act, in all cases, to be paid out of the school fund, to which the fund belongs, and the clerk of the county court, and treasurer of the county, shall each receive, for his services performed under this act, such compensation as the court may deem right, which shall be allowed and paid out of the county treasury, which shall not exceed (to the treasurer) one half of one per cent, on all money received and paid out by him.

§ 17. If any person shall commit waste, trespass, or other injury, upon any school lands in this state, or upon any improvements thereon, the person so offending shall upon conviction thereof, be fined in a sum not exceeding five hundred dollars, at the discretion of the court, to be recovered by indictment; and it shall be the duty of all civil officers, upon information upon oath, or of their own knowledge, to cause all persons, committing any of the offences aforesaid, to be brought before them by the like process as in criminal cases, and cause such person, to enter into recognizance for his appearance at the circuit court for the county, or commit him to jail, in like manner and with like effect, to all intents and purposes, as in other criminal cases.

§ 18. It shall be the duty of the judges of the several circuit courts in this state, to give the above section in charge to the grand jury at each term, who are hereby required, specially to enquire into, and make presentments of all offences committed under this act, in their respective counties.

§ 19. All fines, penalties and forfeitures, accruing under the provisions of this act, shall be paid into the county treasury of the proper county, for the use and benefit of the inhabitants of the township, to which the land injured belongs.

§ 20. Each township, or fractional township, as surveyed under the authority of the United States, shall compose a school district; but when any fractional town-

ship shall be entitled to less than one hundred acres, of section numbered sixteen, or land selected in lieu thereof, it shall be lawful for the county court for the county, in which such fractional township, or the greater part thereof may be situated, to attach the same to some adjoining township, and when so attached, it shall compose, together with the township to which it is attached, one school district.

§ 21. Whenever the trustees of two or more townships, shall desire to use the funds of their respective townships, conjointly, in establishing a school, they shall be authorized so to do, first procuring the consent of the county court of the proper county; provided, that each township shall be bound to pay towards tuition, only, in proportion to the number of children each may furnish, between six and eighteen years of age.

§ 22. It shall be the duty of the chairman of each of the boards of trustees, to meet at the school house, as provided in the foregoing sections, and apportion the number of children in each township, subject to the charge of tuition in such school, and make a joint report thereof to the county court of the proper county, upon which report, the court shall make the just and necessary apportionment of monies due to each, and draw its warrants upon their respective funds accordingly.

§ 23. Where two or more school districts are formed of one township, the school fund shall be divided between them, and applied to school purposes therein, according to the number of persons between the ages of six and eighteen, to be ascertained by the board of trustees.

§ 24. It shall be the duty of the county court, in each county, to number the several school districts, which, or the greater part of which, lie in their county, and cause a record thereof to be made out and kept, and when by the establishment of any new county, or the alteration of a county line, any school district, or the greater part thereof, shall fall within a different county; the said court for the county in which the district may fall, shall have power to alter the numbers, so as to correspond with the number of the district in their county, causing a record thereof to be made and kept as aforesaid, and the bonds, mortgages and monies, belonging to said district, shall be transferred to the proper county.

§ 25. The sixteenth section, and every part thereof, being in any school district, or other lands which may be selected in lieu of the sixteenth section, or any part thereof, together with all the profits, fines, penalties, forfeitures and damages, recovered for waste, trespass or injury thereto, shall be appropriated to the use of common schools, in the school district to which the land belongs.

§ 26. Each county treasurer, and each clerk of the county court, under the direction and control of the court, shall keep accurate accounts of all monies paid into the treasury of their county for the use of schools, in such manner, as to show distinctly, the amount of monies received to the use of each school district; and all payments made out of the monies of each district, shall be upon warrants specially drawn for that purpose, and the said treasurers and clerks, shall settle their accounts with the said courts at the same time, in the same manner, and under the

same penalties, as are, or may be, by law required, with respect to the accounts of ordinary monies of the county.

§ 27. The corporate powers and duties of every district, incorporated by virtue of this act, shall be vested in a board of trustees, to consist of three members; the first board shall be chosen and appointed by the county court, at the time of declaring the district incorporated.

§ 28. All trustees, (except the first board for each district) shall be chosen by the qualified electors residing within the district, on the first Monday in September in every year, in the manner hereinafter provided; no person shall be a trustee, who shall not be eligible to the house of representatives of the general assembly of this state, and an inhabitant of the district at the time of his election, and shall not have donated as a "benefactor of common schools," the sum of one dollar.

§ 29. The board of trustees shall from time to time, appoint three judges of election, and shall fix upon the place of holding elections, and all persons qualified to vote for representatives to the general assembly, and residing in the school district, shall be entitled to vote for trustees; in all other respects, the election shall be held, and conducted in such manner, as shall be provided by said trustees.

§ 30. In all cases where trustees are not elected, in pursuance of the provisions of the two foregoing sections, the county court shall, upon a knowledge of that fact, appoint them, and whether appointed or elected, the trustees, for the time being, shall continue to act until their successors are duly chosen and qualified.

§ 31. Every trustee shall hold his office for the term of one year, and until a successor shall be duly elected, and regularly qualified, before entering upon the duties of his office, shall take an oath or affirmation, to support the constitution of the United states, and of this state, and faithfully to demean himself in office, which oath may be administered by any judge or justice of the peace, which shall be endorsed and certified on the certificate of election.

§ 32. Every board of trustees shall assemble, within twenty days after their appointment, or election, and choose a chairman out of their number, and shall fix the time and place of holding their stated meetings thereafter, and they may be convened at any time by the chairman, or any two members, when he, or they, shall be of opinion that the good of the school district requires such meeting.

§ 33. A majority of the board of trustees shall constitute a quorum to do business, and the board when convened, shall have power to provide for the building of a school house, to furnish it with the necessary accommodations, to employ teachers, and to appoint visitors, and fix upon the salary of the teacher, and all other such rules and regulations for the purpose aforesaid, as shall be necessary, not contravening the existing laws. The trustees and visitors shall receive no compensation for their services, nor shall the labor expended in building a school house, be paid for out of any part of the principal or income of the school fund, nor shall the books and stationery be included, as a necessary accommodation to be furnished by the trustees; provided, that when the annual income in any district, shall amount to more than two hundred and forty dollars. the excess may be employed for building a school house.

§ 34. It shall be the duty of the trustees, to employ a teacher, and keep up a school in each incorporated school district at least six months in every year, in which school, all children between the age of six and eighteen years, permanently residing in the district, shall be free to enter as scholars.

§ 35. In all schools established according to the provisions of this act, there shall be taught, reading, writing, arithmetic, geography, english grammar, and such other branches of education (theology excepted) as the funds may justify. In the choice of visitors, instructors and pupils, no preference shall be given on account of religious opinions, nor shall any preference by law, or regulation ever be made, in any wise to control, or interfere with the rights of conscience, or belief, on the subject of religion, or the free exercise of religious worship.

§ 36. If the annual income from the school fund of the district, shall not be sufficient to defray the expenses of keeping up a school for six months in a year, the trustees shall apportion the deficit, among those who send to school, in proportion to the number each may send.

§ 37. In those districts where the annual income from the school fund, shall be more than is required to defray the expenses of teaching a school six months in the year, the trustees shall, if required by a majority of those who have children to send to school, provide for teaching a school the full year, and the deficit (if any) shall be apportioned in the same way as is [required] in the preceding section; and in those districts, where the school fund shall amount to twenty-four hundred dollars, it shall be their duty absolutely to furnish, or provide for the keeping a school for the year.

§ 38. At the election to be held in August next; the judges of the election at the respective precincts, shall open a poll for, and against taxing the people of the county for the benefit of education therein, three and one-third cents on every hundred dollars worth of all property, now taxable by law, and if two-thirds of the voters in any county, vote in the affirmative, then such tax shall thereafter be annually levied by the county court, which tax shall be apportioned and collected as other taxes are.

§ 39. All fines and forfeitures, collected for the use of the state or county shall be appropriated for the use and benefit of education in the county, where they are collected.

§ 40. It shall be the duty of the clerk of each county court of this state, (if desired to do so by said court) to procure at the expense of the school fund, a book well bound, and sufficiently large to register the names of at least five thousand persons, in which book the name of every person shall be written, who wishes to be a "benefactor of common schools," by giving any sum of money they [may] think proper, for the encouragement of such schools in their county, and the said clerk shall write opposite each name, both in words and figures the sum which each person gives, and if required by the donor, shall specify the school district, for the benefit of which the donation is made. This book shall be entitled, "Register of benefactors to common schools," and shall be carefully preserved among the records in the archives of the county.

§ 41. The money received by virtue of the three preceding sections, shall be appropriated for the use and benefit of education among the several incorporate school districts, in the county where the same is collected, in proportion to the number of children in each, between the ages of six and eighteen years, which money shall be added to the principal and form a part of the permanent school fund, and loaned from time to time, as the principal is loaned; *provided*, that no school district shall receive any part of the money arising from the sources mentioned in the three preceding sections, after its permanent school fund shall amount to twenty-four hundred dollars; and the monies given for the benefit of any particular school district, shall be added to, and form a part of the permanent fund of such district, in addition to its due proportion, and the fact of having a permanent fund of twenty-four hundred dollars, shall not deprive such district of donations made for its particular use and benefit.

§ 42. When the inhabitants of any congressional township, may, by any law of congress, acquire a right to relinquish their sixteenth section, and select other lands in some other part of the state, in lieu thereof, and when a majority of such inhabitants make known their intention to relinquish to the county court, it shall be the duty of said court, if good land can be selected in the same county, to appoint some discreet person of the county to make the selection, who shall, in the performance of his duty, conform to the law of congress giving the right to relinquish and select, and the land so selected, shall in all respects be sold and managed as hereinbefore provided for the management of sixteenth sections; and if a majority of said inhabitants wish to select land in lieu of their sixteenth section, in some other county, then the county court shall report the fact from time to time as made known to them, to the secretary of state, particularly describing the land relinquished, by stating the number of acres, section, township and range.

§ 43. It shall be the duty of the governor, to appoint (when in his opinion it may be necessary) some discreet person, who is a good judge of the value of lands, to select for the inhabitants of the different townships lands in lieu of those relinquished.

§ 44. The person appointed by the governor, shall make selections of land in place of those relinquished, in accordance with such law or laws, as congress may pass on the subject, taking care to choose the most valuable; [and] shall make report of his proceedings to the governor, and shall describe the quantity selected, and its location, as to section, township and range; for which service the person appointed shall be allowed two dollars per day, to be paid out of the state treasury.

§ 45. It shall be the duty of the governor, to cause the secretary of state, to certify said selections to the county court of the proper counties; which certificate shall set forth a particular description of the land, as to number of acres, section, township and range; and shall also cause the secretary of state to certify to the clerk of the circuit court of each county, in which any lands so situated may lie, the number of the sections therein selected, township and range, and the county for which they are selected; which certificate shall be recorded by the said clerk

in the recorder's office of said county, and a certified copy thereof, shall be evidence, in all cases of such selection.

§ 46. It shall be the duty of the sheriff in the respective counties, where any school lands may be selected in lieu of any relinquished sixteenth section, to sell such lands under the same regulations as are required by this act in selling the sixteenth sections proper, and when he takes the bond, or bonds given by the purchaser or purchasers, he shall transmit the same to the county court of the county to which they properly belong.

§ 47. The governor, secretary of state, auditor of public accounts, state treasurer and attorney general for the time being, shall *ex officio* constitute a board of commissioners for literary purposes.

§ 48. It shall be the duty of the trustees in each school district, to report to the county court at the August term in every second year, commencing in eighteen hundred and thirty-six, the whole number of children in their district, between the ages of six and eighteen years, distinguishing between those who can read and write, and those who cannot, and shall state what number are going to school at the time of making such report; together with the name of the teacher, the amount of salary, and the branches of education he professes to teach.

§ 49. The county court shall, previous to the first Monday in October, every second year, commencing in eighteen hundred and thirty-six, report to the secretary of state, the amount of the permanent school fund of each district, and the interest or income for the last year; and an abstract of all the reports made by the several boards of trustees in the county up to that time, together with such defects as may occur to them; and should the trustees in any district fail to make a report as herein required, the county court shall make an estimate of the number and description of children, as required in the preceding sections.

§ 50. It shall be the duty of the secretary of state, to lay before the board of commissioners when required, all such reports as he may receive from the several county courts, in pursuance of the preceding section of this act; and it shall be the duty of said board, to report to each general assembly, all the defects which they may discover in the laws, on the subject of education, and shall recommend such amendments as will, in their opinion, remedy such defects.

§ 51. The circuit attorney, sheriffs, judges, clerks of the several circuit and county courts, and trustees, shall be subject to the same penalties for neglect of duties required of them under this act, as for neglect of any other official duties required to be performed by them, by any other law.

§ 52. The trustees, appointed in pursuance of this act, shall not have power, or control over any town or village lots, or common field lots, mentioned in, or contemplated by the act of congress, approved on the thirteenth of June, eighteen hundred and twelve, nor to appropriate any of the profits, proceeds, or monies arising therefrom, but the same shall remain under the control of such town or village.

Approved, March 19th, 1835.

SCHOOL LANDS.

An act to provide for the sale of township school lands in Saline and other counties.

- Sec. 1. School lands in certain counties may be sold on certain conditions, when.
 2. Limitation and construction of this act.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. That when it shall appear to the satisfaction of the county court of Saline, Jackson, Ralls, Pettis, Gasconade, Clay, Clinton, and Crawford counties, that so much of the eleventh section of an act approved January the seventeenth, eighteen hundred and thirty-one, as provides that the sixteenth section shall not be sold, unless fifteen free white house-holders reside in said township, cannot be carried into effect in their respective counties, on account of extensive prairies, or other local causes, may, in their discretion, authorize the same to be sold according to the provisions of the eighth section of "an act supplementary to an act, to provide for the sale of township school lands," approved January the twenty-eighth, one thousand eight hundred and thirty three.

§ 2. This act shall not authorize the sale of any township school lands surveyed since the year one thousand eight hundred and twenty-six.

Approved, February, 25th, 1835.

SECRETARY OF STATE.

An act to regulate the secretary of state."

- Sec. 1. Secretary to take oath and give bond; its condition; how attested; where deposited
 2. His residence; shall keep the seal of state, public records, rolls, acts, documents, &c.; to keep register of commissions, official acts, &c.
 3. Postage of certain letters, how paid; certain documents to be recorded.
 4. Shall make report of all matters referred to him by governor and general assembly; free access to his office; when.
 5. Original rolls or documents not to be taken out of his office, unless called for, &c.
 6. To affix seal of state to executive acts.
 7. To make out and authenticate copies of public acts, &c.; such copies received as evidence.
 8. To keep an abstract or register of commissions; note vacancies and occasion thereof.
 9. To keep an abstract of all military commissions, and make certain memorandums thereof.
 10. Secretary *pro tem.* may be appointed, in what cases; his compensation and duties.
 11. To procure stationary for the general assembly; how paid for.
 12. To make report to each session of general assembly the amount expended under preceding section.
 13. Contingent expenses, how paid.
 14. Contingent accounts to be settled quarterly.
 15. Neglect of duty, taking illegal fees, &c; penalty.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The secretary of state, before entering upon the duties of his office, shall take an oath endorsed on his commission, before some judge, or justice of the peace, to support the constitution of the United States and of this state, and to demean himself faithfully in office, and shall, within thirty days after his appointment, enter

into bond with good security, to the governor for the use of the state, in the sum of eight thousand dollars, conditioned, that he will well and truly perform the duties of secretary of state, which bond, shall be attested by the governor and deposited in the office of the auditor of public accounts.

§ 2. He shall reside and keep his office at the seat of government, he shall have the safe keeping of the seal of state, and of all public records, rolls, documents, acts, resolutions, and orders of the general assembly, he shall keep a register of all commissions issued, the official acts of the governor, and, when necessary, attest the same.

§ 3. He shall pay the postage on all official letters and other public documents, directed to, or received by the governor or himself, out of the contingent fund belonging to the office of secretary of state, which letters, and documents, he shall record in the office in a book to be kept for that purpose.

§ 4. He shall make report and give information to the governor, or either branch of the general assembly, respecting all matters referred to him by the governor, the senate, or house of representatives when required by either; and the governor, or a committee of either, or both branches of the general assembly, shall have free access to his office for the inspection and examination of all books, papers, records, and proceedings.

§ 5. He shall not permit any original roll, paper, or public document filed in his office, to be taken out of it, unless called for by a resolution of either house of the general assembly, or for the examination of the executive.

§ 6. He shall affix the seal of state to, and countersign all commissions and other official acts required by law to be issued or done by the governor, his approbation, or disapprobation of the acts of the general assembly excepted, and all other instruments when required or authorized by the governor.

§ 7. He shall make out and deliver to every person requiring the same, copies of any act, resolution, order of the general assembly, commission, or other official act of the governor, roll, record, document, paper; bond and recognizance deposited in his office by law, and shall certify such copies under his hand, and affix thereto the seal of his office, and such copies shall be admitted as evidence in any court of record.

§ 8. He shall keep in his office, an abstract of all commissions issued, and appointments made by the governor, and shall register therein the substance of each commission, specifying the name of the person appointed, the office conferred, the district or county, for which the appointment is made, [and] the term of office; and when any office shall become vacant, he shall enter in a space, to be left for that purpose, a memorandum of such vacancy, and the occasion thereof, with a reference to any evidence deposited in his office.

§ 9. He shall keep a like abstract of all military commissions and appointments, noting, in addition to what is required in the preceding section, the company, battalion, regiment, brigade and division, for which such appointment is made.

§ 10. In the case of absence from the state, sickness, or impeachment of the secretary of state, the governor shall appoint a secretary of state, *pro tempore*, who

shall take the oath herein prescribed, and perform the duties of said office during such absence, sickness or pendency of such impeachment, and shall receive the same salary as the secretary of state would be entitled to, for the like period, which shall be deducted out of the salary of the secretary of state.

§ 11. He shall procure stationary for the use of the general assembly of this state, previous to its sitting, to be paid for out of the joint contingent fund of the senate and house of representatives, for which the auditor of public accounts shall draw his warrant on the treasury, in favor of the secretary of state, any time within four months previous to the meeting of the general assembly.

§ 12. He shall make report to each session of the general assembly, the amount of money that has been expended in carrying into effect the provisions of the next preceding section.

§ 13. The expenses of procuring books, stationary, furniture, printing and other things necessary to be obtained for the use of the office of the secretary of state, shall be paid out of the state treasury, out of any money, appropriated for the contingent expenses of secretary of state.

§ 14. He shall keep exact accounts of the contingent expenses of his office, and on the first days of January, April, July and October, in each year, shall render his accounts with the vouchers of all expenditures, to the auditor of public accounts, who shall settle and adjust the same, as other accounts, against the state.

§ 15. If the secretary of state shall, at any time, neglect or refuse to perform any of the duties enjoined on him by law, or shall take fees for the performance of any duty whereby he is not entitled to fees, or shall take more than by law he is entitled to, he shall pay to the person aggrieved a sum not less than one hundred dollars, nor more than five hundred dollars, to be recovered by action of debt.

Approved, March 20th, 1535.

SECURITIES.

An act concerning securities.

- Sec. 1. Securities may require person having right of action to bring suit.
2. If suit not brought within thirty days after notice, security exonerated.
3. To what cases the two preceding sections shall not extend.
4. Money paid by security to be refunded by the principal debtor.
5. Remedy against principal, by suit, for money or property paid.
6. Security paying more than his due portion, may recover the excess from his co-security; how.
7. No such security compelled to pay more than his portion of the original demand.
8. Judgment against principal and security; and the judgment or any part paid by security, he is entitled, on motion to judgment against principal for amount paid.
9. Notice of such motion to be given, when; limitation of time to make such motion.
10. Securities of officers may be relieved by petition; how.
11. What the petition shall state, to be verified by affidavit.
12. Notice with copy of petition to be served on the principal, how and when.
13. If principal be absent from the state six months, publication to be made, how.
14. Court or officer to hear application, may require new bond and security to be given, when.

15. Such new bond and security, how taken and filed.
16. When such new bond is taken, &c., securities in former bond to be discharged; effect and extent of.
17. Remedy of securities who pay money for officers.
18. Remedies under this act may be maintained by and against executors and administrators; when.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Any person bound : s security for another in any bond, bill, or note, for the payment of money, or delivery of property, may at any time after an action has accrued thereon, require the person having such right of action, forthwith to commence suit against the principal debtor, and other parties liable.

§ 2. If such suit is not commenced within thirty days after the service of such notice, and proceeded in with due diligence, in the ordinary course of law, to judgment and execution, such security shall be exonerated from liability to the persons so notified.

§ 3. The two preceding sections shall not extend:

First, To the bond of any administrator, executor, guardian, curator, officer, or other person, given to secure the performance of the duty of his office, trust, place or business; nor,

Second, To any bond with a collateral condition, except bonds with collateral conditions exclusively for the payment of money or delivery of property, or exclusively for the performance of a covenant or agreement for the payment of money, or delivery of property.

§ 4. Where any bond, bill or note, for the payment of money, or delivery of property, shall not be paid by the principal debtor, according to the tenor thereof, and such bond, bill or note, or any part thereof, shall be paid by any security therein, the principal debtor shall refund to such security, the amount or value so paid, with interest thereon at ten per centum per annum, from the time of such payment.

§ 5. When such payment by a security shall be made in money, such security may recover the same with the interest, in an action for so much money paid to the use of the defendant, and when such payment is made in property, he may recover the value with the interest, in an action as for such property sold to the defendant.

§ 6. When there are two or more securities in any such bond, bill or note, and any of them shall pay in money or property, more than his due portion of the original demand, such security may recover such excess, in the same form of action herein provided for a security against the principal debtor.

§ 7. No such security shall be compelled in any such action, as specified in the last section, to pay more than his due proportion of the original demand, and when such security shall have previously paid any part thereof, he shall be liable in such action to pay only so much as the amount, already paid by him, falls short of his due proportion of the original demand.

§ 8. In all cases where judgment is given in any circuit court upon any bond, bill or note, for the payment of money, or delivery of property, against the principal debtor and any security therein, and such security shall pay the judgment, or any part thereof, he shall be entitled upon motion, to a judgment in the same

court, against the principal debtor, for the amount he is entitled to recover, together with costs.

§ 9. No judgment shall be rendered, as provided in the last preceding section, unless the party applying therefor, shall have given the adverse party, at least ten days notice in writing, of such motion, nor unless such motion shall be made within one year after the rendering the original judgment.

§ 10. Any person bound as security in any bond, given by any officer, to secure the faithful performance of the duties of such officer, may on his petition, in writing, adduce to the court or officer, authorized by law for the time being, to take and approve such official bonds, be discharged from all future liability on such official bond.

§ 11. The petition shall set forth the facts upon which the application for a discharge is founded, and shall be verified by the affidavit of the petitioner thereto annexed.

§ 12. A notice in writing of such intended application, together with a copy of the petition, shall be personally served on the principal in the bond, at least thirty days before the making of the application.

§ 13. If the principal in the bond shall be absent from the state, for the period of six months, the publication of the notice and petition, in some newspaper printed in this state, for eight weeks successively, shall be sufficient service of the notice.

§ 14. The court or officer, to whom the petition is addressed, shall hear the application, and may, on examination thereof, in their discretion make an order requiring the principal in such bond, to give new bond and security for the performance of his official duties.

§ 15. If such bond and security is given, it shall be taken, approved and filed, in the same manner that the official bond of such officer is required by law, for the time being, to be taken, approved and filed.

§ 16. When such new bond is taken, approved and filed, it shall immediately operate as a discharge, of all the securities in the former bond, from all liability arising from any subsequent misconduct, or default, of the principal therein; and such securities shall thenceforth be liable on such bond, only, for such breaches thereof, as shall have happened, prior to the taking, approving and filing of the new bond.

§ 17. Any person bound as security in any bond given by an officer, to secure the faithful performance of his duties, who shall pay any money which he shall have been liable to pay, by reason of such bond, shall have the same right and remedy against his principal and co-securities, that are provided in this act, against principal and co-securities in bonds, bills and notes, for the payment of money or delivery of property.

§ 18. The remedies given by this act, may be maintained by and against executors and administrators, in all cases where they could be maintained by or against their testators, or intestates, if they were living.

Approved, March 16th, 1835.

SEMINARY LAND.

An act to provide for the sale of the seminary lands

- SEC. 1. Commissioners to superintend sale of seminary land appointed, to enter into bond, its condition.
2. One of the bonds deposited in county clerks office, the other forwarded to secretary of state to be recorded, &c.
3. Certain commissioners not required to give new bond, unless required by their securities.
4. To receive entries at private sale, under what rules and regulations.
5. When offices' to be kept open for purpose of receiving entries.
6. Commissioners to receipt for and pay into the state treasury monies received, when, proceedings.
7. Triplicate abstracts of lands sold, when and how made out, to be forwarded to the governor, &c.
8. Governor to cause patents to be made out and transmitted to commissioners, patents how made out, recorded, &c.
9. Compensation of commissioners.
10. Two or more applying for same land, to be put up to the highest bidder.
11. Vacancies, how filled.
12. When this act to take effect.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. John Moore, of Scott county, is hereby continued commissioner, for the purpose of superintending the sale of the seminary lands, at private entry, in the Cape Girardeau land district; and that Henry Wilcox, is hereby continued commissioner, for the same purpose, in the Salt River land district; and that Smallwood Noland, of Jackson county, be, and he is hereby appointed commissioner, for the same purpose, in the Western land district; who shall, severally, enter into duplicate bonds, to the state of Missouri, with good and sufficient security, in a sum not less than five thousand dollars, conditioned, that said commissioner will faithfully discharge the duties of his office, as prescribed by law, and pay over to the proper authority all monies, which may come into his hands, in virtue of his office; and that he will deliver to his successor in office, or other person properly authorized to receive the same, all books, papers and other property, belonging to, or in any otherwise appertaining to his office.

§ 2. The bonds shall be approved by the county court of the county, in which such commissioner resides, and the approval endorsed thereon, one of which, shall be deposited with the clerk of said court, and the other forwarded by said court, to the secretary of state, who shall record the same, and deposit the original in his office.

§ 3. The commissioners continued in office, in the Salt River and Cape Girardeau land districts, shall not be required to give new bonds, unless their securities shall, within ninety days after the passage of this act, require the same, in which event, they shall give security in all things, and under the same rules and restrictions, as pointed out in the preceding sections, for the commissioner of the Western land district.

§ 4. The commissioners shall receive entries, at private sale, for seminary land, in their respective land districts, in sections, half sections, quarter sections, half quarter sections, or quarter quarter sections, in the same manner, at the same price, and under the same regulations, as the United States lands are now disposed of, at private sales.

§ 5. The commissioners shall keep their offices open the first Monday of each

month, until the whole of said land shall be disposed of, or until the legislature shall otherwise direct.

§ 6. The commissioners shall receive and receipt for all monies arising from the sale of said lands, in their respective districts, shall pay the amount thereof, into the state treasury every twelve months, commencing on the first Monday in December next, and shall take from the treasurer duplicate receipts for the same, one of which, shall be delivered to the auditor, who shall charge the treasurer there with, which money, shall be kept by the treasurer as a distinct fund, for the purpose for which, said lands were acquired.

§ 7. The commissioners shall every twelve months, commencing on the first Monday in December next, make out triplicate abstracts, of all the lands sold, under this act, in their respective land districts; one of which shall be forwarded to the governor, to be deposited in the office of secretary of state, one to the auditor, and one to the state treasurer; which abstracts shall specify each tract of land so sold; describing it by its section, township and range, the quantity of acres, the price per acre, the name of the purchaser, and the amount of the purchase money.

§ 8. As soon as practicable thereafter, the governor shall cause to be forwarded to each commissioner, respectively, a patent for each tract of land sold, under the provisions of this act, in their respective land districts, which patents, shall be issued in the name of the state of Missouri, and under the seal of said state, signed by the governor, and countersigned by the secretary of state, and shall be recorded, in the office of the auditor, in a book to be kept for that purpose.

§ 9. The commissioners shall each receive three dollars per day, for every day, they may be necessarily employed, in carrying into effect this act, and also, shall respectively receive one half of one per cent. of all monies by them received and paid over as aforesaid; which said compensation, shall be paid out of the money arising from the sale of said land.

§ 10. When two or more persons, shall apply to enter the same piece of land, at the same time, the commissioners, shall put the same up to the highest bidder; and the person, who shall bid the highest sum, shall be the purchaser; but in no case, shall the land be sold for less, than one dollar and twenty-five cents per acre.

§ 11. The governor is authorized to appoint some proper and competent person to fill any vacancy, which may occur by death, resignation or otherwise; and the person so appointed to fill such vacancy, shall be fully authorized to discharge all the duties of his office, as commissioner, as prescribed by this act, and shall be subject to give the same security, and perform the same services, as is herein required of the commissioners.

§ 12. This act to take effect, from and after the first day of May next.

Approved, March 17th, 1835.

SENATORS.

An act prescribing the manner of electing senators from this state, to the congress of the United States, and the form of their credentials.

- SEC. 1. Senators, how appointed; form of credentials.
 2. Form of credentials, when appointed by the executive.

Be it enacted by the general assembly of the state of Missouri, as follows.

§ 1. Whenever any elections shall be made for senator, or senators, for this state; in pursuance of the constitution of the United States; the two houses of the general assembly shall assemble together at such times and places as shall be agreed to by both houses, and by joint vote proceed to the election, and a majority of all the votes given shall be necessary to elect a senator. When the election is made, the president of the senate and the speaker of the house of representatives shall certify the same to the governor, who shall cause a credential to be made out, with the great seal of the state affixed thereto, and cause it to be delivered to each senator, which credential shall be in the words following to wit: State of Missouri to wit: The general assembly of this state, on the — day of —, one thousand eight hundred and —, having in pursuance of the constitution of the United States of America, chosen —, a senator of the United States; I — governor, (or person exercising the powers of governor, as the case may be) of the state of Missouri; do hereby certify the same to the senate of the United States. Given under my hand and the seal of the state of Missouri, this — day of —, one thousand eight hundred and —.

§ 2. Whenever the executive shall, by virtue of the said constitution, make a temporary appointment of a senator, he shall deliver to such senator a credential in the words following to wit: State of Missouri to wit. A. B. who was chosen United States senator for this state in pursuance of the constitution of the United States of America having died, resigned, or otherwise, (as the case may be) during the recess of the general assembly of the state; I, — governor, (or person exercising the power of governor, as the case may be) of said state, have therefore thought fit to appoint C. D. to fill the vacancy. Given under my hand and the great seal of the state, this — day of —, one thousand eight hundred and —.

Approved, December 16th, 1834.

SET-OFF.

An act regulating set-off.

- SEC. 1. Mutual debts may be set-off.
 2. In suits by executors or administrators, debts against testator or intestate may be set-off.
 3. May be pleaded or given in evidence on the general issue, notice to be given.
 4. If the set-off be equal to or less than plaintiff's demand, judgment how rendered.
 5. If the set-off exceeds the demand of plaintiff, judgment for the excess.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. If any two or more persons are mutually indebted in any manner whatsoever, and one of them commences an action against the other, one debt may be set-off against the other; although such debts are of a different nature.

§ 2. In suits brought by administrators and executors, debts existing against their intestates or testators, and belonging to the defendant at the time of their death, may be set-off by the defendant, in the same manner, as if the action had been brought by, and in the name of the deceased.

§ 3. A set-off may be given in evidence upon the general issue, or pleaded in bar, but when it is intended to be insisted upon in evidence, notice shall be given at the time of pleading the general issue, of the demand so intended to be insisted upon; and upon what account it became due.

§ 4. If the amount of set-off be equal to the plaintiff's demand, the plaintiff shall recover nothing by his action; if it be less than the plaintiff's demand, he shall have judgment for the residue only.

§ 5. If there be found a balance due from the plaintiff to the defendant, judgment shall be rendered for the defendant, for the amount thereof, together with costs.

Approved, January 5th, 1835.

SHERIFF.

An act establishing and regulating the office of sheriff.

- Sec. 1. To receive certificate of election, from whom.
2. Sheriff appointed by the governor; his certificate by whom made out and delivered.
 3. Within what time bond and security to be given, how given, its condition; where filed.
 4. Failing to give bond, office vacated.
 5. May be taken by clerk in vacation, to be approved or disapproved by judge at next term.
 6. To be valid until disapproved.
 7. Oath of office to be taken and endorsed on certificate of election; bond with approval, to be recorded.
 8. May appoint deputies, how; certificate of appointment and oath of office to be filed in clerk's office.
 9. Power and duties of deputy sheriff.
 - 10 & 11. General duties of sheriff in reference to breaches of the peace, &c.
 12. Office of sheriff and coroner vacant, elizor may be appointed; his duties.
 13. Vacancy to be certified to the governor.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. When any person shall be elected sheriff, the clerk of the county court shall deliver to him a certificate [of] his election under the seal of the court.

§ 2. When any person shall be appointed sheriff by the governor, the secretary of state shall transmit an official certificate of his appointment, to the clerk of the county court of the county, who shall immediately deliver it to such sheriff.

§ 3. Every sheriff, shall within fifteen days after he receives the certificate of his appointment or election, give bond to the state in a sum not less than five thousand, nor more than fifty thousand dollars, with securities approved by the judge

of the circuit [court,] conditioned for the faithful discharge of his duties, which bond shall be filed in the office of the clerk of the circuit court of the county.

§ 4. If any sheriff fail to give such bond, within the time prescribed, the office shall be considered vacated.

§ 5. Such bond, may be taken by the clerk of the circuit court in vacation, and if so taken, shall be approved or disapproved by the judge thereof at the next term.

§ 6. Such bond shall be valid until disapproved, nor shall its obligations be impaired by the disapproval of the judge.

§ 7. Every sheriff shall, before he enter on the duties of his office, cause his certificate of election or appointment with the oath of office endorsed thereon, and his bond with the approval thereon, to be recorded at his own expense in the office of the recorder of the county.

§ 8. Any sheriff may appoint one or more deputies, with the approbation of the judge of the circuit court, and every such appointment, with the oath of office endorsed thereon, shall be filed in the office of the clerk of the circuit court of the county.

§ 9. Every deputy sheriff shall possess all the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff.

§ 10. Every sheriff shall keep the peace, and cause all offenders against law in his view to enter into recognizance with security to keep the peace, and to appear at the next term of the circuit court of the county, and to commit to jail in case of failure. The sheriff shall certify and return such recognizance to the clerk of the circuit court.

§ 11. Every sheriff shall quell and suppress assaults and batteries, affrays and insurrections, he shall apprehend and commit to jail, all felons and traitors, and execute all process, directed to him by legal authority, and he shall attend upon all courts of record at every term.

§ 12. If the office of both sheriff and coroner be vacant, the clerk of the county court may appoint an elizor, who shall perform all the duties of sheriff until a sheriff or coroner be qualified, and shall give bond and security, and make oath as sheriffs are required to do.

§ 13. If any vacancy occur in the office of sheriff, the clerk of the county court shall immediately certify the same to the governor.

Approved, March 19th, 1835,

SLANDER.

An act declaring certain words actionable.

Sec. 1. Certain words actionable.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. It is actionable to publish, maliciously and falsely, in any manner whatsoever, that any person has been guilty of fornication or adultery.

Approved, January 14th, 1835.

SLAVES.

An act concerning slaves.

ART. I. Of the introduction of slaves, and police regulations concerning them.

ART. II. Of the emancipation of slaves.

ART. III. Concerning gifts of slaves.

ART. IV. Concerning runaway slaves.

ARTICLE I.

Of the introduction of slaves and police regulations concerning them.

Sec. 1. The introduction into this state, &c.; certain slaves prohibited.

2. Penalty on persons violating the provisions of the preceding section.

3. Penalty on persons bringing to this state slaves, belonging to non-residents.

4. Construction of last section.

5. Further construction of the four last sections.

6. Penalty on persons who hire, harbor or employ slaves contrary to the foregoing provisions.

7. Penalty on owner, who hires one slave to another, or permits them to go at large, hiring their own time, or deal or act as a free person.

8. Duty of sheriff, coroner or constable in reference to the 3d and 7th sections of this article.

9 & 10. Duty of justice of the peace on information that any such slave is running at large or hired out in his county.

11. If the owners do not appear and comply with the terms as in the next section; sheriff to advertise; how.

12. Upon what condition slave may be delivered to owner; recognizance to be given.

13. Recognizance, how taken; its condition.

14. If the owner do not appear, slave may be sold by sheriff; how.

15. Proceeds of sale how appropriated.

16. Construction of the eight last sections.

17. Penalty on master to permit slave to sell spirituous liquor to another slave.

18. Slave punished with stripes for commission of such offence.

19. Slave to be tried in a summary way for such offence.

20. On conviction for such offence, to be committed till costs are paid, and recognizance given for his good behavior.

21. Recognizance given and costs paid, how discharged.

22. If master do not pay costs and give recognizance, slave to be sold; proceeds how applied.

23. Slaves who harbor or conceal other slaves, punished with stripes.

24. Slave leaving home without a pass, &c., punished with stripes.

25. Slave coming on the plantation of another without leave, may be whipped.

26. Gun or other weapon found in possession of, how disposed of, may be whipped.

27. Slaves how proceeded against and punished for riots, routes, or unlawful assemblies, or seditious speeches.

28. Penalty on master or overseer, to permit slave of another to remain on the place without leave.

29. Penalty on owners to permit more than five slaves with or without permit to be on place at one time.

- Sec. 30. Penalty on white person, free negro or mulatto, if found at unlawful assembly of slaves, or harbor them.
31. Duty of justices in case of such unlawful meetings.
- 32 & 33. Duty of sheriffs, coroners and constables in such cases; penalty for neglect.
34. Slaves, how punished, for disturbing religious congregation.
35. Penalty on ferry-man or other person who shall cross a slave without permit, over Mississippi river.
36. Penalty on master, commander or owner of steam boat, &c, for carrying slave out of state without permit.
37. Penalty on person buying or trading with slave without permit.
38. Penalty on person moving beyond the limits of this state taking slaves or other personal property, without having the absolute right.
39. Construction of the term "master" as used in this article.
- 40 & 41. Court to give this article in charge to grand jury; their duty; on presentments cognizable before justice; how to proceed.

Be it enacted by the general assembly of the s'tate of Missouri, as follows:

§ 1. Hereafter no person shall bring or cause to be brought into this state, or hold, purchase, hire, sell or otherwise dispose of within the same:

First, Any slave who shall have committed, in any other state, territory or district within the United States, or in any foreign country, any offence, which if committed within this state, would according to the laws thereof, be a felony or infamous crime; or,

Second, Any slave who shall have been convicted, within this state, of any felony or infamous crime, and ordered to be taken or removed out of the state, according to the laws thereof; or,

Third, Any slave who shall have been actually removed out of this state, after a conviction of felony, or infamous crime, although no order for such removal shall have been made; or,

Fourth, Any person, or the descendant of any person, who shall have been imported into the United States, or any of the territories thereof, in contravention of the laws of the United States, and held as a slave.

§ 2. Every person, who shall knowingly violate any of the provisions of this last section; shall be punished by fine, not exceeding five hundred dollars; to be recovered by indictment.

§ 3. Every person, who shall bring into this state and hold to service, or hire to labor therein, any slave belonging to any person, not a resident of, or *bona-fide* emigrant to this state, shall be punished by fine not exceeding two hundred and fifty dollars, to be recovered by indictment.

§ 4. The last section shall not be construed to extend to any person, who shall acquire a right to a slave within this state, from a resident thereof and shall remove such slave out of the state, within three months after he acquires a right to possession, nor to any person, who shall introduce a slave, the owner whereof intending at the time, to emigrate thereto, shall actually remove to, and settle in the state, within twelve months after bringing in such slave.

§ 5. Nothing in the four last sections, shall be construed to prevent any person, from bringing into this state, any slave, for the purpose only of passing through the same, or for a short time abiding therein, if such slave be not kept within the state, for a longer period than six months, and during that [the] time he shall remain therein, shall be kept in the employment of the person, by whom he was brought into

the state, and not sold, or hired to labor, nor attempted to be sold nor hired to labor therein.

§ 6. Every person who shall knowingly hire, harbor, or employ, any slave brought into this state, in violation of either of the foregoing provisions, shall forfeit and pay five dollars, for every day any such slave shall be so hired, employed, or harbored by him; to be recovered by action of debt, in the name, and to the use of the county.

§ 7. Every master, or owner of a slave, who shall hire such slave to any other slave, or permit, or suffer him to go at large, upon a hiring of his own time, or to act, or deal as a free person, or to hire himself within this state, shall pay, not less than twenty, nor more than one hundred dollars for each offence, to be recovered by indictment.

§ 8. Whenever any sheriff, coroner, or constable, shall discover, within his county, any slave going at large, or hired, contrary to the third, or seventh sections of this article, it shall be his duty, and it shall be lawful for any other person, to arrest any such slave, and take him before a justice of the peace without warrant.

§ 9. Whenever any justice of the peace, shall receive satisfactory information, that any such slave is so at large, or hired within his county, he shall immediately, issue his warrant to apprehend and bring such slave before him.

§ 10. Whenever any slave shall be arrested, and brought before any magistrate under the foregoing provisions, such magistrate shall enquire into the facts, and if it appear that such slave has been going at large, or hired, contrary to any of the provisions of this article, he shall commit such slave to the common jail of the county, there to remain, until discharged by due course of law.

§ 11. If the owner of such slave, shall not appear, and comply with the terms declared in the next section, within ten days after the commitment, the sheriff shall publish, for three weeks successively, in some newspaper printed in, or nearest to the county, an advertisement, containing a description of such slave, the cause of commitment, and the name of the owner if known.

§ 12. Such slave may be delivered to the owner, by order of the circuit court of the county, or the judge thereof in vacation, if application be made on or before the second day of the first term of such court, next to be holden after the publication of the advertisement provided for in the last section; such applicant, first paying the costs and expenses of the proceedings, and entering into a recognizance as provided for in the next section.

§ 13. Such recognizance, shall be in the sum of five hundred dollars, with one or more securities, to be approved by the court or judge, conditioned, that the slave shall not again go at large, or be hired contrary to the provisions of this act; if the owner of such slave be not a resident of this state, the recognizance shall contain a further condition, that the slave be removed out the state without delay, and shall not return thereto, within three years.

§ 14. If the owner of such slave, do not appear within the time prescribed by the twelfth section, and comply with the terms above prescribed, the county court shall make an order for the sale of such slave, which shall be executed by the

sheriff who shall proceed thereon, as in sales of personal property under execution.

§ 15. The proceeds of such sale, shall be applied, first, to the payment of all costs and expenses, including five per centum to the sheriff for his commission, one-fourth of the residue, shall be paid into the county treasury for the use of the county, and the other three-fourths, shall be paid to the owner of the slave, on his application to the court therefor.

§ 16. Nothing contained in either of the eight last sections, shall be construed to discharge, or exempt any person from any fine or forfeiture herein-before declared for a violation of any of the provisions of this act.

§ 17. Every master, or owner of a slave, who shall permit, or suffer such slave, to sell, barter, or deliver, any vinous or spirituous liquor, to the slave of any other person, without the authority in writing, of the owner of such last mentioned slave, shall be punished by fine, not exceeding three hundred dollars, to be recovered by indictment.

§ 18. If any slave shall sell, barter or deliver, to any other slave, any vinous or spirituous liquors, he shall be punished by stripes not exceeding twenty-five, and shall stand committed until he be discharged in the manner herein-after directed.

§ 19. Every slave, charged with the commission of the offence specified in the last section, shall be tried in a summary manner before a justice of the peace, and the same proceedings shall be had as in other cases of the trial of slaves for offences cognizable before a justice of the peace.

§ 20. Upon conviction of such slave, he shall, after the execution of the sentence, be committed to jail, unless his master or owner will pay the costs, enter into a recognizance in the sum of two hundred dollars with sufficient security, conditioned, for the good behavior of such slave for the term of one year, and that he will not, during that time, violate the provision of the eighteenth section of this article.

§ 21. When a slave shall be committed for want of such recognizance, he may be discharged by the circuit court, or the judge thereof, on the application of the master or owner, and his entering into a recognizance, as specified in the last section and paying all costs and expenses.

§ 22. If the master or owner do not appear, and comply with the terms specified in the last section, on or before the second day of the circuit court, next holden after the commitment, the slave shall be sold, and the proceeds applied as specified in the fourteenth and fifteenth sections of this article.

§ 23. Every slave, who shall harbor or conceal any slave, who shall have absented, or deserted from the service of his master, overseer or employer, shall be punished by stripes, not exceeding thirty-nine, upon a trial and conviction before a justice of the peace.

§ 24. Any slave, who shall go from the tenements of his master, or other person with whom he lives, without a pass, or some letter or token, whereby it may appear that he is proceeding by authority from his master, employer or overseer, may be apprehended by any person, and being carried before a justice of the peace.

shall, by order of such justice, be punished with stripes, in the discretion of such justice.

§ 25. If any slave shall come, and be upon the plantation of any person, without permission in writing from his or her owner or overseer, not being sent upon lawful business, the owner, or occupier of such plantation, may cause such slave for every such offence, to be whipped not exceeding twenty lashes.

§ 26. Any gun, or other offensive or defensive weapon, found in the possession of a slave, may be seized by any person, and upon proof of such seizure, before a justice of the peace of the county where the same shall have been made, such gun, or weapon, shall be, by the order of such justice, adjudged and forfeited to the seizor for his own use, and such slave shall receive by order of the justice any number of lashes not exceeding thirty.

§ 27. All riots, routs and unlawful assemblies, and seditious speeches of slaves, shall be punished with stripes, at the discretion of a justice of the peace, and it shall be lawful for any person, without further warrant, to apprehend slaves so offending, and carry them before the justice.

§ 28. If any master, or mistress, or overseer of a family, shall knowingly permit, or suffer any slave, not belonging to him or her, to be and remain upon his or her plantation or premises, above four hours at any one time, without the consent or permission of the owner or overseer of such slaves, such master, mistress or overseer, so permitting, shall forfeit and pay to the owner or overseer of such slave, five dollars for every such offence, to be recovered by action of debt.

§ 29. Any owner or overseer of a plantation or tenement, who shall permit, or suffer more than five slaves, other than his or her own, to be and remain upon his or her plantation or tenement, at any one time, with, or without the consent of the master or overseer of such slave, shall forfeit and pay one dollar for each slave, above that number, to the informer, to be recovered by action of debt, unless such slaves have met together on Sunday at public worship, or on any other day, for the purpose of laboring, or some lawful occasion.

§ 30. If any white person, or any free negro or mulatto, shall be found in the company of slaves, at any unlawful meeting, or shall harbor or entertain any slave, without the consent of his, or her owner or overseer, such white person, free negro or mulatto, shall forfeit to the informer, ten dollars for every such offence, to be recovered by action of debt, and if a free negro or mulatto, shall moreover receive any number of lashes, not exceeding thirty, by the order of any justice of the peace, before whom, he or she shall be carried.

§ 31. Every justice of the peace, upon his own knowledge of any unlawful meeting of slaves, or of slaves and free negroes or mulattoes, or on information thereof, within ten days thereafter, shall issue his warrant to apprehend such slaves, free negroes or mulattoes, and cause them to be brought before himself, or any other justice of the county, to be dealt with as this act directs.

§ 32. Sheriffs, coroners and constables, upon a knowledge, or information of any unlawful meeting of slaves, or free negroes or mulattoes, or any riot, rout, or unlawful assembly thereof, shall endeavor to suppress the same, and shall, without

further warrant, bring the offenders before some justice of the peace of the county, to be dealt with as this act directs.

§ 33. Any sheriff, coroner or constable, who, upon knowledge or information, shall neglect or refuse to comply with the requisition of the foregoing section, shall forfeit for every such offence, to the informer ten dollars to be recovered by action of debt.

§ 34. Any slave who shall, by noise, riotous or disorderly conduct, or otherwise, disturb any religious congregation, assembled for the purpose of public worship, may be apprehended by any person, and forthwith carried before any justice of the peace of the county, who shall examine into the truth of the charge, and being satisfied of the truth thereof, shall cause such slave to be whipped, not exceeding thirty-nine lashes.

§ 35. Any ferryman, or other person, who shall cross any slave, from this state across the Mississippi river, unless such slave, have a pass or permit in writing from his master, mistress, overseer or employer, particularly directed to such ferryman, or other person, shall forfeit and pay to the owner or employer, for the use of the person injured, all damages and costs which may accrue to the owner or employer of such slave, and the value of such slave in addition thereto, to be recovered by action on the case.

§ 36. Any master, commander or owner of a steam boat, or any other vessel, who shall transport or carry away any servant or slave, out of this state in such vessel, without the consent or permission of the person, or persons to whom such slave doth of right belong, or who has authority to grant such consent, or permission, shall forfeit and pay one hundred and fifty dollars, to the owner of such servant or slave, to be recovered by action of debt, without prejudice to the right of such owner to his action at common law.

§ 37. Any person who shall buy, sell, or receive of, to or from a slave, any commodity, whatsoever, without the consent in writing, of the master, owner or overseer of such slave first held and obtained, or who shall deal with any slave, without such consent, shall forfeit to the master or overseer of such slave, four times the value of the commodity, so bought, sold or received, to be recovered with costs, and shall also, forfeit to the county, in which the offence was committed, twenty dollars, to be recovered by indictment with costs.

§ 38. Any person, migrating beyond the bounds of this state, with an intention there to reside, who shall carry away with him or her, any slave or slaves, or other personal property, not having at the time of the removal of the same, the unlimited and absolute title and interest in such slave or other personal property, or the consent of all persons interested to such removal, shall forfeit all his or her right, title and interest, in such slave or other personal property; which forfeited right, title and interest, shall immediately vest in the person or persons entitled in remainder or reversion, absolutely.

§ 39. The term "master" as used in this article, shall be construed to include every person, who at the time, shall have the possession and control of a slave,

whether he be owner, or bailee, or have the general, or special property in his own right, or in right of another.

§ 40. It shall be the duty of the circuit courts respectively, at each term, to give this article in special charge to the grand jury, whose duty it shall be, to make diligent inquiry and presentment, of all violations of the provisions of this article.

§ 41. Whenever a grand jury, shall make presentment of any violation of this article, cognizable before a justice of the peace, such presentment, shall be certified to some justice of the peace of the proper township, who shall immediately proceed thereon, according to the foregoing provisions.

ARTICLE II.

Of the emancipation of slaves.

SEC. 1. How slaves may be emancipated.

2. Effect of such emancipation.

3. Slaves emancipated, liable to be taken in execution in certain cases.

4. Person emancipating slave, liable for his support, in what cases.

5. Person emancipating slave, to deliver to him a copy of the act of emancipation, how certified, &c.

6. Emancipation by will, copy how and by whom made out and delivered.

7. Fees of clerk for making out such copies, and by whom paid.

8. Taxes or levies imposed on slaves emancipated, how and by whom paid.

§ 1. Any person may emancipate his or her slave, by last will, or any other instrument in writing under hand and seal, attested by two witnesses, and proved in the circuit court of the county, where he or she resides, or acknowledged by the party in the same court.

§ 2. Such emancipation shall have the effect to discharge the slave, from the performance of any contract entered into during servitude, and shall make such slave, as fully and perfectly free, as if such slave had been born free.

§ 3. Slaves emancipated by virtue of this law, shall be liable to be taken in execution, to satisfy any debt, contracted by the person emancipating them, prior to the act of emancipation, as if no such act had been made.

§ 4. The person emancipating a slave in virtue of this law, shall be held to support and maintain such slave,

First, Where the slave shall not be, in the judgment of the court, of sound mind and body.

Second, Where the slave shall be above the age of forty-five years; and,

Third, Where the slave being a male, shall be under the age of twenty-one years, or being a female, shall be under the age of eighteen years, and the circuit court of the county, where the person emancipating the slave resides, may, upon application of any inhabitant of the county, order the sheriff to distrain and sell, so much of the personal or real estate of such person, as shall be sufficient for that purpose.

§ 5. Every person emancipating a slave, shall cause to be delivered to him or her, a copy of the act of emancipation, attested by the clerk and the seal of the court, in which the act was proved, or acknowledged.

§ 6. Where the emancipation has been by last will, the executor or administrator of the testator, shall cause to be delivered a copy as is required in the last preceding section.

§ 7. The clerk making out and attesting such copies, shall receive the like fees as are allowed for attested copies in other cases, to be paid by the person emancipating, or his or her executor or administrator.

§ 9. When any slave emancipated by virtue of this law, shall neglect or refuse to pay, any taxes or levies imposed by law, and the collector shall not find property of such liberated slave, out of which, to make such tax or levy, it shall be the duty of such collector, to distrain and sell, of the goods and chattels of the person who shall have liberated such slave, if he be in his county, as much as shall be sufficient to pay such tax or levy, as if the same had been assessed to such person himself.

ARTICLE III.

Concerning gifts of slaves.

Sec. 1. Slaves deemed personal estate.

2. In what cases the right in slaves shall pass by gift.
3. To what gifts this law shall intend.

§ 1. Slaves shall be held, taken and deemed to be personal estate.

§ 2. No gift of any slave, shall pass or vest any right, estate or title, in or to such slave, in any person or persons whatsoever, unless the same be made:

First, By will duly proved and recorded; or,

Second, By deed in writing, to be proved, by not less than two witnesses, or acknowledged by the donor, and recorded in the county where one of the parties lives, within six months after the date of such deed.

§ 3. This law shall only extend to gifts of slaves, whereof the donors have, notwithstanding such gifts remained in the possession, and not to gifts of such slaves, as have at any time, actually came into the possession of, and remained with the donee, or some person claiming under such donee.

ARTICLE IV.

Concerning runaway slaves.

Sec. 1. Slave suspected of being runaway may be taken before justice of the peace.

2. Justice to grant such apprehender a warrant to deliver the slave to the owner, when.
3. To grant a warrant to deliver such runaway to the keeper of the county jail, when.
4. Justice to issue his warrant to apprehend runaway slave, when and in what cases.
5. Person committed to jail as a runaway, sheriff to advertise, and how.
6. Sheriff to advertise such runaway in newspaper, when.
7. If owner do not appear in twelve months after advertisement, slave to be sold, notice of sale how given, &c.
8. Proceeds of sale, after deducting expenses, to be paid into the state treasury.
9. If owner proves property in such slave, to draw the money from the treasury, when.
10. What shall be required of claimant before runaway shall be delivered up to him.
11. When runaway is sold, duplicate statements to be made out by sheriff; their contents.
12. Amount to be paid into the treasury to be certified to the auditor, &c.
13. When the money is paid sheriff to take treasurer's receipt and present it to the auditor &c.

SEC. 14, § 15. Proceedings to obtain money paid into the treasury.

16. Reward to person apprehending runaway, how paid.
17. Such fees to be retained by the sheriff, when; sheriff liable to pay them, when
18. Who declared to be a runaway.
19. Court or judge may discharge person apprehended, when.
20. In what cases and when expenses and jailors' fees to be paid by the state.

§ 1. Any person may apprehend any negro or mulatto, being, or suspected of being, a runaway slave, and take him or her before a justice of the peace.

§ 2. If it shall appear to such justice, by the oath of the person apprehending or otherwise, that the person so brought before him is a runaway slave, he shall make out and deliver to the apprehender, a certificate of the distance, between the place where such runaway was apprehended, and the place whence he or she fled, and may grant to such apprehender, a warrant to convey and deliver such runaway, to the owner or person entitled to possession.

§ 3. If the owner, or person entitled to possession, be not known, then such justice shall make out and deliver to the apprehender, a warrant to such apprehender, to take, convey and deliver such runaway slave, together with the warrant, to the sheriff, or other keeper of the common jail of the county, in which such justice resides.

§ 4. Where any justice of the peace, shall have cause to suspect, from information or upon his own knowledge, that any runaway slave is lying out, hid, or lurking in his county, such justice shall issue his warrant, reciting the name of the slave, and his owner (if known) directed to the sheriff, or any constable in his county, commanding such sheriff, or constable, to apprehend such slave and commit him to the jail of the county, to be dealt with according to law.

§ 5. When any person shall be committed to any jail as a runaway, according to law, the sheriff of the county shall, forthwith, cause an advertisement to be put up at the court house door, which advertisement shall give a description of the runaway, his or her name, wearing apparel, and the name and place of residence of the person, to whom such runaway is supposed to belong.

§ 6. If the owner, overseer or employer of any runaway slave, committed to jail, shall not, within two months after such commitment, appear and claim such runaway, and pay all lawful charges incurred, in the apprehension and securing of him or her, the sheriff shall then publish a like advertisement, in some newspaper published in the state.

§ 7. If the owner, overseer or employer, of such runaway, shall not appear and establish his claim to such runaway within twelve months after the first publication required by the last preceding section, and pay all lawful charges, the sheriff shall sell such runaway, to the highest bidder, at the court house door, first giving one month's notice of the time, place, and cause of such sale, in some newspaper published in this state.

§ 8. The sheriff, after deducting the legal expenses of apprehending, securing, advertising and selling such runaway, shall pay into the state treasury, the remaining proceeds of such sale.

§ 9. If the owner shall prove his property, in such runaway, at any time within five years after the day of his or her sale, such owner shall be entitled to draw from the treasury, the amount of proceeds paid over by the sheriff.

§ 10. Before any runaway slave, in custody by virtue of this law, shall be delivered up to any claimant, such claimant shall,

First, Prove by the affidavit of some disinterested witness, that such claimant has lost such a slave as the one described in the advertisement, which affidavit shall be taken before some competent officer in the county where the slave was committed to jail;

Second, Make oath that the runaway is the same that he lost;

Third, Give bond with security, to indemnify the sheriff;

Fourth, Produce a certificate of the proof made and security given, under the seal of the court, or hand of the officer, before whom the same shall have been taken; and

Fifth, Pay all expenses incurred in apprehending, receiving, securing and advertising the runaway; but the proper agent of any person claiming, may claim, prove and receive such runaway in like manner, as the owner is herein enabled to do.

§ 11. When any runaway slave shall be sold, as is herein-before directed, the sheriff shall make out duplicate statements, showing the name, age and particular description of the runaway so sold, and a particular account of the expenses of apprehending, keeping, advertising and selling such slave, together with a copy of the advertisement.

§ 12. The county court shall audit and examine such statement, and ascertain the amount to be paid into the treasury, and cause their clerk to certify the same under the seal of the court, to the auditor of public accounts, who shall charge the sheriff therewith.

§ 13. The sheriff shall pay such amount into the state treasury, and the treasurer shall give receipts therefor accordingly, which, being presented to the auditor, shall be by him credited to the sheriff, and charged to the treasurer.

§ 14. Any person, claiming any money paid into the treasury, by virtue of this law, may present his petition to the circuit court of the county, in which the runaway was sold, setting forth the ground of his claim, and having served a copy of his petition on the attorney general, or circuit attorney, who is required to appear and defend against the said petition on behalf of the state, the court shall cause an issue to be made up and tried, as other issues, to try the right between the claimant and the state.

§ 15. If the issue shall be found for the claimant, the court shall grant him a certificate thereof, which being delivered to the auditor of public accounts, he shall draw his warrant for the amount, on the state treasury, in favor of the claimant, specifying in the warrant that it is drawn by virtue of this act, and the certificate of the court; and the amount shall be paid by the treasurer, out of any monies in the treasury not otherwise appropriated; but no claimant shall be entitled to any

greater sum out of the treasury, by virtue of this law, than was paid into the same, as the proceeds of the runaway claimed.

§ 16. Every person who shall apprehend any runaway slave, and deliver such slave to the owner, or other person entitled to receive such slave, or to any jailor, according to the provisions of this law, shall be entitled to receive five dollars, and ten cents for every mile of such distance as he shall, necessarily, convey such slave; or such sum, in lieu thereof, as the owner, or other person claiming such slave, may previously have offered for the same services, at the election of the person apprehending, to be paid by such owner, or person claiming, or by the sheriff out of the proceeds of the sale.

§ 17. The sheriff shall, before delivering any slave to the owner, or person claiming, require payment of the fees or charges allowed by the last preceding section, if he shall have had notice thereof, and the sheriff, having such notice, shall be liable to the party entitled, for the payment thereof at all events.

§ 18. Every slave, who shall be found at any place, more than twenty miles distant from the plantation, lot, tenement, or other place, where such slave is employed, or required to be, by his, or her owner, overseer or employer, without a written pass, or permission to that effect, from such owner, overseer or employer, is declared to be a runaway slave, within the meaning of this law.

§ 19. Any court of record, or any judge thereof, in vacation may at any time order any person who has been apprehended or imprisoned as a runaway slave, to be discharged, on being satisfied that such person is not a runaway slave; and for that purpose may cause such person to be brought before them, by writ of *habeas corpus*.

§ 20. When any person committed as a runaway slave shall die in jail, or be discharged from custody by the order of any court, or judge, or upon a writ of *habeas corpus*, the expenses of supporting such prisoner, and the jailor's fees, shall be paid by the state.

Approved, March 19th, 1835.

STATE LIBRARY.

An act for the better regulation and management of the state library.

- SEC. 1. Secretary of state to be librarian, shall have the custody of books, &c.
2. Librarian to have charge of all books, &c., properly belonging to the library.
3. He shall cause certain works to be bound, and how.
4. Library to be kept in a convenient room in the state house.
5. Deficiency in certain works to be procured by the librarian, how.
6. Copy of each of the acts of congress to be transmitted to each clerk of circuit court, &c.
7. Librarian to purchase books, &c., under the direction of the governor.
8. Books donated or purchased to be kept in the library, catalogue, &c., to be kept, report, &c., to be made to the legislature.
9. Expenses, &c., incurred under this act, to be paid, out of what fund.
10. Accounts adjusted and warrants drawn by the auditor.

- Sec. 11.** Books not to be removed from the library except by certain officers.
12. No person to remove a book without giving a receipt therefor.
 13. Penalty on persons injuring or failing to return a book, &c.
 14. Citizens or strangers may be introduced into the library by certain officers.
 15. Librarian to carry this act into effect, and to sue for all injuries done the library, and penalties.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The secretary of state shall be the librarian of the state library, and shall have the custody and direction of all books belonging to the same, and take special care that none of them be lost or injured.

§ 2. The librarian shall have the custody, charge, safe-keeping, management and direction of all books, papers, maps, charts and all other things, of what nature soever, properly belonging to the library, and shall take special care that none of them be lost or injured.

§ 3. He shall cause to be bound (if not already done) in a cheap, but good and substantial manner, three copies of each of the following works: the acts of each session of congress, the acts of the Missouri legislature, and the acts of every other state in the United States; the journals of each house of congress; the journals of the general assembly of this state, the decisions of the supreme court of this state; and all state papers and documents of the United States.

§ 4. The librarian shall cause all such books, now owned by the state, and such as may be hereafter acquired by it, to be thus prepared, arranged and kept in a convenient and suitable room in the state house.

§ 5. Where there shall be a deficiency in any of the acts, journals, or other works, it shall be the duty of the librarian, to correspond with the proper officer for that purpose, and if not otherwise procured, he shall purchase the same, and place them in the library.

§ 6. The librarian shall cause one copy of the acts of each session of congress, to be bound and transmitted to the clerk of the circuit court of each county in this state, for the use of the courts, and for which, the clerk shall make out and forward his receipt to the librarian, whose duty it shall be, to make a regular entry of the same, and put the original on file.

§ 7. It shall be the duty of the librarian, under the directions of the governor, to purchase all such books, maps or charts, as he shall deem necessary and expedient, and provide suitable presses, for their reception and preservation.

§ 8. All books donated to, or purchased by the state, shall be kept in the library, and it shall be the duty of the librarian to make a complete catalogue of all the books, maps and charts, then in the library, and report the same to the legislature at the commencement of each session, together with the manner, and for what books, the annual appropriations have been expended.

§ 9. All expenses, of procuring and binding such copies of acts and journals, as are mentioned in this act, and the necessary expenses for stationary, candles and fuel, shall be paid out of the contingent fund of the general assembly.

§ 10. The auditor of public accounts, shall adjust the accounts of the librarian under this act, and draw warrants on the treasury for the payment of the same.

§ 11. No person shall be permitted to remove a book from the library, except the

governor, the executive officers at the seat of government, the members and officers of the general assembly, judges of the supreme or circuit courts of this state, or of the United States, or the attorney general and circuit attorneys.

§ 12. No person shall be permitted to remove any book from the library, without giving a receipt therefor, to the librarian.

§ 13. If any person injure, or fail to return any book, map or chart, taken from the library, for more than three months, he shall forfeit and pay to the librarian, for the benefit of the library, three times the value thereof, or of the set to which it belongs, to be recovered in the name of the state, for the use of the library, in any court having jurisdiction thereof.

§ 14. The officers of the several departments of government, who are entitled to the use of the library, may introduce citizens, or strangers into the library, who shall have the privilege, during all seasonable hours, to read any of the books therein, not required for the use of such officers.

§ 15. The librarian shall carry this act into execution, and sue for all injuries done to the library, and penalties under this act.

Approved, March 10th, 1835.

STRAYS.

An act concerning strays.

- Sec. 1.** When strays may be taken up.
2. Who authorized to take up strays; who required to give bond before he can take up a stray.
 3. Person may take up stray though not found on his own plantation, when.
 4. Person taking up stray to give information to justice, to take oath, &c.
 5. Justice to appoint appraisers, how.
 6. Appraisers to take oath, appraisement embracing description of property to be returned to justice and recorded.
 7. Justice within ten days to send certified copy to the clerk, and deliver a copy to the taker-up.
 8. Justice to give to taker-up, a written statement of the duties required to be performed by him.
 9. Taker-up to cause notices to be put up, when, where, and their contents.
 10. Clerk to record certificate of strays in a book kept for that purpose.
 11. Clerk to set up in his office a list of strays; list how made out.
 12. Secretary of state to contract with two printers to publish all strays, how, &c.
 13. Clerk of each county court to be notified of the printer employed, and the price of advertisements.
 14. Printer once a month to publish a list of strays and transmit such list to clerk of each county court.
 - 15, & 16. List to be kept in clerk's office free for inspection of all persons. Compensation to printer.
 17. Secretary to contract with printer, when; vacancies in the office of printer, how filled.
 18. Copy of appraisement to be transmitted to printer, when, fees how and by whom paid and accounted for.
 19. Strays may be used or worked with care and moderation.
 20. Claimants may prove stray within one year, and entitled to receive same by paying costs, charges, &c.
 21. Owner failing to prove stray within twelve months, property vested in taker-up.
 22. If after twelve months owner proves property, taker-up may pay appraised value or deliver up stray.
 23. Stray escape or die, without fault of taker-up, not liable for the same.
 24. Reward for taking up strays.
 25. Penalty on person who shall sell or swap or take out of the state a stray, before title is vested in him.
 26. Penalty on persons taking up, using or working strays contrary to this act.
 27. Penalty on persons who take up strays and fail to comply with the provisions of this act.
 28. Penalty on clerk, printer or justice of the peace failing to comply with provisions of this act.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. No person shall take up any unbroke animal, as a stray, between the first day of April and the first day of November, unless the same be found within his lawful enclosure, nor shall any person, at any time take up any stray unless it be found on his plantation.

§ 2. No person shall be authorized to take up any stray beast, unless he be a free white person and a householder, unless he first enter into bond and sufficient security to run in the name of the state of Missouri, for the use of the owner, in double the amount of the property proposed to be taken up, to be ascertained by the justice before whom the person wishes to post said stray beast.

§ 3. If any horse, mule or ass, liable to be taken up, come to any person's plantation, any other person may notify him of the fact, and if he fail to take up such stray, for more than ten days after such notice, any other person, of the same county, may take up such stray, and proceed with it as if taken up upon his own plantation, except that he shall produce to the justice of the peace proof of the service of the notice, and shall not swear that the stray was taken up on his own plantation.

§ 4. If any person take up any stray of any kind, and it be not claimed and proved, he shall, within five days, take it before a justice of the peace of the county, and make oath that it was taken up on his plantation, and that the marks and brands have not been since altered to his knowledge.

§ 5. If necessary, the justice shall issue a summons to three disinterested householders, to appear and appraise the stray.

§ 6. The householders, or two of them, shall take an oath that they will fully, fairly and impartially appraise the same, and their appraisement, embracing a description of the size, color, age, marks and brands of the stray, shall be entered by the justice in a book kept by him for that purpose.

§ 7. The justice shall, within ten days, send to the clerk of the county court, a certified copy of the entry on his stray book, and shall also deliver to the taker-up a copy of the same.

§ 8. The justice of the peace shall give to the taker-up a written statement of the duties required by law, to be performed by such taker-up.

§ 9. The taker-up shall, immediately after the appraisement, cause a notice to be set up at the court house, and at one public place in every township of the county, which shall contain a copy of the entry on the justice's stray book.

§ 10. The clerk of the county court, immediately after receiving the certificate of any stray from the justice, shall record the same, in a book to be kept for that purpose.

§ 11. Such clerk shall also keep, hung up in some conspicuous place in his office, a list containing a brief description of each stray, the name and residence of the taker-up, and the time at which it was taken up, and shall enter such description of each stray on the list, as soon as the certificate is filed in his office. Any part of said list may be removed, when it has remained one year.

§ 12. The secretary of state shall select and contract with one printer on

the north side of the Missouri river, to print all advertisements of strays required by law to be published on that side of the river, and another printer on the south side of that river, to print all such advertisements of the south side of that river.

§ 13. The secretary of state, immediately after contracting with any printer, shall notify the clerk of each county court, on that side of the river, of the name and residence of the printer, and the price of advertisements.

§ 14. Such printer shall, once in each month, issue a newspaper or printed sheet, in which he shall give one insertion to all advertisements of strays sent to him, and shall send one copy of such monthly sheets to the clerk of each county court on his side of the river.

§ 15. Such clerk shall receive, file and preserve in his office, all such papers sent to him, for the inspection of all persons who desire to examine them.

§ 16. Such printer shall receive for each advertisement, a sum agreed by the secretary of state, in the contract, not to exceed fifty cents.

§ 17. The secretary shall contract with printers, as soon as this law goes into effect, and such contract shall terminate and be renewed on the first day of January annually; and vacancies in the office of printer shall be filled by the secretary of state by new contracts, as soon as he shall have given reasonable notice to all the printers in the district.

§ 18. If the owner of any stray horse, mule or ass, do not prove him according to law, within twenty days from the time the same was taken up, the person taking it up shall pay the clerk all fees, the necessary postage, and the price of advertisement, and the clerk shall immediately transmit by mail, or otherwise, to the proper printer, a copy of the appraisement of the stray, and shall account to the printer for all money received for him.

§ 19. Any person may use or work a stray, legally taken up by him, if he do so with care and moderation, and do not abuse or injure it.

§ 20. The owner of any stray may, within one year from the time of taking up, prove the same by evidence, before a justice of the peace, and upon the payment of all costs, the reward, and a reasonable allowance for keeping the same, he shall be entitled to receive the stray. If the owner and taker-up cannot agree in the amount of such allowance, it shall be settled by some justice of the peace, who shall take into consideration the trouble and expense of the taker-up, and whatever use or service he may have had of such stray.

§ 21. If the owner fail to comply with the preceding section, for one year after the time of taking up, and the taker-up shall have complied with this law, a complete title to such stray shall vest in the taker-up.

§ 22. If, after the end of one year from the taking up, the owner shall appear and prove such stray, and pay all costs and expenses as above provided, the taker-up shall pay him the appraisement price of the stray, or, at his option, may deliver him the stray.

§ 23. If any stray legally taken up get away or die, without the fault of the taker-up, he shall not be liable for the same.

§ 24. The following rewards shall be paid for taking up strays: for every horse

mule or ass, one dollar; for every colt under two years old, fifty cents; for every head of cattle, thirty-seven and a half cents; for each head of other kind of animals twenty-five cents.

§ 25. If any person sell or swap, or take out of this state, any stray, before the legal title shall have vested in him, he shall forfeit to the county, double the value of such stray, and may also be punished by imprisonment on indictment, not exceeding one year, and forfeit to the owner double its value.

§ 26. If any person unlawfully take up any stray at any place except at his plantation, or take up any stray, and fail to comply with this act, or use or work such stray, in any manner contrary to this act, or use or work it before having it appraised, or shall keep the same more than three days out of the county at any one time, before he acquire title to the same, such offender shall forfeit to the county twenty dollars.

§ 27. If any person take up any stray, and violate or fail to comply with this act, or abuse or injure such stray, the owner may recover of him double the amount of all injury sustained, with costs.

§ 28. If any printer, clerk or justice of the peace, fail to perform the duties enjoined on him by this act, he shall forfeit to the county not less than five, nor more than fifty dollars, and pay to the party injured not less than five nor more than ninety dollars.

Approved, March 7th, 1835.

STRAYS.

An act supplementary to an act concerning strays, passed at this session; approved, 7th March, 1835.

- Sec. 1.** Proceedings on taking up any neat cattle, sheep, hog or goat.
2. Owner not appearing fifteen days after it is posted, same to be recorded in clerk's office.
3. Compensation to clerk for his services in relation to strays
 . Compensation of justice for each certificate; certificate to embrace all animals, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. That any person who shall take up any head of neat cattle, sheep, hog or goat, shall within ten days thereafter, unless it shall have been previously claimed and proven by the proper owner, and a tender made of the compensation allowed in the act to which this is a supplement, go before some justice of the peace of the township or county, and make oath as is required in the taking up of a stray horse, and such taker up, shall cause two householders of the township, to view such stray and go with him before said justice, they being first sworn, shall describe and appraise such stray, or strays, as is required in the case of a horse beast, which description and valuation shall have the same proceedings as is required in the act, to which this is a supplement, in the case of a horse, except that the taker-up shall

not be required to publish the same in a newspaper; but shall advertise the same, in three of the most public places in the township in which strays are taken up, and on failure of the claimant appearing in one year, and satisfying the costs of posting, and fees allowed for taking up, with a reasonable compensation for keeping such strays, to be ascertained by two disinterested householders, the taker-up shall have a complete title to such property.

§ 2. If the owner does not appear and prove said stray in fifteen days after it is posted, it shall be the duty of the taker up to have the same recorded in the clerk's office of the county.

§ 3. The clerk shall receive the following fees for his services in relation to strays: for recording each certificate of an estray, twenty-five cents, for recording each certificate of appraisement, twenty-five cents, whether such certificate contain a greater or less number of animals.

§ 4. The justice of the peace, shall receive the sum of twenty-five cents, for each certificate of strays taken up or appraised before him, and shall put in one certificate all the animals taken up by any one person.

Approved, March 21st, 1835.

SURVEYORS.

An act concerning the office of county surveyors and defining the duties thereof.

- Sec. 1. Surveyor to be elected, tenure of his office, how commissioned, vacancies, how filled.
2. To execute orders of court.
 3. What surveys only shall be evidence.
 4. Surveyor Interested, court may direct some other person to make survey.
 5. Surveyor to keep record of surveys, and furnish copies.
 6. Lands divided by county lines, how surveyed.
 7. Chainmen and markers to be sworn; their expenses how paid.
 8. Compensation to chainmen and markers.
 9. Deputies may be appointed.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. That at the August election in eighteen hundred and thirty-five, and every fourth year thereafter, the qualified voters of each county shall elect some suitable person as county surveyor, who shall hold his office for four years, and until his successor is elected and commissioned and qualified, and the clerk shall certify the election of county surveyor, in the same manner as other elections, and shall be commissioned by the governor as other officers, and in case of death, resignation or otherwise, the vacancy shall be filled as in case of a sheriff.

§ 2. It shall be the duty of the said county surveyor, to execute all orders to him directed by any court of record, for surveying or re-surveying any tract of land, the title of which is in dispute, or litigation before such court, and also all orders of survey for the partition of real estate.

§ 3. No survey or re-survey hereafter made, by any person except the county surveyor or his deputy, shall be considered as legal evidence, in any court of law

or equity within this state, except such surveys are made by authority of the United States, or by mutual consent of parties.

§ 4. Where it shall appear that the county surveyor is interested in making any survey of a tract of land, the title of which is in dispute before the court, the said court shall direct the survey or re-survey to be made by some capable person, who is in no wise interested, who shall be authorized to administer oaths in the same manner as the county surveyor is directed to do, and shall return said survey or resurvey on oath or affirmation, and shall receive for his services, the same fees that the county surveyor would do for similar services.

§ 5. The surveyor of each county shall keep a correct and fair record of all surveys made by himself and deputies, in a book or books to be by him procured for that purpose; he shall number his surveys progressively, and shall also file and preserve a copy of the calculation of each survey, endorsing thereon its respective number; a copy of any survey shall be furnished by the surveyor to any person requiring the same, on payment of the fees allowed by law.

§ 6. Any person owning or claiming any lands in this state, where the same are divided or split by any county line or lines, the person owning or claiming such lands, and wishing to have the same surveyed, may apply to the county surveyor of the county in which such person resides, and if there be no surveyor in such county, he may apply to any surveyor in an adjoining county, who is legally appointed as such, and on such application being made, the surveyor is authorized and required to make such survey, which shall be as valid as though such lands were situated entirely in one county.

§ 7. Each chainman or marker, employed by the county surveyor, or his deputies, shall, before he commences the duties assigned him, take an oath or affirmation, faithfully and impartially to execute the duty of chainman, or marker, (as the case may be,) which oath or affirmation the county surveyor, or his deputies, are hereby authorized and required to administer. The expense of chain carriers and marker shall be paid by the party at whose request the survey is made.

§ 8. The chain carriers and markers may be provided by the party requesting such survey, if approved of by the surveyor; and each chainman, or marker shall be allowed seventy-five cents for each and every day he is actually employed.

§ 9. Deputies may be appointed by any surveyor, who, before they proceed to discharge their duties, shall take an oath, well, truly and faithfully to discharge the duties of deputy surveyor.

Approved, February 20th, 1835.

TOWNS.—P L A T S .

An act concerning plats of towns and villages.

- Sec. 1. Plats of towns how to be made, to be acknowledged before whom.
 2. To be recorded by the recorder and preserved in his office.
 3. Penalty for selling lots without filing plat.
 4. Plats acknowledged and filed, operates to convey public ground.
 5. Penalty for filing false plats.
 6. Penalties how recovered and appropriated.
 7. How plats disposed of in certain cases of change of county lines.

Be it enacted by the General Assembly of the state of Missouri, as follows:

§ 1. Whenever any town or village, or any addition to any town or village, shall be laid out, the proprietor of such town or village, or addition, shall cause to be made out an accurate map or plat thereof, particularly setting forth and describing all the parcels of ground within such town, village or addition, reserved for public purposes, by their boundaries, course and extent, whether they be intended for avenues, streets, lanes, alleys, commons or other public uses, and all lots intended for sale by numbers, and their precise length and width; which map or plat the proprietor shall acknowledge, before some court or officer authorized by law to take the acknowledgment of deeds.

§ 2. The map or plat so made, acknowledged and certified, the proprietor shall deposit in the office of the recorder of the county, in which the town, village or addition is situate: the recorder shall preserve the same in his office among the records thereof.

§ 3. If any person sell, or offer for sale, any lot within any town, village or addition, before the map or plat thereof be made out, acknowledged and deposited as aforesaid, such person shall forfeit a sum not exceeding three hundred dollars for every lot which he shall sell or offer to sell.

§ 4. Such maps and plats, of such towns and villages and additions, made, acknowledged, certified and deposited with the recorder, shall be a sufficient conveyance to vest the fee of such parcels of land as are therein expressed, named or intended for public uses in the county in which such town, village or addition is situate, in trust, and for the uses therein named, expressed or intended, and for no other use or purpose.

§ 5. If any person, his agent or attorney, shall cause a map or plat of any such town, village or addition, to be deposited with the recorder, which does not set forth and describe all parcels of ground, which has been or shall be promised or set apart for public uses, and other lots, such person shall forfeit double the value of the ground so promised or pretended to have been set apart for public uses, and not set forth on the map or plat.

§ 6. The forfeitures arising under this act, may be recovered by action of debt, with costs, in the name of, and to the use of the county; and the person incurring such forfeiture, and his property and effects, may be proceeded against by attachment or otherwise, in like manner, and for the like causes, as in ordinary cases of debt.

§ 7. When any town plat shall be deposited with the recorder of any county, and by reason of the establishment of any new county, or the alteration of any county lines, the town or village shall fall within a different county, such recorder shall transmit such plat to the recorder of the county within which such town or village may be.

Approved, February 20th, 1835.

TOWNS.—INCORPORATIONS.

An act for the incorporation of towns.

- Sec. 1. May be incorporated on petition of inhabitants; boundaries; style.
2. Corporate powers vested in trustees; trustees, how appointed.
3. Qualification of trustees; term of service.
4. Oath of office; meeting and appointment of officers.
5. Board of trustees, quorum to do business; power of adjournment.
6. Trustees to judge of elections, qualifications, &c., make their own rules, &c., journal to be kept, yeas and nays taken, &c.
- 7, & 8. Power and authority of board of trustees.
9. Power of collector of taxes.
10. Limitation of power to tax.
11. Statement of receipts and expenditures to be published.
12. Penalty for neglect.
13. Chairman to publish and enforce by-laws; term of his service.
14. Vacancies, how supplied.
- 15, & 16. Penalties imposed by ordinance, how recovered, appropriated.
17. Judges of election to be appointed.
18. Notice of election to be given, how.
19. Judges failing to attend, others to be appointed; how.
20. Manner of voting and qualification of voters.
21. Judges of election to appoint a clerk; his duties.
22. Elections, how conducted; how determined.
23. In case of a tie how determined; certificates of election to be delivered.
24. In case of failure of any election, election may be ordered, how and by whom.
25. Town heretofore incorporated to continue as such, &c.
26. Court may dis-incorporate any town, when.
27. Corporation not to be dissolved unless notice of application for dissolution be given, &c.
28. Acts done, contracts and rights accruing, not to be affected by dissolution.
29. When corporation is dissolved, trustee to be appointed.
30. Trustee to take oath and give bond before entering on the duties of his office.
- 31, & 32. Duties and powers of trustee.
33. When trustee shall close the affairs of the corporation, he shall deliver over books, &c.
34. Compensation of trustee.
35. Town dis-incorporated, revenue accruing and money paid by trustee, how appropriated.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Whenever two-thirds of the inhabitants of any town or village within this state, shall present a petition to the county court in the county, setting forth the metes and bounds of their town or village and commons, and praying that they may be incorporated and a police established for their local government, or for the preservation and regulation of any commons appertaining to such town or village; and the court shall be satisfied that two-thirds of the taxable inhabitants of such

town or village have signed such petition, and that the prayer of the petitioners is reasonable, the county court may declare such town or village incorporated, designating in such order the metes and bounds thereof; and thenceforth the inhabitants within such bounds, shall be a body politic and corporate by the name and style of the inhabitants of "the town of (naming it,)" and by that name they and their successors shall be known in law; have perpetual succession, sue and be sued, plead and be impleaded, defend and be defended in all courts of law and equity, and in all actions and matters whatsoever; may grant, purchase, hold and receive property, real and personal, within such town, and no other (burial ground excepted) and may lease, sell and dispose of the same, for the benefit of the town; and may do all other acts as natural persons; may have a common seal, and break and alter the same at pleasure.

§ 2. The corporate powers and duties of every town so incorporated, shall be vested in a board of trustees to consist of five members; the first trustees shall be chosen and appointed by the county court for the county, at the the time of declaring such town incorporated, who shall continue in office until their successors are duly chosen and qualified according to this act, the trustees (except the first,) shall be chosen by the qualified electors residing in such town, on the first Monday of April, in every year, in such manner as hereinafter provided.

§ 3. No person shall be a trustee who shall not have attained the age of twenty-one years; who shall not be a free white male citizen of the United States; who shall not be an inhabitant of the town at the time of his election, and resided therein for one whole year next preceding; who shall not be a householder within the limits of such town; and every trustee shall hold his office for the term of one year, and until a successor is elected and qualified.

§ 4. Every trustee before entering upon the duties of his office, shall take an oath or affirmation to support the constitution of the United States, and of this state, and faithfully to demean himself in office; and every board of trustees shall assemble within twenty days after their appointment or election, and choose a chairman of their number, and some other person as a clerk; the board of trustees shall by ordinance fix the time and places of holding their stated meetings, and may be convened by the chairman at any other time.

§ 5. At all meetings of the board, a majority of the trustees shall constitute a quorum to do business, a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as the board of trustees may previously by ordinance, have prescribed.

§ 6. The board of trustees shall judge of the qualifications, elections and returns of their own members, and determine contested elections; they may determine rules of their own proceedings, punish any member, or other person for disorderly behavior in their presence, and, with the concurrence of four of the trustees, expel any member, but not a second time for the same cause; they shall keep a journal of their proceedings, and at the desire of any member, shall cause the yeas and nays to be taken and entered on the journals on any question, resolution or ordinance; and their proceedings shall be public.

§ 7. The board of trustees as aforesaid, shall have power and authority to pass by-laws and ordinances to prevent and remove nuisances; to restrain and prohibit gambling; to provide for licensing, regulating or restraining theatrical and other amusements within such town; to prevent or restrain the meeting of slaves; to regulate and establish markets; to erect and repair bridges; to cause the streets to be cleared and repaired by the inhabitants thereof, and if any of them shall refuse to clear or repair the part assigned to them, the trustees may hire the clearing and repairing of the same, and levy and collect the price thereof, on the person so failing and refusing; to impose and appropriate fines, penalties and forfeitures for breaches of their ordinances; to levy and collect taxes; to enact by-laws to prevent and extinguish fire; to regulate the enclosure of any common field belonging to, or within the limits of the said town; and to pass such by-laws for the regulation of the place, and commons thereto appertaining, as they shall deem necessary, if not contradictory to the laws of the land; to lay out, extend, alter, or widen streets or alleys.

§ 8. Such board of trustees shall have power to appoint an assessor, collector, constable and such other officers, servants and agents as may be necessary; remove them from office, prescribe their duties, and fix their compensation.

§ 9. The persons appointed to collect any tax imposed by virtue of the powers granted by this act, shall have authority to collect the same by distress and sale of the goods and chattels of the person chargeable therewith.

§ 10. No sale shall be made unless ten days notice thereof be given; no law shall be passed by the board subjecting vacant or improved lots or pieces of ground to be sold for taxes; no tax shall be imposed by the board on real or personal property in the said town, at a higher rate than one half of one per centum on the assessment valuation of such property in any one year; and no ordinance shall be passed unless three of the trustees concur therein.

§ 11. The chairman of each board of trustees shall, on the first day of March and September, in each year, make out a correct statement of all monies received and expended, on account of their respective towns, during the six months next preceding, and shall cause such statement, within ten days thereafter, to be published in some newspaper printed in the same town, if there be any, and if not, then he shall cause copies of such statement to be put [up] in six public places in said town, within ten days.

§ 12. If the chairman of the board of trustees for the said town, shall at any time neglect to make, and caused to be published a statement as aforesaid, according to this act, he shall forfeit for every such neglect, the sum of fifty dollars, to be recovered by action of debt in any court of record, one half whereof shall be to and for the use of the said corporation, and the other half to the use of any person who will sue for the same.

§ 13. The chairman of the board shall publish the by-laws and ordinances of the board, for the information of the inhabitants, and cause the same to be carried into effect; he shall remain in office for the term for which he is elected a trustee, but

in case of his absence at the meeting of the board, the board may appoint a chairman *pro tempore*.

§ 14. All vacancies in the board of trustees, shall be filled by a special election, ordered by the chairman of the board, after ten days public notice thereof being given.

§ 15. All fines, penalties and forfeitures imposed by any ordinance, may be recovered by action of debt, before any justice of the peace within the township.

§ 16. If the fine, penalty or forfeiture, shall exceed the amount of the jurisdiction of a justice of the peace in civil cases, the same may be recovered by action, with costs, in the circuit court of the county, which action shall be brought in the name of the inhabitants of such town, and the amount recovered to be applied in such manner as shall be prescribed by ordinances.

§ 17. Each board of trustees shall, as often as may be necessary, appoint three qualified voters as judges of the election, to superintend and conduct all elections for trustees or other town officers required to be elected, and the said trustees shall supply all vacancies which may happen in the office of judges of elections.

§ 18. The judges of elections shall give public notice of the time and place of holding each election, by advertisement published in some newspaper in their town, or by hand-bills set up in six places in the town, not less than ten, nor more than twenty days previous to the election.

§ 19. If on the day appointed for holding any election, any of the judges shall fail to attend, the electors present may appoint a judge or judges of election to hold such election, who shall be qualified as required by this act; and all elections shall be by ballot.

§ 20. All free white male persons of the age of twenty-one years, residing within the limits of any incorporated town, who shall have paid a town tax, and are otherwise qualified, shall be entitled to vote at all elections for town officers; at all such elections, which may be held before a town tax shall have been levied and become due and payable, all persons otherwise qualified, who shall have paid a county tax, shall be entitled to vote.

§ 21. The judges of election shall appoint a clerk, who shall write down the names of all persons whose votes shall be received, and the names of those whose votes are rejected, in separate columns.

§ 22. The election shall be kept open from ten o'clock in the forenoon, until six o'clock in the afternoon; after the election is closed, the judges shall examine the ballots, and the five duly qualified persons, who shall have received the highest number of votes, shall be declared duly elected trustees.

§ 23. In case of a tie, the judges shall determine the election between the persons so having an equal number of votes, by lot; and the judges shall make out and deliver to each person elected a trustee, a certificate of his election.

§ 24. In case of the failure of any election of trustees, or other town officers, a majority of the trustees then in office, may cause the election to be held on any other day.

§ 25. The inhabitants of towns heretofore incorporated, shall be continued as

such, and after the taking effect of this act, shall proceed in all things according to its provisions.

§ 26. The county court of each county shall have power to disincorporate any town which they may have incorporated, upon the petition of three-fourths of the taxable inhabitants of such town.

§ 27. No corporation shall be dissolved by virtue of this act, unless it shall appear to the satisfaction of the court, that notice has been given of the intended application for a dissolution of the corporation, by advertisement published in a newspaper nearest to the town, prayed to be disincorporated, for at least eight weeks successively, prior to such application.

§ 28. No dissolution of any corporation under this act, shall invalidate or affect any right, forfeiture or penalty accruing to such corporation, or to invalidate or affect any contract, obligation or liability entered into, or imposed upon such corporation.

§ 29. Whenever the county court shall dissolve any corporation, they shall appoint some competent person to act as trustee for the corporation so dissolved.

§ 30. The trustee before entering upon the discharge of his duties, shall take and subscribe an oath before some judge or justice, that he will faithfully discharge the duties of his office; and shall moreover give bond with sufficient security, to be approved of by the court, to the use of the disincorporated town, conditioned for the faithful discharge of the duties of his office.

§ 31. It shall be the duty of the trustee, as soon as possible, to prosecute or defend to final judgment, all suits instituted by or against the corporation, to collect all monies due to the same, to liquidate all lawful demands against the same, and for that purpose to sell any property belonging to said corporation, or so much thereof as may be necessary, and generally to do all acts requisite to bring to a speedy close all the affairs of the corporation.

§ 32. The trustee shall make a report of his proceedings to the county court at each term thereof.

§ 33. When the trustee shall have closed the affairs of the corporation, he shall pay over to the county court, all monies remaining in his hands, and deliver to the clerk of said court, all books, papers, records and deeds belonging to the dissolved corporation.

§ 34. The trustee shall receive for his services, such compensation as the court shall allow him.

§ 35. If any town disincorporated as aforesaid, have an annual revenue accruing thereto, the same shall be paid to the county court by the persons owing the same, and all monies thus paid, as well as all monies paid them by the trustee, shall be held and disposed of by the court for the benefit of such town, and may be applied by the court to any specific object, upon the petition of a majority of the taxable inhabitants of such town.

Approved, March 11th, 1835.

TOWNSHIPS.

An act respecting townships.

Sec. 1. How laid off and subdivided.

2. Name and description to be recorded, and transmitted to secretary of state.
3. No township line to pass through any town or common field thereto belonging.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Each county court may divide the county into convenient townships, and as occasion may require, erect new townships, sub-divide townships already established, or alter township lines.

§ 2. The court shall within thirty days after establishing any township, transmit to the office of the secretary of state, a description of such township, containing the name and boundaries thereof, and shall cause the clerk to enter such description of record.

§ 3. No township line shall pass through any town or common field thereto belonging, but the whole of such town and common field shall be part of one township.

Approved, January 26th, 1835.

TREASURY DEPARTMENT.

An act to regulate the treasury department.

- ART. I.** The organization of the department.
ART. II. Of the auditor; his general duties.
ART. III. The auditor: Of the settlement of claims and accounts.
ART. IV. Of the treasurer.
ART. V. Miscellaneous provisions.

ARTICLE I.

The organization of the department.

- Sec. 1.** Treasury department established, embracing the offices of treasurer and auditor.
 2. Where to reside and keep their offices.
 3. Auditor and treasurer to be commissioned; to take oath and give bond.
 4. Penalty for performing official acts before complying with the preceding section.
 5. Treasurer to give bond to the governor with not less than six securities; its condition.
 6. Oath to be taken by securities.
 7. Approval of the bond to be endorsed and delivered to the secretary of state.
 8. Auditor and treasurer not to be commissioned until bond given.
 9. Auditor and treasurer to keep a seal of office.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. A separate department is hereby established to be called *The Treasury Department*, which shall embrace the offices of the state treasurer and the auditor of public accounts.

§ 2. The treasurer and auditor shall reside and keep their respective offices at the seat of government.

§ 3. The treasurer and auditor shall be commissioned by the governor, and before entering upon their respective duties, shall take the oath of office prescribed by the constitution, and shall cause the same to be endorsed on their respective commissions, and shall respectively give the official bonds required by law.

§ 4. If the treasurer or auditor shall perform any official act, before complying with the requirements of the preceding section, he shall forfeit five hundred dollars for the use of the state.

§ 5. The treasurer shall, immediately after his appointment, execute and deliver to the governor a bond to the state, in the sum of one hundred thousand dollars, with not less than six securities, to be approved of by the governor, conditioned for the faithful performance of all the duties required or which may be required of him by law; and the auditor shall, in like manner, execute his bond in a sum not less than fifty thousand dollars.

§ 6. Each security offered shall make oath, either before the governor verbally, or before some judge or justice of the peace in writing, to be laid before the governor, that he verily believes himself to be worth his equal portion of the amount of the bond, after the payment of all debts for which he is in any wise bound or liable.

§ 7. The governor shall endorse on the bond his approval thereof, stating the time of approval, and deliver the same to the secretary of state, who shall record and keep the same in his office.

§ 8. No commission shall issue to any auditor or treasurer until he shall have given bond and security, as required by law.

§ 9. The treasurer and auditor shall each keep a seal of office, which shall be used to authenticate all writings, papers and documents required by law to be certified from either of said offices, respectively; and copies of all papers and documents lawfully deposited in either of the said offices, when certified by the officer and authenticated by the seal of office, shall be received in evidence in the same manner, and with the like effect, as the originals.

ARTICLE II.

Of the auditor—his general duties.

SEC. 1. Auditor declared to be the general accountant of the state; his duties, &c.

2. Auditor to prepare and make certain reports at the commencement of each session of the general assembly.

3. Certain other duties enjoined on the auditor.

§ 1. The auditor of public accounts is declared to be the general accountant of the state, and the keeper of all public account books, accounts, vouchers, documents and all papers relating to the accounts and contracts of the state, and its revenue, debt and fiscal affairs, not required by law to be placed in some other office, or kept by some other person.

§ 2. It shall be the duty of the auditor to digest, prepare and report to the general assembly, at the commencement of each regular session:

- First*, A full and detailed statement of the condition of the revenues, and the amount of the expenditures for the two preceding fiscal years:
- Second*, A full and detailed statement of the public debt:
- Third*, Estimates of the revenues and expenditures for the two succeeding fiscal years:
- Fourth*, Such plans as he may deem expedient for the support of public credit; for lessening the public expenses; for using the public money to the best advantage; for promoting frugality and economy in the public offices; and generally for the better management and more perfect understanding of the fiscal affairs of the state:
- Fifth*, A tabular statement, shewing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended:
- Sixth*, A tabular statement shewing separately the amount of money received into the treasury, from all sources, in each fiscal year, the amount received from each county, and from each source of revenue in each county.
- § 3. It shall be the duty of the auditor:
- First*, To audit, adjust and settle all claims against the state, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers or persons:
- Second*, To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law:
- Third*, To express in the body of every warrant which he may draw upon the treasury for money, the particular fund appropriated by law out of which the same is to be paid:
- Fourth*, To audit, settle and adjust the accounts of all collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury:
- Fifth*, To keep an account between the state and the state treasurer:
- Sixth*, To keep an account of all debts and credits between the state and the United States, and between the state and every other state, government, community, officer or person, with whom the state may have dealings; and of every separate fund in the treasury, authorized by law:
- Seventh*, To direct prosecutions in the name of the state, for all official delinquencies in relation to the assessment, collection and payment of the revenue, against all persons who, by any means, become possessed of public money or property, and fail to pay over or deliver the same, and against all debtors of the state:
- Eighth*, To procure from the proper officers an abstract and description of all taxable lands within the state, not yet procured, and, annually hereafter, abstracts and descriptions of such lands as shall become taxable:

- Ninth*, To transmit to the clerk of each county court, annually, a descriptive list of all taxable lands in such county:
- Tenth*, To give information, in writing, to either house of the general assembly, whenever required, upon any subject relating to the fiscal affairs of the state; or touching any duty of his office:
- Eleventh*, To perform all such other duties as may be required by law.

ARTICLE III.

The auditor—of the settlements of claims and accounts.

- SEC. 1. Collectors and others to exhibit their accounts to the auditor, when; his duties thereon.
2. Balance found due the state to be paid in ten days; delinquent to be charged his commissions and 2½ per cent. per month.
3. Claims against the state to be audited within two years; what debts and claims may be set off against the state.
4. In the settlement of accounts auditor may examine parties, witnesses, &c., on oath, when.
5. Accounts, documents, &c., settled, to be preserved in his office; copies to be given when required.
6. Auditor to draw warrants upon the treasury, when; no money to be drawn for unless appropriated by law: state constitution, Art. 3, sec. 31.
7. Person dissatisfied with decision of auditor, &c., proceedings.
8. When claims are audited and no appropriation for their payment, duty of the auditor.
9. Auditor to make report to general assembly list of collectors, &c., who have not settled.

§ 1. All collectors of the revenue, and others bound by law to pay money directly into the treasury, shall exhibit their accounts and vouchers to the auditor, on or before the first Monday in December, in each year, to be audited, adjusted and settled; and the auditor shall proceed, without any unnecessary delay, to audit, settle and adjust the same, and report to the treasurer the balance found due.

§ 2. If any of the persons mentioned in the preceding section shall fail to pay the amount, so found due, into the treasury, and produce the treasurer's receipt to the auditor within ten days after the settlement above required, the delinquent shall forfeit to the state, the amount of his commission allowed him by law, and also two and a half per cent. a month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid until actual payment, and the auditor shall charge such delinquent accordingly; and the whole amount of principal and forfeiture may be recovered by action on the official bond of the delinquent, or otherwise according to law.

§ 3. All persons having claims against the state shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed, within two years after such claims shall accrue, and not afterwards: And in all suits brought in behalf of the state, no debt or claim shall be allowed against the state as a set off, but such as have been exhibited to the auditor, and by him allowed or disallowed, except only in cases where it shall be proved to the satisfaction of the court, that the defendant at the time of trial is in possession of vouchers which he could not produce to the auditor: or that he was prevented from exhibiting the claim to the auditor by absence from the state, sickness or unavoidable accident.

§ 4. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses and others on oath, or

affirmation, touching any matter material to be known in the settlement of such account, and for that purpose may issue writs of summons, and compel witnesses to attend before him and give evidence in the same manner and by the same means allowed by law to courts of record.

§ 5. All accounts, vouchers and documents settled or to be settled by the auditor, shall be preserved in his office, and copies thereof, authenticated by the official seal, shall be given to any person interested therein, who shall require the same.

§ 6. In all cases of accounts audited and allowed against the state, and in all cases of grants, salaries, pay and expenses allowed by law, the auditor shall draw warrants upon the treasurer for the amounts due, in the form now used in the treasury department; but no such warrant shall be drawn by the auditor, or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid, under any one head, ever exceed the amount appropriated by law for that purpose.

§ 7. If any person interested shall be dissatisfied with the decision of the auditor on any claim, account or credit, it shall be the duty of the auditor, at the request of such person; to refer the same, with the reasons of his decision, to the general assembly

§ 8. In all cases where the laws recognize a claim for money against the state, and no appropriation shall be made by law to pay the same, the auditor shall audit and settle the same, and give the claimant a certificate of the amount thereof under the official seal, if demanded; and shall report the same to the general assembly with as little delay as possible.

§ 9. The auditor shall report to the general assembly, within ten days after the commencement of each regular session, a list of all collectors of the revenue, and other holders of public money, whose accounts remain unsettled for six months after they ought to have been settled according to law, and the reasons therefor.

ARTICLE IV.

Of the treasurer.

SEC. 1. State treasurer to perform certain duties.

2. Treasurer to grant duplicate receipts in what cases, duty of person receiving the same and of the auditor in such case.

§ 1. It shall be the duty of the state treasurer:

First, To receive and keep all the monies of the state, not expressly required by law to be received and kept by some other person:

Second, To disburse the public monies upon warrants drawn upon the treasury, according to law, and not otherwise:

Third, To keep a just, true and comprehensive account of all monies received and disbursed:

Fourth, To keep a just and true account of each head of appropriation made by law, and the disbursements under the same:

Fifth, To render his accounts to the auditor for settlement quarterly, or oftener if required:

Sixth, To report to each house of the general assembly, within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the two preceding years:

Seventh, To give information in writing, to either house of the general assembly whenever required, upon any subject connected with the treasury, or touching any duty of his office:

Eighth, To perform all such other duties as may be required by law.

§ 2. The treasurer shall grant duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposite one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

ARTICLE V.

Miscellaneous provisions.

- SEC. 1. Auditor or treasurer *pro tem.* may be appointed in certain cases.
2. Their compensation.
 3. Upon new appointment settlements to be made with former auditor or treasurer;
 4. Auditor and treasurer may administer oaths.
 5. May have access to each other's offices.
 6. Auditor and treasurer to keep letter book, in which they shall copy official letters.
 7. Auditor issuing unauthorized warrant on the treasury; penalty.
 8. Treasurer refusing payment of warrant unlawfully; penalty.
 9. Wilful neglect of duty, oppression, extortion, &c., by auditor or treasurer; penalty.
 10. Accounts audited, &c., and found due to the state, to be a lien on the property of the person.
 11. Governor to select and notify three members of the general assembly to make settlement with auditor and treasurer, when.
 12. Members thus selected to take oath prescribed to members of general assembly.
 13. Members thus selected to make settlement and report, &c., their duties.
 14. Their compensation.

§ 1. In case of the death, sickness, absence from the state, resignation, removal from office or impeachment of any auditor or treasurer, it shall be lawful for the governor to make an appointment, for the time being, of some suitable person to perform the duties of such office, until a successor can be appointed according to the constitution, or until such absence or disability shall cease.

§ 2. Any person appointed by the governor, in virtue of the preceding section, shall receive the same compensation allowed by law to the officer whose duty he is appointed to perform, in proportion to the time he shall be engaged in such service.

§ 3. Immediately after the appointment and qualification of any auditor or treasurer, the general assembly, if in session, and if not in session, then in the first week of the next session, shall cause settlement to be made in manner above provided, of the former auditor or treasurer's accounts remaining unsettled, and shall cause to be made out and delivered to the person entitled thereto, a certificate of such settlement showing the balance of monies, securities and effects, for which he is accountable, and what has been delivered to his successor.

§ 4. The auditor and treasurer shall each have power to administer all oaths and affirmations required or allowed by law, in matters touching the duties of their offices.

§ 5. The auditor and treasurer shall have free access to each other's offices, for the inspection of all books, accounts and papers, which they respectively contain, and free access to all the other offices of the state, for the inspection of all such books, accounts and papers, as concern any of their duties

§ 6. The auditor and treasurer shall each keep a letter-book, in which shall be copied all official letters which they may write.

§ 7. If the auditor shall knowingly issue any warrant upon the treasury not authorized by law, he shall, upon conviction thereof, be fined in any sum not exceeding four-fold the amount of such warrant, and imprisoned for any length of time not exceeding one year, and shall be deemed guilty of a misdemeanor in office.

§ 8. If the treasurer shall wilfully and unlawfully refuse to pay any warrant, lawfully drawn upon the treasury, he shall forfeit and pay to the holder thereof four-fold the amount of such warrant to be recovered by action against the treasurer and his securities, on his official bond, or otherwise according to law, and the treasurer shall be deemed guilty of a misdemeanor in office.

§ 9. If the auditor or treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion, in the performance of any legal duty, shall receive any fee or reward for the performance of any legal duty, not allowed by law, or by color of his office shall knowingly do any act not authorized by law, or in any other manner than is required by law, he shall forfeit to the state any sum not exceeding one thousand dollars, and shall be deemed guilty of a misdemeanor in office.

§ 10. The amount of every account audited, adjusted and found due to the state, according to this law, with the penalties and interest thereon, is declared to be a lien upon all the real estate of the person charged with the same, from the time that suit shall be commenced for the recovery thereof.

§ 11. On or before the first day of September, preceding the regular session of the legislature, the governor shall select and notify one member elected to the senate, and two members elected to the house of representatives, to attend at the seat of government, fifteen days before the commencement of the session, for the purpose of settling with the auditor and treasurer.

§ 12. The members thus selected, before entering on such duties, shall take the oath required by the constitution of members of the general assembly; which shall be endorsed and certified on their certificate of election.

§ 13. The members elected, or a majority of them, shall make such settlement, and make report to each house of the general assembly, and if they approve the same, shall cause proper entries to be made in the books of the auditor and treasurer's offices, shewing the result of such settlement, and immediately thereupon destroy, by burning, all vouchers which shall have been examined and allowed in such settlements, and which do not concern the private interest of any person.

§ 14. The persons thus selected shall receive the same compensation as is allowed to members of the general assembly, from their time of meeting.

Approved, March 9th, 1835.

TRESPASSES.

An act to prevent certain trespasses.

Sec. 1. Treble damages recoverable for certain trespasses.

2. Throwing down or opening gates, doors, &c., forfeit five dollars and double damages.
3. Penalties and damages how recoverable.
4. When to recover single damages only.
5. Slave committing trespass, owner to pay single damages.
6. If in the employ of other than the owner, employer responsible.
7. Defendants in actions under this act may plead general issue, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. If any person shall cut down, injure or destroy, or carry away any tree, placed or growing for use, shade or ornament, or any timber, rails or wood, standing, being or growing on the land of any other person, or shall dig up, quarry or carry away any stones, ore or mineral, gravel, clay, turf or mould, roots, fruits or plants, or cut down, or carry away any grass, grain, corn, flax or hemp, in which he hath no interest or right, standing, lying, or being on any land not his own, or shall knowingly break the glass or any part of it, in any building not his own; the person so offending, shall pay to the party injured treble the value of the thing so damaged, broken, destroyed or carried away, with costs.

§ 2. If any person shall voluntarily throw down, or open any doors, bars, gates or fences, and leave the same open or down, other than those which lead into his own enclosure, shall pay to the party injured the sum of five dollars, and double the amount of damages the party shall sustain by reason of such doors, bars, gates or fences, having been thrown down, or opened, with costs.

§ 3. All penalties contained in the preceding sections, may be recovered by action of trespass or debt, founded upon this statute, in any court having jurisdiction of the same.

§ 4. On the trial of any action, brought on this statute, if it shall appear that the defendant had probable cause to believe that the land on which the trespass is alleged to have been committed, or that the thing so taken, carried away, injured, or destroyed, was his own, the plaintiff in the action, shall recover single damages only, with costs.

§ 5. If a slave commit any of the offences contained in the first and second sections of this act, it shall be lawful for the person injured to bring an action for the recovery of single damages against the owner of such slave, under the same regulations and restrictions as are in this act heretofore provided.

§ 6. If such slave, at the time of committing such trespass, shall be in the employ or hire of another person other than his owner, such person shall be accountable for all trespasses such slave shall commit whilst so employed or hired, in the same

manner that the owner is made accountable by this act for the trespass of his slave.

§ 7. In all actions founded on this statute, it shall be lawful for the defendant to plead the general issue, and give any special matter in evidence, giving the plaintiff notice in writing, at the time he pleads the general issue, of the points of the special matter which he means to give in evidence.

Approved, February 25th, 1835.

VAGRANTS.

An act respecting vagrants.

Sec. 1, & 2. Who deemed vagrant.

3. Justice of the peace to issue warrant to apprehend vagrant.
4. Vagrancy to be established by verdict; proceedings to hire out such vagrant.
5. Minors to be committed or give recognizance, &c., court to direct sheriff to bind him out, &c.
6. Hire of vagrants, how disposed of.
7. Duty of sheriffs and constables to give information of vagrants.
8. Grand juries to make presentments of vagrants, proceedings thereon.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Every able-bodied person who shall be found loitering or rambling about, not having wherewithal to maintain himself, by some visible property, and who doth not betake himself to labor or some honest calling to procure a livelihood; and all able-bodied persons who are found begging, and who quit their houses, and leave their wives and children without the means of subsistence, shall be deemed and treated as vagrants.

§ 2. All keepers or exhibitors of any gaming table or gambling device, and all persons who travel or remain in steam boats, or go from place to place, for the purpose of gaming, shall be deemed and treated as vagrants.

§ 3. Where any such person is found, any justice of the peace of the county shall, upon information or from his own knowledge, issue his warrant to the sheriff or constable to bring such person before him.

§ 4. If upon due examination, it shall appear to said justice that he is a vagrant as above set forth, and the fact having been established by the verdict of a jury, which shall, in all such cases, be summoned and sworn to enquire whether the person be a vagrant or not, he shall make out a warrant under his hand and seal authorizing the sheriff or constable to keep said vagrant in his custody, until three days notice can be given by advertisements set up in the most public places in the county, and to hire out such vagrant at the court house door in said county, for the term of six months to the highest bidder for cash in hand.

§ 5. If such person be a minor, the justice of the peace shall commit him to jail, unless such minor enter into a recognizance to appear at the next term of the county court, and it shall be the duty of the county court, to direct the sheriff to bind him apprentice to some useful trade or occupation, until he arrives at the age of twenty-

one years, and such vagrant minor, shall in all respects be subject to the laws regulating apprentices.

§ 6. The money arising from the hire of any vagrant shall be applied by the justice of the peace, after the payment of costs, to the paying of his debts; if he shall not be indebted, or do not owe the amount of his hire, the same, or the balance, shall be paid to such vagrant, at the expiration of such time of service, unless he has a wife or children, in which case it shall be applied to their use.

§ 7. All sheriffs and constables within the several counties of this state, shall give information to some justice of the peace, of all vagrants within their knowledge in their respective counties.

§ 8. Grand jurors empanelled for a county, shall make presentment of all such persons within the county whom they may suspect to be vagrants, and upon any such presentment, the court shall direct some justice to issue his warrant to bring such suspected person before him; and such examination shall be had, and such steps taken as heretofore directed.

Approved, March 19th, 1835.

V E N U E .

An act for the change of venue in civil cases.

- SEC. 1. For what causes allowed.
2. Application for change of venue, how made.
 3. On notice given to the adverse party, court to hear the application and grant a change.
 4. Court may change venue without application, in what cases; but one change allowed.
 5. Change awarded in vacation, proceedings of the judge.
 6. When such order is made by the court or judge, proceedings and duty of the clerk.
 7. Duty of the clerk of the court to which such cause is certified.
 8. Costs and expenses attending such change, how taxed and by whom paid.
 9. Failing to pay such costs, fee bill may be made out, how collected.
 10. Clerk to recover such fee bill, how.
 11. If clerk fail to transmit the transcript and papers, or if they be lost, effect of, and how to proceed.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. A change of venue may be awarded in any civil suit at law or equity, in any circuit court, for any of the following causes:

First, That the judge is interested, prejudiced, or is related to, or has been counsel in the cause for either party:

Second, That the opposite party has an undue influence over the mind of the judge:

Third, That the inhabitants of the county are prejudiced against the applicant:

Fourth, That the opposite party has an undue influence over the inhabitants of the county.

§ 2. Any party in such cause, may present to the court or to the judge thereof in vacation, a petition, setting forth the cause of his application for a change of venue, and shall annex thereto an affidavit to the truth of the petition, and alleging that he has just cause to believe that he cannot receive a fair trial, on account of the causes alleged.

§ 3. If reasonable notice shall have been given to the adverse party, or his attorney, the court shall hear the case, and award a change of venue to some court where the causes complained of do not exist, as convenient as may be to the opposite party.

§ 4. If the judge is interested, or related to, or shall have been counsel in the cause for either party, the court or judge may award such change of venue, in his discretion, without any application from either party; but neither party shall have more than one change of venue.

§ 5. If any judge award such change of venue, in vacation, he shall immediately transmit to the clerk of the court wherein the cause is pending, the petition and affidavit, with a written order for the change of venue.

§ 6. When any such order shall be made by the court or judge, the clerk shall immediately make out and transmit to the proper court, a copy of the order, petition and affidavit, and a full transcript of the record and proceedings in such cause, with all the original papers filed in the cause and forming a part of the record.

§ 7. The clerk of the court to which such cause is certified, shall file the same, and the cause shall be docketed, proceeded in and determined, as if it had originated therein.

§ 8. All the costs and expenses attending any such change of venue, made on the application of either party, shall be taxed and paid by the petitioner, and not taxed in the costs of suit.

§ 9. If such petitioner fail to pay such costs, within fifteen days after the change of venue, such clerk may make out a fee bill against such petitioner and his securities for costs, if any, and deliver the same to any sheriff who shall levy and collect the same, with fifty per cent. thereon, for the use of the clerk, as other fee bills.

§ 10. Such clerk shall recover the amount of such fee bill, and fifty per cent. thereon, by action of debt.

§ 11. If any clerk fail thus to transmit the transcript and papers in any cause, the venue whereof has been changed, or if such papers be sent and lost, such loss or failure shall not operate a discontinuance of such cause, but at the next term of such court may be filed, or if lost, copies of the original may be furnished and the cause shall proceed as if no such failure or loss had happened.

Approved, March 14th, 1835.

WEIGHTS AND MEASURES.

An act to regulate weights and measures.

- Sec. 1. County court to procure standard of certain weights and measures; to be kept by the clerk.
2. When procured, notice to be given; penalty for using weights, &c., not corresponding with the standard.
3. To be tried and sealed by the county standard.
4. Limitation and construction of the second section of this act.
5. Duty of constable to inspect weights and measures used in his township, and report, &c.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. The clerk of each county court shall provide, at the county expense, one measure of one foot or twelve inches, English measure; one measure of three feet or thirty-six inches, English measure, denominated one yard; one half bushel measure, which shall contain one thousand seventy-five and one-fifth cubic inches, denominated dry measure; one gallon measure, which shall contain two hundred and thirty-one cubic inches; one half gallon measure, which shall contain one hundred and fifteen and one half cubic inches; one quart measure, which shall contain fifty-seven and three-fourths cubic inches; also, one set of weights called Avoirdupois-weights, and one seal, with initials of the county inscribed thereon; which measures, weights and seal, shall be kept by the clerk of the county court of each county.

§ 2. As soon as the weights and measures are provided, the clerks of the county courts shall cause notice thereof to be given at the court house door for two months; and any person who shall knowingly keep any measure, or weight, and buy or sell any commodity whatsoever by such weight or measure as shall not correspond with the weights and measures deposited in the clerk's office, shall, for every such offence, forfeit and pay ten dollars, for the use of the county where such offence shall have been committed, with costs of suit, to be recovered before any justice of the peace of said county.

§ 3. Clerks of the county courts shall, with the seal aforesaid, seal all weights and measures presented to them for that purpose, that correspond with the county standard.

§ 4. The second section of this act, shall not apply to any person who uses any measure or weight in selling, which would be of advantage to the purchaser.

§ 5. It shall be the duty of each constable to inspect, from time to time, the weights and measures used by millers, merchants, pedlars, grocers and other dealers in buying or selling commodities by weight or measure, within his township, and report to some justice of the peace all violations of this act which may come to his knowledge:

Approved, December 31st, 1834.

WILLS:

An act respecting wills.

- SEC. 1. Who may make a will.
2. Who may make a will of personal estate.
3. Married woman may make a will, in what cases.
4. Wills, how made and attested.
5. Revocation of, how made.
6. Nuncupative when allowed, and how to be established.
7. Mariners and soldiers may dispose of their wages or other personal property, how.
8. Proof of nuncupative will, when to be offered, to be reduced to writing in what time.

- Sec. 9. Who shall take proof of last wills.
10. Probate of, where to be taken.
 11. Probate of nuncupative will, when and how to be taken.
 12. Probate how taken when witness is sick, or resides out of the state, or more than sixty miles from place, of probate.
 13. Force and effect of probate thus taken.
 14. Wills to be recorded; if lands devised, where to be recorded.
 15. Will exhibited, probate to be granted or refused.
 16. Proceedings for contesting validity of proved, or establishing rejected will.
 17. Verdict of the jury, or judgment of court to be final; new trial may be granted; appeal allowed.
 18. Not contested in five years, will to be binding; saving to persons under disability.
 19. Citizens of other states may devise property in this state, how.
 20. Authentic copies of wills proved in other states to be recorded here; effect of.
 21. Testimony on probate, if reduced to writing, good on trial of validity of will, in certain cases.
 22. Devises, &c., to subscribing witnesses void, and devisee competent witness.
 23. Not to be void if there be sufficient number of witnesses without him.
 24. Creditors competent witnesses, though will charged with debts.
 25. Legatees, &c., may be competent witnesses in certain cases.
 26. Legatee dying before probate, a competent witness.
 27. Witnesses examined to prove a will, not to take legacy or bequest, or any interest.
 28. Construction of devises for life, with remainder to heirs in fee.
 29. Construction of devises, omitting words of inheritance, in certain cases.
 30. Children, &c., not provided for in will, to inherit as if no will made; legatees and devisees to contribute.
 31. Legacy. &c., not to lapse by death of legatee before testator.
 32. Devise or legacy taken in execution, other legatees to refund.
 33. How legatees, &c., compelled to refund or contribute.
 34. Construction of wills.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. Any person aged twenty-one years and upwards, of sound mind, may by last will devise all his estate, real, personal and mixed, and all interest therein, saving to the widow her dower.

§ 2. And, in like manner, any person above the age of eighteen years, of sound mind, may dispose of goods and chattels by will.

§ 3. No married woman shall be capable of making a will, unless she have power to do so by marriage settlement, or authority in writing, executed by the husband before the marriage.

§ 4. Every will shall be in writing, signed by the testator or testatrix, or by some person by his direction, in his presence, and shall be attested by two or more competent witnesses subscribing their names to the will, in the presence of the testator.

§ 5. No will or codicil, or any part thereof, shall be revoked, except by a subsequent will or codicil in writing, or by burning, cancelling, tearing or obliterating the same, by the testator, or in his presence and by his consent and direction.

§ 6. No nuncupative will shall be good where the estate bequeathed exceeds the value of two hundred dollars, nor unless the same be proved by two witnesses who were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect, nor unless such nuncupative will was made at the time of the last sickness and at the dwelling of the deceased, or where he had

been residing for the space of ten days or more, except where such person was taken sick from home, and died before his return.

§ 7. Any mariner at sea, or soldier in the military service, may dispose of his wages, or other personal property, as he might have done by the common law, or by reducing the same to writing.

§ 8. No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

§ 9. The county court, or clerk thereof in vacation, subject to the confirmation or rejection by the court, shall take proof of last wills.

§ 10. If the testator have a mansion house or known place of abode, in any county, his will shall be there proved; if he have no place of residence, and lands be devised, it shall be proved in the county where any part of the lands lie, and if he have no place of residence, and there be no lands devised, the will shall be proved in the county in which the testator died, or if he died out of the state, then in any county.

§ 11. No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved unless the substance thereof be first committed to writing, and a citation be issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased, that they may answer the same.

§ 12. When any will shall be produced for probate, and any witness shall be prevented by sickness from attending, or resides out of the state, or more than sixty miles from the place where the will is to be proved, such court or clerk may issue a commission annexed to such will, and directed to any judge or justice of the peace, or mayor, or other chief magistrate, empowering him to take and certify the attestation of such witness.

§ 13. If such witness appear before such officer, and make oath or affirmation, that the testator signed the writing annexed to such commission as his last will, or that some other person signed it by his direction, that he was of sound mind, that the witness subscribed his name thereto in the presence of such testator; the testimony so taken shall have the same force as if taken before the court or clerk.

§ 14. All wills shall be recorded by the clerk of the county court, in a book kept for that purpose, within thirty days after probate; and if lands be devised in such will the same shall be recorded in the recorder's office of each county in which any part of the lands lie, within six months after probate.

§ 15. When any will is exhibited to be proved, the court or clerk may immediately receive the proof, and grant a certificate of probate; or if such will be rejected, grant a certificate of rejection.

§ 16. If any person interested appear, within five years thereafter, and by petition to the circuit court of the county, contest the validity of the will, or pray to have a will proved which has been rejected, an issue shall be made up whether

the writing produced be the will of the testator or not, which shall be tried by the court, or by a jury, (if either party require it.)

§ 17. The verdict of the jury, or the judgment of the court, shall be final, saving to the court the right of granting a new trial, as in other cases, and to either party an appeal in matters of law to the supreme court.

§ 18. If no person appear within the time aforesaid, the probate or rejection of such will shall be binding, saving to infants, married women, persons absent from the United States and territories during five years, or of unsound mind a like period after their disabilities are removed.

§ 19. Citizens of any of the United States or of the territories thereof, owning real or personal estate in this state, may devise or bequeath such property by last will and testament, executed and proved according to the laws of this state, or of any such state or territory in which the will shall be made.

§ 20. Copies made as aforesaid, other than copies and probates of such wills as shall appear to be annulled or disproved, shall be recorded, as in cases of wills executed and proved in this state, and shall be valid as if executed and proved in this state, and shall be admitted in evidence. Any such will may be contested, disproved and annulled, within the same period, and in the same manner, as prescribed respecting wills proved in this state.

§ 21. In all trials respecting the validity of a will, if any subscribing witness be deceased, or cannot be found, the oath of such witness, examined at the time of probate, if reduced to writing at the time of taking such oath, shall be admitted in evidence, and have such weight as the court or jury think it deserves.

§ 22. If any person hath attested, or shall attest, the execution of any will or codicil, to whom any beneficial devise, legacy, estate, interest, gift, or appointment of, or effecting any real or personal estate (other than, and except charges on bonds, tenements or hereditaments, for the payment of any debt or debts,) shall be thereby given, or made, such devise, legacy, estate, interest, gift or appointment, shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be void; and such person shall be admitted as a witness to the execution of such will or codicil.

§ 23. If the execution of such will or codicil be attested by a sufficient number of other competent witnesses, as required by this act, then such devise, legacy, estate, interest, gift or appointment, shall be valid.

§ 24. If by any will or codicil any real estate be charged with any debt, and any creditor, whose debt is so charged, hath attested the execution of such will or codicil, every such creditor shall be admitted as a witness to the execution of such will or codicil.

§ 25. If any person hath attested, or shall attest, the execution of any will or codicil, to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will or codicil, shall have been paid, or have accepted or released, or shall refuse to accept, such legacy or bequest, upon tender thereof, such person shall be admitted as a witness to the execution

of such will or codicil. The credit of such witness shall be subject to the consideration of the court or jury.

§ 26. If any legatee, who has attested the execution of any will or codicil already made, or shall attest the execution of any will or codicil, shall have died in the life time of the testator, or before he shall have received or released the legacy or bequest, so given him; and before he shall have refused to receive such legacy or bequest, on tender made thereof, such legatee shall be deemed a legal witness to the execution of such will or codicil.

§ 27. No person to whom any estate, interest, gift or appointment, shall be given, or made, which is hereby enacted to be void, or who shall have refused to receive any such legacy or bequest, on tender made, and who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he shall have been so examined, demand or receive any profit or benefit of or from any such estate, interest, gift or appointment, so given or made to him, by any such will or codicil, or demand, receive or accept from any person, any such legacy or bequest, or any satisfaction or compensation for the same.

§ 28. If any person by last will, devise any real estate to any person for the term of such person's life, and after his or her death to his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.

§ 29. All devisees of lands, or other estate in this state, in which the words "heirs and assigns" or "heirs and assigns forever" are omitted, and no expressions are contained in such will whereby it shall appear that no such devise was intended to convey only an estate for life, and no further devise be made of the devised premises, to take effect after the decease of the devisee to whom the same shall be given, all such devises shall be understood to be the intention of the testator thereby to devise an absolute estate in the same; and shall convey an estate in fee simple to the devisee for all such devised premises.

§ 30. If any person make his last will, and die, leaving a child or children, or descendants of any such child or children, (in case of their death,) not named nor provided for in such will, although born after the death of the testator, every such testator, so far as shall regard any such child or children, or their descendants, not provided for, shall be deemed to die intestate, and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate; and the same shall be assigned to them; and all the other legatees, devisees and heirs, shall refund their proportional part: Provided, such children, or their descendants, so claiming, have not had an equal proportion of the testator's estate bestowed on them, in the testator's life time, by way of advancement.

§ 31. When any estate shall be devised to any child, grand child, or other relation of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator.

§ 32. When any testator, in his last will, shall give any chattels or real estate to

any person, and the same shall be taken in execution, for the payment of the testator's debts, then all the other legatees, devisees and heirs, shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

§ 33. When any devisees, legatees or heirs, shall be required to refund any part of the estate received by them for the purpose of making up the share, devise or legacy of any other devisee, legatee or heir, the circuit courts shall, upon petition of the party entitled to such contribution, and due notice given to the legatees, devisees, heirs, executors and administrators, order a contribution and distribution of such estate, according to equity, and enforce such order with like effect as decrees of courts of equity.

§ 34. All courts, and others concerned in the execution of last wills, shall have due regard to the direction of the will, and the true intent and meaning of the testator, in all matters brought before them.

Approved, March 21st, 1835.

WITNESSES.

An act concerning witnesses.

- Sec. 1. Subpœnas for, how and by whom issued.
2. Compulsory process when to issue.
 3. Refusal to testify, may be committed.
 4. Fine for non-attendance; liable for damages if expenses tendered.
 5. Privileged from arrest; party arresting, suit to abate; may be fined.
 6. Justice of the peace shall have power to issue subpœnas in all cases.
 7. Subpœna to whom directed, and by whom executed.
 8. Service and return of subpœna how made, effect of.
 9. Writ may be awarded to the sheriff to take the body of witness to testify, when,
 10. Witness taken under preceding section or on attachment, may give recognizance, its condition.
 11. *Habeas corpus* to bring witness up to testify may be issued, by whom and when.
 12. May be issued in causes pending before justice of the peace, when and how.
 13. Proceedings on making application for such writ.
 14. Prisoner after testifying to be remanded to prison.
 15. Competent witness not excused from answering on the ground that it may subject him to a civil suit.
 16. Minister of the gospel or priest not allowed to disclose confessions made to him in his professional character.
 17. Physician or surgeon not allowed to disclose confessions, when.
 18. Witness not incompetent on account of religious opinions or belief.
 19. Negro or mulatto incompetent as a witness except in certain cases.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. In all cases where witnesses are required to attend the trial of any cause in any court of record, a summons shall be issued by the clerk of the court wherein the action is pending, or by the commissioners or referees, or other person acting under the authority of such court, to take the deposition, or testimony of such witness, required to attend before them at the request of either party interested, expressing the day and the place where they are to appear, and such summons may be served in any county in this state; which summons shall contain the names of all witnesses for whom a summons is required by the same party, at the same term, who reside in one county.

§ 2. Any person summoned as a witness in any cause depending in any court

of record, or before commissioners, referees, or other persons appointed under the authority of the court to take his deposition or testimony and failing to attend, not having a reasonable excuse, may be compelled by attachment to appear, which may be served in any county of this state.

§ 3. Any person so summoned and attending, who shall refuse to give evidence, which may lawfully be required to be given by such person, on oath or affirmation, may be committed to prison by the court, or other person authorized to take his deposition or testimony, there to remain without bail, until he give such evidence.

§ 4. The court shall have power to impose a fine, not exceeding fifty dollars, on every person summoned as a witness, who shall not appear and testify, which fine may be remitted, for good cause shewn, at the term to which he is summoned, or the next term thereafter; and where the party causing such witness to be summoned shall have paid or tendered to such witness his legal fees for travel, and one day's attendance, at the time of summoning; such delinquent witness shall be moreover, liable to the action of the party for all damages sustained by his non-attendance, unless he show sufficient cause to justify such absence.

§ 5. All witnesses shall be privileged from arrest in all cases, except treason, felony or breach of the peace, during their attendance on any court, or where their attendance is required by subpœna; and in going to, and returning thence, allowing one day for every twenty miles from their abode; and every person who shall cause a witness to be arrested, knowing him to be attending as such upon a subpœna, his suit shall be abated, and he shall be fined, at the discretion of the court from which the subpœna issued, in any sum not exceeding twenty dollars, upon ten days previous notice thereof.

§ 6. Justices of the peace shall have power to issue subpœnas for witnesses, in cases cognizable before circuit and county courts, justices courts, referees, or arbitrators, and for taking depositions.

§ 7. Subpœnas for witnesses shall be directed to the persons to be summoned to testify, and may be served by the sheriff, coroner or any constable of the county in which the witness to be summoned resides, or may be; or by any free white person above the age of twenty-one years, who would be a competent witness in the cause.

§ 8. The service of a subpœna to testify, shall be by reading the same, or delivering a copy thereof to the person to be summoned, and if served by an officer, his return shall be conclusive of the facts therein stated; if served by a private person the return shall be verified by affidavit, which shall be received as evidence.

§ 9. When any cause shall be continued on account of the absence of a witness duly summoned, and the party for whom such witness shall have been summoned, shall make affidavit stating that such absent witness is material, and that he cannot safely go to trial without his testimony, the court may award a writ directed to the sheriff of the proper county, commanding him to take the body of such witness, that he appear and testify in the cause at the next term thereafter, and the clerk shall issue such writ accordingly, stating therein the day on which the cause shall be set for trial, as the day of appearance.

§ 10. When any writ authorized by the preceding section, or any attachment for a witness shall be executed, the sheriff shall discharge such witness, on his entering into a recognizance in the sum of one hundred dollars, (which such officer is authorized to take,) conditioned for the appearance, and due attendance of such witness according to the exigency of the writ.

§ 11. Every court of record, and every judge of the supreme or circuit court, shall have power, upon the application of any party to any suit or proceeding, civil or criminal, pending in any court of record, or public body authorized to examine witnesses, to issue a writ of *habeas corpus*, for the purpose of bringing before such court or public body, any person who may be detained in jail or prison within the state for any cause, except a sentence for felony, to be examined as a witness in such suit or proceeding on behalf of the applicant.

§ 12. Such writ may also be issued by any such court, or judge upon the application of a party to a suit or proceeding pending before a justice of the peace, or any officer who may be authorized to examine witnesses, to bring any person confined in the jail of the same county, or the county next adjoining that where the suit or proceeding is to be heard or had, before such justice or officer to be examined as a witness.

§ 13. Every application for any writ, shall be verified by affidavit, and shall state the title and nature of the proceeding in which the testimony of the prisoner is desired, the court or officer before whom pending, and that the testimony of such prisoner is material and necessary to the applicant, or the trial or hearing of such suit or proceeding, as he is advised by counsel and verily believes; except that when the application is made by the attorney general, circuit attorney, or other public prosecutor, it shall not be necessary to swear to such advice or counsel.

§ 14. Every prisoner who shall be brought before any court, public body or officer, upon any writ of *habeas corpus* to testify, shall be remanded, after having testified, to the prison from which he was taken.

§ 15. No competent witness in a cause, shall be excused from answering a question relevant to the matter in issue, on the ground, merely, that the answer to such question may establish or tend to establish, that such witness owes a debt, or is otherwise subject to a civil suit.

§ 16. No minister of the gospel, or priest of any denomination, shall be required or allowed to disclose any confessions made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination.

§ 17. No person authorized to practice physic or surgery, shall be required or allowed to disclose any information which he may have acquired from any patient, while attending him in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or do any act for him as a surgeon.

§ 18. No person on account of his opinions in relation to the existence of a Supreme Being, or a state of future rewards and punishments, shall be incompetent to testify as a witness.

§ 19. No negro or mulatto, bond or free, shall be a competent witness except in pleas of the state against a negro or mulatto, bond or free, or in civil cases, in which negroes and mulattoes alone are parties.

Approved, January 27th, 1835.

WOODS, MARSHES AND PRAIRIES.

An act to prevent the firing of woods, marshes and prairies

- Seco. 1. Penalty on firing woods, marshes, &c., if it occasion damage, &c.
 2. Penalty for wilfully firing woods, &c., though no special damage happen.
 3. Firing woods, &c. liable for damages to the party injured.
 4. Masters liable for offences of slaves.
 5. Person permitted to fire any thing on his own farm.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. If any person shall wilfully set on fire any woods, marshes or prairies, so as thereby to occasion any damage to any other person, such person shall pay a sum, not exceeding three hundred dollars, nor less than fifty dollars, one half thereof for the use of the person suing for the same, and the other half to the use of the county in which the offence is committed.

§ 2. If any person shall wilfully set on fire any woods, marshes or prairies, such person shall be fined in any sum not exceeding one hundred dollars.

§ 3. If any person shall wilfully set fire to any woods, marshes or prairies, so as thereby to occasion any damage to any other person, such person shall make satisfaction for such damage to the party injured, to be recovered in an action on the case.

§ 4. Where any offence shall be committed against this act, by a slave, with the consent, or by the command of his master, such master shall be liable in the same manner and to the same extent, as if the act had been committed by himself.

§ 5. This act shall not extend to any person setting fire to any thing on his own farm, as often as occasion may require, if done without intention to set on fire the adjacent woods, marshes or prairies, not occupied by such person.

Approved, January 26th, 1835.

WRITS AND PROCESS.

An act regulating writs and process.

SEC. 1. Style and attestation, see state constitution, Art. 5. sec. 19.

2. Fees and tax to be paid on.

3 Not to be executed on Sunday or Sabbath; except in certain cases.

4. Clerks may issue *alias writs*, and process to bring in representatives of deceased parties.

Be it enacted by the general assembly of the state of Missouri, as follows:

§ 1. All writs and process issued out of any court of record, shall run in the name of "the state of Missouri," and shall be tested by the clerk of the court from which the same shall be issued; and all such writs shall be sealed with the judicial seal of such court; and all writs and process issued by any judge or justice of the peace, or other officer authorized to issue the same, shall run in the name of "the state of Missouri," and be subscribed by the officer issuing the same.

§ 2. In all cases where any person shall apply for an original writ or process for commencing any action in any court of record, the legal fee for issuing the same and all taxes accruing thereon, shall be paid to the clerk at the time the writ is issued.

§ 3. No person on Sunday, or on the fourth day of July, shall serve or execute any writ, process, warrant, order, judgment or decree, (except in criminal cases, for breach of the peace, or when the defendant is about leaving the county;) and the service of every such writ, process, warrant, order, judgment or decree, shall be void; and the person serving or executing the same, shall be as liable to the suit of the party aggrieved, as if he had done the same without any writ, process, warrant, order, judgment or decree.

§ 4. When any writ or process issued out of any court of this state, shall not be executed, the clerk of such court, on application of the party suing out such writ or process, shall issue other like process; and if any party to any suit depending in the said court shall die, the clerk of such court may, in vacation, issue proper writs and process to bring in the representatives of such deceased party, on application of the other party in such action.

Approved, December 16th, 1834.

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ERRATA,

IN THE TEXT OF THE REVISED STATUTES.

- Page 50, § 43, word "end," in first line, should be "one."*
- P. 52, § 8, word "such," in third line, should be "real,"—"such" occurs in the manuscript.*
- P. 82, § 51, word "issues," in first line, should be "issued,"—"issues" occurs in the manuscript.*
- P. 114, § 2, word "he," in third line, should be "the."*
- P. 119, § 2, word "interest," in third line, should be "intent."*
- P. 179, § 40, word "of," in third line, should be "for."*
- P. 195, § 31, in the fourth line insert the word "not," before "exceed."*
- P. 222, § 1, word "be," in second line, should be "die."*
- P. 225, § 6, word "detinue," in second line, should be "detention."*
- P. 226, § 6, after "cases," in first line, insert "of divorce."*
- P. 232, § 35, word "defendant," in third line, should be "demandant,"—"defendant" occurs in the manuscript.*
- P. 241, § 36, word "pre," should be "presented."*
- P. 332, § 38, word "served," in second line, should be "sued,"—"served" occurs in the manuscript.*
- P. 339, § 4, word "defend," in first line, should be "defendant."*
- P. 410, first line on the page, after word "in," insert "actions."*
- P. 459, § 21, word "deklaration," in third line, should be "declaration."*
- P. 468, 9th subdivision, § 7, word "providing," should be "proning,"—"providing" occurs in the manuscript.*
- P. 508, § 2, word "not," in fourth line, should be "non,"—"not" occurs in the manuscript.*
- P. 509, § 14, first line, after the word "bill," insert "filed."*
- P. 506, § 37, word "held," in third line, should be "had."*
- P. 527, last line, word "harmless," should be "harmless," and word "ouching," should be "touching."*

