This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

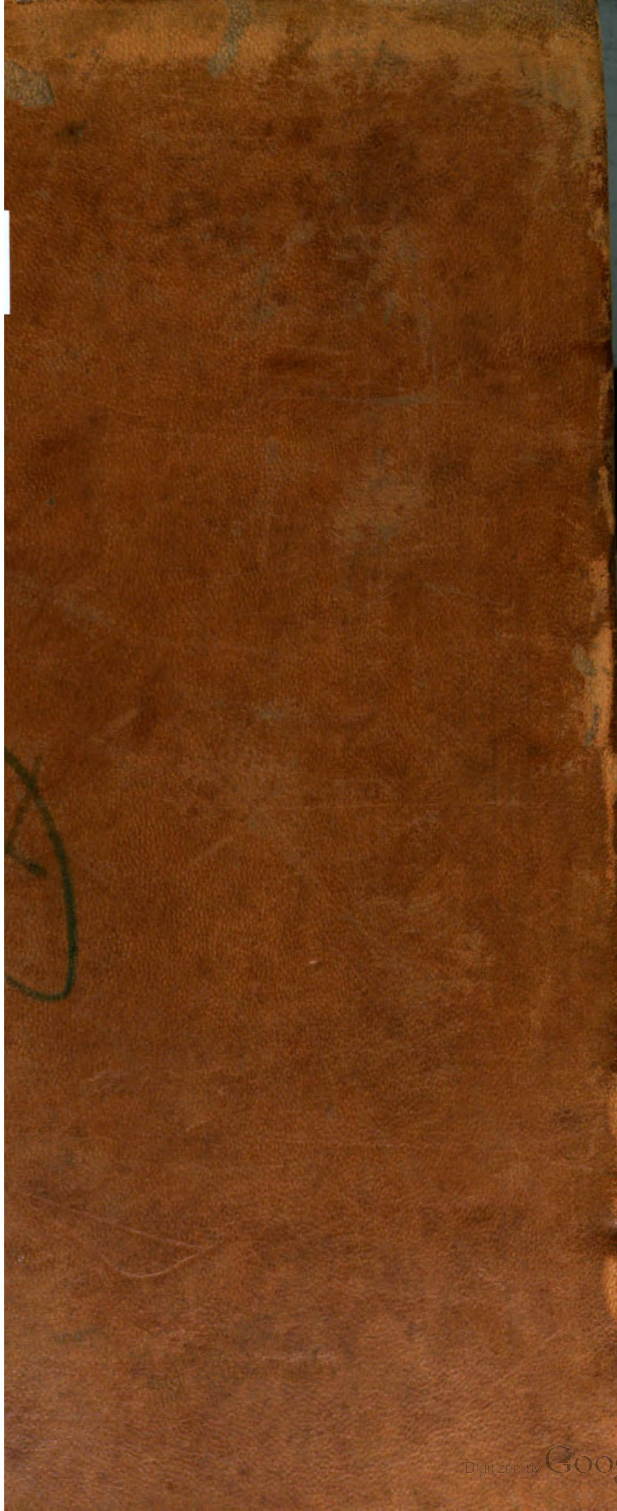
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`


Digitized by Google

Digitized by Google

TCD
I
1845

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

THE

REVISED STATUTES

OF THE

STATE OF MISSOURI,

REVISED AND DIGESTED BY THE THIRTEENTH GENERAL ASSEMBLY, DURING THE SESSION OF EIGHTEEN HUNDRED AND FORTY-FOUR AND EIGHTEEN HUNDRED AND FORTY-FIVE;

TO WHICH ARE PREFIXED

THE CONSTITUTIONS

OF THE

UNITED STATES AND OF THE STATE OF MISSOURI,

AND

THE ACT OF CONGRESS

AUTHORIZING THE PEOPLE OF MISSOURI TERRITORY TO FORM A STATE GOVERNMENT,

AND

THE ORDINANCE

OF THE CONVENTION OF THE PEOPLE OF MISSOURI, BY THEIR REPRESENTATIVES, DECLARING THE ASSENT OF THE PEOPLE OF MISSOURI TO THE CONDITIONS AND PROVISIONS OF THE SAID ACT OF CONGRESS;

STANFORD LIBRARY

WITH AN

APPENDIX.

PRINTED UNDER THE SUPERINTENDENCE OF

WILLIAM CLAUDE JONES, COMMISSIONER,

APPOINTED IN VIRTUE OF "AN ACT TO PROVIDE FOR THE ELECTION AND COMPENSATION OF A COMMISSIONER TO SUPERINTEND THE PRINTING OF THE REVISED LAWS."

ST. LOUIS:

PRINTED FOR THE STATE, BY J. W. DOUGHERTY.

1845.

Digitized by Google

193313

STANFORD LIBRARY

Digitized by Google

PREFACE.

THE LAWS OF MISSOURI have grown up gradually, have been derived from various sources and from time to time have undergone numerous changes and modifications. The first civilized settlements in the country which is now embraced in the limits of the State of Missouri, were made by the French. Extending on the east and west of the river Mississippi, almost indefinitely, Louisiana included the first establishments and settlements in the great western valley. The principal portion of the early population, consisted of hunters, traders and miners, and the settlements were mostly temporary. Meager in numbers, scattered over a wide extent of wilderness on the banks of the great rivers, or in the mineral districts, the civil and political organization of the colonists was founded more in necessity than the fostering care of the French government. Vaguely defined, without fixed organic laws, it was, consequently, imperfect. While the French colony of Acadie, on the St. Lawrence, flourished under governmental protection, the rich prairies and valleys of the Mississippi were inhabited only by a few hardy adventurers.

By the seventh article of the charter of Louis XIV, to Crozat, dated the 14th September, 1712, the "Edicts, ordinances, customs, &c., of Paris, were to be observed for laws in the said country of Louisiana." In 1717, Crozat's rights were passed to the "Company of the West," and were finally surrendered to the king, without a change of jurisprudence. These customs of Paris, &c., in connection with the Roman or civil law, constituted the laws of France, and were the laws of the colony, with such alterations as were necessary to adapt them to the condition of a new country and its provincial form of government. The officers of government had extensive powers and were far removed from responsibility to the crown of France; the manner of proceeding, in the adjustment of private controversies, was prompt and summary; and of course, there was little litigation at that time in the province. The titles at that period had their origin in the civil law, as modified by the laws and colonial regulations of France.

On the 3d November, 1762, France, by a separate act, not made public till the 21st April, 1764, ceded to Spain all of Louisiana west of the Mississippi, including the city and island of New Orleans, to be delivered whenever Spain should be in readiness to receive it. That portion lying east of the Mississippi, was at the same time ceded to Great Britain. On these events becoming public, many of the French inhabitants east of the Mississippi, living at Cahokia and Fort Chartres, abandoned their habitations and removed west of the Mississippi. Several new settlements were made by these immigrants. Ste. Genevieve and New Bourbon were founded in 1763. Mons. La Clede, a member of a French trading company, selected the site of St. Louis in 1763; in the following year the town was laid off, founded and named after Louis XIV of France. In 1765, Mons. St. Ange, a former French commandant, east of the Mississippi, came to St. Louis, assumed the reins of government, probably by the common consent of the people, and St. Louis became the principal town of the province. Subsequent to the cession of 1762, to Spain, the French government exercised no authority over the ceded territory west of the Mississippi. The inhabitants, being discharged from all obligations to France, had no legal political government till the 27th August, 1769, when Count O'Riley, under the authority of Spain, landed at New Orleans with an armed force and took possession of the country. (See 9 Raynal, 222—235.)

In the case of the claim for the Batture in New Orleans, it was decided in 1808, that the laws of France were in force in Louisiana from the year 1762, till possession of the country was taken by the King of Spain, in 1769. (See Vol. II of Am. State Papers, title Public Lands; and opinion of Thomas Jefferson, *ib.*)

The long delay of the Spanish government, in taking possession of her newly purchased territory, originated in the distracted condition of the monarchy and the rebellious disposition of the inhabitants. During the interregnum, from 1762 to 1769, the only political head acting at St. Louis, was Mons. St. Ange, deriving his power by assumption, or from the people themselves. It appears, however, that he was subsequently appointed an officer under the Spanish government. The changes introduced in 1769, were chiefly in the organization of the government, and but little in the principles of jurisprudence. The proclamation of General Count O'Riley, of the 25th November, 1769, made only specific, and no general alterations. The *form* of the government was only

Digitized by Google

changed in accordance with the colonial regulations of Spain, and the laws of France continued entire, so far as not altered. The Spanish, instead of the French organization of officers was adopted for the administration of the laws. The manner of proceeding in judicial trials, and pronouncing judgments, was changed. Rules for instituting actions, pleadings, and the general mode of procedure and rules in civil actions were prescribed, without changing the great outlines of the law. The criminal law and actions for wrongs, (not differing from the French law,) and the fees of officers, were also specified in the proclamation. There was no abolition of the French code, or the substitution of the Spanish code for it. In 1770, O'Riley issued an ordinance respecting the grants of land. In 1795, the Baron Carondelet passed an ordinance of police, concerning bridges, roads, levees, slaves, &c. These acts constituted the only change in the established system of laws, while the Spanish had possession of the country. Both codes were from the same Roman original, and did not justify a full substitution. They were probably both confounded in practice.

So, the civil code, as modified by the laws of France, and the several colonial regulations of Spain, still continued to be the law of Louisiana. After the establishment of Spanish authority, the province of Louisiana was entrusted to a lieutenant governor, who was appointed by the Crown, was subordinate to the intendant general at New Orleans, and resided at St. Louis. Although the great majority of the population were French, and spoke the French language, the proceedings of the public authorities of the province were transacted in the Spanish language, and all grants of land, and public surveys, were in the same tongue. The powers of the commandants were very full, and their proceedings prompt and arbitrary, and very little room was afforded for litigation of any kind under the Spanish government of the province. The titles that originated at that period partook of the nature of the titles under the laws of Spain; the relative rights of husband and wife to the lands of each other were different from those that exist under the common law; and marriages were commonly preceded by marriage contracts that provided for a community of property. The titles to a very large number of tracts of fine land, in this State, originated under the laws and regulations of Spain; and this renders it necessary for the Missouri lawyer to acquire a competent knowledge of the civil and Spanish laws, and the colonial regulations of Spain in relation to the concession of the public domain.

The legal questions that arise out of the French and Spanish laws, in relation to concessions, commons, and common fields, are numerous and difficult; and the change of government, and the substitution of the common and statutory law for the civil and Spanish laws, have rendered them still more difficult and complicated.

On the 1st October, in the year 1800, by the treaty of St. Ildefonso, Louisiana was retroceded by the king of Spain to the French republic. On the 30th April, 1803, the treaty between France and the United States was signed at Paris, by which Louisiana was ceded to the United States, in full sovereignty. The country was ceded without any conditions, except such as were intended to protect the inhabitants in the enjoyment of their property, and their civil and religious rights. Special provisions were made in the treaty, binding the United States to perfect and confirm the inchoate rights of the inhabitants to the lands that they had acquired under the French and Spanish governments. On the 31st October, 1803, an act was passed by congress authorizing the President to take possession of the territory, in conformity with the treaty of cession; and, on the 20th December, 1803, formal possession of Louisiana was delivered to Wm. C. C. Claiborne and James Wilkinson, commissioners of the United States, by Laussat, the colonial prefect of the French republic at New Orleans. In the month of March, 1804, formal possession was taken of the upper province of Louisiana, by Amos Stoddard, of the United States army; the keys and public papers were peacefully delivered up by Don Charles Dehault Delassus, the lieutenant governor, and the American flag was made to float over the government house at St. Louis. The creole inhabitants were thus transferred, by treaty, without their consent, and came under the American government with fear and apprehension. Many of the ancient inhabitants still look back with pleasure to the time when they lived under the provincial government, and contrast their happy lives at that period with the more busy and active scenes which transpire among the enterprising Anglo-American race. On the 26th March, 1804, an act was passed by the congress of the United States, dividing the province of Louisiana into two distinct territories, by a line corresponding with the thirty-third degree of north latitude; all the country south of that parallel was called the "Territory of New Orleans," and the remainder, north of that parallel, was called the "District of Louisiana." The executive power of the governor of Indiana was extended over the district of Louisiana, and the governor and judges of Indiana were impowered to establish inferior courts, prescribe their jurisdiction and duties, and make all laws which they might deem conducive to the good government of the inhabitants. The judges of Indiana were required to hold two courts annually in the district, at such places as they might deem proper; and the secretary of Indiana was required to receive and preserve all public papers belonging to the district of Louisiana. Under this act of congress, the governor and judges of Indiana proceeded to pass sixteen acts for the government of the district. They were passed on the 1st October, 1804, and related to the following subjects:—Crimes and punishments; Justices' courts; Slaves; Revenue; Militia law; Recorder's offices; Attorneys; Constables; Boatmen; Defalcation; Practice at law; Probate business; Establishing a court of quarter sessions; Oaths; Sheriffs, and Marriages. By that act of congress, all the laws in force in the territory, at the time of its passage, were declared

Digitized by Google

to be continued in force, except such as were inconsistent with the terms of the act of congress and, of course, the civil law continued to be the law of the territory, except so far as the same was repealed or modified by the laws of congress, and the acts of the governor and judges of Indiana. The governor and judges of Indiana, in framing these laws for the territory, appear to have taken the laws of Pennsylvania for their model; but the provisions in relation to slaves and free negroes appear to have been taken from the statutes of Virginia and Kentucky.

The territory did not long remain under that form of government, for, on the 3d March 1805, an act was passed by congress, by which the name of the "District of Louisiana" was changed to that of the "Territory of Louisiana." It also provided for a governor of the territory, to be appointed by the President, to hold his office for three years, to be commander of the territorial militia, and superintendent of Indian affairs. A secretary of the territory was also authorized to be appointed, who was to hold his office for four years, and who was to act as governor during the absence of the governor. The legislative power was to be vested in a governor and three territorial judges, and they were invested with authority to establish inferior courts and to make such laws as they might deem necessary for the territory. The three judges were to be appointed by the President, to hold office for four years, and to hold two courts in each year, at suitable places in the territory. By it, all laws in force at the time of its passage not repugnant to the act, were continued in force. This act took effect on the 4th July, 1805. Under this act, various territorial statutes were passed by the governor and judges, from time to time, adapted to the wants and necessities of the early pioneers. The first act, creating the office of attorney general, was passed on the 6th May, 1806. Originally, there were five districts or counties in the territory, viz: St. Louis; St. Charles; Ste. Genevieve; Cape Girardeau; and New Madrid. In the years 1806–7 and 8, a considerable number of statutes were enacted by the governor and judges, by which many of the principles of the common law were adopted; a number of the statutory enactments of the states of the Union, were introduced, and the laws in relation to the acquisition and descent of property, materially changed. In the year 1808, these acts were embodied under the care of Edward Hempstead, Esq., and published in an octavo volume called "Hempstead's Digest." In the year 1810, other acts were passed somewhat modifying the laws of the territory. On the 4th June, 1812, an act was passed by congress, re-organizing the territorial government. By that act, the legislative power of the territory, was vested in a governor, a legislative council, and a house of representatives. The governor had an absolute veto, and had the same powers as before. The legislative council consisted of nine members and held their office for five years. The house of representatives nominated eighteen citizens to the President, and out of that number, he selected nine counsellors, to form the legislative council. The house of representatives consisted of members chosen by the people every two years, one representative being allowed for every five hundred free white males. The first house of representatives consisted of thirteen members, and, under the act of congress, the number of representatives could never exceed twenty-five. The legislature was required to hold annual sessions in St. Louis. The judicial power of the territory was vested in a superior court, inferior courts, and justices of the peace. The superior court consisted of three judges, who held their offices for four years, and had original and appellate jurisdiction, in civil and criminal cases. By the same act the territory was authorized to send one territorial delegate to congress. On the 29th April, 1806, another act of congress was passed, by which the legislative council was required to be elected by the people for two years, and the legislative sessions were made biennial instead of annual. It also authorized the legislature to require the judges of the supreme court to act as circuit court judges, and, as such, to hold regular terms in all the counties in the territory. To the circuit courts was given original jurisdiction in civil and criminal cases, and in all chancery proceedings. Under these acts of congress, a court of common pleas was established on the 20th of August, 1813. The act to incorporate the bank of St. Louis, was passed the next day. It was a badly guarded corporation, was improvidently granted, and ended in disaster. At the same legislative session, the county of Washington was organized.

In the year 1815, another session of the territorial legislature was held, at which many changes were made in the statutory law; but of these, far the most important was an act introduced by Mathias McGirk, and passed on the 19th January, 1816, by which the common law of England of a general nature, and the statutes of England, passed prior to the fourth year of James I., of a general nature, were adopted as the laws of Missouri; provided the same were not repugnant to the constitution and laws of the United States, and the statutes of the territory. By the same act the right of survivorship among joint tenants, and estates in entail, was finally abolished. The civil law ceased to be the ground-work of the laws of the territory, and the common law took its place. On the 23d January, 1816, Howard county was formed out of the western parts of the counties of St. Charles and St. Louis, and included all the country on both sides of the Missouri river, from the mouth of the Osage to the mouth of the Kansas. In 1816 and '17, another session of the legislature was held, in which a number of statutes were passed, the old bank of Missouri was improvidently incorporated, and some new features introduced into the statutes.

In the year 1817, a digest of the statutes of Missouri was prepared by Henry S. Geyer, Esq., to which was appended a form book, and some of the acts of congress, and documents originating

Digitized by Google

under the colonial government of Spain. It was published in octavo, well arranged, and was a useful book.

On the 8th December, 1818, an act was passed creating the county of Jefferson; on the 11th of same month, Franklin county was formed; on the same day, Wayne county was formed; on the 14th December, Lincoln, Pike, Madison and Montgomery counties were formed; on the 17th December, Cooper county was created. During that session, many statutes were passed; the most important of which was the enactment of the statute of limitations, in relation to real estate, limiting the right of entry to twenty years. This act was passed on the 17th of December, 1818.

On the 6th of March, 1820, the act of congress admitting Missouri, as a state, into the Union, was passed, and on the 19th July, in the same year, the terms prescribed by congress were acceded to by the convention in Missouri. The first session of the Missouri legislature was held in 1820, and many statutes were passed to put the state government into operation; and the counties of Lillard, Ralls, Cole, Chariton, Saline, Gasconade, and Callaway, were formed. In 1821, a second session of the legislature was held, at which was passed a solemn public act, declaring the assent of Missouri to the fundamental conditions prescribed by congress. At the same session, a ruinous banking system was established, by the creation of *loan offices*, that ruined many citizens, and involved the state in a heavy debt. Scott and St. Francois counties were formed at that session. In 1822, a long session of the legislature occurred, during which many changes and innovations were made in the statutes, some of which were of a material character. At this session, Clay county was created.

The first revising session of the legislature occurred in the years 1824–5. The whole body of the general laws had been previously prepared and written out with care by HENRY S. GEYER, Esq., and RUFUS PETTIBONE, Esq., revisors appointed for that purpose. The laws thus prepared, were enacted with few changes by the legislature, and formed a well arranged code. Ray county was formed at this session. In 1826, a session of the legislature occurred, at which but few material changes were made in the general laws of the state. Jackson county was then created, and the name of Lillard had been changed to that of La Fayette, previously to that time. At the session of 1828–9, but few material changes were made in the general laws. Crawford county was then formed. In 1830–31, the legislature made but few innovations in the laws of a general nature. Randolph county was formed at that session. At the session of 1832–3, the changes in the law of a general nature were not numerous. At that session, the law to establish a penitentiary was passed. The counties of Carroll, Green, Lewis, Morgan, Pettis, Pulaski, Ripley, and Warren were created. One revisor was appointed to report to the next general assembly a revision of such acts as had been altered since the last preceding revision; but no provision was made for the general revision of the statutory code. The session for the general revision of the laws was held in 1834–5. The work of revision was undertaken and laboriously performed by a joint committee of the two houses. The criminal law was remodeled and adapted to the penitentiary system. Many other material changes and alterations were made in the body of the revised laws. The code then published, was, in some respects, an improvement on the code of 1825; but from the hurried manner in which it was prepared, and the large number of persons engaged in the revision, it lacked system, and some of its enactments were inconsistent with each other. At that session, the counties of Barry, Benton, Polk, Rives, Shelby, Stoddard and Van Buren were formed.

At the next succeeding session, 1836–7, some additional changes were made, and some of the defects of the revision were corrected. The bank of the State of Missouri was created, and many corporations authorised. The counties of Audrain, Caldwell, Clark, Daviess, Linn, Livingston, Macon, Miller, and Taney, were organized.

At the session of 1838–9, a well prepared common school law was enacted, and a state university established. The counties of Newton, Platte and Buchanan were formed. At the subsequent sessions of the legislature, previous to the revision of 1845, the innovations upon the general laws of the state were not very great. A number of new counties were formed, and many local laws passed. The act to provide for the call of a convention to revise the constitution, and the act to abolish imprisonment for debt, were the most important which were enacted during the session of 1842–3.

A brief notice of the laws of congress, in relation to the adjustment of land titles in Missouri, the undersigned has thought proper to insert, as a convenient matter for reference.

In conformity to the stipulations of the treaty of cession, the congress of the United States, at various times, passed acts for ascertaining and adjusting the land titles that had originated under the Spanish and French governments. The first act on this subject was passed on the 26th of March, 1804, and appears to have been principally intended to guard against spurious and fraudulent claims. On the 2d of March, 1805, an act was passed by congress, providing for the confirmation of the claims of persons who claimed under concessions from the French and Spanish governments; also, granting settlement rights, to heads of families, who were settlers on lands in the province before the treaty of cession, by permission from the Spanish officers. It also pro-

Digitized by Google

vided for the appointment of a register and recorder, and prescribed their duties; it required all claimants to file with the register or recorder, on or before the 1st of March, 1806, a notice stating the nature and extent of their claims, together with a plat thereof, and declared void all claims, of which such notice should not be thus filed. It also provided for the appointment of two commissioners, who, together with the recorder, should form a board to investigate all land claims, and make a report to congress of such as they should consider worthy of confirmation. On the 28th of February, 1805, an act of congress was passed, providing for the appointment and compensation of a surveyor general, and deputy surveyor, and for the making of surveys of old Spanish land claims. On the 26th of April, 1806, an act was passed, modifying the law in relation to settlement rights, and other claims in land. On the 3d of March, 1807, an act was passed making further changes in the law for the adjustment of land claims in the territory, extending the time for filing notices and plats, till the 1st of July, 1808, and declaring that all claims, not then presented, should be barred, and making other miscellaneous provisions. On the 13th of June, 1812, an act was passed confirming the claims of the inhabitants of the French villages in Missouri, to the lots, out lots, common field lots, and commons, thereof, providing for their survey, and setting apart vacant lots for the use of schools. By the same act, the President was authorized to have portions of the public lands surveyed into townships, and the time for filing notices of claims, was extended until the 1st of December, 1812, and all claims not presented by that time, were declared to be barred and void. The powers of the old board of commissioners were transferred to the recorder by the same act. On the 3d of March, 1813, the time for giving evidence in favor of unconfirmed claims, was extended till the first day of January, 1814, and all claims not proved by that time, were declared to be barred. On the 2d of August, 1813, another act of congress gave further time till the 1st of January, 1814, for filing notices of claims, and till the 1st of July, 1814, for proving land claims; and the powers given to the former board of commissioners were conferred on the recorder. On the 12th of April, 1814, an act of congress confirmed the lands embraced in the report of the commissioners for confirmation. By the same act, persons claiming lands by right of donation under the acts of congress and the report of the commissioners, were confirmed in their claims. On the 29th of April, 1816, an act of congress provided for the further confirmation of land titles. On the 3d of March, 1811, an act of congress provided for the survey and sale of the public lands in Louisiana territory, reserving the sixteenth sections for public schools, and, by that act, all the navigable rivers and waters of the territories of Orleans and Louisiana, were declared to be public highways, and that such they should forever remain. The act of congress, of the 29th of April, 1816, provided for the appointment of a surveyor general for Illinois and Missouri, and prescribed his duties. Laws granting pre-emption rights to actual settlers, were passed on the 5th of February, 1813, on the 12th of April, 1814, and on the 29th of April, 1816. On the 17th day of February, 1815, the law for the relief of the sufferers by earthquakes in New Madrid, was passed, and it has given rise to much protracted litigation in Missouri. In 1818 and 1819, the first sales of public lands took place in Missouri. In 1824, congress passed an act giving to the district court of Missouri, power to hear and confirm concessions for lands after proper investigation. This act was to continue in force for two years by an act passed in 1826, and again by another act in 1828. Under this act, some heavy claims were confirmed. In 1832, an act was passed to appoint another board of commissioners to investigate and report for confirmation land claims in Missouri. Under this act, the commissioners reported for confirmation a large number of claims, the largest portion of which were confirmed by act of congress on the 4th of July, 1836. Since that time an act of congress has been passed and is still in force, which requires the judge of the United States district court to hold special terms of that court, to investigate unconfirmed claims, and render a decree of confirmation for such as are deemed valid. Under this act the judge holds special terms at different places in the state semi-annually, and the claimant files his petition, setting forth the facts, and the proceedings are conducted according to the chancery practice. At various times acts have been passed by congress, wisely securing to actual settlers the right of pre-emption to the lands improved, and the settled policy of the country now appears to be in favor of the maintenance of permanent prospective pre-emption laws. Under these various acts of congress, many important causes have been adjusted, by the courts of Missouri and of the United States; they occupy much space in the reports of the supreme court of this state and of the United States, and form an important branch of the jurisprudence of Missouri.

At the session of the legislature of 1842–3, an act was passed appointing the Hon. WILLIAM SCOTT, Hon. WILLIAM B. NAPTON, and HENRY S. GEYER, Esq., as revisors of the laws, with powers to revise and digest the whole body of the general laws of the state, and report the same to the next session of the general assembly. MR. GEYER declined the office and the Hon. JAMES W. MORROW was appointed in his place. When the legislature met in 1844, the revisors reported their revision, apparently prepared with much ability and care. The laws, as reported by them, were referred to a joint committee on revision, and were reported back with but few changes.

The legislature commenced its session on the 18th of November, 1844, and closed on the 28th of March, 1845, after a laborious session of one hundred and thirty days. The work now presented to the public, is the principal result of their labors.

Digitized by Google

There were some important modifications, and several new provisions introduced into the general code. The provision authorizing the partition of slaves and personal property, removes the difficulty which heretofore existed on that subject. The changes in the administration laws, relative to partnership effects and the lien of judgments, supply a deficiency in that law which has long been felt; the statute of frauds was remodeled, and some new provisions introduced. The guards which have been thrown around corporations, in the general law upon that subject, the extended re-enactment of the restrictions upon private banking, and the issues and circulation of depreciated paper currency, are not only important as it regards their legal effect, but as they exhibit the progress of public opinion on these subjects. The change relative to pleading, in the practice act, is salutary. Several acts are wholly new: among them is the act relative to the distribution of the proceeds of the five hundred thousand acres of land—important in its consequences, whether the policy be wise or unwise. Wherever a new act occurs, it has been noted in the margin. Nineteen new counties were formed at this session.

The undersigned was elected a commissioner to direct and superintend the publication of the revised laws, by virtue of an act creating that office, approved March 26th, 1845. He has been governed in arranging the order of publication by the "Act concerning the Revised Statutes," approved March 27th, 1845, and the "Act to provide for the publication and distribution of the laws and journals," approved March 27th, 1845, as far as they were applicable. All laws of a general nature, not repealed or revised, but continued in force by their own provisions, have been carefully selected and published. The whole body of the laws of a public, general, and permanent nature, are contained in the work.

The rapidity with which the work passed through the press, demanded great labor and attention to prevent errors. The preparation of the analysis which heads each chapter, and the marginal notes, and references to former acts and laws, showing the derivation of the present code, the correction of the notes made by the revisors, and the preparation of additional notes and references to the decisions of the supreme court, required no small attention and investigation; and with every effort to render the work correct, a few errors have been detected since it passed through the press: they will be found corrected in the errata.

The publication would have been completed some weeks earlier, had it not been for neglect in the former secretary of state in furnishing the copy. A delay of two weeks was occasioned by this.

The index has been a work of no small difficulty, and has been necessarily executed with much rapidity. The analytical method has been adopted in its preparation. The acts are alphabetically arranged, and numbered in chapters. An analysis of the several acts is prefixed to the work. There is a complete sub-index to each chapter, or act, and a cross-index to every subject matter, alphabetically arranged. It was considered that this order of arrangement, when understood, was better calculated to facilitate reference than any other.

Wherever a superfluous word occurs in the text, it has been placed in italics; and wherever a word has been added to supply a deficiency, or explain an ambiguity, it has been placed in roman letters, and included in brackets—[ ]. The text has been uniformly and carefully preserved and followed, except where it has been marked and designated as above, unless—may also be excepted unimportant grammatical corrections, and inaccuracies in orthography.

No matter has been introduced in the appendix, unless it was believed to be of general utility. The repealing acts, and the abstracts of the laws of the United States in relation to the authentication of public acts and records, and the naturalization of aliens; the convention, and the northern boundary acts; a few unrepealed, and some public laws passed at the revision session, have been published. These were all that were deemed of sufficient importance to warrant publication.

Every proof sheet has been carefully compared with the copy of the original rolls, furnished by the secretary of state. The undersigned was anxious to make the edition correct, and several of the most important acts were compared by him with the original and engrossed bills.

WILLIAM CLAUDE JONES.

St. Louis, August 1, 1845.

Digitized by Google

ANALYSIS

OF THE

SEVERAL CHAPTERS

CONTAINED IN

THE REVISED STATUTES.

Chapter 1.	An act regulating the action of account.....	55
Chapter 2.	An act regulating the removal of officers by address.....	57
Chapter 3.	An act respecting executors and administrators.....	61
Chapter 4.	An act respecting public administrators.....	108
Chapter 5.	An act concerning advertisements.....	111
Chapter 6.	An act respecting aliens.....	113
Chapter 7.	An act to apportion representation.....	113
Chapter 8.	An act concerning apprentices.....	115
Chapter 9.	An act concerning arbitrations and references.....	121
Chapter 10.	An act concerning voluntary assignments.....	127
Chapter 11.	An act to provide for the recovery of debts by attachment.....	132
Chapter 12.	An act concerning the attorney general, circuit and county attorneys.....	155
Chapter 13.	An act concerning attorneys at law.....	158
Chapter 14.	An act concerning attorneys at law.....	161
Chapter 15.	An act to license auctioneers, and impose a tax on licenses and sales.....	161
Chapter 16.	An act to prevent illegal banking, and the circulation of depreciated paper currency within the limits of this state.....	166
Chapter 17.	An act to license and tax billiard tables.....	170

Digitized by Google

CHAPTER 18. An act concerning bills of exchange and negotiable promissory notes..... 172
CHAPTER 19. An act concerning boatmen..... 176
CHAPTER 20. An act concerning boats and vessels..... 180
CHAPTER 21. An act concerning bonds and notes..... 189
CHAPTER 22. An act to provide for building bridges..... 192
CHAPTER 23. An act to license and tax money brokers and exchange dealers..... 196
CHAPTER 24. An act regulating the mode of taking the census... 198
CHAPTER 25. An act regulating clerks..... 200
CHAPTER 26. An act providing for the election of a commissioner of the permanent seat of government, and for other purposes..... 205
CHAPTER 27. An act further to define the duties of the commissioner of the permanent seat of government.... 209
CHAPTER 28. An act respecting constables..... 210
CHAPTER 29. An act to lay off the state into congressional districts..... 213
CHAPTER 30. An act supplementary to an act entitled "An act to lay off the state into congressional districts," approved February 21, 1845..... 214
CHAPTER 31. An act concerning contracts and promises..... 215
CHAPTER 32. An act regulating conveyances..... 217
CHAPTER 33. An act concerning coroners..... 229
CHAPTER 34. An act concerning corporations..... 230
CHAPTER 35. An act concerning costs..... 240
CHAPTER 36. An act defining the limits of the several counties in this state..... 252
CHAPTER 37. An act to provide for erecting county buildings.... 286
CHAPTER 38. An act to enable counties to make contracts, and hold and convey real estate..... 289
CHAPTER 39. An act to provide for the organization of counties hereafter established..... 291
CHAPTER 40. An act to provide for the removal of seats of justice..... 300
CHAPTER 41. An act to establish and regulate county treasuries... 306
CHAPTER 42. An act to establish a court of common pleas in the county of St. Louis..... 314
CHAPTER 43. An act to establish a criminal court in the county of St. Louis..... 318
CHAPTER 44. An act to establish judicial circuits, and prescribe the times and places of holding courts.. 320

Digitized by Google

CHAPTER 45. An act to establish courts of record, and prescribe their powers and duties..... 328
CHAPTER 46. An act prescribing the time and place of holding the supreme court..... 339
CHAPTER 47. An act concerning crimes and their punishments... 340
CHAPTER 48. An act concerning depositions..... 416
CHAPTER 49. An act providing for the appointment of commissioners to take depositions in other states..... 420
CHAPTER 50. An act concerning descents and distributions..... 421
CHAPTER 51. An act concerning the action of detinue..... 423
CHAPTER 52. An act for the distribution of the proceeds of the sales of the 500,000 acres of land donated to this state by the congress of the United States.. 424
CHAPTER 53. An act concerning divorce and alimony..... 426
CHAPTER 54. An act concerning dower..... 429
CHAPTER 55. An act regulating the action of ejectment..... 439
CHAPTER 56. An act to regulate elections..... 446
CHAPTER 57. An act to provide for choosing electors of president and vice-president of the United States..... 457
CHAPTER 58. An act concerning escheats..... 461
CHAPTER 59. An act concerning evidence..... 466
CHAPTER 60. An act concerning evidence..... 472
CHAPTER 61. An act to regulate executions..... 473
CHAPTER 62. An act to regulate fees..... 489
CHAPTER 63. An act allowing fees to clerks in certain cases.... 507
CHAPTER 64. An act to regulate fees in certain cases..... 508
CHAPTER 65. An act regulating ferries..... 508
CHAPTER 66. An act concerning forcible entries and detainers.. 511
CHAPTER 67. An act concerning fraudulent conveyances..... 525
CHAPTER 68. An act to prevent frauds and perjuries..... 529
CHAPTER 69. An act to enable persons held in slavery to sue for their freedom..... 531
CHAPTER 70. An act relative to fugitives from other states..... 534
CHAPTER 71. An act to restrain gaming..... 539
CHAPTER 72. An act to regulate groceries and dram-shops..... 541
CHAPTER 73. An act concerning guardians, curators, and minors. 546
CHAPTER 74. An act to authorise guardians of minors, idiots and lunatics, to receive, and remove from this state, any property to which said wards may be entitled 554
CHAPTER 75. An act regulating proceedings on writs of habeas corpus..... 555
CHAPTER 76. An act respecting seed horses..... 570

Digitized by Google

CHAPTER 77. An act respecting impeachments..... 571
CHAPTER 78. An act to abolish imprisonment for debt..... 574
CHAPTER 79. An act regulating inclosures..... 575
CHAPTER 80. An act to restrain intercourse with the Indians... 576
CHAPTER 81. An act regulating injunctions..... 578
CHAPTER 82. An act to regulate injunctions in certain cases.... 582
CHAPTER 83. An act to regulate inns and taverns..... 583
CHAPTER 84. An act concerning inquests..... 589
CHAPTER 85. An act relative to insane persons..... 592
CHAPTER 86. An act to regulate the inspection of tobacco..... 600
CHAPTER 87. An act to license and regulate agencies of foreign insurance companies..... 609
CHAPTER 88. An act regulating the interest of money..... 613
CHAPTER 89. An act concerning jails and jailors..... 615
CHAPTER 90. An act regulating judgments and decrees..... 621
CHAPTER 91. An act concerning grand and petit jurors..... 626
CHAPTER 92. An act to provide for the election of justices of the peace, and to prescribe their powers and duties..... 629
CHAPTER 93. An act to establish justices' courts, and to regulate proceedings therein..... 634
CHAPTER 94. An act to define the jurisdiction, and regulate the proceedings of justices' courts, in cases of breach of the peace..... 672
CHAPTER 95. An act to provide for the selection and sale of the lands granted to this state, by an act of congress, approved September 4, 1841..... 677
CHAPTER 96. An act amendatory to an act entitled "An act to provide for the selection and sale of the lands granted to this state, by an act of congress, approved September 4, 1841," approved February 27, 1843..... 682
CHAPTER 97. An act regulating the fees of the registers and receivers of the state land office, and for other purposes..... 685
CHAPTER 98. An act concerning landlords and tenants..... 686
CHAPTER 99. An act to authorize the appointment of a law commissioner for the county of St. Louis..... 690
CHAPTER 100. An act concerning laws..... 693
CHAPTER 101. An act concerning the revised statutes..... 695
CHAPTER 102. An act to provide for the publication, and distribution of the laws and journals..... 700

Digitized by Google

CHAPTER 103. An act directing the fencing and inclosing of furnaces for the smelting of lead..... 706
CHAPTER 104. An act fixing the time of meeting of the general assembly..... 707
CHAPTER 105. An act to fill vacancies in the general assembly... 707
CHAPTER 106. An act respecting notice of petition to the general assembly..... 709
CHAPTER 107. An act to regulate proceedings of the general assembly in certain cases..... 710
CHAPTER 108. An act to fix the pay of the general assembly, and their officers..... 713
CHAPTER 109. An act prescribing the times of commencing actions..... 714
CHAPTER 110. An act respecting lost money and goods..... 722
CHAPTER 111. An act for the entire abolition of lotteries..... 723
CHAPTER 112. An act to regulate proceedings upon writs of mandamus..... 724
CHAPTER 113. An act to regulate marks and brands..... 726
CHAPTER 114. An act concerning marriage contracts..... 727
CHAPTER 115. An act regulating marriages..... 729
CHAPTER 116. An act amendatory of an act entitled "An act regulating marriages"..... 732
CHAPTER 117. An act for securing liens to mechanics and others 733
CHAPTER 118. An act to license and tax merchants..... 737
CHAPTER 119. An act supplementary to "An act to license and tax merchants"..... 741
CHAPTER 120. An act concerning mills, millers, and the rates of toll..... 741
CHAPTER 121. An act concerning mills and mill-dams..... 743
CHAPTER 122. An act concerning mortgages..... 748
CHAPTER 123. An act concerning free negroes and mulattoes..... 753
CHAPTER 124. An act respecting notaries public..... 760
CHAPTER 125. An act concerning oaths and affirmations..... 761
CHAPTER 126. An act authorising officers to call to their assistance the power of the county..... 763
CHAPTER 127. An act allowing suits against officers for services rendered under illegal orders..... 764
CHAPTER 128. An act to provide for the partition of land and personal property..... 764
CHAPTER 129. An act concerning patrols..... 777
CHAPTER 130. An act to license and tax peddlers..... 778
CHAPTER 131. An act to regulate actions on penal bonds..... 781

Digitized by Google

Chapter 132.	An act to establish and regulate the penitentiary..	786
Chapter 133.	An act concerning perpetuating testimony.....	792
Chapter 134.	An act to provide for the support of the poor.....	798
Chapter 135.	An act for the speedy recovery of debts due on bonds and notes.....	800
Chapter 136.	An act to regulate practice at law.....	804
Chapter 137.	An act to regulate the practice in courts of chancery.....	835
Chapter 138.	An act to regulate proceedings in criminal cases..	854
Chapter 139.	An act to regulate practice in the supreme court..	900
Chapter 140.	An act to provide for electing a public printer....	907
Chapter 141.	An act concerning writs of quo warranto.....	912
Chapter 142.	An act to recover public records.....	913
Chapter 143.	An act to establish recorders' offices.....	915
Chapter 144.	An act to establish the office of register of lands..	919
Chapter 145.	An act regulating the action of replevin.....	921
Chapter 146.	An act to provide for reporting the decisions of the supreme court.....	923
Chapter 147.	An act to provide for levying, assessing, and collecting the revenue.....	926
Chapter 148.	An act to authorise the correction of erroneous assessments of lands for taxes.....	955
Chapter 149.	An act to authorise the repayment of taxes improperly paid.....	956
Chapter 150.	An act concerning the road and canal fund.....	956
Chapter 151.	An act for opening and repairing public roads and highways.....	960
Chapter 152.	An act fixing the salary of civil officers.....	978
Chapter 153.	An act to regulate the governor's salary.....	979
Chapter 154.	An act to amend an act, entitled "An act fixing the salary of civil officers".....	980
Chapter 155.	An act respecting saline lands.....	980
Chapter 156.	An act for the relief of certain purchasers of saline lands.....	982
Chapter 157.	An act concerning saltpetre works.....	983
Chapter 158.	An act respecting salvage.....	983
Chapter 159.	An act to regulate the sale of the sixteenth sections,	987
Chapter 160.	An act to regulate the office of secretary of state	995
Chapter 161.	An act concerning securities.....	998
Chapter 162.	An act respecting seminary lands.....	1002
Chapter 163.	An act prescribing the time of electing United States' senators.....	1003

Digitized by Google

CHAPTER 164. An act respecting set-off..... 1004
CHAPTER 165. An act regulating the offices of sheriff and marshal..... 1007
CHAPTER 166. An act declaring certain words actionable..... 1011
CHAPTER 167. An act concerning slaves..... 1012
CHAPTER 168. An act supplementary to "An act concerning slaves," approved March 19, 1835..... 1024
CHAPTER 169. An act explanatory of an act entitled "An act supplementary to 'An act concerning slaves,'" approved March 27, 1845..... 1027
CHAPTER 170. An act for the regulation and management of the state library..... 1027
CHAPTER 171. An act to provide for the institution and support of a state university..... 1031
CHAPTER 172. An act concerning strays..... 1037
CHAPTER 173. An act concerning the office of county surveyor.. 1042
CHAPTER 174. An act amendatory of "An act concerning field-notes of public surveys," approved February 15, 1841..... 1046
CHAPTER 175. An act for the incorporation of towns, and to prevent the circulation of town and city scrip..... 1047
CHAPTER 176. An act concerning the plats of towns and villages 1055
CHAPTER 177. An act respecting townships..... 1057
CHAPTER 178. An act to establish and regulate the treasury department..... 1058
CHAPTER 179. An act to amend the law regulating the treasury partment..... 1068
CHAPTER 180. An act to prevent certain trespasses..... 1068
CHAPTER 181. An act respecting vagrants..... 1070
CHAPTER 182. An act providing for the change of venue in civil cases..... 1072
CHAPTER 183. An act to enable persons to secure the right of way in certain cases..... 1074
CHAPTER 184. An act to regulate weights and measures..... 1076
CHAPTER 185. An act respecting wills..... 1077
CHAPTER 186. An act concerning witnesses..... 1087
CHAPTER 187. An act to prevent the firing of woods, marshes and prairies..... 1090
CHAPTER 188. An act regulating writs and process..... 1091

Digitized by Google

APPENDIX.

ABSTRACT of the laws of the United States in relation to the naturalization of aliens..... 1093
ABSTRACT of the laws of the United States in relation to the authentication of public acts, records, and judicial proceedings 1096
AN ACT concerning the northern boundary line of this state..... 1096
AN ACT to provide for the call of a convention..... 1097
AN ACT to amend "An act concerning jails and jailors"..... 1098
AN ACT to repeal an act approved February 24, 1843, entitled "An act amendatory of 'An act to regulate marks and brands,'" approved February 26, 1835..... 1098
AN ACT to repeal "An act to provide for the sale of land for the taxes," approved February 27, 1843..... 1098
AN ACT to repeal the several acts to encourage the destruction of wolves..... 1099
AN ACT to repeal a portion of "An act to amend an act entitled 'An act to regulate fees,'" approved February 15, 1841 1099
AN ACT to regulate the licensing of groceries in the city and county of St. Louis..... 1099
AN ACT to provide for the payment of jurors in St. Louis county.. 1100
AN ACT concerning landlords and tenants in St. Louis county.... 1101
AN ACT establishing a probate court in St. Louis county, and for other purposes..... 1102
AN ACT concerning the school lands in St. Louis county..... 1104
AN ACT to provide for the election and compensation of a commissioner to superintend the printing of the revised laws.... 1104
INDEX..... 1105

Digitized by Google

CONSTITUTION

OF

THE UNITED STATES.

ARTICLE. I.

Sec. 1. Legislative power, in whom vested.

2. House of representatives, how and by whom chosen.—Qualification of a representative. Representatives and direct taxes, how apportioned.—Census. Vacancies to be filled.—Power of choosing officers, and of impeachment.

3. Senators, how and by whom chosen.—How classified.—State executive to make temporary appointments, in case, &c.—Qualifications of a senator.—President of the senate, his right to vote.—President pro tem., and other officers of senate, how chosen.—Power to try impeachments.—When president is tried, chief justice to preside.—Sentence.

4. Times, &c. of holding elections, how prescribed.—One session in each year.

5. Membership.—Quorum.—Adjournments.—Rules.—Power to punish or expel.—Journal. Time of adjournments limited, unless, &c.

6. Compensation.—Privileges.—Disqualification in certain cases.

7. House to originate all revenue bills.—Veto.—Bill may be passed by two thirds of each house, notwithstanding, &c. Bill not returned in ten days. Provision as to all orders, &c., except, &c.

8. Powers of congress.

Sec. 9. Provision as to migration or importation of certain persons. Habeas corpus.—Bills of attainder, &c.—Taxes how apportioned.—No export duty. No commercial preferences.—No money drawn from treasury, unless, &c.—No titular nobility.—Officers not to receive presents, unless, &c.

10. States prohibited from the exercise of certain powers.

ARTICLE II.

Sec. 1. President, his term of office.—Electors of president, number, and how appointed.—Electors to vote on same day.—Qualification of president.—On whom his duties devolve in case of his removal, death, &c. President's compensation.—His oath.

2. President to be commander-in-chief.—He may require opinion of, &c., and may pardon. Treaty-making power.—Nomination of certain officers.—When president may fill vacancies.

3. President shall communicate to congress.—He may convene and adjourn congress, in case, &c.; shall receive ambassadors; execute laws and commission officers.

4. All civil offices forfeited for certain crimes.

ARTICLE III.

Sec. 1. Judicial power.—Tenure.—Compensation.

Digitized by Google

SEC. 2. Judicial power, to what cases it extends.—Original jurisdiction of supreme court.—Appellate. Trial by jury, except, &c.—Trial, where.
3. Treason defined.—Proof of.—Punishment of.

ARTICLE IV.

SEC. 1. Each state to give credit to the public acts, &c. of every other.
2. Privileges of citizens of each state.—Fugitives from justice to be delivered up.—Persons held to service having escaped, to be delivered up.
3. Admission of new states.—Power of congress over territory and other property.
4. Republican form of government guaranlied.—Each state to be protected.

ARTICLE V.

Constitution, how amended.—Proviso.

ARTICLE VI.

Certain debts, &c. adopted.—Supremacy of the constitution, treaties and laws of the United States.—Oath to support the constitution, by whom taken. No religious test.

ARTICLE VII.

When ratification shall establish constitution.

AMENDMENTS.

ART. 1. Religious establishment prohibited.—Freedom of speech, of the press, and right to petition.
2. Right to keep and bear arms.
3. No soldier to be quartered in any house, unless, &c.
4. Right of search and seizure regulated.
5. Provisions concerning prosecution, trial and punishment.—Private property not to be taken for public use, without, &c.
6. Further provisions respecting criminal prosecutions.
7. Right of trial by jury secured.
8. Excessive bail or fines and cruel punishments, prohibited.
9. Rule of construction.
10. Same subject.
11. Same subject.
12. Manner of choosing president and vice-president.

Preamble. 1 Wheat. 304. 4 Wheat. 316.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure 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 FOR THE UNITED STATES OF AMERICA.

ARTICLE I.

SECTION I.

Legislative powers vested in congress.

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 II.

House of representatives how composed 11 Mass. 424.

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.

Qualification of a representative.

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.

Apportionment of representatives and direct taxes.

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

Digitized by Google

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

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

5. The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment. House of representatives to choose their own officers. Power of impeachment.

SECTION III.

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. Senate, how composed.

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. How classified. Of temporary appointments.

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. Qualifications of a senator.

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

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. President pro tem. and other officers may be appointed.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath Power to try impeachments.

Digitized by Google

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.

Effect of judgment in such cases.

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 IV.

Times, places and manner of electing members of congress.

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 regulations, except as to the places of choosing senators.

Sessions annual, at least.

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 V.

Membership.

1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each

Quorum.

shall constitute a quorum to do business; but a smaller num-

Adjournments.

ber may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Rules and orders. Censures and expulsions.

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.

Journals of each house.

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.

Limitation of the right to adjourn.

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 VI.

Compensation and privileges.

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, or returning from

Digitized by Google

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.

To what offices members of congress may not be appointed.

SECTION VII.

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.

Of bills for raising revenue.

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

Of the president's veto, in case of bills.

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

Also in case of concurrent orders, resolutions or votes.

SECTION VIII.

The congress shall have power,

Powers of congress.

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:

3 Dall. 171.

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

2 Pet. 449, 468.

Digitized by Google

9 Wheat. 1, 209. 11 Pet. 102. 2 Wheat. 259. 4 Wheat. 122, 209. 12 Wheat. 213. 3 Mo. Reps. 297.

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:

5 Wheat. 153.

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:

8 Cranch 110.

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:

12 Wheat. 19.

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

8 Mass. 72.

congress, become the seat of the 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

2 Cranch 358. 2 Wheat. 316. 3 Mo. Reps. 43.

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 IX.

Restrictions upon the powers of congress. 1 Wash. C. C. R. 499.

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.

Digitized by Google

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 money shall be published from time to time.

7. 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 X.

Powers withheld from the individual states.

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 coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility. (*a*)

Congress may permit certain acts, otherwise prohibited to the states. 12 Wheat. 419. 2 Howard 608.

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. (*b*)

(*a*) 1 Mo. Reps. 116, 321, 451. 2 Mo. Reps. 56, 5 Wheaton 420.
(*b*) 5 Wheaton 420. 8 Peters 88. 1 Howard 301, 311. 2 Gall. C. C. R. 138. 3 Peters 289. 4 Peters 431, 514. 6 Cranch 87. 6 Pick. 440. 3 Wash. C. C. R. 313. 7 Peters 243. 4 Wheat. 518. 12 Wheat. 370. 11 Peters 420, 257. 15 Mass. 447. 16 Mass. 245. 2 Fair. 118. 1 Mo. Reps. 59, 255.

Digitized by Google

ARTICLE II.

SECTION I.

President and vice president.

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:

Electors of those officers. 2 Brockenb. C. C. R. 96.

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.

Original mode of electing president and vice president.

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

Amendment 12 substituted for the third clause in art. 2, sec. 1.

Time of choosing electors and when they shall vote.

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.

Qualifications of president.

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.

Provisions for cases of vacancy in that office

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers

Digitized by Google

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

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. President's compensation.

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

"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 II.

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. President to be commander-in-chief. May require the opinion of heads of departments. Reprieves and pardons.

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 all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments. Of treaties and foreign intercourse. Appointment of public officers. 2 Brockenb. C. C. R. 96

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. Of vacancies in the recess of the senate.

SECTION III.

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 be- Further powers and duties.

Digitized by Google

tween 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 IV.

Of removal of officers of the U. S. by impeachment.

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.

SECTION I.

Judicial power how vested.

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.

Tenure of office.

Compensation.

SECTION II.

Extent of the judicial power. 1 Wheat. 304. 6 Peters 515.

5 Cranch 61. 2 Gall. C. C. R. 378, 474, 5. 3 Wheat. 336. 9 Wheat. 738. Vide Amendment.

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

Original and appellate jurisdiction of the supreme court. 5 Peters 1.

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.

Of trial by jury.

Where to be held.

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

SECTION III.

Definition of treason and mode of proof.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies,

Digitized by Google

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. Its punishment.

ARTICLE IV.

SECTION I.

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. (*a*) Mutual credit to be given to the public acts of the states. Mode of authenticating.

SECTION II.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. (*b*) Reciprocal right of citizenship.

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. Fugitives from justice.

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. (*c*) Fugitives from service or labor, required under the laws of certain states, to be delivered up.

SECTION III.

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. Admission of new states.

2. The congress shall have the 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. Power of congress as to the territory and other property of the U. S. 1 Peters 511, 546.

SECTION IV.

1. The United States shall guarantee to every state in the Union a republican form of government; and shall protect each of them against invasion; and on application of the Obligation of the U. S. to protect the several states.

(*a*) 7 Cranch 481. 17 Mass. 521 9 Mass. 462. 1 Caines 460. 8 Mo. Reps. 421.
(*b*) 6 Pick. 89. 2 Howard 9, 479. (*c*) 1 Wash. C. C. R. 497. 2 Pick. 11.

Digitized by Google

legislature, or of the executive (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

How the constitution may be amended.

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

Proviso.

ARTICLE VI.

Debts under the confederation assumed by U. States.

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

Supremacy of U. S. constitution and laws. 4 Wheat. 316. Peters C. C. R. 390. 1 Wash. C. C. R. 322. 6 Peters 515.

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.

Oath required of public officers.

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.

No religious test.

ARTICLE VII.

Ratification of this constitution.

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.

NOTE.—The legislature of Virginia, in January, one thousand seven hundred and eighty-six, appointed commissioners "to meet such commissioners as were, or

Digitized by Google

AMENDMENTS TO THE CONSTITUTION

Adopted in pursuance of the fifth article of the constitution.

ARTICLE 1. 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. Religious freedom, and the rights of speech, the press and petition.

ART. 2. 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. Right to bear arms.

ART. 3. 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. Restrictions on quartering troops.

ART. 4. 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. Restrictions on search and seizure.

might be appointed by the other states in the union, at such time and place as should be agreed upon by said commissioners, to take into consideration the *trade* and *commerce* of the United States; to consider how far an uniform system in their commercial intercourse and regulations, might be necessary to their common interest and permanent harmony; and to report to the several states such an act relative to this great object, as when unanimously ratified by them, would enable the United States in congress assembled, effectually to provide for the same." This movement resulted from the inadequacy of the articles of confederation to supply the wants of the government. It was afterwards agreed that the contemplated meeting of the commissioners should be held in Annapolis, in Maryland, in September of the same year. Commissioners from the states of Virginia, Delaware, Pennsylvania, New Jersey and New York, alone attended. In consequence of so partial a representation of the states, the commissioners present, thought it most advisable to propose a second convention. They accordingly recommended to all the states to concur "in the appointment of commissioners to meet at Philadelphia on the second Monday in May, one thousand seven hundred and eighty-seven, to take into consideration the situation of the United States, to devise such further provisions as should appear to them necessary, to render the constitution of the federal government adequate to the exigencies of the union." In February of the same year, congress, by a resolution, sanctioned and advised the proposed convention, "for the sole and express purpose of *revising* the articles of confederation, and reporting to congress and the several legislatures, such alterations and provisions therein, as shall, when agreed to in congress, and confirmed by the states, render the federal constitution adequate to the exigencies of government, and the preservation of the union." Delegates were accordingly appointed by all the states, except Rhode Island, and met in convention at Philadelphia, and framed the present constitution. It was then recommended to the several states for adoption. During the years one thousand seven hundred and eighty-seven and one thousand seven hundred and eighty-eight, the constitution was adopted without amendment, by the state conventions of all the thirteen states, with the exception of Rhode Island and North Carolina. The ratification of the requisite number of states, having been laid before congress, an act was passed on the thirteenth of September, one thousand seven hundred and eighty-eight, providing for the appointment of the electors of president, &c., and the fourth day of March, one thousand seven hundred and eighty-nine, was fixed as the *time*, and the city of New York as the *place*, for commencing proceedings under the new constitution. Rhode Island and North Carolina afterwards acceded to the union; and the several amendments to the constitution were afterwards adopted.

Digitized by Google

Rights of persons charged with crimes and of private property.

ART. 5. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property to be taken for public use without just compensation.

7 Peters 243. 2 Dall. 304. 2 Peters 380, 657.

Mode of trial in criminal cases.

ART. 6. 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.

Of trial by jury in civil actions.

ART. 7. 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 jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

1 Gall. C. C. R. 19. 2 Peters 523 14 Mass. 412.

Of bail. Of fines or other punishments.

ART. 8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Rights reserved to the people.

ART. 9. The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Powers retained by the states and people.

ART. 10. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. (*a*)

United States' courts not to have jurisdiction of suits brought by individuals against one of the states.

ART. 11. 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. (*b*)

Manner of choosing president and vice president.

ART. 12. 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,

(*a*) 3 Wash. C. C. R. 313. 11 Peters 257. (*b*) 3 Dall. 378.

Digitized by Google

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.

Choice by house of representatives in case of no election by the electors.

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

Choice of vice president by the senate, in case of no election by the electors.

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

His qualifications.

NOTE.—The first ten of the foregoing amendments were proposed at the first session of the first congress of the United States, which was begun and held at the city of New York, on the fourth March, 1789, and were adopted by the requisite number of states. (First volume of the laws of the United States, page 72.)

The eleventh amendment was proposed at the second session of the third congress. It is printed in the laws of the United States, first volume, page seventy-three, as article eleven.

The twelfth amendment was proposed at the first session of the eighth congress. It is printed in the laws of the United States as article twelve.

In the laws of the United States, and also in the revised statutes of Missouri, of one thousand eight hundred and thirty-five, there is an amendment printed as article thirteen, prohibiting citizens from accepting titles of nobility, or honor, or presents, offices, &c., from foreign nations. But this amendment has been ratified only by twelve states, and therefore has not been adopted. (*Vide*, volume iv. of the printed papers of the first session of the fifteenth congress, No. 76.

Digitized by Google

Digitized by Google

CONVENTION.

AN ACT

To authorize the people of the Missouri territory (a) to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and to prohibit slavery in certain territories.

SEC. 1. The inhabitants of Missouri authorized to form a constitution and state government, and to be admitted into the Union.

2. Boundaries. Proviso: the state to ratify the boundaries, and have concurrent jurisdiction of rivers. Rivers, &c. to be common highways, and free.

3. Qualifications of electors and elected, to form a convention. Apportionment of representatives to form a convention. Election on the first Monday of May and two days following, &c.

4. Members of convention to meet at the seat of government on the second Monday of June, &c. Convention to determine on the formation of a constitution, or otherwise. Proviso: constitution to be republican, &c. Conditions.

5. The state entitled to one representative in congress.

6. Propositions offered to the convention for acceptance or rejection. First proposition, section number sixteen for schools. Second proposition, salt springs and lands adjacent for the use of the state. Proviso: salt springs confirmed to individuals, &c. Proviso: salt springs not to be leased for more than ten years. Third proposition, five per centum net proceeds of sales of land for public roads and canals. Fourth proposition, four sections of land for a seat of government. Proviso: location before public sale of surrounding lands. Fifth proposition, thirty-six sections of land for a seminary of learning. Proviso: the five foregoing propositions on condition that lands sold by the U. States, be exempt from taxes, for five years, and bounty land for three years.

SEC. 7. A true attested copy of the constitution to be transmitted to congress.

8. Slavery, &c. forever prohibited in the territory north of thirty six degrees thirty minutes north latitude, except Missouri. Proviso: fugitives may be reclaimed.

(a) By the treaty of cession between the United States of America and the French republic, concluded the thirtieth day of April, one thousand eight hundred and three, the United States acquired the title to Louisiana. An act of congress approved October thirty-first, one thousand eight hundred and three, authorized the president to take possession of the ceded territory. Louisiana was organized into two territories, by an act of congress, approved March twenty-six, one thousand eight hundred and four, and provision made for the temporary government thereof. The portion south of the Mississippi territory, and the thirty-third degree of north latitude, was constituted a territory, under the name of Orleans. The residue of Louisiana, lying north of that parallel of latitude, was called the district of Louisiana. The district of Louisiana was changed to the territory of Louisiana, by an act of congress, approved March third, one thousand eight hundred and five. The territory of Louisiana was changed to the territory of Missouri, by an act of congress, approved June fourth, one thousand eight hundred and twelve, and fuller provisions made for its government. *Vide, Laws of U. S.*

Digitized by Google

The inhabitants of Missouri authorized to form a constitution and state government, and be admitted into the Union.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the inhabitants of that portion of the Missouri territory, included within the boundaries hereinafter designated, be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the Union, upon an equal footing with the original states, in all respects whatsoever.

Boundaries.

SEC. 2. *And be it further enacted*, That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning in the middle of the Mississippi river, on the parallel of thirty-six degrees of north latitude; thence west, along that 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 to 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 and 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: *Provided*, The said state shall ratify the boundaries aforesaid: *And provided also*, That the said state shall have concurrent jurisdiction on the river Mississippi, and every other river bordering on the said state, so far as the said rivers 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; such rivers to be common to both; and that the river Mississippi, and the navigable rivers and waters leading to the same, shall be common highways, and for ever free, as well to the inhabitants of the said state as to other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said state.

Proviso: the state to ratify the boundaries, and have concurrent jurisdiction of rivers.

Rivers, &c. to be common highways and free.

Qualifications of electors and elected, to form a convention.

SEC. 3. *And be it further enacted*, That all free white male citizens of the United States, who shall have arrived at the age of twenty-one years, and have resided in said territory, three months previous to the day of election, and all

Digitized by Google

other persons qualified to vote for representatives to the general assembly of the said territory, shall be qualified to be elected, and they are hereby qualified and authorized to vote, and choose representatives to form a convention, who shall be apportioned amongst the several counties as follows: From the county of Howard, five representatives. From the county of Cooper, three representatives. From the county of Montgomery, two representatives. From the county of Pike, one representative. From the county of Lincoln, one representative. From the county of St. Charles, three representatives. From the county of Franklin, one representative. From the county of St. Louis, eight representatives. From the county of Jefferson, one representative. From the county of Washington, three representatives. From the county of St. Genevieve, four representatives. From the county of Madison, one representative. From the county of Cape Girardeau, five representatives. From the county of New Madrid, two representatives. From the county of Wayne, and that portion of the county of Lawrence that falls within the boundaries herein designated, one representative. And the election for the representatives aforesaid shall be holden on the first Monday, and two succeeding days, of May next, throughout the several counties aforesaid in the said territory, and shall be, in every respect, held and conducted in the same manner, and under the same regulations, as is prescribed by the laws of the said territory regulating elections therein for members of the general assembly, except that the returns of the election in that portion of Lawrence county, included in the boundaries aforesaid, shall be made to the county of Wayne, as is provided in other cases under the laws of said territory.

Apportionment of representatives to form a convention.

Election on the first Monday of May and two days following, &c.

SEC. 4. *And be it further enacted*, That the members of the convention thus duly elected shall be, and they are hereby, authorized to meet, at the seat of government of said territory, on the second Monday of the month of June next; and the said convention, when so assembled, shall have power and authority to adjourn to any other place in the said territory, which to them shall seem best for the convenient transaction of their business; and which convention, when so met, shall first determine, by a majority of the whole number elected, whether it be, or be not, expedient at that time to form a constitution and state government for the people within the said territory, as included within the boundaries above designated; and, if it be deemed expedient, the convention shall be, and hereby is, authorized to form a constitution and state government; or, if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government; which said representatives shall be chosen in such manner, and in

Members of convention to meet at the seat of government on the second Monday of June, &c.

Convention to determine on the formation of a constitution, or otherwise.

Digitized by Google

such proportion, as they shall designate; and shall meet at such time and place as shall be prescribed by the said ordinance; and shall then form for the people of said territory, within the boundaries aforesaid, a constitution and state government: *Provided*, That the same, whenever formed, shall be republican, and not repugnant to the constitution of the United States; and that the legislature of said state shall never interfere with the primary disposal of the soil of the United States, nor with any regulations congress may find necessary for securing the title in such soil to the *bona fide* purchasers; and that no tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents.

Proviso: constitution to be republican, &c.

Conditions.

The state entitled to one representative in congress.

SEC. 5. *And be it further enacted*, That, until the next general census shall be taken, the said state shall be entitled to one representative in the house of representatives of the United States.

Propositions offered to the convention for acceptance or rejection.

SEC. 6. *And be it further enacted*, That the following propositions be, and the same are hereby, offered to the convention of the said territory of Missouri, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States:

First proposition, section number sixteen for schools.

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

Second proposition, salt springs and lands adjacent for the use of the state.

Second. That all salt springs, not exceeding twelve in number, with six sections of land adjoining to each, shall be granted to the said state for the use of said state, the same to be selected by the legislature of the said state, on or before the first day of January, in the year one thousand eight hundred and twenty-five; and the same, when so selected, to be used under such terms, conditions, and regulations, as the legislature of said state shall direct: *Provided*, That no salt spring, the right whereof now is, or hereafter shall be, confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said state: *And provided also*, That the legislature shall never sell or lease the same, at any one time, for a longer period than ten years, without the consent of congress.

Proviso: salt springs confirmed to individuals, &c.

Proviso: salt springs not to be leased for more than ten years.

Third proposition, five per centum net proceeds of sales of land for public roads and canals.

Third. That five per cent. of the net proceeds of the sale of lands lying within the said territory or state, and which shall be sold by congress, from and after the first day of January next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three fifths shall be applied to those objects within the state, under the direction of the legislature thereof; and the other two fifths in defraying, under the direction of congress, the

Digitized by Google

expenses to be incurred in making of a road or roads, canal or canals, leading to the said state.

Fourth. That four entire sections of land be, and the same are hereby, granted to the said state, for the purpose of fixing their seat of government thereon; which said sections shall, under the direction of the legislature of said state, be located, as near as may be, in one body, at any time, in such townships and ranges as the legislature aforesaid may select, on any of the public lands of the United States: *Provided*, That such locations shall be made prior to the public sale of the lands of the United States surrounding such location.

Fourth proposition, four sections of land for a seat of government.

Proviso: location before public sale of surrounding lands.

Fifth. That thirty-six sections, or one entire township, which shall be designated by the president of the United States, together with the other lands heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of said state, to be appropriated solely to the use of such seminary by the said legislature: *Provided*, That the five foregoing propositions herein offered, are on the condition that the convention of the said state shall provide, by an ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of January next, shall remain exempt from any tax laid by order or under the authority of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale: *And further*, That the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees, or their heirs, remain exempt as aforesaid from taxation for the term of three years from and after the date of the patents respectively.

Fifth proposition, thirty-six sections of land for a seminary of learning.

Proviso: the five foregoing propositions on condition that lands sold by the United States be exempt from taxes for five years.

And bounty lands for three years.

Sec. 7. *And be it further enacted*, That in case a constitution and state government shall be formed for the people of the said territory of Missouri, the said convention, or representatives, as soon thereafter as may be, shall cause a true and attested copy of such constitution, or frame of state government, as shall be formed or provided, to be transmitted to congress.

A true and attested copy of the constitution to be transmitted to congress.

Sec. 8. *And be it further enacted*, That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state contemplated by this act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, for ever prohibited: *Provided always*, That any person escaping into the same, from whom labor or service is lawfully claimed, in any state or territory of the United States,

Slavery, &c. forever prohibited in the territory north of 36 deg. 30 min. north latitude, except Missouri.

Proviso: fugitives may be reclaimed.

Digitized by Google

such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service aforesaid. (*b*)
Approved March 6, 1820.

(*b*) In pursuance of the provisions of this act, members of the convention were elected to form a constitution and state government. They assembled at St. Louis on the 12th June, 1820, and determined that it was expedient to form a constitution and state government, and having accepted the five propositions offered by the sixth section of the above act, passed an ordinance which was finally signed on the 19th of July, 1820. A constitution was formed, whereby the boundaries, mentioned in the second section of the above act, were ratified, and a new republic established by the name of the state of Missouri. Agreeably to the seventh section of the above act, an attested copy of the constitution, was transmitted to congress. A resolution was introduced in both houses for the unconditional admission of the state into the Union, as had been the uniform course in relation to other new states; these resolutions were, however, lost, and finally after much discussion, a resolution was passed for admitting the state *on a certain condition*. The legislature of Missouri, on the 27th June, 1821, accepted the condition, protesting at the same time against the right of congress to annex it; and on the 10th of August, 1821, the President of the United States issued his proclamation, announcing the acceptance of this state of the condition.

AN ORDINANCE

19th July, 1820.

Declaring the assent of the people of the state of Missouri, by their representatives in convention assembled, to certain conditions and provisions in the act of congress of the sixth of March, one thousand eight hundred and twenty, entitled "An act to authorize the people of Missouri territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and to prohibit slavery in certain territories."

PROPOSITIONS.

1. School lands.
2. Salt springs and six sections adjoining each. Proviso: in favor of confirmations to individuals.
3. Fund for roads and canals.
4. Lands for locating permanent seat of government.
5. University lands.

Propositions accepted.

Lands exempt from taxation.

Modification of proposition concerning tax on lands proposed.

This ordinance irrevocable without the consent of the United States.

Recital of the act of congress.

WHEREAS, The act of congress of the United States of America, approved March the sixth, one thousand eight hundred and twenty, entitled "An act to authorize the people of Missouri territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and to prohibit slavery in certain territories," contains certain requisitions and provisions, and, among other things, has offered to this convention when formed, for and in behalf of the people inhabiting this state, for their free acceptance or rejection, the five

Propositions.

following propositions, and which, if accepted by this convention in behalf of the people as aforesaid, are to be obligatory on the United States, viz:

School lands.

First. That section numbered sixteen in every township, and when such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be,

Digitized by Google

shall be granted to the state for the use of the inhabitants of such township for the use of schools.

Salt springs and six sections adjoining each.

Second. That all salt springs, not exceeding twelve in number, with six sections of land adjoining to each, shall be granted to the said state for the use of said state, the same to be selected by the legislature of said state on or before the first day of January, in the year one thousand eight hundred and twenty-five, and the same, when so selected, to be used under such terms, conditions and regulations as the legislature of said state shall direct: *Provided*, That no salt spring the right whereof now is, or hereafter shall be, confirmed or adjudged to any individual or individuals, shall by this section be granted to said state; *And provided also*, That the legislature shall never sell or lease the same at any one time for a longer period than ten years without the consent of congress.

Proviso in favor of confirmations to individuals.

Fund for roads and canals.

Third. That five per cent. of the net proceeds of the sale of lands lying within the said territory or state, and which shall be sold by congress from and after the first day of January next, after deducting all expenses incident to the same, shall be reserved for making public roads and canals, of which three-fifths shall be applied to those objects within the state, under the direction of the legislature thereof, and the other two-fifths in defraying, under the direction of congress, the expenses to be incurred in making of a road or roads, canal or canals, leading to the said state.

Lands for locating permanent seat of government.

Fourth. That four entire sections of land be, and the same are hereby, granted to the said state for the purpose of fixing their seat of government thereon; which said sections shall, under the direction of the legislature of said state, be located as near as may be in one body, at any time, in such townships and ranges as the legislature aforesaid may select, on any of the public lands of the United States: *Provided*, That such location shall be made prior to the public sale of the lands of the United States surrounding such location.

University lands.

Fifth. That thirty-six sections, or one entire township, which shall be designated by the president of the United States, together with the other lands heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, and vested in the legislature of said state, to be appropriated solely for the use of such seminary by the legislature.

Propositions accepted.

NOW THIS CONVENTION, for and in behalf of the people inhabiting this state, and by the authority of the said people, DO ACCEPT the five before recited propositions offered by the act of congress under which they are assembled; and in pursuance of the conditions, requisitions, and other provisions in the before recited act of congress contained, this convention, for and in behalf of the people inhabiting this state, DO ORDAIN, AGREE and DECLARE, that every and each tract of land sold by the United States from and after the first day of

Lands exempt from taxation.

Digitized by Google

January next, shall remain exempt from any tax laid by order, or under the authority of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the respective days of sale thereof; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt as aforesaid from taxation for the term of three years from and after the date of the patents respectively: *Provided nevertheless*, That if the congress of the United States shall consent to repeal and revoke the following clause in the fifth proposition of the sixth section of the act of congress before recited, and in these words, viz: "That every and each tract of land sold by the United States from and after the first day of January next, shall remain exempt from any tax laid by order, or under the authority of the state, whether for state, county or township, or any other purpose whatever, for the term of five years from and after the day of sale, and further;" that this convention for and in behalf of the people of the state of Missouri, do hereby ordain, consent and agree, that the same be so revoked and repealed, without which consent of the congress as aforesaid, the said clause to remain in full force and operation as first above provided for in this ordinance: and this convention doth hereby request the congress of the United States so to modify their third proposition, that the whole amount of five per cent. on the sale of public lands therein offered may be applied to the construction of roads and canals, and the promotion of education within this state, under the direction of the legislature thereof. And this convention for and in behalf of the people inhabiting this state, and by the authority of the said people, do further ORDAIN, AGREE, and DECLARE that this ordinance shall be irrevocable without the consent of the United States.

Modification of proposition concerning tax on lands proposed.

This ordinance irrevocable without consent of United States.

DONE IN CONVENTION, at St. Louis, in the state of Missouri, this 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.

By order of the convention,

DAVID BARTON, *President.*

Attest—WM. G. PETTUS, *Secretary.*

NOTE—Agreeably to the compact formed between the United States and the state of Missouri, the school lands mentioned in the first proposition, have been appropriated to the use of common schools. The salt springs and lands adjoining have been selected and disposed of. The lands for the location of the seat of government, have been selected and appropriated. The university lands have been designated and mostly disposed of.

Digitized by Google

CONSTITUTION

OF THE

STATE OF MISSOURI.

ARTICLE I. Of Boundaries.
II. Of the distribution of the powers of government.
III. Of the legislative power.
IV. Of the executive power.
V. Of the judicial power.
VI. Of education.
VII. Of internal improvement.
VIII. Of banks.
IX. Of the militia.
X. Of miscellaneous provisions.
XI. Of the permanent seat of government.
XII. Of the mode of amending the constitution.
XIII. Of the declaration of rights.

SCHEDULE.

Of miscellaneous provisions.

AMENDMENTS.

ARTICLE I.

SECTION 1. Of chancery courts.
2. Of the judicial power.
3. Of the compensation of judges.
4. Of United States officers.
5. Of the salary of the governor.
6. Of the salaries of judges.
7. Of the expiration of judges' commissions.

ARTICLE II.

SECTION 1. Of circuit court judges.
2. Of clerks of circuit courts.
3. Of the election of clerks.
4. Of the western boundary line.
5. Of the northern boundary line.

Digitized by Google

PREAMBLE.

Republic established by the name of the state of Missouri.

ARTICLE I.

Of boundaries.

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

ARTICLE II.

SEC. 1. Powers of government divided into three departments.

ARTICLE III.

Of the legislative power.

SEC. 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 one hundred.
3. Qualification of representatives.
4. Enumeration of inhabitants, and apportionment of representatives to be made every fourth year.
5. Senators. Their term of service. Qualification.
6. Senate, how constituted. Apportionment. Districts.
7. Senators to be classed.
8. Elections, when held. Electors privileged from arrest on election days, except in certain cases.
9. Writs of election to supply vacancies. By whom issued.
10. Electors, their qualification.
11. Certain 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 moneys 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. The powers and duties 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 secresy. Power to punish for disrespect and contempt.
20. Of adjournment.
21. Bills may originate in either house. How often read. 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, 2d, to prevent emigrants from removing their slaves to this state. The legislature may prohibit, 1st, the introduction of slaves guilty of high crimes; or, 2d, for the purpose of speculation; or, 3d, 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, 2d, to compel masters to treat their slaves with humanity.
27. Right of slaves in trial 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. Meeting of the general assembly.
34. Counties to be not less than twenty miles square.
35. Revision of laws to be made every ten years.
36. Style of laws.

ARTICLE IV.

Of the executive power.

SEC. 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, except, &c.
6. Remission of fines, and pardons.
7. Governor to give information to the general assembly. May convene them.
8. To distribute and enforce laws.
9. Vacancies in office, how supplied.

Digitized by Google

Sec. 10. Power and duty in the approval and disapproval of bills. General assembly to reconsider 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 vacancies, when to be ordered.
18. Compensation of lieutenant governor and president of 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 the sheriff and coroner, how filled.
25. Election of sheriff or coroner in case of a tie, or contested election.

ARTICLE V.

Of the judicial power.

Sec. 1. Judicial power, in what court 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 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. Qualification 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.

ARTICLE VI.

Of education.

Sec. 1. Education shall be encouraged. Legislature shall preserve lands from waste and damage.
2. University lands to be improved and funds properly applied.

ARTICLE VII.

Of internal improvement.

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

ARTICLE VIII.

Of banks.

One bank and five branches may be established and no more.—Capital stock never to exceed five millions of dollars.

ARTICLE IX.

Of the militia.

Sec. 1. Militia officers, how appointed and by whom.
2. Of staff officers.
3. Adjutant general.

ARTICLE X.

Of miscellaneous provisions.

Sec. 1. General assembly not to interfere with the disposal of the soil.
2. Of navigation.

ARTICLE XI.

Of the permanent seat of government.

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

ARTICLE XII.

Mode of amending the constitution.

How amendments are to be proposed, and how ratified.

ARTICLE XIII.

Declaration of rights.

Sec. 1. Sovereign power vested in the people.
2. The people have the 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.

Digitized by Google

Sec. 12. Bail and fines.
13. No search except on oath.
14. Prosecutions for crimes by indictments.
15. Treason. Evidence. Conviction.
16. Freedom of speech and of the press.
17. Ex post facto laws, &c.
18. Exempt from military duty.
19. Taxation.
20. Titles of nobility not to be granted.
21. Migration not to be prohibited.
22. Military power shall be in subordination to civil power.

SCHEDULE.

Sec. 1. Writs, actions, &c., not affected by change of government.
2. Territorial laws.
3. Of fines, &c.
4. Recognizances, bonds, criminal prosecutions, &c.
5. Officers of the United States and territorial governments to hold until superceded, &c.
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.

AMENDMENTS.

Sec. 1. Chancery courts abolished.
2. Judicial power as to matters of law and equity, where vested.
3. Compensation of judges.
4. Of United States officers.
5. Salary of governor.
6. Salaries of judges.
7. Expiration of judges' commissions.

Preamble.

We, the people of Missouri, inhabiting the limits hereinafter designated, by our representatives in convention assembled, at St. Louis, on Monday, the twelfth day of June, one thousand eight hundred and twenty, 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.

Republic established by the name of the state of Missouri.

ARTICLE I.

Of boundaries.

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

Digitized by Google

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." (*a*)

ARTICLE II.

Of the distribution of powers.

Powers of government divided into three departments.

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 these departments, shall exercise any powers properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

ARTICLE III.

Of the legislative power.

Legislative power, in what body vested.

SECTION 1. The legislative power shall be vested in a general assembly, which shall consist of a senate and of a house of representatives. (*b*)

Constitution of house of representatives.

SEC. 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.

Qualification of representatives.

SEC. 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.

Enumeration of inhabitants, and apportionment.

SEC. 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

(*a*) By an act of congress, of June 7th, 1836, the western boundary of the state of Missouri was extended west to the Missouri river, to take effect when the Indian title should be extinguished, and when Missouri should assent to the provisions of the act. The state of Missouri, by an act of the general assembly, approved December 16th, 1836, declared her assent to the several provisions of the said act of congress. The Indian title was extinguished by a treaty with the Ioways, Sacs and Foxes, concluded at fort Leavenworth, September 17th, 1836, and ratified February 15th, 1837. By this treaty, that beautiful and fertile portion of the state called the "Platte purchase," was acquired. This acquisition has greatly enlarged the limits of the state. According to the calculation of Mr. Edward Hutawa, Missouri at present, contains a superficial area of 72,207.63 square miles.

(*b*) *Vide*, The State vs. Simonds, 3 Mo. Rep., 292.

Digitized by Google

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.

Senators, their term of service, qualification.

SEC. 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.

Senate, how constituted. Apportionment. Districts.

SEC. 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.

Senators to be classed.

SEC. 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.

Elections, when held.

SEC. 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.

Electors privileged from arrest, &c.

Writs of election to supply vacancies.

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

Electors, their qualification.

SEC. 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

Digitized by Google

of the United States, shall be entitled to a vote at any election in the state.

Certain officers not eligible to the general assembly.

SEC. 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.

No disbursing, or receiving officer eligible to the legislature unless they fully account, &c.

SEC. 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.

Clergymen, &c. disqualified from holding office.

SEC. 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.

Persons disqualified from holding office on account of crime.

SEC. 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.

Disqualification for bribery.

SEC. 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 disqualified 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.

Disqualification of senators and representatives for certain offices.

SEC. 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.

Each house to appoint its own officers.

SEC. 17. Each house shall appoint its own officers, and shall judge of the qualifications, elections, and returns of its own members.

What constitutes a quorum.

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.

Powers and duty of each house. Rules. Expulsion, &c.

SEC. 18. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two thirds of all the members elected, expel a member; but no member shall be expelled a second

Digitized by Google

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.

Journal to be published.

Doors to be kept open except, &c. Power to punish.

SEC. 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 behavior 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.

Adjournment.

SEC. 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.

Bills may originate in either house. How often read. By whom signed.

SEC. 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.

Appointment of officers viva voce.

SEC. 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.

Privileges of senators and representatives.

SEC. 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.

Compensation.

SEC. 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.

Suits against the state.

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

Power, limited.

SEC. 26. The general assembly shall have no power to pass laws,

Emancipation.

First. For the emancipation of slaves without the consent

Digitized by Google

of their owners, or without 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. Introduction of slaves by emigrants.

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; Power to prevent the introduction of slaves.

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. May authorize slaves to be emancipated.

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

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

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. To compel master to treat slaves with humanity.

Sec. 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, that 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. Rights of slaves in trials for crimes.

Sec. 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. Crimes committed on slaves.

Sec. 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 case shall not extend farther than removal from office, and disqualification to hold any office of honor, trust, or profit, under this state. Impeachment. Judgment.

Digitized by Google

Impeachment to be made by house of representatives and tried by senate.

SEC. 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.

Treasurer.

SEC. 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.

Appointment of officers.

SEC. 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.

Oath of office.

Meetings of general assembly.

SEC. 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.

Counties.

SEC. 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.

Revision of laws.

SEC. 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.

Style of laws.

SEC. 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.

Governor.

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

Qualifications.

SEC. 2. The governor shall be at least thirty-five years of age, and a natural born citizen of the United States, or a

Digitized by Google

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.

Term of service and election of governor.

SEC. 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.

Ineligible for four years.

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

Commander of militia and navy.

SEC. 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.

Remission of fines, &c. Pardons.

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

Governor to give information to general assembly and may convene them.

SEC. 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.

To distribute and enforce laws.

SEC. 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.

Vacancies how supplied.

SEC. 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.

Power and duty in the approval or disapproval of bills.

SEC. 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

General assembly to reconsider rejected bills.

Digitized by Google

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.

Joint resolutions.

SEC. 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.

Auditor of public accounts.

SEC. 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.

Compensation of governor.

See amendments.

SEC. 13. The governor shall at stated times, receive for his services an adequate salary to be fixed by law; which shall neither be increased or diminished during his continuance in office, *and which shall never be less than two thousand dollars annually.*

Lieutenant governor, election and qualification.

SEC. 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.

To be president of the senate.

SEC. 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.

Who to act as governor in case of vacancy, &c.

SEC. 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.

Election to supply vacancy, when to be ordered.

SEC. 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

Digitized by Google

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.

Compensation of lieutenant governor and president of the senate.

SEC. 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.

Returns of elections of governor and lieut. gov.

SEC. 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.

Contested elections.

SEC. 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.

Secretary of state, appointment, term of service, duties.

SEC. 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.

Seal of state.

SEC. 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, his approbation of the laws excepted, shall be thereby authenticated.

Sheriff and coroner to be appointed.

SEC. 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.

Vacancies in office of sheriff and coroner.

SEC. 24. When vacancies happen in the office of sheriff or coroner, they shall be filled by appointment of the governor; and the person so appointed shall continue in office until suc-

Digitized by Google

cessors shall be duly qualified, and shall not thereby be rendered ineligible for the next succeeding term.

Election of sheriff and coroner in case of tie or contested election.

SEC. 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.

Courts.

SECTION 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. (*c*)

See amendments.

Jurisdiction of supreme court.

SEC. 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. (*d*)

Control over inferior courts.

Writs.

SEC. 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. (*e*)

Supreme court, of how many judges it shall consist.

SEC. 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.

Judicial districts.

SEC. 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.

Circuit court jurisdiction.

SEC. 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.

Terms.

Judicial circuits.

SEC. 7. The state shall be divided into convenient circuits, for each of which a judge shall be appointed, who, after his

(*c*) *Vide*, Baily vs. Gentry and wife, 1 Mo. Rep., 116.
(*d*) *Vide*, Blunt vs. Sheppard, 1 Mo. Rep., 156; Jim vs. The State, 3 Mo. Rep., 108.
(*e*) *Vide*, Rector vs. Price, 1 Mo. Rep., 141.

Digitized by Google

appointment, shall reside and be a conservator of the peace within the circuit for which he shall be appointed.

Control over inferior tribunals.

SEC. 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.

Chancery court jurisdiction. See amendments.

SEC. 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.*

Chancery jurisdiction.

SEC. 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.

Circuit court, See amendments.

Inferior courts of chancery may be established.

SEC. 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.

Inferior tribunals.

SEC. 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.

Appointment of judges. See amendments.

SEC. 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 behavior; 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.

Judges. Qualification.

SEC. 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.

Clerks of courts.

SEC. 15. The courts respectively, shall appoint their clerks, who shall hold their offices during good behavior. 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.

Judges may be removed by address. See amendments.

SEC. 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;

Digitized by Google

but no judge nor chancellor shall be removed in this manner for any cause for which he might have been impeached.

Justices of the peace.

SEC. 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.

Attorney general.

SEC. 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.

Style of writs and process.

Indictments.

SEC. 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." (*f*)

ARTICLE VI.

Of education.

Education to be encouraged and lands preserved.

SECTION 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.

University lands to be improved and funds applied.

SEC. 2. The general assembly shall take measures for the improvement of such lands as have been, or hereafter may 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. (*g*)

ARTICLE VII.

Of internal improvement.

Internal improvement in roads and navigable waters.

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

(*f*) *Vide*, Davis vs. Wood, 7 Mo. Rep., 162, in which the cases of Charless vs. Marney, 1 Mo. Rep., 537, Fowler vs. Watson, 4 Mo. Rep., 27, and Little vs. Little, 5 Mo. Rep., 227, are overruled.

(*g*) *Vide*, Maupin vs. Parker, 3 Mo. Rep., 219.

Digitized by Google

law for ascertaining the most proper objects of improvement in relation both 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.

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

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. Branches. Capital stock.

ARTICLE IX.

Of the militia.

Section 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. Militia officers how appointed.

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

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

ARTICLE X.

Of miscellaneous provisions.

Section 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. General assembly not to interfere with disposal of the soil.

Sec. 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 Navigation.

Digitized by Google

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 this state.

ARTICLE XI.

Of the permanent seat of government.

Commissioners to be appointed.

SECTION. 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.

A site to be selected.

SEC. 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 may 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.

Within what limits.

General assembly to determine the location.

SEC. 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.

Selection of commissioners.

SEC. 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 proposed and 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

Digitized by Google

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. (*h*)

ARTICLE XIII.

Declaration of rights.

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: Sovereign power in 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: The people have sole right to alter or abolish the constitution.

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: Right of protection, bearing arms, &c.

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: Rights of conscience. Religious opinions.

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: Corporation.

6. That all elections shall be free and equal: Elections.

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: Administration of justice.

(*h*) *Vide*, The State vs. McBride, 4 Mo. Rep., 302.

Digitized by Google

Trial by jury. 8. That the right of trial by jury shall remain inviolate. (i)

Right of accused in criminal cases. 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: (j)

No person to be twice tried for same offence. 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: (k)

Bail and habeas corpus. 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: (l)

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

No search, except on oath. 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:

Prosecutions for crimes by indictment. 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:

Treason, evidence, conviction. 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

(i) *Vide*, McGunnegle vs. The State, 6 Mo. Rep., 367.
(j) *Vide*, The State vs. Stein, 2 Mo. Rep., 56, and The State vs. Ledford, 3 Mo. Rep., 75.
(k) *Vide*, The State vs. Spear, 6 Mo. Rep., 644.
(l) *Vide*, Shore et al vs. The State, 6 Mo. Rep., 640.

Digitized by Google

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; and 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: Freedom of speech and of the press.

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: (m) Ex post facto laws, &c.

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 shall 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: Exempt from militia duty.

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

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 behavior of the officer appointed to fill the same: Titles, &c.

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

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. Military subordinate to civil power.

SCHEDULE.

Section 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 Writs, actions, &c. not affected by change of government.

(m) *Vide*, The State, to the use of Gentry and wife, vs. Fry, 4 Mo. Rep., 120; Brown vs. Ward, 1 Mo. Rep., 148; Baily vs. Gentry and wife, 1 Mo. Rep., 116; Bumgardner vs. The Circuit Court of Howard county, 4 Mo. Rep., 50; Little vs. Seymour and Bool, 6 Mo. Rep., 166; Marbury vs. Madison, 1 Cranch's Rep., 137.

Digitized by Google

the territory of Missouri, shall be as valid as if issued in the name of the state.

Laws, territorial.

SEC. 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.

Fines, &c.

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

Recognizances.

SEC. 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 the court of chancery.

Bonds.

Criminal prosecutions.

Officers continued.

SEC. 5. All officers, civil and military, now holding commissions under the 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.

First meeting of general assembly.

SEC. 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, anything in the constitution to the contrary notwithstanding.

Apportioment of representation.

SEC. 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

Digitized by Google

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.

Senatorial districts.

SEC. 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.

Writs for first election.

SEC. 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

Digitized by Google

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, anything in this constitution to the contrary notwithstanding.

Returns of votes for governor, &c.

SEC. 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 hereinbefore 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.

Oath of office.

SEC. 11. The oath 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.

Seal.

SEC. 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,
James Evans,
Richard S. Thomas,
Alexander Buckner,
Joseph McFerron.

Digitized by Google

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.

Nicholas 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.

From the county of Madison.

Nathaniel Cook.

From the county of New Madrid.

Robert D. Dawson, Christopher G. Houts.

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.

From the county of St. Louis.

Edward Bates, Pierre Chouteau, jr.,
A. M'Nair, Bernard Pratte,
William Rector, Thomas F. Riddick.
John C. Sullivan,

From the county of Washington.

Jno. Rice Jones, John Hutchings.
Samuel Perry,

From the county of Wayne.

Elijah Bettis.

Attest:

WM. G. PETTUS,
Secretary of the Convention.

Digitized by Google

AMENDMENTS TO THE CONSTITUTION,

Ratified, 1822. *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.*

ARTICLE I.

Chancery courts.

SECTION 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.

Judiciary powers.

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

Compensation of judges.

SEC. 3. The judges of the supreme court, and the judges of the 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.

United States officers.

SEC. 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.

Salary of governor.

SEC. 5. 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.

Salaries of judges.

SEC. 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.

Judges.

SEC. 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

Digitized by Google

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'NEIL,
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 Inglish,
Jos. Evans,
Asa Finley,
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,
Chauncey 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.

Digitized by Google

AMENDMENTS TO THE CONSTITUTION,

Ratified, 1834. *Proposed by the general assembly at their last session, begun and held at the city of Jefferson, on the third Monday of November, one thousand eight 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, one thousand eight hundred and thirty-four.*

ARTICLE II.

Offices of circuit court judges declared vacant on 1st January, 1836.

SECTION 1. That the offices of the several judges of the circuit courts within this state, shall be vacated on the first day of January, one thousand eight hundred and thirty-six. (*n*) Passed in senate—yeas fifteen, nays seven; ratified by the house of representatives—yeas forty-eight, nays twenty-three.

Part of 15th section of 5th article of the constitution abolished.

SEC. 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 behavior, 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.

Offices of the clerks of courts declared vacant on the first day of January, 1836, circuit and county court clerks to be elected by the people.

SEC. 3. That the offices of the clerks of the several courts within this state, shall be vacated on the first day of January, one thousand eight 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.

Boundary line of the state altered.

SEC. 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. (*o*) Passed in senate, yeas twenty-two, nays none; ratified by the house of representatives, yeas twenty-nine, nays two.

Further alteration of boundaries.

SEC. 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

(*n*) *Vide*, The State vs. McBride, 4 Mo. Rep., 302.
(*o*) *Vide*, note (a) to this constitution.

Digitized by Google

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,
Lieutenant 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. Thompson,
Cha's C. Valle,
W. K. Van Arsdall,
John D. Williams.

W. B. NAPTON,
Secretary of the Senate.

MEMBERS OF THE HOUSE OF REPRESENTATIVES.

Alonzo Abernathy,
Corbin Alexander,
David R. Atchison,
Hugh Barclay,
Edward 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,
David Jones,
Dabney Jones,
A. A. King,
A. Leonard,
Adam Mase,
John Martin,
Thos. C. Maupin,
G. W. Miller,
Thomas Moseley, jr.,
Clifton Mothershead,
S. V. Noland,
Jordon 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,

Digitized by Google

John B. Gordon, (op.)
Thomas C. Gordon,
Benjamin Harrison,
John Harvey,
Waller Head,
Ayres Hudspeth,
Frederick Hyatt,
John Inglish,
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,
Chief Clerk of the House of Representatives.

NOTE—The legislature by an act approved February 27th, 1843, required that at the general election for the members of the general assembly in the year 1844, a poll should be opened "at the several election precincts, for taking the sense of the people of this state upon the expediency of calling a convention to amend, alter or make a new constitution of this state." In pursuance of the provisions of said act, a poll was opened at the August election, in 1844, and the people decided by an overwhelming majority, in favor of the call of a convention.

The election for delegates to the convention takes place in August, 1845. They are to meet at the seat of government, on the third Monday in November following. The action of the convention may wholly supersede the present constitution.

Digitized by Google

REVISED STATUTES

OF THE

STATE OF MISSOURI.

Revised and digested by the thirteenth general assembly, and printed and published by authority of law.

JOHN C. EDWARDS, *Governor.*
JAMES YOUNG, *Lieutenant Governor and President of the Senate.*
C. F. JACKSON, *Speaker of the House of Representatives.*

CHAPTER 1.

ACCOUNT.

AN ACT regulating the action of account.

SEC. 1. Joint tenants and tenants in common liable to account.
2. Joint tenants, &c., may maintain the action.
3. Residuary legatees may maintain the action.
4. May be maintained against executors and administrators.
5. Process and manner of service.
6. Referred after judgment, that the parties account.
7. Duty of referees.
8. Power of referees.
9. To notify parties and report to court.
10. Proceedings against parties refusing to account.
11. Parties may be imprisoned for refusing to be sworn, or to answer.
12. Judgment on report of referees.

Be it enacted by the General Assembly of the State of Missouri, as follows: Digest of 1835. p. 37.

SECTION 1. When one or more joint tenants, tenants in common, or coparceners 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. Joint tenants and tenants in common liable to account.

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

Digitized by Google

CHAP. 1.

Residuary legatees may maintain the action.

SEC. 3. Residuary legatees may maintain actions of account against executors and administrators of the testator or intestate.

May be maintained against executors, &c.

SEC. 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. (*a*)

Process and manner of service.

SEC. 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.

Referred after judgment that the parties account.

SEC. 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. (*b*)

Duty of referees.

SEC. 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.

Power of referees.

SEC. 8. 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.

To notify parties and report to court.

SEC. 9. 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 accounts, and shall take, audit and settle such account, and report thereon to the court.

Proceedings against parties refusing to account.

SEC. 10. 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 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.

(*a*) *Account* lay only at common law against one as guardian in socage, bailiff or receiver, except in favor of trade and merchandise. Coke Lit. 172.

The origin of the preceeding sections of this act is 13 Ed. 1, cap. 23, 25. Ed. 3, cap. 11, and 4 Anne, cap. 16, sec. 27.

(*b*) *Vide*, the act concerning arbitrations and references.

Digitized by Google

SEC. 11. 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 question. Parties may be imprisoned for refusing to be sworn, &c.

SEC. 12. 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 to either party, judgment shall be rendered against the plaintiff with a like effect as upon a verdict. Judgment on report of referees.

Approved February 4, 1845.

CHAPTER 2.

ADDRESS.

AN ACT regulating the removal of officers by address.

SEC. 1. Either house may prefer charges, when and how.
2. Proceedings as in joint resolutions.
3. Charges to be entered on the journals, and a day fixed for trial.
4. Notice of the charges and specifications to be issued to the accused.
5. When, how and by whom served.
6. If no personal service, to be served by copy.
7. Managers to be appointed.
8. Proceedings to obtain witnesses.
9. Depositions to be taken, when.
10. How to be taken.
11. Accused to respond in writing. Replication.
SEC. 12. Failing to respond, proceedings to be *ex parte*.
13. Two houses to assemble at the trial.
14. Postponement, when.
15. Proceedings on trial regulated.
16. Questions arising on trial, how determined.
17. Each house to determine on the charges separately.
18. When charges may be withdrawn.
19. If accused be found guilty, address to be voted.
20. If address passes, to be transmitted to the governor.
21. Governor to communicate his decision, when.
22. Entry of removal, when to be made, and effect of.

Be it enacted by the General Assembly of the State of Missouri, as follows: Digest of 1835.

SECTION 1. When either house of the general assembly shall be satisfied that there is probable cause for proceeding 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. (*a*) Either house may prefer charges, when and how.

(*a*) The proceedings, by address, against the Hon John D. Leland, were commenced by the introduction of a preamble and resolutions into the house of rep-

Digitized by Google

CHAP. 2.

Proceedings as in joint resolutions.

SEC. 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.

Charges to be entered on the journals, and day fixed for trial.

SEC. 3. 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.

Notice of charges and specifications to be issued to accused.

SEC. 4. The president of the senate shall immediately cause a notice of the time and place of trial, with a copy of the charges and specifications annexed, directed to the accused, signed by himself and attested by the secretary of the senate, to be issued.

When, how and by whom served.

SEC. 5. Such notice, with the charges and specifications annexed, shall be delivered to the party charged, ten days at least before the day appointed for the 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.

If no personal service, to be served by copy.

SEC. 6. If the party charged cannot be found, the notice shall be served by leaving a copy of such notice, and the charges and specifications annexed, at his dwelling house or usual place of abode.

Managers to be appointed.

SEC. 7. When charges shall be exhibited, there shall be appointed, by joint vote of both houses, two or more competent managers, who shall not be members of either house, to prosecute such charges.

Proceedings to obtain witnesses.

SEC. 8. The presiding officer of each house shall cause subpœnas to be issued for any witness whose attendance shall be required by either of the managers, the accused, or his counsel.

Depositions to be taken, when.

SEC. 9. They shall cause commissions to be issued 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.

resentatives, Dec. 12, 1842, (jour. house of representatives, 140,) which were referred to a select committee, with power to send for persons and papers. On the 2d January, 1843, the committee submitted a report accompanied with the charges and specifications, together with the testimony upon which the same were founded, (jour. house of representatives, 222,) and on the same day the same were sent to the senate, (senate jour., 156). On the 3d of January all the papers relative to the case were referred to a select committee of the senate, (senate jour., 160,) and on the 6th of January the committee reported a substitute for the charges and specifications of the house, (senate jour., 170,) which was adopted on the 7th of January, (senate jour., 172,) and on the 9th of January the house adopted the substitute, (jour. house of representatives, 251).

Digitized by Google

How to be taken.

SEC. 10. Depositions shall be taken in like manner, and the like notice given thereof, as in the taking of depositions to be read in the circuit court.

Accused to respond in writing. Replication.

SEC. 11. The party accused shall respond in writing to the charges against him one day before the trial, and the managers, if they deem it necessary, shall reply thereto without delay.

Failing to respond proceedings to be ex parte.

SEC. 12. If the accused shall be served with notice and a copy of the charges, and do not respond, proceeding shall be had against him *ex parte*, unless further time be given him to respond.

Two houses to assemble at the trial.

SEC. 13. 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 the trial.

Postponement, when.

SEC. 14. For good cause shown before or on the day appointed for trial, a different day may be appointed, by concurrent resolution, as often as may be necessary.

Proceedings on trial regulated.

SEC. 15. When the two houses shall be assembled for 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.

Questions arising on trial, how determined.

SEC. 16. 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 such house shall give the casting vote.

Each house to determine on the charges separately.

SEC. 17. After the two houses shall, in joint meeting, have heard all the testimony adduced, and the argument 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.

When charges may be withdrawn.

SEC. 18. At any time during the trial the managers may withdraw any charge or specification, with the permission of both houses.

Digitized by Google

CHAP. 2.

If respondent be found guilty, address to be voted.

SEC. 19. If two-thirds of each house shall concur in finding the accused guilty of any of the charges, or any of the charges and specifications, (*b*) either house may originate an address to the governor setting forth the charges, or charges and specifications, of which the accused was found guilty, and praying his removal.

If address passes, to be transmitted to the governor.

SEC. 20. The 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.

Governor to communicate his decision, when.

SEC. 21. The governor shall, within ten days after receiving any address, 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.

Entry of removal, when to be made, and effect of.

SEC. 22. 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. (*c*)

Approved January 8, 1845.

(*b*) The words "or any of the charges and specifications," here used, are in lieu of the words "or specifications," contained in the revisions of 1825 and 1835. On the trial of Judge Leland, in February, 1843, the house of representatives rejected the first charge, but sustained the second and third specifications of that charge, (jour. house of representatives, 482—483,) and thereupon a question arose whether an address could be voted; it passed off without any decision. But it is submitted that an address could not be voted upon such a finding, although it is conceived that an address might be voted upon sustaining the charge without the specifications.

(*c*) This act is differently arranged from the act of 1835.

Digitized by Google

CHAPTER 3.

ADMINISTRATION.

AN ACT respecting executors and administrators.*

ARTICLE I. Of their appointment and removal from office.
II. Of their duties respecting money and property.
III. Of their duties respecting the sale of real estate.
IV. Of the allowances of demands against estates.
V. Of the settlement of their accounts.
VI. Of the distribution of the estate.
VII. Of proceedings against executors, administrators and their securities.
VIII. Of appeals.

ARTICLE I.

Of their appointment and removal from office.

SEC. 1. Letters testamentary and of administration, by whom granted.
2. Duty of clerk, when granted in vacation.
3. When letters are to be granted.
4. Proceedings entrusted to the county court, where to be had.
5. Who shall not be an executor or administrator.
6. Who entitled to administration, next of kin.
7. When letters may be granted to other persons.
8. Citation may be issued to persons entitled; failure to appear deemed a renunciation.
9. Letters to administrators with will annexed, when granted; proceedings in case of refusal.
10. Two or more executors, none to act except those who give bond.
11. Letters of administration to be granted *pendente lite*, &c., in certain cases.
12. Applicants for administration to discover on oath the heirs. Administrator to take oath.
13. Administrators *de bonis non*, *pendente lite*, &c., to take similar oath.
14. Oath of administrator with the will annexed.
15. Bond of the administrator.
16. Conditions of the bond.
17. Bond of executor or administrator with the will annexed.
18. Who shall not be taken as security in bond of executor or administrator.
19. Who to be taken as security.
20. Bonds to be recorded, originals filed; taken in vacation, presented to court.
21. County court to approve or reject bonds taken in vacation. Duty of clerk in such cases.
22. If bond be rejected, new bond to be given. Failure to give such bond, letters to be revoked.
23. Original bond valid till new bond be given.
24. Letters of administration to be recorded before delivered.
25. Penalty on clerk for failing to record letters before delivering.
26. Certified copies of letters and record thereof to be evidence.
27. Form of letters testamentary.
28. Form of letters of administration.
29. All letters testamentary and of administration to be issued in the above form.
30. Letters revoked on production of will.

* Several new provisions have been introduced into this act. The general design and details of the act of 1835, have, however, been preserved. Sections 49 to 56, both inclusive, of the first article, and sections 54 to 56, both inclusive, of the second article, and sections 10 to 20, both inclusive, of the third article, are new.

Digitized by Google

CHAP. 3.

SEC. 31. Letters revoked if will set aside. Other letters granted.
32. Marriage of *femme sole*, revocation of her letters.
33. For what causes, and how letters may be revoked.
34. Heir, legatee, creditor or other person, may apply for additional security, when.
35. Security in bond may apply to be released, when.
36. When court may order another bond, and additional security to be given.
37. New bond to operate as a discharge of former securities, &c.
38. Failure to give a new bond, deemed a revocation of letters.
39. Court, when necessary, may order further security to be given. Failure to comply, deemed a revocation.
40. Resignation and surrender of letters, how made.
41. Letters surrendered, expense paid by applicant.
42. Letters of one revoked, or surrendered, others to proceed.
43. Administration of goods unadministered, when to be granted.
44. If executor or administrator die, resign, or letters be revoked, how to account.
45. Who may proceed against the delinquent and his securities.
SEC. 46. Securities not to be sued after seven years.
47. Failing to make settlement, after citation, court may revoke letters.
48. Delinquent to pay costs of citation, or attachment.
49. Executor or administrator of member of co-partnership, to make inventory and appraise property.
50. Property may be delivered to surviving partner. Such partner to give bond.
51. Conditions of the bond.
52. Authority of county court over survivor.
53. Survivor refusing to act, executor or administrator to give bond and take possession of partnership estate. His duties.
54. To give further bond, its conditions.
55. Survivor to exhibit, and in certain cases to surrender, partnership property.
56. Failing to comply, may be cited. Penalty.
57. Two or more executors, clerk may take separate bond from each, or joint bond from all.
58. Letters testamentary and of administration not to be granted to non-residents; not to be continued after administrator becomes non-resident.

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

Letters testamentary and of administration, by whom granted.

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

Duty of clerk when granted in vacation.

SEC. 2. The clerk shall present to the county court, at the next succeeding term thereof, all such letters as may have been granted by him in vacation, and shall enter on the record the confirmation or rejection of such letters.

Where letters are to be granted.

SEC. 3. Letters testamentary, and of administration, shall be granted in the county in which the mansion house or place of abode of the deceased is situated. 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

(*a*) Letters of administration cannot be granted by a deputy clerk in his own name; Stewart vs. Cave and Westerfield, 1 Missouri Rep., 752. Letters of administration granted by proper authority, in due form, and sealed with the official seal of the county court, will be good without the signature of the clerk, until set aside for want of formality; Post vs. Caulk, 3 Missouri Rep., 36.

Digitized by Google

the land, or a 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.

Proceedings entrusted to the county court, where to be had.

SEC. 4. 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.

Who shall not be an executor or administrator. Sess. acts of 1842–3, p. 26.

SEC. 5. No justice, or 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 of the first testator.

Who entitled to administration, next of kin.

SEC. 6. 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. (*b*)

When letters may be granted to other persons.

SEC. 7. 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.

Citation may be issued to persons entitled, failure to appear deemed a renunciation.

SEC. 8. The county court, or clerk thereof in vacation, on 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.

Letters to administrators, with will annexed, &c.

SEC. 9. 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 dis-

(*b*) The county court has no right to grant letters of administration to a stranger, before an opportunity is afforded, within the time prescribed by statute, to those entitled to administer, to take out letters; and where the court had thus improvidently granted such letters to a stranger, the letters were properly revoked on the application of those entitled to administer; Mullanphy vs. St. Louis county court, 6 Missouri Rep., 563.

Digitized by Google

CHAP. 3. qualified, 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.

Executors, none to act except those who give bond.

SEC. 10. When there are two or more persons named co-executors in any will, none shall have authority to act as such, or intermeddle, except those who give bond.

Letters of administration to be granted *pendente lite*, &c., in certain cases.

SEC. 11. 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.

Applicants for administration to discover on oath the heirs.

Administrator to take oath.

SEC. 12. 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 places 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 as the assets will extend and the law direct, and account for and pay all assets which shall come to his possession or knowledge.

Administrator *de bonis non*, *pendente lite*, &c., to take similar oath.

SEC. 13. 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.

Oath of administrator with the will annexed.

SEC. 14. 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 laws direct, render just accounts and faithfully perform all things required by law touching such executorship or administration.

Bond of the administrator.

SEC. 15. 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, to the state of Missouri, in such

Digitized by Google

amount as the court or clerk shall deem sufficient, not less than double the amount of the estate.

Condition of the bond.

SEC. 16. 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 or decree of any court having jurisdiction, then the above bond to be void, otherwise to remain in full force."

Bond of executor or administrator with the will annexed.

SEC. 17. 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 administraters during the time of a contest about a will, or of the minority or absence of an executor.

Who shall not be taken as security in bond of executor or administrater. Sess. acts of 1843, p. 26.

SEC. 18. No justice of the county court, or judge of probate, and no sheriff, clerk of a court, or deputy of either, and no attorney at law shall be taken as security in any bond required to be taken by this act.

Who shall be taken as security.

SEC. 19. 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, they may take testimony, or examine, on oath, the applicant, or persons offered as his securities.

Bond to be recorded, originals filed; taken in vacation, presented to court.

SEC. 20. 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 session.

County court to decide on bonds taken in vacation. Duty of clerk.

SEC. 21. The county court shall approve or reject the bonds taken in vacation, and the clerk shall enter such approval or rejection on the record, and endorse a copy of such entry on the bond.

If bond be rejected, new bond to be given. Failure give such bond, letters revoked.

SEC. 22. If the bond be rejected, the court shall order the executor or administrator to give another bond with sufficient security; and if he fail to give such bond within such time as the court shall direct, his letters shall thenceforth be deemed to be revoked.

Such bond valid till new bond be given.

SEC. 23. Such bond shall be valid until such new bond be given, notwithstanding its rejection by the court.

Letters to be recorded before delivered.

SEC. 24. All letters testamentary, and of administration, shall be recorded by the clerk of the county court, in a well

Digitized by Google

CHAP. 3. 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.

Penalty on clerk for failing to record letters before delivery.

SEC. 25. 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. (c)

Certified copies of letters and record thereof to be evidence.

SEC. 26. Copies of such letters, and copies of the record thereof, certified under the seal of the county court, shall be evidence.

Form of letters testamentary.

SEC. 27. All letters testamentary, to be issued to executors under the provisions of this act, may be in the following form: "County of ———, ss: The state of Missouri to all persons to whom these presents shall come, greeting: Know ye, that the will and testament of A. B., deceased, hath, in due form of law, been exhibited, proved and recorded, in the office of the clerk of the county court for ——— county, a copy of which is hereunto annexed; and inasmuch as it appears that C. D. has been appointed executor in and by the said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator, We do hereby authorize him, the said C. D., as such executor, to collect and secure, all and singular, the goods and chattels, rights and credits, which were of the said A. B. at the time of his death, in whosesoever hands or possession the same may be found, and to perform and fulfil all such duties as may be enjoined upon him by said will, so far as there shall be property and the law charge him, and in general to do and perform all other acts which now are, or hereafter may be required of him by law. In testimony whereof, I, G. P., clerk of the county court in and for said county of ———, have hereunto signed my name, and affixed the seal of said court, at office, this — day of ———, A. D. 18—. G. P., clerk."

Form of letters of administration.

SEC. 28. Letters of administration hereafter to be issued in this state may be in the following form: "County of ———, ss: The state of Missouri to all persons to whom these pre-

(c) Possession of letters of administration by the person to whom they purport to be granted, is at least *prima facie* evidence of delivery; McNair vs. Dodge, 7 Missouri Rep., 407.

Digitized by Google

sents shall come, greeting: Know ye, that whereas A. B., late of the county of ———, died intestate, as it is said, having, at the time of his death, property in this state which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to the end, therefore, [that] said property may be collected, preserved and disposed of according to law, We do hereby appoint C. D., administrator of all and singular, the goods and chattels, rights and credits, which were of the said A. B. at the time of his death, with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are or hereafter may be required of him by law. In testimony whereof, I, G. P., clerk of the county court in and for the county of ———, aforesaid, have hereunto signed my name, and affixed the seal of said court, at office, this — day of ——, A. D. 18—, G. P., clerk."

All letters testamentary and of administration to be issued in the above forms.

SEC. 29. In all cases where letters of administration, with the will annexed, letters of administration *de bonis non* during minority or absence, shall hereafter be issued by the county court, or the clerk thereof in vacation, the same shall be issued in conformity to the foregoing forms as near as may be, taking care to make the necessary variations, additions or omissions, to suit each particular case.*

Letters revoked on production of will.

SEC. 30. 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.

Letters revoked if will set aside. Other letters granted.

SEC. 31. 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.

Marriage of *femme sole*, revocation of her letters.

SEC. 32. 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.

For what causes, and how letters may be revoked.

SEC. 33. If any executor or administrator become of unsound mind, or be convicted of any 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

* Sections 27, 28 and 29, are new.

Digitized by Google

CHAP. 3. discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor 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.

Heir, legatee, creditor, or other person, may apply for additional security, when.

SEC. 34. If any heir, legatee, creditor or other person interested in any estate, file in the county court an affidavit, stating that the affiant has sufficient cause to believe, and does believe, that the security in the executor's or administrator's bond has, or is likely to become insolvent, or has died, or has removed from the 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 the principal in such bond at least ten days notice of the complaint, the court shall examine into the complaint.

Security in bond may apply to be released, when. Sess. acts of 1840-1, p. 3.

SEC. 35. If any person bound as security in the executor's or administrator's bond, file in the county court an affidavit stating that the affiant has sufficient cause to believe, and does believe, his co-security has died, or has, or is likely to, become insolvent, or has removed from the state, or that the principal in such bond has, or is likely to, become insolvent, or is wasting the estate, and shall have given to the principal in such bond at least ten days notice of such complaint, the court shall examine into the complaint.

When court may order another bond to be given.

SEC. 36. If the county court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond and sufficient security to be given.

New bond to operate as a discharge of former securities, &c.

SEC. 37. 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 of such new bond.

Failure to give new bond, deemed a revocation of letters.

SEC. 38. 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.

Court when necessary may order further security to be given.

SEC. 39. It shall be the duty of the county court, whenever it shall appear necessary and proper, to order an executor or administrator to give other and further security, first giving such executor or administrator at least five days notice of

Digitized by Google

such intended order, and if such executor or administrator shall fail to give such further security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease.*

Failure to comply deemed a revocation.

SEC. 40. 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: said publication of notice in the newspaper, upon application to the county court for that purpose, may be dispensed with, and instead thereof the court may require said administrator to put ten written handbills in ten of the most public places in the county where he is conducting the business of his administration, at least twenty days before the term at which he intends to resign his administration.

Resignation and surrender of letters, how made.

SEC. 41. Such person shall then surrender his letters, his power from that time shall cease, and he shall pay the expenses of publication and all the proceedings on the application.

Letters surrendered, expenses paid by applicant.

SEC. 42. 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.

Letters of one revoked or surrendered, others to proceed.

SEC. 43. If all the executors or administrators of an estate 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. (*d*)

Administration of goods unadministered, when to be granted.

SEC. 44. 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,

If executor or administrator die, resign, or letters be revoked, how to account.

(*d*) Where an administrator dies in possession of a specific property belonging to the estate of his intestate, and it can be identified as a part of such estate, the administrator *de bonis non* is entitled to the possession of such property; but if the property cannot be so identified, the administrator *de bonis non* must fall into the class of creditors designated by the administration law; Gamble vs. Hamilton, 7 Missouri Rep., 469.

* Session acts of 1842-3, p. 6.

Digitized by Google

CHAP. 3.

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 with such executor or administrator, or his legal representatives.

Who may proceed against the delinquent and his securities.

SEC. 45. 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.

Securities not to be sued after seven years.

SEC. 46. 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.

Failing to make settlement after citation, court may revoke letters.

SEC. 47. If any executor or administrator fail to make either annual or final settlement, as required by law, and do not show good cause for such failure after citation, the county court shall order the executor or administrator to give notice when required, and to make such settlement, and may enforce obedience to such order by attachment, or may revoke his letters.

Delinquent to pay costs of citation or attachment.

SEC. 48. In all cases where citation or attachment may be issued against any executor or administrator for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

Executor or administrator of member of co-partnership to make inventory and appraise property.

SEC. 49. The executor or administrator on the estate of any deceased member of a co-partnership, shall include in the inventory which he is required by law to return to the county court, the whole of the partnership estate, goods and chattels, rights and credits, appraised at its true value, as in other cases, but the appraisers shall carry out in the footing an amount equal only to the deceased's proportional part of the co-partnership interest.

Property may be delivered to surviving partner. Such partner to give bond.

SEC. 50. The property thus appraised shall remain with or be delivered over, as the case may be, to the surviving partner, who may be disposed to undertake the management thereof, agreeably to the conditions of a bond which he shall be required to give to the state of Missouri, in such sum, and with such securities as is required in other cases of administration.

Condition of the bond.

SEC. 51. The condition of such bond shall be in substance, as follows: "The condition of the above bond is, that if A. B., surviving partner of the late firm of ———, shall use due diligence and fidelity in closing the affairs of the late co-partnership, apply the property thereof towards the payment of the partnership debts, render an account, upon oath, to the

Digitized by Google

county court whenever by it thereunto required, of all the partnership affairs, including the property owned by the late firm, and the debts due thereto, as well as what may have been paid by the survivor towards the partnership debts, and what may still be due and owing therefor, and pay over within two years, unless a longer time be allowed by the county court, to the executor or administrator, the excess, if any there be, beyond satisfying the partnership debts, then the above bond to be void, otherwise to remain in full force.

Authority of county court over survivor.

SEC. 52. The county court shall have the same authority to cite such survivor to account, and to adjudicate upon such account, as in the case of an ordinary administrator, and the parties interested shall have the like remedies by means of such bond, for any misconduct or neglect of such survivor, as may be had against administrators.

Survivor refusing to act, executor or administrator to give bond and take possession of partnership estate.

SEC. 53. In case the surviving partner, having been duly cited for that purpose, shall neglect or refuse to give the bond required in the fiftieth and fifty-first sections of this article, the executor or administrator on the estate of such deceased partner, in giving a bond, as provided in the following sections, shall forthwith take the whole partnership estate, goods and chattels, rights and credits, into his own possession, and shall be authorized to use the name of the survivor in collecting the debts due the late firm, if necessary; and shall, with the partnership property, pay the debts due from the late firm, with as much expedition as possible, and return or pay to the surviving partner his proportion of the excess, if there be any.

His duties.

To give further bond; its conditions.

SEC. 54. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the county court to give further bond, to its satisfaction, conditioned that he will faithfully execute that trust, and with no unnecessary waste or expense, which bond may be enforced like other administration bonds.

Survivor to exhibit, and, in certain cases, to surrender partnership property.

SEC. 55. Every surviving partner, on the demand of any administrator of a deceased partner, shall exhibit to the appraisers, the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement, and in case the administration thereof shall devolve upon such administrator, the said survivor shall surrender to him, on demand, all the property of such partnership, inclu-

Digitized by Google

CHAP. 3.

ding their books and papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

Failing to comply, may be cited.

SEC. 56. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section, may be cited for such neglect or refusal before the county court, and unless he comply with such provision, or show sufficient excuse for his omission, the county court may commit him to the common jail of the county, there to remain till he consent to comply, or is discharged by due course of law.

Penalty.

Two or more executors, clerk may take separate bond from each, or joint bond from all.

SEC. 57. When two or more persons are appointed executors, the court, or clerk in vacation, may take a separate bond with securities from each of them, or a joint bond with securities from all of them.

Letters testamentary and of administration not to be granted to non-residents, &c.

SEC. 58. Letters testamentary and of administration shall in no case be granted to a non-resident of this state; and where an executor or administrator shall become non-resident, the county court having jurisdiction of the estate of the testator or intestate of such executor or administrator, shall revoke his letters.

ARTICLE II.

Of their duties respecting money and property.

SEC. 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, when and where to be filed.
5. Additional inventories, when to be made.
6. Witnesses shall be appointed to accompany executor or administrator in opening and examining effects of deceased, and to aid in making inventory.
7. Their compensation.
8. To open and 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. If party charged and cited appear and answer, trial to be in a summary manner.
12. In case of conviction, court may compel delivery of effects.
13. Estate to be appraised, by whom.
SEC. 14. Affidavit of appraisers.
15. Duty of appraisers.
16. Appraisement and affidavit, when and where to be filed.
17. Compensation of appraisers.
18. Additional appraisement, when to be made.
19. Inventories and appraisements, how far evidence.
20. When and how notice to creditors shall be published.
21. When and how to advertise, when there are no known heirs.
22. Administrator may collect debts, give receipts, and prosecute and defend actions.
23. What actions executors and administrators may prosecute and defend.
24. Competent witnesses in certain cases.
25. What actions may be maintained by and against executors and administrators.
26. Not to extend to certain actions.
27. Debts due by executor or administrator to testator or intestate, assets in his hands.
28. Debtor appointed executor, his debt considered assets.

Digitized by Google

SEC. 29. Articles allowed the widow in addition to dower.
30. May take other property not to exceed two hundred dollars.
31. To be deducted from her dower in personalty, not liable for debts.
32. Property not taken, proceeds to be paid to widow.
33. Sale of perishable articles, how made.
34. If insufficient to pay debts, other personalty to be sold.
35. Bonds and notes may be assigned to creditors, legatees and distributees.
36 Notice of sale, how and when given.
37. Estate of testator, when not to be sold.
38. All the personal estate to be sold, where there are no known heirs.
39. Personal estate may be sold at private sale, when.
40. Clerk to be employed at public sale.
41. His duties.
42. Sale bill, when and where filed.
43. Real estate leased, and slaves hired out by order of court.
44. Repairs on real estate made by order of court.
45. Inventories, appraisements and sale bills filed, when to be examined by court, &c.
46. Assistance in taking care of estate, when to be procured.
SEC. 47. Further assistance, when authorized; expenses, how paid.
48. Interest on debts, when assets. When to be paid by executor or administrator.
49. To be accounted for under the equitable control of the court.
50. Statement on oath of money on hand, when to be rendered.
51. Disposition of money on hand, when and how made.
52. Orders for collection, sale and distribution, when made.
53. Executors and administrators may give receipts and discharges, effect of.
54. If property bound by lien of execution, duty of executor or administrator. To sell the same.
55. How the proceeds of such sale shall be applied.
56. Preceding provisions not to extend to certain cases.
57. In certain cases slaves not to be hired out, and only a certain portion of personal estate to be sold. Proviso.
58. Appraisement. Such property to be left in possession of the widow or family.
59. Suspension of hire or sale of such property may be ordered in vacation of court.
60. In case of injury or waste to such property, the court may rescind such order.
61. Courts may continue proceedings before them for good cause.

SECTION 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. Executors and administrators to collect and take charge of estate.

SEC. 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 debtors, the date of the contract, the amount of interest then due thereon, the rate of interest, and such further description as will render it a perfect inventory of the estate. To make and return inventory.

SEC. 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 and becoming due, so far as he can ascertain them, Affidavit to be annexed to the inventory.

Digitized by Google

CHAP. 3.

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.

Inventory and affidavit, when and where to be filed.

SEC. 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.

Additional inventories, when to be made.

SEC. 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.

Witnesses shall be appointed to accompany executor or administrator in opening and examining effects of deceased, and to aid in making inventory. Sess. acts of 1842-3, p. 5.

SEC. 6. At the time of appointing an administrator, or of granting letters testamentary to an executor, 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 or executor, as witnesses to accompany and aid the administrator or executor in opening and examining the papers and money of the deceased, and in making an inventory thereof; and if they fail to attend, the court, or clerk, shall appoint others in their stead, so that two witnesses shall be present to attend the proceeding, before it shall be lawful for any executor or administrator to open or examine such papers or money by virtue of his appointment.

Their compensation.

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

To open and examine effects of deceased without witnesses, penalty for.

SEC. 8. If any administrator or executor 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.

Affidavit filed against persons concealing or embezzling effects, citation to issue.

SEC. 9. If the executor or administrator, or other person interested in any estate, file an affidavit in the county court, stating that the affiant has good cause to believe, and does believe, that any person has concealed or embezzled any goods, chattels, money, books, papers or evidences of debt of the deceased, the county court may cite such person to appear before them, and compel such appearance by attachment, and examine him and other witnesses, on oath, for the discovery of the same.

Digitized by Google

Refusing to answer, may be committed to jail.

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

If party charged and cited appear and answer, trial to be in a summary manner. Sess. acts, 1840–1, p. 4.

SEC. 11. If any person charged and cited as aforesaid shall appear, and in his answer to the interrogatories, deny the right of the executor or administrator to such goods, chattels, money, books, papers, or evidences of debt, the right thereof shall be tried by a jury, or if neither party require a jury, by the court, in a summary manner, and judgment shall be rendered according to the right, and for costs.

In case of conviction, court may compel delivery of effects.

SEC. 12. 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.

Estate to be appraised, by whom.

SEC. 13. After having collected personal estate, the executor or administrator shall cause the same to be appraised by three disinterested householders of the county.

Affidavit of appraisers.

SEC. 14. 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.

Duty of appraisers.

SEC. 15. 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.

Appraisement, &c., when and where to be filed.

SEC. 16. The appraisement and affidavits shall be filed in the office of the clerk of the county court, within sixty days after letters granted.

Compensation to appraisers.

SEC. 17. Each appraiser shall receive from the estate one dollar per day for his attendance.

Additional appraisement, when to be made.

SEC. 18. 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.

Inventories and appraisements, how far evidence.

SEC. 19. 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.

When and how notice to creditors shall be published.

SEC. 20. 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,

Digitized by Google

[or] of administration have been granted to 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.

When and how to advertise, when there are no known heirs.

SEC. 21. When 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 his estate.

Administrator may collect debts, give receipts, and prosecute and defend actions.

SEC. 22. 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. (*e*)

What actions executors, &c., may prosecute and defend.

SEC. 23. 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. (*f*)

Competent witness in certain cases.

SEC. 24. 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.

What actions may be maintained by and against executors and administrators.

SEC. 25. For all 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

(*e*) Lapse of time, there being no statute interposing and no final settlement of the estate, will not render null letters of administration. McNair vs. Dodge, 7 Missouri Rep., 408. An administrator can recover in assumpsit for the use and occupation of the house of his intestate after his death. Rector vs. Rankin, 1 Missouri Rep., 371. An administrator may sue by petition in debt. Baily vs. Ormsby, 3 Missouri Rep., 580. An administrator, with the will annexed, may sue for a breach of covenant made to the testator to convey land. Labarge vs. McCausland, 3 Missouri Rep., 585. See Hughes et al vs. Hughes, 8 Missouri Rep., 38.

(*f*) An executor cannot prosecute a writ of error on a judgment obtained in the life time of the testator, unless the death of the testator be suggested on the record. Childers vs. Goza, 1 Missouri Rep., 394.

Digitized by Google

the like effect, in all respects as actions founded upon contracts. (*g*)

Not to extend to certain cases.

SEC. 26. 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.

Debts due by executors, &c., to be assets.

SEC. 27. All debts due by an administrator to his testator or intestate, shall be considered as assets in his hands.

Debtor appointed executor, his debt considered assets.

SEC. 28. 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.

Articles allowed widow in addition to dower.

SEC. 29. 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.

May take other property not to exceed two hundred dollars.

SEC. 30. In addition to the above, the widow may take such personal property as she may choose, not to exceed the appraised value of two hundred dollars, for which she shall give a receipt. (*gg*)

To be deducted from her dower in personalty, not liable for debts.

SEC. 31. 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.

Property not taken, proceeds to be paid to widow.

SEC. 32. If the widow do not receive the property thus allowed 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.

Sale of perishable property, how made.

SEC. 33. 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 render-

(*g*) An executor or administrator, as such, cannot maintain an action of ejectment for lands, of which his testator or intestate died seized. 7 Missouri Rep., 374. See Higgins vs. McNally's adm'rs., 8 Missouri Rep., (not yet printed.)

(*gg*) Craslin et al vs. Baker, 8 Missouri Rep., 437.

Digitized by Google

ed worse by the keeping, giving such credit as he may think best, and take bonds or notes, with good security, of the purchaser. (*h*)

If insufficient to pay debts, other personalty to be sold.

SEC. 34. If the perishable goods be not sufficient to pay the debts, the executor or administrator shall, in the same manner, sell other personal estate, disposing of the 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.

Bonds and notes may be assigned to creditors, legatees and distributees.

SEC. 35. 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.

Notice of sale, how and when given.

SEC. 36. 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 in the county where the sale is made.

Estate of testator, when not to be sold.

SEC. 37. 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.

All the personal estate to be sold, when there are no known heirs.

SEC. 38. 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.

Personal estate may be sold at private sale, when.

SEC. 39. 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.

Clerk to be employed at public sale.

SEC. 40. 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.

His duties.

SEC. 41. Such clerk shall keep a true account of the sale 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 executor or administrator at the time specified.

(*h*) A bond executed to a person as administrator is an admission of his representative character, and the obligor cannot afterwards deny it. Jones & Jones vs. Snedecor, 3 Missouri Rep., 390.

Digitized by Google

Sale bill, when and where filed.

SEC. 42. Such sale bill shall be filed by the executor or administrator, in the office of the clerk of the county court within thirty days after the sale, and it shall be evidence in the same manner and with like effect as inventories.

Real estate leased and slaves hired out by order of court. Sess. acts of 1842–3, p. 1.

SEC. 43. Executors and administrators under the direction of the county court shall lease the real estate for any term not more than three years, and hire out the slaves for any period not more than one year at a time, and shall receive and recover such rents, hire and wages. (*i*) Slaves shall be hired to the highest bidder at the court house door, unless the court order otherwise.

Repairs on real estate made by order of court.

SEC. 44. When any house, out building, fence 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. (*j*)

Inventories, &c., filed; when to be examined by county court, &c.

SEC. 45. 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.

Assistance in taking care of estate, when to be procured.

SEC. 46. If a person die, leaving horses or other stock that require 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.

Further assistance, when authorized; expenses, how paid.

SEC. 47. The county court on the 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.

(*i*) An administrator can recover in assumpsit, for the use and occupation of the house of the intestate after his death. 1 Missouri Rep., 371. When an administrator leases the property of an intestate, it is not necessary, in an action for rent, for him to allege in his declaration, that the county court gave him permission and authority to grant the lease.—*Ib.*

(*j*) Building a house on the real estate of an intestate by the administrator, is a misapplication of the funds of the estate, and the securities will be liable for the waste. Byrd vs. Miller, 2 Missouri Rep., 102.

Digitized by Google

CHAP. 3.

Interest on debts, when assets; when to be paid by executor or administrator.

SEC. 48. All interest received by executors or administrators 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.

To be accounted for under the equitable control of the court.

SEC. 49. The county court shall exercise an equitable control in making executors and administrators account for interest accruing to the estate on account of money loaned by them belonging to the estate, or otherwise, and for that purpose may take testimony, or examine the executor or administrator on oath.

Statement on oath of money on hand, when to be made.

SEC. 50. Every executor and administrator, at the second term after the one 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.

Disposition of money on hand, when and how made.

SEC. 51. If, on the return of the inventory, or at any other time, it shall appear to the satisfaction of the county court that there is a surplus of money in the hands of the executor or administrator, that will not be shortly required for the expenses of administration, or payment of debts, they shall have discretionary power to order him to lend out the money on such terms, and for such time, as they may judge best.

Orders for collection, sale and distribution, when made.

SEC. 52. The county court may at any time make such orders as the interest of the estate may require, for the speedy collection of debts, or the sale or distribution of personal property.

Executors and administrators may give receipts and discharges, effect of.

SEC. 53. 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 receipt or discharge, or they shall be void.

If property bound by lien of execution, duty of executor or administrator. To sell the same.

SEC. 54. If personal property shall be bound by the lien of an execution or executions, whether such execution or executions shall have been levied or not, at the time of the death of the testator or intestate, the executor or administrator shall nevertheless inventory, cause to be appraised, and sell the same as if no such lien existed, except that a separate inventory, appraisement and sale bill, of such property, shall be made and returned.

How the proceeds of such sale shall be applied.

SEC. 55. The proceeds of the sale of such personal property shall be applied, under the direction of the county court, in the following manner: *First*, When there is but one

Digitized by Google

execution, to the payment of such execution, and the residue, if any, shall be assets to be administered according to law. *Second.* When there is more than one execution, the liens whereof are of even date, to the payment of such executions, and the residue, if any, shall be assets, to be administered according to law; but if such proceeds shall not be sufficient to pay the whole, then in proportion to their respective amounts. *Third.* When there is more than one execution, the liens whereof are of uneven dates, and such proceeds shall not be sufficient to pay the whole, to the payment thereof according to their priority of lien.

Preceding provisions not to extend to certain cases.

SEC. 56. The provisions of the two preceding sections shall not be construed to deprive the widow of the benefit of the twenty-seventh, twenty-eighth and thirtieth sections of the second article of this act, nor to deprive the demands classed in the first and second sub-divisions of the first section of the fourth article of this act, of their precedence over all other demands against the estate of the deceased.

In certain cases, slaves not to be hired out, and only a certain portion of personal estate to be sold. Sess. acts of 1841, p. 5. Proviso.

SEC. 57. In all cases where any person shall die, leaving a widow or other family, the county court has power, if in its opinion it will not be prejudicial to creditors, and will be advantageous to such widow or others entitled to distribution in the estate, to order that the slaves belonging to such estate shall not be hired out, and that no more of the personal estate shall be sold than will be sufficient to pay the debts; *Provided*, The county court shall take good and sufficient security that the property shall be forthcoming to answer the demand of any creditor, or others concerned in the estate.

Appraisement. Such property to be left in possession of the widow, or family. *Ibid.*

SEC. 58. In the cases specified in the preceding section, the executor or administrator shall make an inventory and appraisement of the estate as in other cases, but he shall leave such slaves as are ordered not to be hired out, and such personal property as is ordered not to be sold, in possession of the widow or other family, who shall use and enjoy the same until the county court shall order such property to be administered.

Suspension of hire, or sales of such property, may be ordered in vacation of court. *Ibid.*

SEC. 59. If slaves are about to be hired out, or property is about to be sold in the vacation of the county court, any justice of such county court has power, upon the petition of the executor or administrator, or of any other person interested in the estate, to order the suspension of such hiring or sale until the next term of the county court.

Digitized by Google

CHAP. 3.

In case of injury, or waste to such property, the court may rescind such order. Sess. acts of 1841, p. 5.

SEC. 60. In any case where the court has ordered that slaves shall not be hired out, or that property shall not be sold, if it shall appear to the county court that such slaves or other property are likely to be injured or wasted, or that those interested therein would be benefited thereby, such court shall order that such estate be forthwith administered, and in such cases the rights of all persons interested shall be the same as if the order, provided for in the fifty-seventh section of this article, had not been made.

Courts may continue proceedings before them for good cause.

SEC. 61. 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.

SEC. 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 officer authorized to sell school lands, may be relinquished in the discretion of the court.
6. Court may order redemption of mortgaged property.
7. Court may order the equity of redemption to be sold.
8. In all cases of relinquishment executor or administrator competent to make a deed; effect thereof.
9. If personal estate insufficient to pay debts, petition to sell real estate to be filed.
10. If real estate bound by lien of judgment, to be stated in petition.
11. Proceeds of sale to be applied to payment of such judgment; remainder to become assets.
12. If real estate bound by lien of several judgments, to be stated in petition.
13. Proceeds of sale to be applied to the payment of such judgments, according to priority of lien.
14. Residue of proceeds to become assets.
15. If lien of such judgments be even, proceeds how applied.
16. If real estate bound by lien of several judgments, be sold under junior judgment, facts to be stated in petition of executor or administrator.
17. Plaintiff in junior judgment and purchaser to be notified of such petition; what notice shall contain.
18. Notice to be published, how.
19. Purchaser privileged to pay prior judgment or judgments, when.
20. Failing to pay, real estate to be sold free from incumbrance. Proceeds how disposed of.
21. Petition to be accompanied by true account of administration, &c., verified by affidavit.
22. Executor or administrator failing to make such application, others may. Notice to be given.
23. Before the time of such application, executor or administrator to make perfect accounts, &c., verified by affidavit. Failing to comply may be attached.
24. When such petition, accounts, &c., are filed, court shall order notice to be given. When and how published.
25. Upon proof of publication, court to hear testimony, and if necessary, order sale.
26. Personal estate may be reserved and real estate sold.
27. Real estate to be appraised before sale.
28. Affidavit to be made by appraisers.
29. Notice of such sale of real estate to be given; how published.

Digitized by Google

SEC. 30. When sales of real estate shall be made, and how conducted.
31. Not to be sold at private sale, nor shall executor or administrator purchase at less than three-fourths of its appraised value.
32. Report of sale; how made.
33. If report not approved by court, new order to be made.
34. If report be approved, deed to be made.
35. Effect of deed.
36. Contract for the conveyance of real estate, by testator or intestate, how enforced.
37. Affidavit to be annexed to petition.
38. Notice to be served on executor or administrator.
SEC. 39. Court to make an order for the specific performance of contract, except, &c.
40. Upon such order executor or administrator to execute deed.
41. Effect of such deed.
42. Petition for specific performance may be brought in circuit court, in first instance. May be certified to circuit from county court.
43. Circuit court in such cases, to proceed according to the practice in courts of chancery.
44. Proceedings by executor or administrator for specific performance of contract, made by testator or intestate.
45. In what case real estate to be sold.

Power by will to sell lands, to be executed by whom.

SECTION 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.

Contracts for the purchase of lands, may be carried into effect by order of court if assets be sufficient.

SEC. 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, by order of the county court, may complete such payment out of the assets in his hands, and such estate shall be disposed of as other real estate.

Interest of testator, or intestate, to be sold if assets are not sufficient to fill contract.

SEC. 3. If the court believe that after the payment of debts, there will not be sufficient 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.

Court may order lands to be relinquished, if purchased from individuals.

SEC. 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 individual on the most advantageous terms that can be agreed upon.

If purchased from officer authorized to sell school lands, it may be relinquished in the discretion of the court.

SEC. 5. If such real estate shall have been purchased from any officer authorized by law to sell school lands, the county court may, in its discretion, order the same to be relinquished, and in such cases the officer shall be authorized to accept of such relinquishment, and surrender the obligation of the deceased.

Court may order redemption of mortgaged property.

SEC. 6. If any person die, having mortgaged any real estate, or mortgaged or pledged any personal property, or owning any equity of redemption, and shall not have devised

Digitized by Google

CHAP. 3. 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. (*k*)

Court may order the equity of redemption to be sold.

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

In all cases of relinquishment executor or administrator competent to make a deed. Effect thereof.

SEC. 8. In all cases of relinquishment of the interest of the testator or intestate, under the provisions of the fourth and fifth sections of this article, and in all cases of the sale of the interest of the testator or intestate, under the third and seventh sections of this article, the executor or administrator shall be competent, by deed, to make such relinquishment, or to convey to the purchaser all the right, title, and interest the testator or intestate had in and to such real estate at the time of his death.

If personal estate insufficient to pay debts, petition to sell real estate to be filed.

SEC. 9. If any person die and not have 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 the real estate, or so much thereof as will pay the debts.

If real estate bound by lien of judgment, to be stated in petition.

SEC. 10. If such real estate be bound by the lien of a judgment, the executor or administrator shall state that fact in his petition, the date and amount of the judgment, and the name of the person in whose favor the same was rendered.

Proceeds of sale to be applied to payment of such judgment; remainder to become assets.

SEC. 11. The proceeds of the sale of such real estate shall be first applied to the payment of such judgment, and the residue, if any, shall become assets in the hands of the executor or administrator, to be administered according to law.

If real estate bound by lien of several judgments, to be stated in petition.

SEC. 12. If such real estate be bound by the lien of several judgments, the executor or administrator shall state that fact in his petition, the dates and amounts of such judgments, and the names of the persons in whose favor the same were rendered.

Proceeds of such sale to be applied to the payment of such judgments.

SEC. 13. The proceeds of the sale of such real estate shall be first applied to the payment of such judgments according to their priority of lien.

(*k*) The circuit court has jurisdiction over a suit for the foreclosure of a mortgage, as well after the death of the mortgagor, as before. Ayres vs. heirs of Shannon, 5 Mo. Rep. 282.

Digitized by Google

Residue of proceeds to become assets.

SEC. 14. The residue of such proceeds, if any, shall become assets in the hands of the executor or administrator, to be administered according to law.

If lien of such judgments be even, proceeds how applied.

SEC. 15. If the lien of such several judgments be of even date, and the proceeds of such sale shall not be sufficient to pay the whole, such proceeds shall be applied to the payment of such several judgments in proportion to their respective amounts.

If real estate bound by lien of several judgments, be sold under junior judgment, fact to be stated in petition.

SEC. 16. If such real estate, being or having been bound by the liens of several judgments, shall have been sold under a junior judgment, the executor or administrator shall state in his petition the fact of such sale, the name of the plaintiff in such junior judgment, the name of the purchaser, the dates and amounts of the several judgments, and the names of the persons in whose favor such several judgments were rendered.

Plaintiff in junior judgment, and purchaser to be notified of such petition; what the notice shall contain.

SEC. 17. The county court shall thereupon order that the plaintiff in the judgment under which such real estate was sold, and the purchaser thereof, shall be notified of the filing of such petition, stating briefly the substance and prayer of the petition, and that, unless good cause to the contrary be shown, on the first day of the next term, an order will be made for the sale of the whole, or so much of such real estate, as will be sufficient to pay the prior judgment or judgments.

Notice to be published, how.

SEC. 18. Such notice shall be published as other notices are required to be published, in cases of petitions for the sale of real estate, in virtue of the provisions of this act.

Purchaser privileged to pay prior judgment, or judgments, when.

SEC. 19. The purchaser of such real estate shall have the privilege of paying such prior judgment or judgments at any time within six months from and including the first day of the term of the court at which he is notified to appear.

Failing to pay, real estate to be sold free from incumbrance.

SEC. 20. If the purchaser of the real estate, under such junior judgment, shall fail to pay such prior judgment or judgments within the time prescribed in the preceding section, such real estate shall be sold free from the incumbrance of the title derived from the sale under such junior judgment, and the proceeds of such sale shall be disposed of according to such of the provisions of the tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth sections of this article, as shall be applicable to the facts of the case.

Proceeds, how disposed of.

Petition to be accompanied by true account of administration, &c.

SEC. 21. The petition, to be filed according to the provisions of the ninth section of this article, shall be accompanied by a true account of his administration, a list of the debts

Digitized by Google

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 the other assets in his hands, the whole to be verified by the affidavit of the executor or administrator.

Executor or adm'r failing to make such application, others may.

SEC. 22. 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.

Duty of executor before making such application.

SEC. 23. 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.

When such petition, accounts, &c. are filed, court shall order notice to be given.

SEC. 24. 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 shown 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, or by ten handbills, to be put at ten public places in the county in which the land lies, at least twenty days before the term of the court at which any such order will be made, in the discretion of the county court.

When and how published.

Upon proof of publication, court to hear testimony, and if necessary, order sale.

SEC. 25. 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.

Personal estate may be reserved, and real estate sold.

SEC. 26. 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 may 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 the whole, or any part of the personal

Digitized by Google

estate, to be reserved, and the real estate, or any part of it, may be sold at public or private sale.

Real estate to be appraised before sale.

SEC. 27. 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 householders of the county in which it lies.

Affidavit to be made by appraisers.

SEC. 28. 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.

Notice of such sale of real estate to be given. How published.

SEC. 29. 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. If the county court shall think it advisable, and so order, the publication of such notices in the newspaper may be dispensed with.

Sess. acts of 1842-3, p. 6.

Where sales of real estate shall be made and how conducted.

SEC. 30. 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.

Not to be sold at private sale, nor shall executor or adm'r purchase at less than three-fourths of its appraised value.

SEC. 31. 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 the executor or administrator directly or indirectly become the purchaser of such real estate, at public sale, at less than three-fourths of its appraised value.

Report of sale, how made.

SEC. 32. At the next term of the county court after such sale, the executor or administrator shall make a full report of his proceedings, with the certificate of appraisement 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.

If report not approved by court, new order to be made.

SEC. 33. 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

Digitized by Google

CHAP. 3. which the same proceedings shall be had as upon the original order.

If report be approved, deed to be made.

SEC. 34. 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) shall execute, acknowledge and deliver to the purchaser, a deed reciting the order of sale and the court by which it was made, the certificate of appraisement, the advertisement, the time and place of sale, the report of the proceedings, and the consideration, and conveying to the purchaser all the right, title and interest which the deceased had in the same.

Effect of deed.

SEC. 35. Such deed shall convey to the purchaser all the right, title and interest which the deceased had in such real estate at the time of his death, discharged from liability for his debts, and shall be evidence of the facts therein recited.

Contract for the conveyance of real estate by testator, or intestate, how enforced.

SEC. 36. 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 lifetime, 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.

Affidavit to be annexed to petition.

SEC. 37. Such petitioner shall annex to his petition an affidavit to the truth thereof, and stating that no part of such contract has been satisfied, except as stated in the petition.

Notice to be served on executor, or administrator.

SEC. 38. 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.

Court to make an order for the specific performance of contract, except, &c.

SEC. 39. 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 otherwise.

SEC. 40. When any order for the specific execution of a contract shall be made, the executor or administrator shall

Digitized by Google

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.

Upon such order, executor or administrator to execute deed.

SEC. 41. Such deed shall be as effectual as if it had been executed by the deceased.

Effect of such deed.

SEC. 42. 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 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.

Petition for specific performance, may be brought in circuit court, in the first instance.

SEC. 43. If any such petition be thus filed or certified to the circuit court, it shall proceed therein according to the practice of courts of chancery, and if it appears 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.

Circuit court in such cases to proceed according to the practice in courts of chancery.

SEC. 44. 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 completed within the lifetime 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.

Proceedings by executor or administrator for specific performance of contract made by testator or intestate.

SEC. 45. 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, the county court may make such order as it may think necessary for the sale of the real estate for that purpose, and the sale shall be conducted, and the same proceedings had in relation thereto, as is provided in this article in relation to the

In what case real estate to be sold.

Digitized by Google

CHAP. 3. sale of real estate, for the payment of debts upon the petition of the executor or administrator, creditor or other person interested.

ARTICLE IV.

Of the allowances of demands against estates.

SEC. 1. Demands against estates classed.
2. After three years demands barred, saving to persons under disability.
3. Suits pending against deceased at his death, when and how classed as demands.
4. From what time other demands in action shall be considered as exhibited against estates.
5. Proceedings to establish demands, and from what time legally exhibited.
6. Executor or administrator to keep a list of demands exhibited.
7. Demands may be established in a court of record; copy of judgment to be exhibited to county court.
8. Jurisdiction and duty of county courts in allowing demands against estates.
9. Court not to allow demand when estate is indebted to claimant, unless oath made or affidavit filed. Form of affidavit.
10. Court not to allow demand, when claimant is indebted to estate, without oath or affidavit of claimant. Nature of affidavit. Demand to be established by testimony.
11. Affidavit or oath may be made by agent in certain cases.
12. Written notice, containing a copy of the instrument or account sued on, to be given.
13. Notice, when, how and by whom served.
14. Notice may be waived in open court.
15. Court to determine demands in a summary way.
16. Depositions in support of demands, how and when taken.
SEC. 17. If the claim does not exceed twenty dollars, and neither party requires a jury, court may determine.
18. If the demand exceed twenty dollars, in what manner and by whom determined.
19. Proceedings when executor or administrator claims as creditor of the estate.
20. Who shall pay costs on allowance of demands.
21. Clerk to keep an abstract of judgments filed and demands established.
22. Demands to be classed, and satisfied according to classification.
23. Amount and class to be endorsed on claim and delivered to demandant.
24. In what order debts of deceased to be paid.
25. Commencement of suits, &c.
26. Executor or administrator shall appoint an agent to act during temporary absence. Proceedings in case of failure.
27. Effect of notice to agent.
28. Proceedings in case of improper allowance.
29. Commissioner to be appointed to audit and settle demands, &c., his powers and duties, mode of proceeding. To make report.
30. Objections to report of commissioner, how and when made.
31. Creditor failing or neglecting to present his demand before commissioner, will not bar allowance by county court, but leaves question of costs discretionary with court.
32. Compensation of commissioner.

Demands against estates, classed.

SECTION 1. All 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 medicines and medical attendance during the last sickness of the deceased. *Third.* Debts due the state. *Fourth.* Judgments rendered against the deceased in his lifetime; but if any such judgments

Digitized by Google

shall be liens upon the real estate of the deceased and the estate shall be insolvent, such judgments as are liens upon the real estate shall be paid as provided in the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth and twentieth sections of the third article of this act, without reference to classification, except the classes of demands mentioned in the first and second subdivisions of this section shall have precedence of such judgments. *Fifth.* All demands without regard to quality which shall be legally exhibited against the estate within one year after the granting of the first letters on the estate. *Sixth.* All demands thus exhibited, after the end of one year and within two years after letters granted. *Seventh.* All demands thus exhibited after [the] expiration of two years and within three years after granting of such letters. (*e*)

After three years, demands barred, &c.

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

Suits pending against deceased at his death, when and how classed as demands.

SEC. 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.

From what time other demands in action shall be considered as exhibited.

SEC. 4. All 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.

Proceedings to establish demands, and from what time legally exhibited.

SEC. 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 such claim shall be considered legally exhibited from the time of serving such notice. (*m*)

(*e*) See Gamble vs. Hamilton, 7 Missouri Rep, 469.

(*ee*) See Labeaume vs. Hempstead, 1 Missouri Rep., 772, and also Miller vs. Woodward and Thornton, 8 Missouri Rep., 169.

(*m*) A. died, leaving his wife devisee and executrix during her life or widowhood. After proving the will, the widow contracted several debts for the benefit of the estate, for which she gave her individual notes, and then intermarried with M. Held that the administrators of the estate appointed by the county court on the marriage of the widow, pursuant to the provisions of the will, were liable to M. for the amount of these notes, as so much money paid to the use of the estate. Maupin vs. Boyd and Bryant, 5 Missouri Rep. 106. A person having a claim against a decedent, and wishing to give legal notice to the administrator of such claim, must state in his notice, its nature; whether he claims it in his own right, or in right of his wife. Ibid 334.

Digitized by Google

CHAP. 3.

Executor or administrator to keep a list of demands exhibited.

SEC. 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.

Demands may be exhibited in a court of record. Copy of judgment exhibited, &c.

SEC. 7. Any person having a demand against an estate, may establish the same by the judgment or decree of some court of record, in the ordinary course of proceeding, and exhibit a copy of such judgment or decree, and shall also exhibit copies of all judgments and decrees rendered in the lifetime of the deceased, to the county court. (*n*)

Jurisdiction and duty of courts in allowing demands.

SEC. 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. (*o*)

Court not to allow demand when estate is indebted to claimant unless oath made, or affidavit filed.

SEC. 9. No county court shall allow any demand against any estate, when the estate is indebted to said claimant after allowing all just credits and offsets, 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 credits to the estate for all payments and offsets to which it is entitled, and that the balance claimed is justly due.

Court not to allow demands when claimant is indebted to estate, without oath or affidavit of claimant.

Nature of affidavit.

Demand to be established by testimony.

SEC. 10. No county court shall allow any demand against any estate, when the claimant is indebted to said estate, after allowing all just credits and offsets, 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 credits to the estate for all payments and offsets to which it is entitled, and that his account or demand, as presented, is correctly stated; and the affidavit in this section and the preceding one, shall not be received as any evidence of the demand, but the same shall be established by competent legal testimony, before it is allowed or adjusted.

SEC. 11. The affidavit or oath required by the two preceding

(*n*) A judgment against an administrator is not a lien on the lands of the intestate, although the judgment be de bonis testatoris. 1 Missouri Rep. 764.

(*o*) When a demand is presented to the county court for allowance against a decedent's estate, and disallowed, the decision of the court is a judgment, and is attended with all the legal consequences of a judgment of a court of record at common law; consequently if the claimant fails to prosecute his appeal in the manner pointed out in the statute, the matter becomes res adjudicata, and so he is forever barred. McKinney vs. Davis, 6 Missouri Rep 501. An order from the county court that an administrator retain all the money of the estate which may come into his hands, subject to the order of the county court, for the purpose of paying all administrators and guardians such sums as may be due from the estate, in preference to all other demands, amounts to a judgment final and conclusive in its nature, and a writ of error will lie. Gamble vs. Hamilton, 7 Missouri Rep. 469.

Digitized by Google

sections may be made by an agent of the claimant, when such agent has had the management and transaction of the business out of which such demand originated, or when such agent has had the means of knowing personally the facts required to be sworn to by those sections: and administrators and executors shall not be required to make such affidavit in relation to any demand in favor of the estate, which accrued prior to their letters of administration. Affidavit or oath may be made by agent in certain cases.

SEC. 12. Any person desiring to establish a demand against any estate, shall deliver to the executor or administrator, 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. (p) Written notice containing a copy of the instrument or account sued on to be given.

SEC. 13. 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. Notice, when, how, and by whom served.

SEC. 14. The executor or administrator may appear in court and waive the service of any such notice. Notice may be waived in open court.

SEC. 15. 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. (q) Court to determine demands in a summary way.

SEC. 16. 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. Depositions in support of demands, how and when taken.

SEC. 17. If the demands do not exceed twenty dollars, or if neither party require a jury, the court may decide on the validity of such demand. Proceedings if the claim does not exceed twenty dollars.

SEC. 18. 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 If the demand exceed twenty dollars, in what manner and by whom determined.

(p) See note (m) supra.

(q) An administrator may avail himself of an equitable defence to a demand, presented to the county court for allowance against a decedent's estate. 6 Missouri Rep. 145.

Digitized by Google

CHAP. 3. therefrom at the rate of six per cent. per annum from the time of trial until due.

Proceedings when executor or administrator claims as creditor of the estate.

SEC. 19. Any executor or administrator may establish a 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-administrator, 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.

Who shall pay cost on allowance of demands.

SEC. 20. When a demand shall be presented to the county court for allowance, if the demand be allowed, the estate shall pay the costs; if disallowed, the party presenting the claim shall pay the costs.

Clerk to keep an abstract of judgments filed, &c.

SEC. 21. 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, date, class, and to whom payable.

Demands to be classed, and satisfied according to classification.

SEC. 22. If any judgment of a court of record be filed in the county court, and when demands 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.

Amount and class to be endorsed on claim.

SEC. 23. 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.

In what order debts of deceased to be paid.

SEC. 24. 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.

Commencement of suits, &c.

SEC. 25. If any person commence a suit of any kind in the circuit court, against an estate, within one year from the date of administration, he may recover judgment but shall pay all costs.

Executor or administrator shall appoint an agent to act during temporary absence.

SEC. 26. If any executor or administrator shall temporarily absent himself from this state, he shall appoint an agent in writing (and file such appointment in the office of the court having jurisdiction of his testator or intestate's estate) to

Digitized by Google

whom notice of demands against his testator or intestate's estate, as provided in the fifth and tenth sections of this article, may be given, and upon failure to appoint such agent, such notice may be filed in the office of the court having jurisdiction of the estate.

Proceedings in case of failure.

SEC. 27. Notice given to such agent, or filed, as aforesaid, among the papers relating to the estate against which the demand is claimed, shall be as effectual as if it had been given to the executor or administrator.

Effect of notice to agent.

SEC. 28. If the executor or administrator shall, within four months after any demand shall have been allowed, upon notice given as prescribed in the two preceding sections, file in the office of the court having jurisdiction of the estate, the affidavit of himself or some other credible person, stating that the affiant has good reason to believe, and does believe, that such demand has been improperly allowed, the court shall vacate such order of allowance, and try the matter anew, and allow or reject such demand as shall be right, and if upon such new hearing such demand shall be allowed, it shall be classed and paid as if such new hearing had not been granted.

Proceedings in case of improper allowance.

SEC. 29. It shall be the duty of the county court, at the next term after letters testamentary or of administration are granted on any estate, (if in their opinion the interest of the estate requires it,) to appoint some suitable disinterested person as commissioner, whose duty it shall be to audit and settle all demands exhibited to him against said estate, not exceeding the sum of one hundred dollars. He shall fix upon such times and such places as shall be most convenient to the largest number of creditors of such estate, and give reasonable notice thereof to the executor or administrator, and to the creditors of the estate; the time and manner of the notice to be prescribed by the court. The commissioner shall make out an exhibit of all demands brought before him, noting thereon which items he allows and which he rejects, or how much of each he allows or rejects, and in what classes those allowed are to be paid, and file such exhibits with the clerk of the county court at its next term, which shall remain in the office of the clerk of the court until the end of the next following term. The commissioner shall have power to administer oaths to witnesses, and shall administer to all claimants the oath required by the ninth section of this article.

Commissioner to be appointed to audit and settle demands.

His powers, duties and mode of proceeding.

To make report.

Digitized by Google

CHAP. 3.

Objections to report by commissioner, how and when made.

SEC. 30. If any executor or administrator, or any claimant shall, before the end of the next term after the one at which the commissioner's report shall have been filed in the clerk's office, object, in writing, to the decision of the commissioner, as to any item therein, the same shall be tried before the county court, as is now provided by law, the court giving to each party reasonable time to procure his witnesses; and such report, as to all such items not so objected to, shall be confirmed by the court and payment ordered accordingly.

Creditor failing or neglecting to present his demand before commissioner, will not bar allowance by county court.

SEC. 31. If any creditor shall have an opportunity to present his demand before such commissioner, and shall fail or neglect to do so, he shall not be prevented from having the same allowed by the county court, as is now provided for by law, but the county court may, in its discretion, compel him to pay all costs attending the establishment and allowance of the same.

Compensation of commissioner.

SEC. 32. The court shall allow said commissioner, out of said estate, a reasonable compensation for his services.

ARTICLE V.

Of the settlement of their accounts.

SEC. 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. Failure to make settlement, citation to issue.
6. Citation not served, alias to issue; may be served or published.
7. Proceedings of the court after service or publication.
8. Court may revoke letters of delinquent and attach. Delinquent to pay costs.
9. Accounts to be settled; what charges, expenses and disbursements allowed.
10. Claim for which disbursements have been made, must be shown upon settlement to have been allowed by the court, or proof produced.
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. Executions 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 settlement how to be conducted.
18. On final settlement, what debts charged in the inventory as due to the estate to be credited.

Accounts and settlements, in what manner to be recorded by the clerk.

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

Digitized by Google

Annual settlements to be made until administration be completed.

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

Clerk to keep a docket of executors and adm'rs, date of their letters.

SEC. 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 term at which they are required to make settlement.

List to be put up by the clerk, when and where.

SEC. 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.

Failure to make settlement, citation to issue.

SEC. 5. If any 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 county 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.

Citation not served, alias to issue; may be served or published.

SEC. 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.

Proceedings of the court after service or publication.

SEC. 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.

Court may revoke letters of delinquent and attach.

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

Accounts to be settled, what charges, expenses and disbursements allowed.

SEC. 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 order of the court, and a reasonable compensation for the trouble and expenses of the executor or administrator.

Digitized by Google

CHAP. 3.

Proceedings upon claims for which disbursements have been made.

SEC. 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 according to law, or shall produce such proof of the demands as would enable the claimant to recover it in a suit at law.

On settlement, expenses to be paid, balance on hand to be apportioned among creditors.

SEC. 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.

On every settlement, how to proceed till debts are paid, or assets exhausted.

SEC. 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.

Executions for demands allowed against estates, when and against whom issued.

SEC. 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 property, goods, chattels and real estate of such executor or administrator.

Execution not satisfied, *scire facias* may issue against securities.

SEC. 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 the bond, the order of 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.

Scire facias returned served, proceedings thereon.

SEC. 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.

Digitized by Google

Notice of final settlement, when and how published.

SEC. 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.

Final settlement, how to be conducted.

SEC. 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.

On final settlement, what debts charged in the inventory as due to the estate, to be credited.

SEC. 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 the distribution of the estate.

SEC. 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 the purpose of distribution, how and when to be given.
6. When sale is ordered, 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.
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 widow until dower is assigned, out of what fund to be made.
SEC. 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. If legatee or distributee do not appear within one year and claim his share, court may order it to be paid into state treasury.
16. Proceedings when such legacy is paid into the state treasury.
17. Mode of obtaining such legacy, &c., by legatee or distributee, prescribed.
18. If one year after final settlement, property unclaimed remain in the hands of executor or administrator, court shall order it to be sold.
19. Administration on estate of non-resident. Estate, how disposed of.
20. On final settlement, residue of personal estate, how disposed of.
21. If non-resident insolvent, estate to be equally divided among his creditors.
22. Estate not to be sent out of the state till creditors here receive their proportion.

Digitized by Google

CHAP. 3.

SEC. 23. Citizen creditors to receive their proportion first.
24. Residue to be paid to other creditors, how.
25. No one to receive more than his share.
26. If any balance of estate remains, it shall be transmitted to foreign executor or administrator.
27. Compensation of executors and administrators.

Distribution, &c., when to be made within one year after date of letters.

SECTION 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.

Legacies when to be paid; bond to refund, when and by whom given.

SEC. 2. No executor or administrator shall be compelled to pay legacies or make distribution 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 legatee or distributee 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.

Payment of legacies and distribution of shares, when and how made.

SEC. 3. If upon any settlement it appear that there is sufficient money to satisfy all the demands against an 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. (r)

If distribution cannot be made in kind, sale may be ordered and money distributed.

SEC. 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, (prescribing the time, place, manner and terms of sale,) and cause the money to be distributed according to the rights of those entitled to distribution. (s)

Notice of application to sell for the purpose of distribution, how and when to be given.

SEC. 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.

(r) Where the records of the county court show that all debts have been paid, that the amount of property is ascertained and three years elapsed since administration was granted, a distributee may maintain his action of debt on the administrator's bond, in the circuit court, against him or his securities. State vs. Rankin, 4 Missouri Rep., 426; Tompkins J. dissenting. The circuit court as a court of chancery, has concurrent original jurisdiction with the county court, in compelling executors and administrators to make distribution and pay legacies, 5 Missouri Rep., 469. Tompkins J. dissenting. See section 1, article I, of the act to regulate practice in the courts of chancery.

(s) See the act concerning dower, section 17.

Digitized by Google

When sale is ordered, claims of distributees to be adjusted.

SEC. 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.

If distributee become purchaser, his receipt good for amount of his share.

SEC. 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.

Distribution, how made, when real estate sold to pay debts.

SEC. 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.

Legatees and distributees, compelled to refund, when and how.

SEC. 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.

Proceedings on failing or refusing to refund. Notice to be given.

SEC. 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.

Court may order appropriations for the support of minor children, when.

SEC. 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.

Appropriation for widow, until dower be assigned.

SEC. 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.

Court in its discretion may order the estate to be delivered up to the widow.

SEC. 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

Digitized by Google

CHAP. 3. that there are no debts due the estate, or so small that they would not defray the expenses of collection and of administration, the county court may, in its discretion, 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.

On final settlement money of distributee, or legatee, when to be loaned out.

SEC. 14. If, upon final settlement, it appear that any legatee or distributee is 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 shall order the executor or administrator to lend out the money on good security, for such limited time as the court may direct, not exceeding one year.

Proceedings if legatee, or distributee do not appear within one year. Sess. acts of 1842–3, p. 4.

SEC. 15. In all cases when the legatee or distributee shall not appear within one year after final settlement by the executor or administrator, and claim his share, the county court shall order the same to be paid into the state treasury.

Proceedings when such legacy is paid into the state treasury. *Ibid.*

SEC. 16. When any share shall be paid into the treasury, the executor or administrator shall take from the treasurer duplicate receipts, one of which he shall file in the office of the auditor, who shall charge the treasurer with the amount, and the other with the clerk of the county court ordering the share to be paid into the treasury, and the court shall credit the executor or administrator therewith.

Mode of obtaining such legacy, &c. by legatee, or distributee, prescribed. *Ibid.*

SEC. 17. When any legatee or distributee shall appear and claim any share paid into the treasury, the county court before whom the final settlement was made, being first satisfied of his right, shall grant him a certificate, under its seal, and on presentation of the certificate to the auditor, he shall draw his warrant on the treasury for the amount.

If one year after final settlement, property unclaimed remain in the hands of executor or adm'r, court shall order it to be sold.

SEC. 18. If, after the expiration of one year after the final settlement, there should remain in the hands of the executor or administrator, slaves or other personal property unclaimed by the legatee or distributee, the court shall order the same to be sold, and the proceeds paid into the state treasury, and the same may be drawn therefrom in the manner provided in the preceding section.

SEC. 19. When administration shall be taken in this state on the estate of any person who, at the time of his decease,

Digitized by Google

was an inhabitant of any other state or country, his real estate found here, after the payment of his debts, shall be disposed of according to his last will, if he left any, duly executed according to the laws of this state, and his personal estate according to his last will, if he left any, duly executed according to the laws of his domicil: and, if there should be no such will, his real estate shall descend according to the laws of this state, and his personal estate shall be distributed and disposed of, according to the laws of the state or country of which he was an inhabitant. (rr)

Administration on estate of non-resident. Estate how disposed of.

SEC. 20. Upon the final settlement of such an estate, and after the payment of all debts for which the same is liable in this state, the residue of the personal estate, if any, may be distributed and disposed of, in manner aforesaid, by the county court in which the estate is settled, or it may be transmitted to the executor or administrator, if there be any, in the state or country where the deceased had his domicil, as the court, under the circumstances, shall think best.

On final settlement residue of personal estate, how disposed of.

SEC. 21. If such deceased person died insolvent, his estate found in this state shall, as far as practicable, be so disposed of, that all his creditors here and elsewhere may receive an equal share, in proportion to their respective debts.

If non-resident insolvent, estate how divided among creditors.

SEC. 22. To this end, his estate shall not be transmitted to the foreign executor or administrator, until his creditors, who are citizens of this state, shall have received their just proportions that would be due to them if the whole of the estate of the deceased, wherever found, were divided among all the said creditors in proportion to their respective debts, without preferring any one species of debt to another.

Estate not to be sent out of the state till creditors receive their proportion.

SEC. 23. In such case, no creditor, not being a citizen of this state, shall be paid out of the assets found here, until those who are citizens shall have received their just proportions, as provided in the preceding section.

Citizen creditors to receive their proportion first.

SEC. 24. If there be any residue after such payment to the citizens of this state, the same may be paid to any other creditors who shall duly have proved their debts here, in proportion to the amount due to each of them respectively.

Residue to be paid to other creditors, how.

SEC. 25. No one shall receive more than would be due to him if the whole estate were divided rateably among all the creditors. *

No one to receive more than his share.

(rr) See Story's conflict of laws, 391, and 403 to 410. Edition of 1834.

* Secs. 19 to 26, both inclusive, are designed to be declaratory of the common law.

Digitized by Google

CHAP. 3.

If any balance of estate remains, it shall be transmited to foreign executor or administrator.

SEC. 26. The balance, if any, may be transmitted to the foreign executor or administrator, or, if there be none such, it shall, after the expiration of three years from the appointment of the administrator, be distributed rateably among all the creditors, citizens and others, who shall have proved their debts in this state.

Compensation of executors and administrators.

SEC. 27. Executors and administrators shall be allowed for their trouble not exceeding six per centum 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. (*s*)

ARTICLE VII.

Of proceedings against executors, administrators and securities.

SEC. 1. Any creditor may suggest a devastavit, when.
2. Upon such application, court to direct an issue.
3. Costs. Judgment. How proceeds applied.
4. If the waste is wilful and fraudulent, applicant to recover double the amount wasted.
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 an executor or administrator may be sued on, suit how and by whom brought.
9. Court how to proceed for disobedience of any order made in pursuance of this act.

Any creditor may suggest a devastavit, when.

SECTION 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.

Upon such application court to direct an issue.

SEC. 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.

Costs. Judgment. How proceeds applied.

SEC. 3. If no waste be found, the applicant shall pay the costs; but if waste be found, judgment shall be recorded 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.

(*s*) Where an allowance of a gross sum is made by the county court to executors or administrators as a compensation for their services, it must be equally divided, and one cannot retain the whole sum on the ground that the other had rendered no services. The county court may, however, where one has performed more than his equal share of labor, allow him a compensation proportioned to his services. Smart vs. Fisher, 7 Missouri Rep., 580.

Digitized by Google

If waste is wilful and fraudulent, applicant to recover double.

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

Action of waste, or suit on administration bond, after final settlement, when brought and effect of the judgment.

SEC. 5. 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, and 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.

Execution on judgment, against whom and what estate to issue.

SEC. 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.

Proceeds of executions on such judgments, how to be applied.

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

The bond of an executor or administrator may be sued on: suit how and by whom brought.

SEC. 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. (*t*)

Court, how to proceed for disobedience of any order made in pursuance of this act.

SEC. 9. The county court, for disobedience to any order made in pursuance of this act, may issue attachment, imprison the body, or proceed by sequestration of land and goods, as fully as a court of chancery may do, and may issue their

(*t*) An action of covenant will not lie on an administrator's bond; Clark vs. Murphy et al. 1 Missouri Rep., 114. A suit on an administrator's bond must be in the name of the governor of the state, (now the state of Missouri,) and not in the name of the party injured; 1 Missouri Rep., 581. Where the securities of an administrator plead his death before the time for filing the inventory, and in the same plea denied that goods had come to his hands—held, that the first part of the plea was not traversable; 1 Missouri Rep., 686. Damages may be assessed for a failure to make and return an inventory; *Ibid.* A breach, setting out a failure to make annual and final settlements, is well assigned; Devore vs. Pitman, 3 Missouri Rep., 179. When a guardian put an administrator's bond in suit, for his *own use*, he was allowed to recover only costs paid by himself: to recover the portion due his ward, it was held necessary to put the bond in suit for *their use*; Devore vs. Pitman, 3 Missouri Rep., 182. A prior and subsequent administrator of the same estate cannot be sued jointly on their separate bonds; Miller vs. Hays, 3 Missouri Rep., 434; The State vs. Pratte and St. Genome, 8 Missouri Rep., 286.

Digitized by Google

CHAP. 3. process for that purpose, directed to any county, and cause it to be served therein.

ARTICLE VIII.

Of appeals.

SEC. 1. Appeals from the county to the circuit court, in what cases allowed.
2. Appeals, when to be taken.
3. Application for appeal, affidavit to be filed, and by whom.
4. Appellant to file bond. Its conditions. Executor or administrator not required to give bond.
5. Affidavit and bond filed, appeal to be granted; how far a supersedeas.
SEC. 6. When appeal taken, clerk to transmit transcript and original papers to the circuit court.
7. Upon filing of transcript, court shall be possessed of the cause and shall try it *de novo*.
8. Proceedings and original papers to be certified to the court whence the appeal was taken, how proceeded on.
9. Same powers conferred and duties enjoined on the probate court of St. Louis county, as are conferred and enjoined on county courts.

Appeals from the county to the circuit court in what cases allowed.

SECTION. 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 ten dollars. *Second*, On all settlements of executors and administrators. (*u*) *Third*, On all apportionments among creditors, legatees or distributees. *Fourth*, On all orders directing the payment of legacies, making distribution, or making allowances to the widow. *Fifth*, On all orders for the sale of personal estate, because distribution cannot be made in kind. *Sixth*, On all orders for the sale of real estate or slaves. *Seventh*, On judgments for waste. *Eighth*, On proceedings to recover balances escheated to the state. *Ninth*, On orders revoking letters testamentary or of administration. (*v*) *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, and in all other cases where there shall be a final decision of any matter arising under the provisions of this act.

Appeals, when to be taken.

SEC. 2. All appeals shall be taken during the term at which the decision complained of is made.

Application for appeal, affidavit to be filed, &c.

SEC. 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

(*u*) The supreme court will not examine the evidence and correct errors in fact, but will only notice the errors in law, as appears upon the record in cases of settlement of estates; Chouteau vs. Consoue, 1 Missouri Rep., 350. Jones dissenting.

(*v*) An appeal lies from the decision of the county court revoking letters of administration; such appeal, however, does not operate as a supersedeas. The provisions of the statute concerning the supersedeas, only applies to those cases in which the appellant is adjudged to pay a debt; Mullanphy vs. St. Louis county court, 6 Missouri Rep., 563.

Digitized by Google

believes that the appellant is aggrieved by the decision of the court.

Appellant to file bond.

SEC. 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 debt, damages and costs that may be adjudged against him. This act shall not be so construed as to require any executor or administrator to enter into bond in order to entitle him to an appeal.

Its condition.

Executor or administrator not required to give bond. Sess. acts of 1842-3, p. 5.

Affidavit and bond filed, appeal to be granted: how far a supersedeas.

SEC. 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.

When appeal taken, clerk to transmit a transcript to circuit court.

SEC. 6. When such appeal is taken, the clerk shall transmit to the clerk of the circuit court a certified transcript of the record and proceedings relating to the cause, together with the original papers in his office relating thereto.

Upon filing of transcript, court shall be possessed of the cause and try it *de novo*.

SEC. 7. Upon the filing of such transcript and papers in the office of the clerk of the circuit court, 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 county court.

Proceedings, &c., to be certified to the court whence the appeal was taken.

SEC. 8. 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.

Same powers conferred on the probate court of St. Louis county, as are conferred on county courts.

SEC. 9. The same powers are conferred, and the same duties enjoined on the probate court of Saint Louis county by this act, as are conferred and enjoined on the several county courts of this state, and the clerks thereof, and the probate court of Saint Louis county shall be governed in all things by this act, as far as it is applicable to its jurisdiction and duties.

Approved March 26, 1845.

Digitized by Google

CHAPTER 4.

ADMINISTRATORS PUBLIC.

AN ACT respecting public administrators.

SEC. 1. County court to appoint public administrator. Tenure of his office.
2. Oath of office to be taken. Bond to be executed. Condition of bond.
3. Certificate of appointment, official oath and bond, where filed and recorded. Copies to be evidence.
4. Who may sue upon such bond.
5. How to be removed from office.
6. His compensation.
7. When he may be indicted and fined.
8. What estates in his county he shall take into possession.
9. Shall make an inventory of such estates, administer and account for same.
10. Letters regularly granted, public administrator to account, &c.
11. Duty of civil officers to inform public administrator of property, &c.
SEC. 12. What suits and prosecutions public administrator may institute.
13. Proceedings against persons unlawfully possessed of property which ought to be committed to the public administrator.
14. Matter to be tried in a summary way. Judgment.
15. How judgment may be enforced.
16. Effect of judgment. Costs. No bar to suit by administrator in another form.
17. Appeal allowed. On what terms.
18. Form of the recognizance.
19. Proceedings as in appeals from justice's courts.
20. Proceedings on judgment, if person against whom it is rendered cannot be found.
21. Court may at any time order public administrator to account, &c.

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

County court to appoint public administrator.

SECTION 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,

Tenure of his office.

and shall hold his office for two years, and until his successor be qualified.

Oath of office to be taken.

SEC. 2. Before entering on the duties of his office, he shall take the oath required by the constitution, and enter into

Bond to be executed.

bond to the state of Missouri, 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

Condition of bond.

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 twenty days after such demand, may remove the administrator and appoint another.

Certificate of appointment, &c., to be filed and recorded. Copies evidence.

SEC. 3. His certificate of appointment, official oath and bond, shall be filed and recorded in the office of the clerk of the county court, and copies thereof, certified under the seal of the county court, shall be evidence.

Digitized by Google

SEC. 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. Who may sue upon such bond.

SEC. 5. Such public administrator may be removed from office in the same manner, and for the same causes, as justices of the county court. How to be removed from office.

SEC. 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. His compensation.

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

SEC. 8. It shall be the duty of the public administrator to take into his charge and custody the estate of all 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 fail to qualify. *Second*, When persons die intestate, without any known heirs, and administration is not undertaken by some other responsible person. *Third*, When persons, unknown, die, or are found dead in the county. *Fourth*, When 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*, When 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. What estates in his county he shall take into possession.

SEC. 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. Shall make an inventory of such estate, administer and account for the same.

SEC. 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, papers and estate, of every kind, in his possession. Letters regularly granted, public administrator to account, &c.

Digitized by Google

CHAP. 4.

Duty of civil officers to inform public adm'r of property, &c.

SEC. 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.

What suits and prosecutions he may institute.

SEC. 12. The public administrator 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.

Proceedings against persons unlawfully possessed of property, &c.

SEC. 13. If any person file an affidavit before a justice of the peace, that he has reason to believe that any other person is unlawfully possessed of property (describing the same in such affidavit as truly as may be) which ought to be committed to the care of the public administrator, he shall issue his warrant to bring such person before him forthwith.

Matter to be tried in a summary way.

Judgment.

SEC. 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, and for costs.

How judgment may be enforced.

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

Effect of judgment.

Costs.

No bar to suit in ordinary form.

SEC. 16. If such judgment be against the right of the public administrator to such property, the affiant shall pay the costs, but the judgment shall be no bar to the administrator's right to sue in the ordinary form, in the proper court, for the recovery thereof.

Appeal allowed.

On what terms.

SEC. 17. If the judgment of the justice be against the person charged with the possession of such property, he shall be allowed an appeal to the circuit court on the same terms, and with like effect, as in appeals from judgments in justices' courts.

Form of recognizance.

SEC. 18. The recognizance to be entered into by the appellant and his securities, may be in the following form: "We, the undersigned, ——— and ———, acknowledge ourselves indebted to ———, public administrator for ——— county, in the sum of ——— dollars, to be void upon this condition: Whereas, ——— has appealed from the judgment of ———, a justice of the peace, in a proceeding between ———, affiant, and ———, defendant: Now, if on such appeal, the judgment of the justice be affirmed, or on a trial anew in the circuit court, judgment be given against the

Digitized by Google

appellant, and he shall satisfy and perform such judgment, or if his appeal be dismissed, he shall satisfy and perform the judgment of the justice, and pay the costs of the appeal, the recognizance shall be void.

Test: G. H., *J. P.* A. B., C. D., E. F.

Proceedings on appeal.

SEC. 19. When an appeal is allowed, the same proceedings shall be had, and the duty of the justice shall be the same, as in appeals from judgments in justices courts.

Proceedings on judgment.

SEC. 20. If the person against whom the judgment is rendered cannot be found, or the judgment be not complied with, the justice may issue his warrant to seize the property or estate, and deliver it to the public administrator.

Court may at any time order public administrator to account, &c.

SEC. 21. 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 January 27, 1845.

CHAPTER 5.

ADVERTISEMENTS.

AN ACT concerning advertisements.

SEC. 1. Affidavit of printer or publisher sufficient proof of publication.
2. Party at whose instance publication was made to pay costs.
3. Party paying to exhibit account to be taxed as other costs.
4. When made by public officer expense to be paid by county.
5. Rates allowed for printing public advertisements.
6. Most advantageous terms to be accepted.
7. Penalty for defacing advertisements.

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

Affidavit of printer or publisher sufficient proof of publication. R. C., 1835, p. 95.

SECTION 1. When any notice or advertisement shall be required by law, or the order of any court, to be published in any newspaper, or made in conformity with any deed of trust or power of attorney, 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.

Who to pay costs.

SEC. 2. When 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.

Digitized by Google

CHAP. 5.

Party paying, to exhibit account to be taxed as other costs.

SEC. 3. He shall exhibit his accounts of such payment 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 proceedings to which such advertisement relates.

When expenses to be paid by the county.

SEC. 4. 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 a like nature.

Rates allowed for printing public advertisements. Sess. acts of 1840–1, p. 6.

SEC. 5. When any law, proclamation, advertisement, order or notice shall be published in any newspaper for the state, or for any public officer on account of the state, or for any county, or for any public officer on account of any county, there shall not be allowed for such publication a higher rate than fifty cents per square for the first insertion, and twenty-five cents for each subsequent insertion, and for fractional squares and parts of squares, in the same proportion.

Most advantageous terms to be accepted.

SEC. 6. In procuring the publication of any law, proclamation, advertisement, order or notice, the public officers shall accept of the most advantageous terms that can be obtained, not exceeding the rates limited in the preceding section.

Penalty for defacing advertisements.

SEC. 7. 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 notice set up at any place in this state, by authority of any law of the United States or of this state, or by 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 February 4, 1845.

Digitized by Google

CHAPTER 6.

ALIENS.

AN ACT respecting aliens.

SECTION 1. Aliens empowered to hold and alienate real estate.

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

SECTION 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 all aliens residents in this state, shall be capable of acquiring real estate in this state, by descent or purchase, and of holding and alienating the same, and shall incur the like duties and liabilities in relation thereto, as if they were citizens of the United States. Aliens empowered to hold and alienate real estate.

Approved January 8, 1845.

CHAPTER 7.

APPORTIONMENT.

AN ACT to apportion representation.

SEC. 1. Apportionment of the house of representatives.
2. Apportionment of the senate.
3. The twenty-eighth district to elect three senators. The eighth, twenty-fifth, and sixteenth to elect two senators. The other districts to elect one senator, each.
SEC. 4. Time of electing senators.

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

SECTION 1. Representation shall hereafter be apportioned as follows, in the house of representatives, viz: from the county of St. Louis four representatives; from the county of Platte two representatives; and from all other counties, each, one representative. Apportionment of the house of representatives.

SEC. 2. The state is hereby divided into the following senatorial districts; the members of the senate to be elected from the districts as hereinafter designated, viz: the counties of St. Charles and Lincoln shall compose the first senatorial district; the counties of Pike and Ralls the second district; the counties of Marion and Monroe the third district; the counties of Scotland, Lewis, Clark, Knox and Schuyler the fourth district; the counties of Sullivan, Putnam, Grundy, Apportionment of the senate. 1st district. 2d district. 3d district. 4th district.

Digitized by Google

CHAP. 7.

5th district. Mercer, Harrison and Gentry the fifth district; the counties
6th district. of Holt, Atchison, Nodaway and Andrew the sixth district;
7th district. the counties of Buchanan, De Kalb and Clinton the seventh
8th district. district; the counties of Clay, Ray and Platte the eighth
district; the counties of Livingston, Linn, Carroll, Caldwell
9th district. and Davis the ninth district; the counties of Howard and
10th district. Chariton the tenth district; the counties of Macon, Adair,
11th district. Shelby and Randolph the eleventh district; the counties of
12th district. Boone and Audrain the twelfth district; the counties of
13th district. Callaway and Montgomery the thirteenth district; the coun-
14th district. ties of Cole, Miller and Morgan the fourteenth district; the
15th district. counties of Franklin and Warren the fifteenth district; the
counties of Crawford, Washington, Jefferson, Gasconade,
16th district. Osage and Pulaski the sixteenth district; the counties of
17th district. Ste. Genevieve, St. Francois and Perry the seventeenth
district; the counties of Cape Girardeau and Wayne the
18th district. eighteenth district; the counties of Scott, Mississippi, New
19th district. Madrid, Stoddard and Dunklin the nineteenth district; the
counties of Reynolds, Shannon, Texas, Madison, Ripley,
20th district. Oregon and Wright the twentieth district; the counties of
21st district. Greene, Taney and Ozark the twenty-first district; the
22d district. counties of Lawrence, Barry, Newton and Jasper the twenty-
second district; the counties of Polk, Hickory, Camden and
23d district. Dallas the twenty-third district; the counties of St. Clair,
24th district. Henry, Bates, Cedar and Dade the twenty-fourth district;
the counties of Johnson, Jackson, Van Buren and Lafayette
25th district. the twenty-fifth district; the counties of Pettis, Saline and
26th district. Benton the twenty-sixth district; the counties of Cooper and
27th district. Moniteau the twenty-seventh district; the county of St.
28th district. Louis the twenty-eighth district.

Apportionment of senators. SEC. 3. The twenty-eighth district shall be entitled to elect three senators; the eighth, twenty-fifth and sixteenth shall each be entitled to two senators; and every other district one senator.

Time of electing senators. SEC. 4. The twenty-eighth district shall elect two senators at the general election in the year eighteen hundred and forty-six, and one senator at the general election in the year eighteen hundred and forty-eight; the twenty-fifth district shall elect one senator at the general election for the year eighteen hundred and forty-six, and one senator at the general election for the year eighteen hundred and forty-eight; the

Digitized by Google

eighth and sixteenth districts shall each elect two senators at the general election for the year eighteen hundred and forty-six; the second, third, fifth, sixth, seventh, ninth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, seventeenth, nineteenth, twenty-first, twenty-second, twenty-third, twenty-fourth and twenty-sixth districts, shall each be entitled to elect one senator at the general election in the year eighteen hundred and forty-six. The first, fourth, tenth, eighteenth, twentieth, and twenty-seventh shall each be entitled to elect one senator at the general election in the year eighteen hundred and forty-eight.

This act to take effect from and after its passage.

Approved, March 27th, 1845.

CHAPTER 8.

APPRENTICES.

AN ACT concerning apprentices.

SEC. 1. Minors may bind themselves by indenture, with consent of parents.
2. With consent of county court.
3. Master to make affidavit.
4. Father incapable, mother may consent.
5. Incapacity, how established.
6. Poor children may be bound by county court.
7. By guardian.
8. Covenants in indenture.
9. To be fulfilled, and grievances redressed.
10. Negro or mulatto, not to be educated.
11. Age of apprentice to be inserted in indenture.
12. Indenture void as to apprentice, when.
13. Complaint by apprentices.
SEC. 14. Court may dissolve contract.
15. Complaint by master.
16. Misconduct of apprentice, warrant to issue.
17. Proceedings on return of warrant.
18. Enticing apprentices to run away, penalty.
19. Harboring, penalty.
20. Executor may bind infant, when.
21. Removing apprentice, prevented.
22. Further proceedings.
23. Master wishing to remove, may deliver up apprentice.
24. Indenture survives to, and against survivor, in certain cases.
25. Desertion, cause of action against apprentice.

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

SECTION 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, and signified by such parent or guardian signing the same, or by the county court, as hereinafter directed, to serve as clerk or apprentice, in any profession, trade or employment, until the age of twenty-one years, or for a

Minors may bind themselves by indenture with consent of parents. Rev. C., 1835.

Digitized by Google

CHAP. 8.

shorter time, 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.

With consent of county court.

SEC. 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, at the age of sixteen years.

Master to make affidavit.

SEC. 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.

Father incapable, mother may consent.

SEC. 4. When the father has no legal capacity to give consent, or when he shall have wilfully abandoned his family for six months, without making suitable provision for their support, or has become an habitual drunkard, the mother shall have the same power to give such consent as if the father was dead.

Incapacity, how established.

SEC. 5. Facts of incapacity, desertion or drunkenness, shall be decided in the county court, by a jury, before the indenture shall take effect, and an endorsement on the indenture, under the seal of the court, that the same are proved, 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.

Poor children may be bound by county court.

SEC. 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 when the parents of such children are poor and the father an habitual drunkard, or, if there be no father, when 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.

By guardian.

SEC. 7. Every orphan or minor who has not estate sufficient for his maintenance, may be bound by his guardian under the

Digitized by Google

order and direction of the county court, and the indenture of 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 infant so bound, be deposited with the clerk of the county court in which such binding shall take place, for safe keeping.

Covenants in indenture.

SEC. 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 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 time 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.

To be fulfilled and grievances redressed.

SEC. 9. The county court shall see that the terms of the indenture, 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 that may occur in the premises, in such manner as is prescribed by law.

Negro and mulatto, not to be educated.

SEC. 10. When an apprentice is a negro or mulatto, it shall not be the duty of the master to cause such colored 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.

Age of apprentice to be inserted, &c.

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

Indenture void as to apprentices, when.

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

Complaints of apprentices.

SEC. 13. The county court shall receive the complaints of apprentices who reside within the county, against their masters, alleging 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

Digitized by Google

CHAP. 8.

such cases by a jury, and make such order therein, as will relieve the party injured, in future.

Court may dissolve contract.

SEC. 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 such apprenticeship, the court shall make such order concerning the same, as shall seem just and reasonable; if the apprentice so discharged shall have been originally bound by the county court, it shall be the duty of the court, if they judge necessary, again to bind such apprentice.

Complaint of master.

SEC. 15. The court shall, in like manner, hear and determine the complaints of masters against their apprentices, for desertion without good cause, miscarriage or ill behaviour, and may punish such apprentice according to the nature and aggravation of his offence; and if the offence be wilful desertion, without cause, the court may, in addition to other punishments, 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 have become of full age. The awarding of costs in the proceedings under this section shall be in the discretion of the court.

Misconduct of apprentice, warrant to issue.

SEC. 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 any discreet and responsible person, to be named in the 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 this state.

Proceedings on the return of warrant.

SEC. 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,

Digitized by Google

or for want of bail, to commit him to prison until the sitting of the next court, unless the master 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 the final hearing, may order such apprentice to make retribution of such costs, by services after the expiration of the time for which he shall have been bound.

Enticing apprentices to run away, penalty.

SEC. 18. Every person who shall counsel, persuade, entice, 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.

Harboring.

SEC. 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, harbouring or concealing, to be sued for and recovered by action of debt, with costs, by such master in any court having jurisdiction thereof.

Penalty.

Executor may bind infant, when.

SEC. 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.

Removing apprentice prevented.

SEC. 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 shall appear 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 this state, and that said master will appear with the apprentice before the county court at the next term thereof, and abide the decision of the court thereon; 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

Digitized by Google

CHAP. 8.

recognizance, or may require a new recognizance, and otherwise proceed according to law and justice.

Further proceedings.

SEC. 22. If the master, when brought before the judge or justice, fails to enter into 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.

Master wishing to remove may deliver up apprentice.

SEC. 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.

Indenture survives to and against survivor in certain cases.

SEC. 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 such term of service, the indenture 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.

Desertion, cause of action against apprentice.

SEC. 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 arrives at full age.

When to be brought.

Approved February 22, 1845.

Digitized by Google

CHAPTER 9.

ARBITRATIONS AND REFERENCES.

AN ACT concerning arbitrations and references.

SEC. 1. Who may submit. What matters may be submitted.
2. Arbitrators to appoint a time and place 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. How award to be confirmed; proceedings of the court thereon.
8. Before confirmation of award, notice to be served on the adverse party.
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 and modify awards, when made, &c.
12. Court may vacate award and direct a new hearing.
13. Judgment, when and how to be rendered.
14. Obedience to award may be enforced by attachment.
15. Costs, when and how taxed and collected.
16. Arbitrators to make an order concerning costs in their award.
17. Effect and extent of the judgment.
SEC. 18. Record of judgment to be made. Its form.
19. Writ of error, or appeal on judgment, proceedings thereon.
20. Costs, how adjudged if award vacated. Payment, how enforced.
21. Proceedings of court on reversing order.
22. Proceedings in case of a reversal of the order.
23. Authority of court of equity not to be impaired by this act, in certain cases.
24. Proceedings when party revokes submission before publication of the award. Power to revoke limited.
25. Proceedings in action on the bond in case of revocation.
26. No other than damages specified to be recovered.
27. Referees appointed by order of reference, to proceed, &c.
28. To appoint a time and place of hearing; may adjourn, &c.
29. Oath of referees.
30. Authority of referees.
31. All must meet, and hear, &c. A majority may report.
32. Power of the court over referees.
33. If the report of the referees be confirmed, judgment thereon.
34. Compensation of arbitrators and referees.
35. Witnesses, &c., allowed fees before arbitrators or referees.

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

SECTION 1. All persons except infants, married women and persons of unsound mind, may, by an instrument of writing, submit to the decision of one or more arbitrators, any controversy which may be 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. (a) Who may submit; what matters may be submitted.

SEC. 2. The arbitrators thus selected, shall appoint a time and place for the hearing, and notify the parties thereof, and

(a) *Vide*, Scudder vs. Johnson; 5 Missouri Rep., 561. Mistakes of arbitrators, as to their mode of appointment, will not vitiate the award. Magoon et al. vs. Whiting, 1 Missouri Rep., 438.

Digitized by Google

CHAP. 9.

Arbitrators to appoint a time and place for hearing.

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.

Oath of arbitrators.

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

Attendance of witnesses, &c. Power of arbitrators during the hearing of the cause.

SEC. 4. The arbitrators shall have the same power to issue subpœnas 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 may be given by law to justices of the peace. (*b*)

All the arbitrators to meet, when majority may award.

SEC. 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.

Award how to be authenticated.

SEC. 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.

How award to be confirmed.

SEC. 7. Upon such submission, and the award made in pursuance thereof, being proved, the court designated in the

Proceedings of the court thereon.

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.

Before confirmation of award, notice to be served on the adverse party.

SEC. 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.

Grounds on which parties may move to vacate award.

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

(*b*) An oath administered by a justice of the peace, before arbitrators, on a parol submission not made a rule of court, is not a judicial oath, nor will its falsity constitute legal perjury. Mahon vs. Berry; 5 Missouri Rep. 21.

Digitized by Google

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 shown, or in refusing to hear any evidence pertinent or material to the controversy, or any other misbehavior 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.

When motion may be made to modify or correct award.

SEC. 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, nor affecting the merits of the decision of the matter submitted. *Third.* Where the award shall be imperfect in some matter of form, not affecting the merits of the controversy, and when, if it had been a verdict, such defect could have been amended or disregarded by the court.

Motions to vacate and modify award, when made, &c.

SEC. 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 the 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 the judge thereof, may, upon good cause shown, order a stay of proceedings upon the award, either absolutely, or upon such terms as shall appear just, until the next succeeding term of the court.

Court may vacate award and direct a new hearing.

SEC. 12. On such application, the court may vacate the award in any of the cases hereinbefore specified, and if the time within which the award shall have been required to be made, by the submission, has not expired, may, in its discretion, direct a re-hearing by the arbitrators; and, in the cases hereinbefore specified, the court may modify and correct the award, so as to effect the intent thereof, and to promote justice between the parties.

SEC. 13. Upon such award being confirmed or modified, the court shall render judgment in favor of any person to

Digitized by Google

CHAP. 9.

Judgment, when and how to be rendered.

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.

Obedience to award may be enforced by attachment.

SEC. 14. When the award shall be for the performance of any act, other than the payment of money, the same being confirmed or modified by the court, obedience thereto may be enforced in said court, by attachment, in the same manner as obedience may be enforced to any other rule of court.

Costs, when and how taxed and collected.

SEC. 15. The costs of the proceedings, after an application to the circuit court for its action upon the award, and the fees 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.

Arbitrators to make an order concerning costs in their award.

SEC. 16. 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.

Effect and extent of the judgment.

SEC. 17. 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 judgment of such court in actions.

Record of judgment to be made.
Its form.

SEC. 18. 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 therein 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.

Writ of error, or appeal on judgment, proceedings thereon.

SEC. 19. 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, amend or affirm such judgment, or any part thereof, according to justice.

Costs, how adjudged, &c.

SEC. 20. If, upon any application made pursuant to the provisions of this act, the court shall vacate any award of

Digitized by Google

arbitrators, costs shall be awarded to the prevailing party, and shall be collected as in other cases of judgment for costs.

Proceedings of court in reversing order.

SEC. 21. 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 in such application, shall be certified to the appellate court, and such court shall affirm or reverse such order, as shall be just.

Proceedings in case of a reversal of the order.

SEC. 22. 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 removed, 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.

Authority of court of equity, not to be impaired by this act, in certain cases.

SEC. 23. Nothing contained in this act, shall impair, diminish or in any way affect the authority of a court of equity over the awards of arbitrators, 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.

Proceedings when party revokes submission, before publication of the award.

SEC. 24. 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.

Power to revoke limited.

Proceedings in action on bond in case of revocation.

SEC. 25. 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.

No other than damages specified shall be recovered.

SEC. 26. 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 damage, penalty or forfeiture

Digitized by Google

contained in such submission or in any other instrument in agreement collateral thereto.

Referees appointed by order of reference to proceed, &c.

SEC. 27. The referees appointed in pursuance of any order of reference, shall proceed with diligence to hear and determine the matter in controversy.

To appoint a time and place for hearing, may adjourn, &c.

SEC. 28. 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 the hearing to any time not extending beyond the next term of the court in which the suit is pending, or when a longer time is given by the order of the court, within which to report, not extending beyond such time.

Oath of referees.

SEC. 29. 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, impartial and true report according to [the] best of their understanding.

Authority of referees.

SEC. 30. The referees shall have the same authority that is conferred by the fourth section of this act upon arbitrators.

All must meet and hear, &c. A majority may report.

SEC. 31. 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.

Power of the court over referees.

SEC. 32. 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, or other testimony; in allowing or overruling any question to any witness, or the answer thereto; and all proceedings by them, together with the testimony before them, and their reasons for allowing or disallowing any claim of either party.

If report of referees be confirmed, judgment thereon.

SEC. 33. If the report of the referees be confirmed by the court, judgment shall be rendered thereon, in the same manner and with like effect, as upon a verdict of a jury.

Compensation of arbitrators and referees.

SEC. 34. Arbitrators and referees shall each receive one dollar a day for their services.

Witnesses, &c. allowed fees before arbitrators or referees.

SEC. 35. Witnesses shall receive the same fees for attending before arbitrators and referees, that may be allowed them for attending before the circuit court in civil cases; and sheriffs, and all other officers, shall be entitled to the same fees, for services performed in relation to arbitrations and

Digitized by Google

references, that may be allowed them in their respective courts for similar services. CHAP. 10.

Approved February 19, 1845.

CHAPTER 10.

ASSIGNMENTS.

AN ACT concerning voluntary assignments.

SEC. 1. Voluntary assignments—trustee to file inventory.
2. Inventory to be sworn to.
3. Appraisers to be appointed.
4. Duty of appraisers.
5. Appraisements to be filed with the clerk.
6. Compensation of appraisers.
7. Additional inventory to be filed.
8. Assignee to give bond.
9. Condition of bond.
10. Bond to be filed with the clerk.
11. May be sued on.
12. Citation may issue to assignee.
13. Not within a year.
14. Clerk to give notice of the exhibition of accounts.
15. Expense of advertising to be paid by assignee.
16. Assignee to appoint a time and place to adjust accounts.
17. To give notice by advertisement and letter.
SEC. 18. Assignee may administer oaths.
19. Evidence to be required by assignee.
20. Decision of assignee to be final, unless, &c.
21. The assignee shall certify to circuit court.
22. Creditors precluded unless they attend.
23. Court may rule assignee to show cause why he should not be dismissed.
24. Rule returned, court may dismiss assignee.
25. Like proceedings in certain cases.
26. Court, in case of removal, may appoint another assignee.
27. Court may order books and papers to be delivered to successor.
28. Court or judge may order sale of real or personal estate, conveyed by deed of assignment.

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

SECTION 1. In all cases in which any person shall make a voluntary assignment of his lands, tenements, goods, chattels, effects and credits, or any part thereof, to any person, in trust for his creditors, or any of them, it shall be the duty of the assignee, within thirty days after the execution thereof, to file in the office of the clerk of the circuit court of the county in which the assignor, or, if there be more than one, in which any one of them shall reside, unless longer time be allowed by the judge of the court, an inventory of the estate or effects assigned. (a)

Voluntary assignments, trustee to file inventory. Sess. acts of 1840–1, sec. 1.

(a) Most of the decisions here noted, were made prior to the fifteenth February, one thousand eight hundred and forty-one, when the substance of this act was passed. A debtor may prefer one set of creditors to another, and he may convey his property in trust for the benefit of one set, to the exclusion of the rest. S. & J. Bell vs. Thompson & Thompson, 3 Missouri Rep., 61. *Vide* Sibley vs. Hood, 3 Missouri Rep., 206.

Digitized by Google

CHAP. 10.

Inventory to be sworn to. Sess. acts of 1840–1, sec. 1.

SEC. 2. The inventory shall be accompanied with an affidavit by the assignee, that the same is a full and complete inventory of all such estate and effects, as far as the same has come to his knowledge.

Appraisers to be appointed. *Ibid, sec.* 2.

SEC. 3. It shall be the duty of the circuit court, in whose office such inventory may be filed, or the judge thereof, in vacation, to appoint two or more disinterested and competent persons to appraise the estate and effects assigned.

Duty of appraisers. *Ibid, sec.* 3.

SEC. 4. The appraisers, or a majority of them, having first taken an oath or affirmation, before some person having authority to administer oaths, to discharge their duties with fidelity, shall forthwith proceed to make an appraisement of such estate and effects.

Appraisement to be filed with the clerk. *Ibid.*

SEC. 5. The appraisers shall file the appraisement and their oath of office in the office of the clerk of the court, which, or the judge whereof, appointed them, within five days after they shall have completed the same.

Compensation of appraisers.

SEC. 6. The appraisers shall each receive one dollar per day for their attendance.

Additional inventory to be filed.

SEC. 7. If, after making the first inventory, any other estate or effects, conveyed by the deed of assignment, shall come to the possession or knowledge of the assignee, his duty in relation thereto, and the duty of the court, or judge and the

A general assignment to a trustee, without a schedule of the property conveyed, or of the creditors provided for, will be good and effectual. Deaver vs. Savage, 3 Missouri Rep., 180.

A deed of assignment by a debtor to a trustee for the benefit of certain preferred creditors, the balance to be distributed *pro rata* among the remaining creditors, provided they will release the debtor from further liability, is of no avail until executed by the creditors. When an execution or attachment is levied before the deed has been executed, the former has the preference. Swearingen vs. Slicer, 5 Missouri Rep., 241.

A deed of trust executed by one of two partners to a trustee, purporting to convey all the goods and effects of the firm, for the benefit of such creditors as might become parties to the deed within sixty days, and the balance to remaining creditors, upon condition that those who became parties, should release the firm from future liability, cannot be set up against an attachment, levied on the property of the firm, *before the trustee took possession* under the deed. Hughes vs. Ellison, 5 Missouri Rep., 463. Such a deed, to be effectual under any circumstances, should be accompanied with proof that the persons recited in the deed as creditors, were *bona fide* creditors to the amount specified. *Ib.* One partner cannot make a general assignment of the partnership effects, so as to bind the other; nor will such assignment avail to place the trustee in the position of a partner. *Ib.* A deed of assignment by a debtor to a trustee, for the benefit of certain creditors on certain terms specified in the deed, does not *prima facie*, vest the legal title to the property assigned, in such trustee, for the purposes mentioned in the deed. Though good between the parties, when assented to, before it can operate to defeat an attachment or execution, it must be established in proof that the persons named in the deed are creditors to the amounts assumed. Crow & Tevis vs. Ruby, 5 Missouri Rep. 484.

A deed conveying "one bundle of orders, one bundle of fee bills, two bundles of accounts and one of receipts," is void, for uncertainty. *Ib.* The courts of this

Digitized by Google

appraisers, shall be the same as is required of them by the preceding sections of this act.

Assignee to give bond. Sess. acts of 1840–1, sec. 5.

SEC. 8. The assignee shall, as soon as the inventory and appraisement shall be filed, give bond, with at least two sufficient securities, to be approved of by the court, or the judge thereof, in double the amount of the appraised value of the estate and effects assigned.

Conditions of bond.

SEC. 9. The bond shall be taken in the name of the state of Missouri, and the conditions shall be as follows: "The condition of this obligation is such, that if the above bound ——, assignee of ——, shall in all things, discharge his duty as assignee of ——, aforesaid, and faithfully execute the trust confided to him, then the above obligation to be void, otherwise to remain in full force."

Bond to be filed with the clerk. *Ibid, sec. 6.*

SEC. 10. The bond shall be filed in the office of the clerk of the court appointing the assignee, and shall be by the clerk recorded.

May be sued on.

SEC. 11. Any person injured by a breach of the condition of the bond, may sue thereon in the name of the state to his use, and the damages shall be assessed as on bonds with collateral conditions.

state, in determining the validity of an assignment made in another state, will be governed by the laws of Missouri. Brown vs. Knox, Boggs & Knox, 6 Missouri Rep., 302.

An assignment, by a debtor, of all his property to trustees, for the benefit of such creditors as should, within a given time, execute a release, is void. *Ib.* When the schedule annexed to a deed of assignment, contains only a list of the preferred creditors, without specifying the amount of their several claims, such omission will not invalidate the deed, if it be unexceptionable in other respects. *Ib.* A deed of assignment, for the benefit of such creditors as should, within a given time, become parties thereto, and executed a release, would be of no avail until executed by the creditors, even though such deed were not void on account of the stipulation for a release. Drake vs. Rogers, *et al*, 6 Missouri Rep., 317. The validity of a deed of assignment cannot be questioned by those creditors who, voluntarily, and with full knowledge of all the circumstances, became parties to it, although it may be void as to those creditors who are not parties to the deed. Burrows vs. Alter, 7 Missouri Rep., 424. A deed of assignment, void as to creditors, is valid between the parties, and does not, from being void as to creditors, create the relation of debtor and creditor between the grantor in the assignment, and the assignee. Van Winkle & Randall vs. McKee, 7 Missouri Rep. 435.

The assent of creditors will be presumed to a deed of assignment made for their benefit, containing no stipulations or conditions prejudicial to their interests. Therefore, when such a deed was made for the benefit of certain preferred creditors, who were named as parties to the deed, but did not execute it, their assent was presumed, they not being required to execute the deed before receiving the benefit of its provisions; Duval et al vs. Raisin et al, 7 Missouri Rep., 449.

Endorsers are viewed by courts as creditors, and a deed of assignment made for their security is valid, although no payments had been made by them at the time of the execution of the deed. *Ib.* The neglect or delay of the assignee in making out a schedule of assets and liabilities, referred to in the deed as part thereof, will not render the deed inoperative. *Ib.* The validity of a deed of assignment, alleged to be fraudulent, may be tried in a court of law, upon an issue made between the attaching creditor and the assignee, summoned as garnishee; Lee et al vs. Tabor and Watson, 8 Missouri Rep., 322.

Digitized by Google

CHAP. 10.

Citation may issue to assignee.

SEC. 12. The court, in whose office the inventory is filed, may, on the application of a co-assignee, or other person interested, issue a citation to any assignee, requiring him to appear in court, and exhibit, on oath or affirmation, the accounts of the trust, within a given time to be named in the citation.

Not within a year.

SEC. 13. No citation shall be issued until after the expiration of one year from the date of the assignment.

Clerk to give notice of the exhibition of accounts. Sess. acts of 1840–1, sec. 7.

SEC. 14. The court shall by such order as the circumstances of the case require, direct the clerk to give notice of the exhibition and filing of such accounts, for such time, and in such public newspapers as it shall appoint, and that such accounts will be allowed by the court at a certain time, to be stated in such notice, unless good cause to the contrary be shown.

Expense of advertising to be paid by assignee. *Ibid*, sec. 8.

SEC. 15. The expense of advertising shall be paid by the assignee at the time of exhibiting his account, and shall be passed to his credit in such account.

Assignee to appoint a time and place to adjust accounts.

SEC. 16. The assignee shall appoint a day, which shall not be less than six months, nor more than twelve months after the date of the assignment, and a place, which shall be the county seat of the county where the inventory is filed, when and where he will proceed publicly to adjust and allow demands against the estate and effects of the assignor.

To give notice by advertisement and letter. *Ibid*, sec. 9, and acts of 1842–3, sec. 1.

SEC. 17. The assignee shall give notice of the time and place of adjusting and allowing demands against the estate of his assignor, by advertisement, published in some newspaper printed in, or nearest the county where the assignee resides, for three months, the last insertion to be at least four weeks before the appointed day, and also, whenever the residence of any of the creditors is known to him, by letter addressed to such creditors at their known or usual places of abode, at least three months before the appointed day.

Assignee may administer oaths. *Ibid*, 1840–1, sec. 10.

SEC. 18. The assignee shall have power to administer all necessary oaths to debtors, creditors and witnesses, and may examine them, on oath, touching any claim exhibited to him for allowance.

Evidence to be required by assignee. *Ibid*, 1842–3, sec. 1.

SEC. 19. The assignee shall require such evidence, and no other, of the justice of such demands, as is required to establish demands of a similar character, in the circuit court, in suits between the original parties to the contract.

Digitized by Google

Decision of assignee to be final, unless, &c. Sess. acts, '40-'1, sec. 10.

SEC. 20. The decision of the assignee in relation to such claims shall be final, unless a creditor, or some other person interested, shall, before a decision is made on any particular claim, request the same to be referred to a jury.

The assignee shall certify to circuit court. *Ibid. sec.* 11.

SEC. 21. The assignee shall certify all such cases to the circuit court of the county, which shall order the same to be tried on an issue formed for that purpose.

Creditors precluded unless they attend. *Ibid, sec.* 12.

SEC. 22. All creditors who, after being notified, shall not attend at the time and place of adjusting and allowing demands against such estate, and lay before the assignee the nature and amount of their demands, shall be precluded from any benefit of such estate.

Court may rule assignee to show cause why he should not be dismissed. *Ibid, sec.* 13.

SEC. 23. Whenever it shall be made to appear, to the court having jurisdiction, that any assignee has neglected or refused, when required by law, to file a full and true inventory, or to give bond, the court shall issue a citation to such assignee to appear in court, at a time therein specified, to show cause why he should not be dismissed from his trust.

Rule returned, court may dismiss assignee. *Ibid, sec.* 14.

SEC. 24. On the return of the citation, the court may require the assignee to file an inventory, and to give bond with good and sufficient security, in such time as it may deem reasonable, or may proceed at once to dismiss such assignee from his trust.

Like proceedings in certain cases. *Ibid, sec.* 15.

SEC. 25. The like proceedings, as are prescribed in the two last preceding sections, may be had whenever it shall appear to the court, that any person who shall have become security for any assignee, in any bond given for the due execution of his trust, has, or is likely to become insolvent, or has removed, or is about to remove from the state.

Court in case of removal may appoint another assignee. *Ibid, sec.* 17.

SEC. 26. The court having jurisdiction, shall have power to appoint an assignee, in all cases of dismissal of any assignee from his trust, and like bond and security shall be required and given by the assignee so appointed, as are required and given by an assignee appointed by an assignor.

Court may order books and papers to be delivered to successor.

SEC. 27. When any assignee shall be dismissed from his trust, the court shall order all the books, papers, effects, moneys, and evidences of debt, to be forthwith delivered to his successor in the trust, or to such other persons as the court shall appoint to receive the same for the time being.

Court or judge may order sale, &c.

SEC. 28. The circuit court, or judge thereof, in vacation, shall make an order for the sale of all the real or personal estate, conveyed by any deed of assignment, either for cash

Digitized by Google

CHAP. 11. in hand, or upon such reasonable credits as shall appear to such court, or judge, to be for the interest of all interested, and shall, by order, direct the nature of the security to be taken at sales made by assignees, under this act.

Approved March 26th, 1845.

CHAPTER 11.

ATTACHMENT.

AN ACT to provide for the recovery of debts by attachment.*

ARTICLE I. Of attachment in the circuit court.
II. Of attachment before justices of the peace.

ARTICLE I.

Of attachment in the circuit court.

SEC. 1. In what cases creditors may sue by attachment.
2. Proceedings to obtain attachment. Declaration, affidavit and bond to be filed.
3. Who shall make affidavit. Its form.
4. Who shall execute the bond. Its conditions.
5. Duty of clerk in taking bond. Bond, declaration and affidavit, to be filed before the attachment issues.
6. Court may order another bond and further security to be given in certain cases.
7. Failure to comply, suit to be dismissed.
8. Who may bring suit on bond. Judgment.
9. Form of original writs of attachment.
10. Several defendants, separate writs may issue.
11. Writs, how issued and returned. Proceedings. Judgment.
12. Writs, how to be served.
13. Who may be summoned as garnishees.
14. Defendant not summoned and property attached, publication to be made. Form of notice.
15. How and where notice shall be published.
SEC. 16. If defendant fail to appear, judgment by default, &c.
17. Judgment and execution to be only against the property attached.
18. Property or effects of one defendant attached, &c., how plaintiff may proceed.
19. Property of one defendant seized, &c., when cause shall not be delayed.
20. Property attached in the hands of a person other than defendant, may be retained; bond, &c., to be given.
21. Return of the writ and proceedings, how made.
22. Execution returned, no property found, proceedings. Assignment of bonds. Motion. Judgment. Damages.
23. Notice of motion to be given before judgment.
24. Liability of the officer on failing to return good and sufficient bond.
25. In what cases defendant may file plea in abatement.
26. Upon such issue the plaintiff shall prove the facts alleged.
27. Plaintiff may exhibit allegations and interrogatories against garnishees.

* See the acts of 1835, and 1836–7, p. 8; 1838–9, p. 6, 7, 8, and 1840–1, p. 15.

Digitized by Google

SEC. 28. Interrogatories, &c., when to be filed.
29. When garnishee shall file answer. Failing to answer, judgment by default, &c.
30. Judgment by default, how rendered final; extent and effect of against garnishee.
31. Answer of garnishee excepted to, adjudged insufficient, proceedings thereon.
32. Answer of garnishee may be denied in whole or in part.
33. If effects found in the hands of garnishee, judgment.
34. Answer of garnishee not excepted to or denied, taken as sufficient.
35. When judgment may be rendered on answer of garnishee; allowance to garnishee.
36. Costs, how settled between plaintiff and garnishee.
37. Garnishee may discharge himself by delivering property of defendant, found in his hands, to sheriff.
38 Debts not yet due defendant may be attached.
39. When and how persons may interplead; proceedings thereon.
40. In cases of interpleader, how costs may be adjudged.
41. Proceedings to obtain attachment in aid of ordinary process.
42. Other writs of attachment may be awarded, when.
43. Such writs to be entitled in the cause, and in aid thereof.
44. Form of writ.
45. How to be served and returned. Proceedings.
46. Defendant not served, may appear and plead to the merits, when.
SEC. 47. In what cases an attachment may be dissolved before final judgment.
48. Perishable property may be sold, when.
49. Proceeds to remain with the officer, how to be disposed of.
50. Order of sale, proceedings of the clerk and officer thereon.
51. Three years time, after judgment, allowed defendant to appear and disprove, or avoid debt, &c.
52. Proceedings in order to disprove, or avoid debt or damages. Petition. Notice.
53. If petition deny the cause of action, plaintiff required to prove it, &c.
54. Further proceedings on petition.
55. Plaintiff served with petition and notice, required to answer; failure taken as a confession.
56. If petition alleges a set-off, &c., plaintiff to plead or answer; in default thereof, judgment to be rendered.
57. Issues on petitions, how tried.
58. Costs, judgment for on petitions.
59. Executions on judgments in attachment, how awarded.
60. Compensation to officer for keeping property attached.
61. Power of court to prescribe rules of proceeding in attachment causes.
62. What property of defendants, residing in this state, is exempt from attachment.
63. In what cases demands for less than fifty dollars may be collected by attachment in the circuit court.
64. Circuit courts, and justices of the peace, to have concurrent jurisdiction over demands exceeding five, and not exceeding fifty dollars.

CHAP. 11.

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

SECTION 1. Creditors, whose demands amount to fifty dollars, may sue their debtors in the circuit court, by attachment, in the following cases: (*a*) *First.* Where the debtor is not a resident of, nor resides within this state. (*b*) *Second.* Where the debtor conceals himself, so that the ordinary process of law cannot be served upon him. *Third.* Where the

In what cases creditors may sue by attachment.

Sess. acts of 1838–9, sec. 1.

(*a*) A non-resident may have an attachment in this state, against a non-resident. Posey vs. Buckner, 3 Missouri Rep., 605. Grahams vs. Bradbury, *et al.*, 7. *Ib.* 281.

(*b*) An affidavit, that the defendant is not a resident of this state, so that the process of the court cannot be served upon him, is insufficient. Lane vs. Fellows, 1 Missouri Rep. 355.

Digitized by Google

CHAP. 11.

debtor has absconded or absented himself from his usual place of abode in this state, so that the ordinary process of law cannot be served upon him. *Fourth.* Where the debtor is about to remove his property or effects out of this state, with the intent to defraud, hinder or delay his creditors. *Fifth.* Where the debtor has fraudulently conveyed or assigned his property or effects, so as to hinder or delay his creditors. *Sixth.* Where the debtor has fraudulently concealed or disposed of his property or effects, so as to hinder or delay his creditors. *Seventh.* Where the debtor is about, fraudulently, to convey or assign his property or effects, so as to hinder or delay his creditors. *Eighth.* Where the debtor is about, fraudulently, to conceal or dispose of his property or effects, so as to hinder or delay his creditors. *Ninth.* Where the debt was contracted out of this state, and the debtor has absconded or secretly removed his property or effects into this state, with the intent to defraud, hinder or delay his creditors. An affidavit, alleging any one of the nine causes, as set forth in the several sub-divisions of this section, in the language of such sub-divisions, shall be held and adjudged good and sufficient.

Proceedings to obtain attachment. Declaration, affidavit and bond to be filed.

SEC. 2. A creditor, wishing to sue his debtor, by attachment, may file in the clerk's office of the circuit court of any county in this state, a declaration or other lawful statement of his cause of action, (*c*) and also shall file an affidavit and bond: and thereupon, such creditor may sue out an original attachment, against the lands, tenements, goods, moneys, effects and credits of the debtor, in whosesoever hands they may be.

Who shall make affidavit. Its form.

SEC. 3. The affidavit shall be made by the plaintiff, or some person for him, and shall state that the defendant is justly indebted to the plaintiff, after allowing all just credits and offsets, in a sum, (to be specified) and on what account, and shall also state that the affiant has good reason to believe, and does delieve the existence of one or more of the causes which, according to the provisions of the first section, would entitle the plaintiff to sue by attachment. (*d*)

(*c*) A petition, in debt, is a lawful statement of the cause of action. Chenault vs. Chapron & Niedelet, 5 Missouri Rep., 438.

(*d*) An affidavit before a judicial officer of another state, authorized by the common law, and practice of the courts to administer oaths, is good in this state, for the purpose of granting an attachment. Hays vs. Bouthalier, 1 Missouri Rep., 346. Posey vs. Buckner, 3 Missouri Rep., 605. A judgment rendered in a suit by attachment, on an affidavit not warranted by the statute, will be set aside, even after a lapse of several years. Alexander vs. Hayden, 2 Missouri Rep., 229. See

Digitized by Google

Who shall execute the bond, Sess. acts of 1838–9, secs. 3 & 17.

SEC. 4. The bond shall be executed by the plaintiff, or some responsible person, as principal, and one or more securities, resident householders of the county in which the action is to be brought, in a sum at least double the amount of the demand sworn to, payable to the state of Missouri, conditioned that the plaintiff shall prosecute his action without delay, and with effect, refund all sums of money that may be adjudged to be refunded to the defendant, or found to have been received by the plaintiff, and not justly due to him, and pay all damages that may accrue to any defendant or garnishee, by reason of the attachment, or any process or proceeding in the suit, or by reason of any judgment or process thereon.

Its conditions.

Duty of clerk in taking bond. *Ibid, sec.* 5.

SEC. 5. The clerk shall judge of the sufficiency of the penalty and the security in the bond; if they be approved, he shall endorse his approval thereon, and the same, together with the affidavit and declaration, or other lawful statement of the cause of action, shall be filed before an attachment shall be issued. (e)

Bond, &c. to be filed before attachment issues.

Court may order another bond and further security to be given in certain cases. *Ibid, sec.* 13.

SEC. 6. If, at any time pending a suit by attachment, it shall appear to the court before which the action is pending, that the bond given by the plaintiff is insufficient, or that any security therein, has died, or has removed from the state, or has become, or is likely to become insolvent, the court may order another bond, and such further security to be given, as shall seem necessary, five days previous notice, in writing, having been given to the plaintiff, his agent or attorney, of the application for such order.

Failure to comply, suit to be dismissed. *Ibid, sec.* 14.

SEC. 7. If the plaintiff shall fail to comply with the order, within ten days after the same shall be made, the suit shall be dismissed at his costs.

Who may bring suit on bond. Judgment.

SEC. 8. The bond to be given by the plaintiff, or other person, in a suit by attachment, 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 breach of the condition of such bond, and the damages shall be assessed thereon as on bonds with collateral conditions.

Lane vs. Fellows, 1 Missouri Rep. 355. The affidavit must state that the affiant "has good reason to believe, and does believe," the existence of the facts alleged. (Stevenson) and Hord vs. Robbins, 5 Missouri Rep., 19. See Curtis vs. Settle, 7 Missouri Rep., 452.

(e) When an attachment has been sued out in vacation, without filing a bond, as the law requires, the plaintiff will not be allowed, either in vacation, or at the ensuing term of the court, to file a bond, *nunc pro tunc*. Stevenson & Hord vs. Robbins, 5 Missouri Rep., 19.

Digitized by Google

CHAP. 11.

Form of original writs of attachment. Rev. C. of 1835, sec. 3.

SEC. 9. 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 effect of an ordinary summons, to answer the action of the plaintiff. (*f*)

Several defendants, separate writs may issue. *Ibid, sec.* 4.

SEC. 10. 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 issue to every such county, and every such writ shall be endorsed upon, or annexed to, a copy of the declaration.

Writs, how issued and returned.

Proceedings.

Judgment.

SEC. 11. 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 contract, and a general judgment may be rendered for, or against the defendant. (*ff*)

Writs, how to be served.

SEC. 12. 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, declaring to them that he does summon them to appear at the return term 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 shall be sufficient to satisfy the debt, interest and costs, and shall, moreover, give notice to the actual tenants, if any, at least ten days before the return day of the writ, and state the fact of such notice, and

(*f*) In Bland vs. Schott, 5 Missouri Rep., 213, the writ commanded the sheriff to attach the defendant by his lands, &c., that he be and appear at the circuit court, &c., without any clause of summons. Nor did the sheriff say any thing in his return, of his having summoned the defendant. On the hearing, the attachment, for certain reasons, was dissolved. The court held, that there having been no clause of summons; the court did not err in dismissing the suit.

(*ff*) A motion to dissolve an attachment, is such an appearance as will authorize a general judgment, although the party has not been served with process. Whiting & Williams vs. Budd, 5 Missouri Rep., 443. Evans vs. King, 7 Missouri Rep., 411. After such constructive appearance, defendants should be allowed six days to file their pleas in, or until the end of the term, and it is error for the court to give judgment by default, against them, on the same day of their motion, unless the court should be about to adjourn on the same day. Whiting & Williams vs. Budd, supra.

Digitized by Google

the names of the tenants in his returns. (g) *Fourth.* When goods and chattels, money or evidences of debt, are to be attached, the officer shall [take] 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. (h) *Fifth.* 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, interest and costs, and summon such debtor as garnishee. (i)

Who may be summoned as garnishees. Rev. C. of 1835, sec. 7.

SEC. 13. All persons shall be summoned as garnishees who are named as such in the writ, and such others as the officer shall find in the 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.

Defendant not summoned and property attached, publication to be made. *Ibid, sec.* 8.

SEC. 14. When the defendant cannot be summoned, and his property or effects shall be attached, if he does not appear and answer the action at the return term of the writ, and within the first six days thereof, if the term shall so long continue, and if not, then before the end of the term, 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 be and appear at the next term, and on or before the third

Form of notice.

(g) A description precise as to quantity, and as particular as to location and boundary as deeds generally are, is sufficient in a sheriff's return of property, upon which he has levied an attachment. Hays vs. Bouthaleir, 1 Missouri Rep., 346.

(h) In the case of Anderson vs. Scott, 2 Missouri Rep., 15, the court held, that, a levy of an attachment on property generally, without saying whose property, was not good and a garnishee summoned, without any further levy was not bound to appear. And in Maulsby vs. Farr, (3 Missouri Rep., 438,) it was held, that, a return to an attachment, not stating on whose property in the hands of the garnishee the writ was levied, is too defective to warrant a judgment, by default, against the garnishee. These decisions were made in reference to the act of the sixth of February, one thousand eight hundred and twenty-five, (R. C., 144,) which did not contain the provisions embraced in the second sub-division of the twelfth section of this act. But that act *did* contain the substance of the fourth sub-division of the twelfth section of this act, and to which this note is appended, and it is submitted that, when the officer is proceeding under the fourth sub-division above mentioned, that his duty is precisely the same as under the act of one thousand eight hundred and twenty-five, and as if the second sub-division had no existence.

(i) The interest of a joint obligee may be attached for his individual debt, in the hands of the obligor, but no more than his share can be so attached. Miller & Irvine vs. Wilson, 1 Missouri Rep., 310. A promissory note made payable to order, is [illegible] property as can be attached. Scott & Rule vs. Hill, *et al*, 3 Missouri Rep., 83. [illegible], *et al*, vs. Tabor & Watson, 8 Missouri Rep., 322.

Digitized by Google

day thereof, if the term shall so long continue, and if not, then before the end of the term, judgment will be rendered against him, and his property sold to satisfy the same.

How and where notice shall be published.

SEC. 15. The notice required in the last section, shall be published four weeks successively, in some newspaper printed in this state, the last insertion [to] be not less than four weeks before the first day of the next term, the necessary expense of which shall be taxed as other costs.

If defendant fail to appear, judgment by default, &c. Rev. C. of 1835, sec. 10.

SEC. 16. 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.

Judgment and execution to be *in rem* only. *Ibid, sec.* 11.

SEC. 17. 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.

Property or effects of one defendant attached, &c. how plaintiff may proceed. *Ibid, sec.* 12.

SEC. 18. When two or more shall be defendants in any attachment cause, and the property or effects of part of them shall be attached in the hands of garnishees, but not actually seized or 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.

Property of one defendant seized, &c. when cause shall not be delayed. *Ibid, sec.* 13.

SEC. 19. But when the property or effects 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 shown, the court shall so order.

Property attached in the hands of a person other than defendant, may be retained by giving bond. *Ibid, sec.* 14, and acts of 1836–7, sec. 2.

SEC. 20. When property of the defendant, found in his possession, or in the hands of any other person, shall be attached, the defendant, or such other person, may retain the possession thereof, by giving bond and security, to the satisfaction of the officer executing the writ, to the sheriff, his successor, or their 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. (*j*)

(*j*) When property of the defendant, attached in the hands of a third person, is retained, by giving bond and security for the forthcoming of the property, the attachment continues to be a lien on the property. Evans vs. King, 7 Missouri Rep., 411. *Vide*, Grant & Finney vs. Brotherton's administrator, 7 Missouri Rep., 458.

Digitized by Google

Return of the writ and proceedings, how made. Rev. C. of 1835, sec. 17.

SEC. 21. The officer executing the 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, and the times and places when and where respectively summoned.

Execution returned, no property found, proceedings. Assignment of bonds, Sess. acts of 1840–1, sec. 1. Motion. Judgment. Damages.

SEC. 22. When a return of no property found shall be made upon an execution, issued upon a judgment in an attachment suit against the defendant, the court shall direct the sheriff to assign to the plaintiff, his executor or administrator, the bonds taken by him for the forthcoming of the property attached, and may, upon motion, render judgment in favor of the plaintiff, against the obligor in the bond, for the value of such property; or, if the property should be greater in value than the amount due upon such execution, then for the amount due, together with twenty per cent. damages upon such value or amount.

Notice of motion to be given before judgment. *Ibid, sec.* 2.

SEC. 23. No judgment shall be rendered upon such motion, unless the plaintiff shall have given the obligors in the bond at least fifteen days notice, in writing, of such motion.

Liability of the officer on failing to return good and sufficient bond. Rev. C. of 1835, sec. 18.

SEC. 24. If the officer fail to return a good and sufficient bond, in any case where bond is required by this act, 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 money, 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.

In what cases defendant may file plea in abatement. Sess. acts of '38–9, sec. 11.

SEC. 25. In all cases where property or effects shall be attached, the defendant may file a plea, in the nature of a plea in abatement, without oath, putting in issue the truth of the facts alleged in the affidavit, on which the attachment was sued out. (*k*)

SEC. 26. Upon such issue, the plaintiff shall be held to

(*k*) A plea, in the nature of a plea in abatement, in proceedings by attachment, puts in issue, not the belief of the creditor in the existence of the facts sworn to, but the existence of the facts themselves. Chenault vs. Chapron & Niedelet, 5 Missouri Rep., 438. It is not necessary to put in issue the goodness of the plaintiff's reasons for his belief. Dider, *et al.* vs. Courtney, 7 Missouri Rep., 500. Scott J. dissenting. A plea, in the nature of a plea in abatement, only denies the facts alleged in the plaintiff's affidavit, and, therefore, a misnomer cannot be taken

Digitized by Google

Upon such issue the plaintiff shall prove the facts alleged. *Ibid*, sec. 12.

prove the existence of the facts alleged by him, as the ground of the attachment, and if the issue be found for him, the cause shall proceed, but if it be found for the defendant, the suit shall be dismissed at the costs of the plaintiff, and he, and his securities, shall be liable, on their bond, for all damages occasioned by the attachment, or other proceedings in the cause. (*ll*)

Plaintiff may exhibit allegations and interrogatories against garnishees. Rev. C. of 1835, sec. 19.

SEC. 27. The plaintiff may exhibit, in the cause, written allegations and interrogatories touching the property, effects and credits, attached in the hands of any garnishee, and require such garnishee to make full, direct and true answers to the same, upon oath.

Interrogatories, &c. when to be filed. *Ibid, sec.* 20.

SEC. 28. The allegations and interrogatories shall be filed at the return term of the writ, and within the first three days thereof, if the term shall so long continue; and if not, then before the end of the term, and not afterwards, unless, for good cause shown, the court shall order otherwise.

When garnishee shall file answer. Failing to answer, judgment by default.

New section.

SEC. 29. Upon the filing the interrogatories and allegations aforesaid, the garnishee shall exhibit and file his answer thereto, on oath, during such term, unless, for good cause shown, the court shall order otherwise: in default of such answer, the plaintiff may take judgment, by default, against him, or the court may, upon motion, compel him to answer, by attachment of his body.

Judgments by default, how rendered final. Extent and effect of, against garnishee. Rev. C. of 1835, sec. 23.

SEC. 30. 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 amount sworn to by the plaintiff, with interest and costs, or for a greater amount than the garnishee shall appear to be liable for the defendant.

Answer of garnishee excepted to, adjudged insufficient, proceedings thereon. *Ibid.*

SEC. 31. 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

advantage of under that plea, but must be specially pleaded. Swan, *et al.* vs. O'Fallon, *et al.*, 7 Missouri Rep., 231. An attachment ought not to be dissolved on motion of the plaintiff, and against the consent of the defendant, after plea in the nature of a plea in abatement filed. Mense vs. Osborn, 5 Msssouri Rep., 544.

(*ll*) See Fugate vs. Glasscock, 7 Missouri Rep., 577.

Digitized by Google

to attach the body of the garnishee, to compel a sufficient answer. (*l*)

How answer of garnishee may be denied. Rev. C. of 1835, sec. 26.

SEC. 32. The plaintiff may deny the answer of the garnishee, in whole or in part, and the issues shall be tried as ordinary issues between plaintiff and defendant. (3)

If effects found in the hands of garnishee, judgment.

SEC. 33. 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 judgment shall be for the proper amount in money.

Proceedings on answer of garnishee. *Ibid*, sec. 26.

SEC. 34. If the answer of the garnishee be not excepted to, or denied in proper time, it shall be taken to be true and sufficient.

When judgment may be rendered on answer of garnishee. *Ibid*, sec. 27.

SEC. 35. 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.

Allowance of garnishee.

Costs, how settled. *Ibid*, sec. 28.

SEC. 36. In all cases of controversy between the plaintiff and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

When garnishee may discharge himself. *Ibid*, sec. 29.

SEC. 37. Whenever any property, effects, money or debts, belonging or owing to the defendant, shall be confessed, or found by the court or jury, to be in the hands of the garnishee, he may, at any time before final judgment, discharge himself by delivering the same to the sheriff.

Debts not yet due defendant may be attached. *Ibid*, sec. 30.

SEC. 38. 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.

When and how persons may interplead proceedings thereon. *Ibid*, sec. 32.

SEC. 39. 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.

(*l*) See Brotherton, administrator vs. Anderson, 6 Missouri Rep., 388.

(3) If the answer of a garnishee is not denied in a proper manner, the garnishee should move to dismiss the proceedings against him, and not demur to the denial. Tuttle vs. Gordon, 8 Missouri Rep., 152.

Digitized by Google

CHAP. 11.

Costs in cases of interpleader. Rev. C. of 1835, sec 23.

SEC. 40. In all cases of interpleader, costs may be adjudged for or against either party, as in ordinary actions.

Proceedings to obtain attachment in aid of ordinary process.

SEC. 41. Any plaintiff in an action of debt, covenant or assumpsit, which shall have been commenced by summons, and without original attachment, may, at any time pending the suit, and before final judgment, sue out an attachment in such action on filing an affidavit and bond, as required in cases of original attachment.

Other writs of attachment may be awarded, when. *Ibid*, sec. 35, and sess. acts of 1838–9, sec. 7, 8, 9.

SEC. 42. If, at any time after the return of an attachment, it shall appear to the satisfaction of the court, that the property, effects and credits attached, will not be sufficient to satisfy the demand sworn to, the court may award other writs of attachment, until sufficient property, effects or credits, shall be attached to satisfy the demand.

Such writs to be entitled in the cause, &c. *Ibid.*

SEC. 43. Every writ of attachment sued out by virtue of either of the two last sections, shall be entitled in the cause pending, and be in aid thereof.

Form of writ. *Ibid.*

SEC. 44. The form of the writ, shall, as well as may be, conform to that of original attachments, (reciting briefly the circumstances,) except that the clause of summons as to all defendants previously summoned, shall be omitted.

How to be served and returned. Proceedings. *Ibid.*

SEC. 45. Such writs of attachment 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.

Defendant not served, may appear and plead to the merits, when. 1835, sec. 36.

SEC. 46. 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.

In what cases an attachment may be dissolved before final judgment. *Ibid*, sec. 37.

SEC. 47. Attachments may be dissolved on motion made in behalf of the defendant, at any time before final judgment, in the following cases: (*m*) *First.* When the affidavits on which the same were founded, shall be adjudged by the court insufficient. (*n*) But no attachment shall be dissolved in

(*m*) It is error in the circuit court to dissolve an attachment on motion of the plaintiff, and against the consent of the defendant, after a plea in the nature of a plea in abatement filed, and to proceed to try the cause on the plea in bar. Mense vs. Osborn, 5 Missouri Rep., 544. A writ of error does not lie to reverse an order of the circuit court, dissolving an attachment. Per Pettibone J., in Lane vs. Fellows, 1 Missouri Rep., 355. *Vide* Whiting & Williams vs. Budd, 5 Missouri Rep., 413, and Evans vs. King, 7 Missouri Rep., 411, as to the consequence of an appearance and motion to dissolve.

(*n*) The reporter's head note to the case of Graham vs. Bradbury, 7 Missouri Rep., 281, is calculated to mislead. The note reads thus: "An attachment *cannot* be dissolved on the ground that the facts do not authorize the issuing of an attach-

Digitized by Google

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. (o) *Second.* When 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. *Third.* When 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 interest and costs of suit, conditioned that the defendant shall 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 next term after that at which judgment shall be rendered.

Perishable property may be sold, when. Rev. C. of 1835, sec. 40.

SEC. 48. 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 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 *fieri facias*.

Proceeds to remain with the officer. *Ibid.* sec. 41.

SEC. 49. 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.

Order of sale, proceedings of the clerk and officer thereon. *Ibid*, sec. 42.

SEC. 50. 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,

ment." The language of Scott J., in delivering the opinion of the court, is: "An attachment *may* be quashed when it is issued on such a state of facts as does not authorize the issuing of the writ. It is not pretended that the affidavit in this case is not sufficient to support the attachment. If the truth of the facts on which it is issued is controverted, it must be put in issue by a plea in the nature of a plea in abatement."

(o) Although a plaintiff may file a good and sufficient affidavit, after the affidavit upon which the writ issued has been adjudged insufficient, he cannot be permitted, after sueing out a writ of attachment in vacation without filing a bond as the law requires, to file a bond *nunc pro tunc*, either in vacation or at the ensuing term. Stevenson & Hord vs. Robbins, 5 Missouri Rep., 19.

Digitized by Google

CHAP. 11.

showing how he has executed the same, and what funds remain in his hands.

Three years time after judgment, allowed defendant to appear, &c. Rev. C. of 1835, sec. 43, and sess. acts of 1838–9, sec. 16.

SEC. 51. 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, he shall be allowed three years, and no longer, from the date of the judgment, to appear and disprove or avoid the debt or damages adjudged against him, or any part thereof.

Proceedings to disprove and avoid debt. Petition. 1835, sec. 44.

SEC. 52. 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, setting forth the grounds on which he resists 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.

Notice.

If petition deny the cause of action, plaintiff required to prove it, &c. *Ibid*, sec. 45.

SEC. 53. 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.

Further proceedings on petition. *Ibid*, sec. 46.

SEC. 54. If the petition denying the 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.

Plaintiff served with petition and notice, required to answer. *Ibid*, sec. 47. Effect of failure.

SEC. 55. 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.

If petition alleges set-off, &c. proceedings. *Ibid*, sec. 48.

SEC. 56. 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.

Issues on petitions, how tried.

SEC. 57. All issues joined by or under such petitions, shall be tried as like issues joined in ordinary actions on contracts.

Digitized by Google

Costs, judgment for on petitions. Rev. C. of '35, sec. 50.

SEC. 58. 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.

Executions on judgments in attachment, how awarded. *Ibid, sec.* 51.

SEC. 59. Executions may be awarded and issued 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 *fieri 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 *fieri 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, (*p*) and shall not be for more than the amount sworn to in the affidavit for the attachment, with interest and costs thereon. *Third.* Where the judgment is against a garnishee, the execution shall be such as may be allowed and used in the same court, on general judgments, in common actions on contracts.

Compensation to officer for keeping property attached. *Ibid, sec.* 52.

SEC. 60. 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.

Power of court to prescribe rules of proceeding. *Ibid, sec.* 34.

SEC. 61. 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, where the time and manner of doing the same are not prescribed in this article.

What property exempt from attachment. Sess. acts of '38–9, sec. 10.

SEC. 62. No property or effects, exempt by law from execution, shall be attached or seized, in any suit against a defendant who is a resident of, or residing in this state.

In what cases demands for

SEC. 63. If any creditor, having a demand exceeding five dollars, and not exceeding fifty dollars, shall, in addition to the

(*p*) When property of the defendant attached in the hands of a third person, is retained, by giving bond and security for the forthcoming of the property, the attachment continues to be a lien on the property. Evans vs. King, 7 Missouri Rep., 411. In the case of Sweringen vs. administrator of Eberius, 7 Missouri Rep., 421. Tompkins, J., held (Scott, J., expressly declining to give an opinion as to the point,) that the lien of an attachment is lost by the death of the debtor.

Digitized by Google

CHAP. 11.

less than $50, may be collected by attachment in the circuit court. 1838–9, sec. 3, p. 8.

affidavit required by this act in order to sue by attachment, file an affidavit, stating that the defendant has not, within this state, any goods, chattels or effects, liable to attachment issued by a justice of the peace, such creditor may sue in the circuit court.

Circuit courts and justices of the peace to have concurrent jurisdiction over demands exceeding $50 and not exceeding $150. *Ibid, sec.* 4.

SEC. 64. The circuit court, and justices of the peace, shall have concurrent jurisdiction in attachment causes, where the demand sworn to is not less than fifty dollars, nor more than one hundred and fifty dollars, and shall be evidenced by a bond or note for the direct payment of money, and where the demand sworn to shall not be less than fifty nor more than ninety dollars, and shall be founded upon a contract other than a bond or note.

ARTICLE II.

Of attachment before justices of the peace.

SEC. 1. In what cases creditor may sue by attachment,
2. Proceedings to procure writ. Instrument sued on, affidavit and bond to be filed.
3. How affidavit and bond shall be made and executed
4. Justice to approve and endorse his approval on bond, &c.
5. Form of the writ of attachment.
6. How issued and returned.
7. When defendant is summoned, proceedings as in ordinary actions.
8. Manner of serving writs.
9. Property attached in the hands of any person, other than defendant, may be retained by giving bond. Condition of bond.
10. Officer to return all bonds taken, and schedule of property.
11. Return of no property on execution, constable to assign bond to plaintiff. Judgment to be rendered on motion.
12. Notice of such motion to be given, when and how.
13. Assignee may sue in his own name on bond, when and how.
14. If the officer fail to return a sufficient bond, he may be ruled to give bond by the justice, when. Failing to give such bond, deemed security. Extent of liability.
15. When defendant may file plea in abatement.
16. On such issues, plaintiff to prove the facts alleged.
SEC. 17. Defendant not summoned or appearing, justice to order notice to be given. How published.
18. When notice to be given. How proved.
19. Judgment by default, when entered.
20. Such judgment and execution thereon, to bind only the property attached.
21. Perishable property may be sold, when. Proceedings thereon.
22. Interrogatories to be propounded to garnishee.
23. Garnishee may answer before return of attachment, when.
24. How garnishee's answer to be filed, or taken by justice.
25. Garnishee failing to appear or answer, judgment by default may be taken against him. Proceedings thereon.
26. When final judgment shall be rendered against garnishee.
27. When plaintiff may deny answer of garnishee.
28. Justice to reduce denial to writing.
29. Issues between plaintiff and garnishee, how tried.
30. If property found in hand of garnishee, judgment.
31. If answer of garnishee not denied, it shall be taken as confessed.
32. Answer not denied, and garnishee possessed of property, proceedings.
33. When garnishee may discharge himself, by surrender, &c.

Digitized by Google

Sec. 34. When persons claiming property may interplead. How issues shall be tried.
35. Justice to notice substance of interpleader.
36. Issues on interplea must be determined before judgment against garnishee.
37. Costs, how adjudged in case of interpleader.
38. Attachments, how and for what causes dissolved.
39. Proceedings when attachment is dissolved.
40. Defendant, on publication of notice, not appearing, one year allowed him to appear and disprove, or avoid judgment.
41. Proceedings to disprove or avoid, to be by petition. Notice to be given to plaintiff.
Sec. 42. Proceedings on petition.
43. Further proceedings on petition.
44. Executions, how to be issued.
45. Compensation to officer for keeping property attached.
46. Property exempt from execution, not to be attached.
47. On return of no property found, transcript to be certified to circuit court.
48. If there be a sufficient bond and affidavit certified, clerk to issue writ as in case of original attachment.
49. If bond and affidavit not sufficient, clerk not to issue till sufficient bond and affidavit be filed.
50. Suit founded on bond, bill or note, and plaintiff withdraws it, justice to endorse thereon the amount paid.

SECTION 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 creditors, whose demands, due upon contracts other than bonds and notes, amount to not more than ninety dollars, may sue their debtors, by attachment, in the following cases: (*a*) *First.* Where the debtor is not a resident of, nor residing within this state. (*b*) *Second.* Where the debtor conceals himself, so that the ordinary process of law cannot be served upon him. *Third.* Where the debtor has absconded, or absented himself from his usual place of abode in this state, so that the ordinary process of law cannot be served upon him. *Fourth.* Where the debtor is about to remove his property or effects out of this state, with intent to defraud, hinder or delay his creditors. *Fifth.* Where the debtor has fraudulently conveyed or assigned his property or effects, so as to hinder or delay his creditors. *Sixth.* Where the debtor has fraudulently concealed or disposed of his property, so as to hinder or delay his creditors. *Seventh.* Where the debtor is about, fraudulently, to convey or assign his property or effects, so as to hinder or delay his creditors. (*bb*) *Eighth.* Where the debtor is about, fraudulently, to conceal or dispose of his property or effects, so as to hinder or delay his creditors. *Ninth.* Where the debt was contracted out of this state, and the debtor has absconded or secretly removed his property or effects

In what cases creditors may sue by attachment. Rev. C. of '35, sec. 1 and sess. acts of '38-9, sec. 1.

(*a*) *Vide*, note (*a*) to first article.
(*b*) *Vide*, note (*b*) to first article.
(*bb*) *Vide*, note (*bb*) to first article.

Digitized by Google

CHAP. 11.

to this state, with intent to defraud, hinder or delay his creditors.

Proceedings to procure writ. Rev. C. of '35, sec. 2.

SEC. 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 ordinary 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 bill of the items of the account, or some plain and intelligible statement of the cause of action, together with an affidavit and bond: and thereupon, the justice shall issue a writ of attachment against the personal property and effects of the defendant.

Instrument sued on, affidavit and bond to be filed.

How affidavit and bond made and executed. Sess. acts of '38–'9, sec. 2 and 3.

SEC. 3. The affidavit and bond required by the preceding section, shall be made and executed in conformity to the provisions of the third and fourth sections of the first article of this act. (c)

Justice to approve and endorse his approval on bond, &c. *Ibid, sec.* 6.

SEC. 4. Before any attachment shall be issued by a justice of the peace, the sufficiency of the penalty and the security in the bond shall be approved by him, and his approval endorsed by him on the bond, and the account, statement or instrument to be sued on, together with the affidavit and bond, shall be filed with the justice in the cause. (d)

Form of the writ of attachment. Rev. C. of 1835, sec. 3.

SEC. 5. The writ of attachment shall be in the form, or to 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 whosesoever hands or possession the same may be found in your township, so that he be and appear before me, E. F., a justice of the peace, within and for the said township and county, at my office in said township, on the ——— day of ——— 18—, to answer the complaint of A. B., 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

(c) *Vide*, note (d) to first article.
(d) *Vide*, note (e) to first article.

Digitized by Google

propound, and have you then and there this writ. Witness, my hand and seal, this ——— day of ———, 18——.

"E. F., *J. P.* [SEAL.]"

How issued and returned.

SEC. 6. Writs of attachments shall be issued and returned in like time and manner as ordinary writs of summons.

When defendant is summoned, proceedings as in ordinary actions.

SEC. 7. When the defendant is summoned to appear, 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.

Manner of serving writs.

SEC. 8. 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. (*e*)

Property attached in the hands of a person other than defendant, may be retained by giving bond Rev. C. of '35, secs. 6 & 7, and sess acts of 1836-7, sec. 2.

SEC. 9. When the property of the defendant, found in his possession, or in the hands or possession of any other person, shall be attached, the defendant or such other person, may retain possession thereof, by giving bond and security, to the satisfaction of the officer executing the writ, to the constable, his successor or their assigns, in double the value of the property attached, conditioned that the same shall be forthcoming when and where the justice shall direct, and shall abide the judgment of the justice. (*f*)

Officer to return all bonds taken and schedule of property.

SEC. 10. The officer executing the 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.

(*e*) *Vide*, note (*i*) to first article.
(*f*) *Vide*, note (*j*) to first article.

Digitized by Google

CHAP. 11.

Return of no property on execution, constable to assign bond to plaintiff. Sess. acts of '40–'1 sec. 1.

SEC. 11. When a return of no property found, shall be made upon an execution, issued upon a judgment in an attachment suit against the defendant, the justice shall direct the constable to assign to the plaintiff, his executors or administrators, the bond taken by him for the forthcoming of the property attached, and the justice may, upon motion, render judgment in favor of the plaintiff, against the obligor in the bond, for the value of such property, or if the property should be greater in value than the amount due upon such execution, then for the amount due, together with twenty per cent. damages upon such value or amount due.

Judgment to be rendered on motion.

Notice of such motion to be given, when and how.—*Ib. secs.* 1 and 2.

SEC. 12. No judgment shall be rendered upon such motion, unless the plaintiff shall have given the obligors in the bond, at least ten days notice in writing of such motion.

Assignee may sue in his own name on bond, when.

SEC. 13. If the penalty of the bond exceed one hundred and fifty dollars, the assignee of the constable may sue thereon in his own name, in any court having jurisdiction thereof.

If the officer fail to return a sufficient bond, he may be ruled to give bond by the justice.

Failing to give such bond, deemed security.

Extent of liability.

SEC. 14. If the officer fail to return a good and sufficient bond, in any case where bond is required by this act, the justice may, upon motion of the plaintiff, rule the constable to file a good and sufficient bond, to be judged of by the justice, on or before the next law day of said justice, and in default thereof, such officer shall be held and considered as security for the performance of all acts, and the payment of all money, 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 motion shall be made, unless on the law day to which the writ is returnable.

New section.

When defendant may file plea in abatement. Sess acts of 1838-9, sec. 11.

SEC. 15. In all cases where property or effects shall be attached, the defendant may put in issue, by a verbal plea, in the nature of a plea in abatement, without oath, the substance of which shall be noted by the justice on his docket, the existence of the facts alleged in the affidavit, on which the attachment was sued out. (*g*)

On such issue, plaintiff to prove the facts alleged.

SEC. 16. Upon such issue, the plaintiff shall be held to prove the existence of the facts alleged by him, as the ground of the attachment, and if the issue be found for him, the cause shall proceed, but if it be found for the defendant, the suit shall be dismissed at the costs of the

(*g*) *Vide*, note (*k*) to first article.

Digitized by Google

plaintiff, and he and his securities shall be liable on their bond for all damages occasioned by the attachment, or other proceedings in the case.

Defendant not summoned or appearing, justice to order notice to be given. How published. Rev. C. ed. of 1835, sec. 9, p. 85.

SEC. 17. 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 four 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 the next law day, (stating the time and place,) judgment will be rendered against him, and his property sold to pay the debt.

Notice to be given, when. How proved.

SEC. 18. 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.

Judgment by default, when entered.

SEC. 19. 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.

Such judgment and execution to bind only the property attached.

SEC. 20. Such judgments shall bind only the property and effects attached, and no execution shall issue thereon against any property of the defendant, nor against his body, nor shall any action be brought thereon.

Perishable property may be sold, when. Proceedings thereon.

SEC. 21. 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 *fieri 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.

Interrogatories to be propounded to garnishee.

SEC. 22. 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 service of the garnishment, had you in your possession, or under your control, any moneys, goods or effects of the defendant? If so, state what property, how

Digitized by Google

much, and of what value, and what money or effects? *Second.* At the time of the service of the garnishment, 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, if not yet due, when will it become due?

Garnishee may answer before return of attachment, when.

SEC. 23. Any garnishee being summoned, may, at his option, appear and answer the interrogatories, before the return day of the attachment.

How garnishee's answer to be filed, or taken by justice.

SEC. 24. The garnishee may file his answer in writing, under oath, with the justice, or the justice may, at his request, write the answer of the garnishee to each interrogatory, separately, and file the answer as a paper in the cause.

Garnishee failing to appear, or answer, judgment by default may be taken against him.

Proceedings thereon.

SEC. 25. 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 distinct answers to the interrogatories. (*h*)

Final judgment against garnishee, when.

SEC. 26. No final judgment shall be rendered against a garnishee, until there shall be final judgment against the defendant.

When plaintiff may deny answer of garnishee.

SEC. 27. 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.

Justice to reduce denial to writing.

SEC. 28. The justice shall reduce to writing, such denial, showing what part is denied, and what not denied, and file it as a paper in the cause.

Issues between plaintiff and garnishee, how tried.

SEC. 29. All issues between the 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 actions.

(*h*) When judgment by default has been rendered against a garnishee, for failing to appear and answer interrogatories, the plaintiff must establish, by competent testimony, the amount of the indebtedness of such garnishee to the defendant, and final judgment can only be rendered against the garnishee for the amount which he actually owes the defendant, and not for the amount which the defendant may appear to owe to the plaintiff. When the justice, in such cases, renders final judgment against the garnishee for the amount of the plaintiff's demand against the defendant, without any evidence to establish the amount of the indebtedness of the garnishee to the defendant, the judgment is irregular, and not cured by lapse of time. Brotherton, administrator vs. Anderson, 6 Missouri Rep., 388.

Digitized by Google

If property found in hands of garnishee, judgment.

SEC. 30. If, upon the trial of any such issue, property or effects shall be found in the hands of any garnishee, the justice or jury shall assess the value thereof, and the judgment shall be for the proper amount in money.

Answer of garnishee taken as confessed, when.

SEC. 31. If the answer of the garnishee be not denied in proper time, it shall be taken to be true and sufficient.

Answer not denied, and garnishee possessed of property, proceedings.

SEC. 32. If, by the answer not denied, it shall appear that the garnishee is possessed of property or effects of the defendant, or is indebted to the defendant, the justice shall assess the value of such property or effects, and ascertain the amount of such indebtedness, and shall render judgment for the proper amount in money.

When garnishee may discharge himself by surrendering, &c. Sess. acts of '36-7, secs. 2 and 3.

SEC. 33. 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 satisfy the debt, interest and costs, to the constable, and taking his receipt therefor, at any time before final judgment against him.

Who may interplead.

SEC. 34. Any person claiming property, money, effects or credits attached, may interplead verbally in the cause, and verbal issues may be taken to such interplea, and shall be tried as issues between plaintiff and defendant in ordinary cases, and without unnecessary delay.

Issues how tried.

Justice to notice substance of interplea.

SEC. 35. The justice shall note the substance of such interplea and issues upon his docket.

Judgment not to be rendered till interplea be determined.

SEC. 36. No judgment shall be rendered against the garnishee, in whose hands or possession the property, money, effects or credits, may be, until the issues upon such interplea shall be determined. (*i*)

Costs, how adjudged.

SEC. 37. In all cases of interpleader, costs may be adjudged for or against either party, as in ordinary actions.

Attachments, how and for what causes dissolved.

SEC. 38. All attachments before justices of the peace may be dissolved, on motion made in behalf of the defendant, in like cases and for like causes, as are provided in regard to attachments in the circuit court, by the forty-seventh section of the first article of this act, and for no other causes, and in no other case. (*j*)

Proceedings when attachment dissolved

SEC. 39. When any attachment shall be dissolved, all proceedings touching the property and effects attached, and the

(*i*) An appeal lies from a judgment of a justice of the peace, on an issue found between the plaintiff, in attachment, and an interpleader, before the final determination of the cause between the plaintiff and defendant; Weisenecker vs. Kelper, 7 Missouri Rep., 52.

(*j*) *Vide*, note (*m*) to first article.

Digitized by Google

CHAP. 11.

garnishee summoned, shall be vacated, and the suit proceed as if it had commenced by summons only.

One year allowed defendant to appear and disprove or avoid judgment, &c. Sess. acts of '38–9, sec. 16.

SEC. 40. In cases when the judgment is rendered against the defendant, upon publication of notice, without his appearance to the action, he shall be allowed one year, and no longer, from the date of the judgment, to appear and disprove, or avoid, the debt or damages adjudged against him, or any part thereof.

Proceedings to disprove, &c. to be by petition.

SEC. 41. The manner of disproving or avoiding the debt or damages, 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 the plaintiff ten days notice of the time and place when and where the petition will be presented.

Notice to be given to plaintiff.

Proceedings on petition.

SEC. 42. 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 the costs of the petition and of the original suit.

Further proceedings on petition.

SEC. 43. 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 costs.

Executions how to be issued.

SEC. 44. Executions may be issued by justices of the peace, in the same manner, and with like effect, as is provided in the fifty-ninth section of the first article of this act, in regard to executions issued out of the circuit court. (*k*)

Compensation to officer for keeping property attached.

SEC. 45. When property is seized on attachment, the justice may allow the officer having charge thereof, such compensation for his trouble and expenses, in keeping and maintaining the same, as shall seem reasonable and just.

What property shall not be attached. Sess. acts of '38–9, sec. 10.

SEC. 46. No property or effects, exempt by law from execution, shall be attached or seized in any suit against a defendant who is a resident of, or residing in, this state.

On return of no property found, transcript to be certified to circuit court.

SEC. 47. If, in any case of a suit brought before a justice of the peace, by attachment, it shall appear by the return that the defendant has not any goods, chattels, effects or credits, liable to be attached by such writ, the justice shall,

(*k*) *Vide*, note (*p*) to first article.

Digitized by Google

on the application of the plaintiff, certify a transcript of his docket, together with the process, and all the original papers in the cause, to the circuit court.

If sufficient bond and affidavit be certified, clerk to issue writ.

SEC. 48. Upon the filing of such transcript and papers in the office of the clerk of the circuit court of the county, such clerk shall, if there be a sufficient bond and affidavit, issue an attachment, as in a case originating in the circuit court, and proceeding shall be had thereon, in the circuit court, in all respects as if the original action had been brought in the circuit court.

If insufficient, clerk not to issue writ till, &c.

SEC. 49. If there be not sufficient affidavit and bond certified with the justices docket and other papers in the cause, the clerk shall not issue a writ of attachment, until a sufficient affidavit and bond be filed.

Suit founded on bond, bill, or note, and plaintiff withdraws it, justice to endorse thereon the amount paid. Sess. acts of '36–7, sec. 4.

SEC. 50. In all cases in which a judgment may have been rendered against the defendant in attachment, without appearance, upon a bond, bill, or note, and the plaintiff shall at any time desire the withdrawal of the instrument sued on, it shall be the duty of the justice to endorse on said instrument the amount, if any, which has been paid upon the judgment, arising from the proceeds of the sale of the attached effects. (e)

Approved March 14, 1845.

(e) The sections of this act were not correctly numbered in the enrolled bill. The error has been corrected by the engrossed bill.

CHAPTER 12.

ATTORNEY GENERAL, CIRCUIT AND COUNTY ATTORNEYS.

AN ACT concerning the attorney general, circuit and county attorneys.

SEC. 1. Attorney general to reside at the seat of government.
2. To aid circuit attorneys in the discharge of their duties.
3. Opinion in writing to be given to officers of government.
4. To act as prosecuting attorney in his circuit.
5. Circuit attorney to be elected.
6. Election on first Monday in November.
7. To be governed by general laws.
8. Clerk to transmit to secretary of state abstract of votes.
9. Secretary of state to certify to governor.
10. Person elected to be commissioned.
11. To prosecute all actions of civil or criminal nature.
12. To give his opinion to justices of the peace and county court.
13. May be indicted.
14. Circuit attorney, or attorney general, interested, not to prosecute.
15. If absent, court to appoint prosecuting attorney.
16. Person appointed. His powers and duties.

Digitized by Google

CHAP. 12.

SEC. 17. Powers conferred upon circuit court, given to criminal court of St. Louis.
18. Fine on failure to perform duties.
19. Attorney general to appear on behalf of the state in the supreme court.
SEC. 20. County court may appoint an attorney. His qualifications. Proviso.
21. Certificate of appointment to be given. Oath of office, when taken.
22. His duties.
23. His compensation.

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

Where attorney general shall reside.

SECTION. 1. The attorney general shall reside and keep his office at the seat of government.

To aid circuit attorneys.

SEC. 2. When directed by the governor, he shall aid any circuit attorney in the discharge of his duties.

To give his written opinion to officers of government. 1835, sec. 2, and sess. acts '42–3, sec. 1.

SEC. 3. 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, register of lands, and any circuit attorney, upon any question of law, relating to their respective offices.

Shall act as prosecuting attorney in his circuit.

SEC. 4. 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.

Circuit attorney to be elected. 1836–7, sec. 2.

SEC. 5. The qualified voters of each judicial circuit, except the one including the seat of government, shall elect one competent circuit attorney.

Elections, when held. *Ibid*, sec. 2.

SEC. 6. An election shall be held on the first Monday of November, in the year one thousand eight hundred and forty-eight, and each subsequent election on the same day of the same month, at the end of every period of four years thereafter.

How governed. *Ibid*, sec. 3.

SEC. 7. The election shall be governed by the general law regulating elections.

Clerk to transmit abstract, &c. *Ibid*, sec. 4.

SEC. 8. The clerk of the county court of each county shall transmit to the secretary of state, an abstract of the votes given for each candidate for circuit attorney in his county.

Duty of secretary of state. *Ibid*, sec. 5, 6.

SEC. 9. The secretary of state shall compare the votes given in each circuit for the respective candidates, and shall certify to the governor the person elected.

Person elected, to be commissioned. *Ibid*, sec. 7.

SEC. 10. The person elected shall be commissioned by the governor, and shall hold his office four years, and until his successor be elected and qualified.

Where he shall reside. His duties.

SEC. 11. 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

Digitized by Google

suits brought against the state, or any county in his circuit; prosecute forfeited recognizances, and actions for the recovery of debts, fines, penalties and forfeitures, accruing to the state, or any county in his circuit. (a)

To give his opinion without fee, to certain officers.

SEC. 12. 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.

May be indicted.

SEC. 13. Any circuit attorney may be indicted for misdemeanor in office, or neglect of duty, and be punished by removal from office, or by fine, not exceeding one thousand dollars, for the use of the county in which he is convicted, or by both such removal and fine.

Not to prosecute when interested.

SEC. 14. If the attorney general, or circuit attorney, be interested, or shall have been employed as counsel in any case which it shall be his duty to prosecute or defend, the circuit court may appoint some other person to prosecute or defend the cause.

Court to appoint prosecuting attorney, when.

SEC. 15. If an attorney general, or 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.

His powers and duties.

SEC. 16. The person thus appointed shall possess the same power, and receive the same fees, as the proper officer would if he were present.

Powers of criminal court of St. Louis.

SEC. 17. The powers conferred upon the circuit court, by this act, shall be exercised in like cases by the criminal court of St. Louis county.

Fine on failure to perform duties.

SEC. 18. If the attorney general, or any circuit attorney, shall fail to attend any term of the circuit court having criminal jurisdiction, or the criminal court of St. Louis county, held in pursuance of law, he shall be fined twenty-five dollars by the court, unless he show good cause to the contrary, at the next succeeding term thereof.

Attorney general to appear in supreme court, when.

SEC. 19. The attorney general shall appear on behalf of the state, in the supreme court, and prosecute or defend, as the case may require, all appeals and writs of error, to which the state is a party, other than such as are taken, in cases in which the name of the state is used as a nominal plaintiff, in the court below.

(a) *Vide*, County of St. Louis vs. George Clay; 4 Missouri Rep., 559.

Digitized by Google

CHAP. 13.

County court may appoint an attorney. Qualifications. Proviso. Sess. acts of 1842–3, p. 18.

SEC. 20. The county courts of the several counties are authorized, when they think the interest of the county requires it, to appoint a county attorney, who shall be a person learned in the law, be at least twenty-one years of age, reside at the seat of justice of the county, and who shall hold his office for one year; *Provided*, that no county attorney shall be appointed in any county in which the circuit attorney of the proper circuit resides.

Certificate of appointment to be given.

SEC. 21. The court shall give such attorney a certificate of his appointment, authenticated by the seal of the court, and, before entering upon the duties of his office, he shall take [the oath] of office prescribed by the constitution, which shall be endorsed on the certificate of his appointment.

His duties.

SEC. 22. He shall prosecute or defend, as the case may require, all civil suits in which the county is interested, represent generally the county in all matters of law, investigate all claims against the county, draw all contracts relating to the business of the county, and shall give his opinion, without fee, in matters of law in which the county is interested, and in writing, when demanded, to the county court or any justice thereof.

His compensation.

SEC. 23. He shall be allowed such compensation for his services as the court think reasonable, not to exceed one hundred dollars per annum, to be paid as other demands against the county.

Approved March 25, 1845.

CHAPTER 13.

ATTORNEYS AT LAW.

AN ACT concerning attorneys at law.

SEC. 1. No person to practice without a license.
2. Applicants to be examined.
3. Attorneys to take oath.
4. Clerk to keep a roll.
5. Penalty for practising without license.
6. May be stricken from the roll for certain offences.
7. Charges to be exhibited.
8. Day to be fixed for the hearing.
9. Copy of charges to be served on defendant.
10. Default, appearance may be enforced.
11. Court may suspend without trial, when.
12. Court may suspend until trial, when.
13. Suspension discontinued, when, and in what cases.
14. Record of conviction, conclusive evidence.
15. Trial by jury or the court.
16. Judgment of the court.
17. Bills of exception, appeals and writs of error, allowed.
18. Effect of judgment, of removal, or suspension.

Digitized by Google

Be it enacted by the General Assembly of the State of Missouri, as follows: CHAP. 13.

SECTION 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 circuit court, or some one of the judges thereof, in vacation. No person to practice without a license. Rev. C. of 1835, sec. 1, and sess. acts of 1840–1.

SEC. 2. Every applicant for license 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. Applicants to be examined.

SEC. 3. Every person obtaining a license shall take an oath or affirmation to support the constitution of the United States, and of this state, and faithfully to demean himself in his practice to the best of his knowledge and ability. A certificate of such oath shall be endorsed on the license. Attorneys to take oath.

SEC. 4. Each clerk shall keep a roll of attorneys, which shall be a record of the court. Clerk to keep a roll.

SEC. 5. If any person shall practice law in any court of record, without being licensed, sworn and enrolled, he shall be deemed guilty of a contempt of court, and punished as in other cases of contempt. Penalty for practicing without license.

SEC. 6. Any attorney or counsellor at law, who shall be guilty of any felony or infamous crime, or 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. May be stricken from the roll for certain offences.

SEC. 7. Such charges may be exhibited, and proceedings thereon had in the supreme court, or in the circuit court of the county in which the offence shall have been committed, or the accused resides. Charges to be exhibited.

SEC. 8. The court in which such charges shall be exhibited, shall fix a 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 this state. Day to be fixed for the hearing.

SEC. 9. The copy of the charges and citation shall be served in the same manner as a declaration and summons in civil actions, a reasonable time before the return day thereof. Copy of charges to be served on defendant.

SEC. 10. If the party served with a citation shall fail to appear according to the command thereof, obedience Default. Appearance may be enforced.

Digitized by Google

CHAP. 13.

may be enforced by attachment, or the court may proceed *ex parte*.

Court may suspend without trial, when.

SEC. 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. (*a*)

Court may suspend until trial, when.

SEC. 12. Upon charges other than 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.

Suspension discontinued, when and in what cases.

SEC. 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.

Record of conviction conclusive evidence.

SEC. 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.

Trial by jury, or the court.

SEC. 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, fail to appear, or appearing, does not require a jury, by the court.

Judgment of the court.

SEC. 16. In all cases of conviction, the court shall pronounce judgment of removal or suspension, according to the nature of the facts found.

Bills of exception, appeals and writs of error, allowed.

SEC. 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.

Effect of judgment of removal, or suspension.

SEC. 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 January 17, 1845.

(*a*) *Vide*, Strother vs. the State, 1 Missouri Rep., 412. The State vs. Watkins, 3 Missouri Rep., 337. The State vs. Foreman, 3 Missouri Rep., 412.

As to liability of an attorney, *Vide*, Benton vs. Craig, 2 Missouri Rep., 160. Upon suggestion of facts, attorney required to show some authority for conducting the suit. *Vide*, Keith vs. Wilson, 6 Missouri Rep., 435.

Digitized by Google

CHAPTER 14.

ATTORNEYS AT LAW.

AN ACT concerning attorneys at law.

SEC. 1. Clerk or deputy clerk of any court of record, not to practice or act as attorney at law.
SEC. 2. Proceedings commenced by such person to be dismissed. Violation of provisions of preceding section deemed a misdemeanor.

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

SECTION 1. No clerk or deputy clerk of any court of record, while he continues to act as such, shall be allowed to plead, practice, or act as an attorney at law in his own name, or the name of any other person, in the court of which he is clerk, under any pretence whatever. Clerk, or deputy clerk, of any court of record, not to practice or act as attorney at law.

SEC. 2. Any suit commenced, or any plea or paper filed, in violation of the preceding section of this act, shall, on motion, be dismissed, or stricken from the record, and any clerk violating the provisions of the preceding section of this act, shall be deemed guilty of a misdemeanor in office. (a) Proceedings commenced by such person to be dismissed. Violation of provisions of preceding section, deemed a misdemeanor.

This act to take effect, and be in force, from and after its passage.

Approved March 19, 1845.

(a) This act is new.

CHAPTER 15.

AUCTIONEERS.

AN ACT to license auctioneers, and impose a tax on licenses and sales.

SEC. 1. No person to exercise the trade or business of auctioneer without license.
2. Penalty for selling without license.
3. Blank licenses to be issued.
4. Under seal.
5. To be delivered to the collector and charged to him.
6. County court to settle with collectors at each term.
7. Collectors shall grant licenses on application.
8. Tax to be paid; rates.
9. Clerk's fee to be paid.
10. Bond to be given; condition.
11. Auctioneer may sell without license as vendor of merchandise.
SEC. 12. Duty on sales; rates.
13. Owner or auctioneer buying; sale subject to duty.
14. Sales of part to fix the price; deemed a sale of the whole.
15. Free of duty in certain cases.
16. Auctioneers to pay duty to collectors.
17. To render account according to the condition of their bond.
18. Clerk to give auctioneer certificate.
19. Clerk to charge collector, and certify to auditor.
20. Condition of bond fulfilled, clerk to endorse on the bond.
21. Auctioneer failing to comply with bond, clerk to prosecute him.

Digitized by Google

CHAP. 15. SEC. 22. Collector to collect duties imposed by law, and to prosecute for fines and forfeitures. SEC. 23. Preceding sections not to be construed to permit persons to sell at auction without license in certain cases.

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

No person to exercise the trade or business of an auctioneer without license.

SECTION 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. (*a*)

Penalty for selling without license.

SEC. 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 duty payable by law upon the property sold.

Blank licenses to be issued. Rev. C. of '35, sec. 3, and sés. acts of '36-7, secs. 1, 2, 3.

SEC. 3. The clerks of the respective county courts shall issue at each term, as many blank auction licenses for ten days, and for one, three, and six months respectively, as the county courts shall direct.

Under seal.

SEC. 4. The licenses shall be under the seals of the respective county courts, signed by the clerk, and shall authorize the persons to whom granted, to exercise the trade and business of auctioneers, by selling any property, real or personal, by auction, within the county, for the period of time specified in such license.

To be delivered to the collector and charged to him.

SEC. 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.

County court to settle with collectors at each term.

SEC. 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 licences returned, and charge him with all not returned, and as soon as may be, the clerk 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.

Collectors shall grant licenses, &c.

SEC. 7. Each collector shall grant to any person, upon application, and upon compliance with the requirements of

(*a*) An indictment, charging that the defendant "did exercise the business of a public auctioneer, and did then and there at public auction unlawfully sell goods, wares, and merchandise," &c., pursues the essential descriptive words of the statute, and is good. Vaughn vs. the State, 4 Missouri Rep., 530. It is error to charge two persons with jointly exercising the business of an auctioneer. *Ib.*

An auctioneer in the city of Saint Louis is required to obtain a license from the state, as well as from the corporation of the city. *Vide*, Simpson vs. Savage, 1 Missouri Rep., 255.

Digitized by Google

this law, an auction license, for ten days, or for one, three, or six months, and for that purpose shall fill up and countersign, one of the blank licences received from the clerk. CHAP. 15.

SEC. 8. There shall be levied upon every license to be paid to the collector, before the delivery thereof, as follows: Tax to be paid.

First. On each license for ten days, ten dollars; Rates.

Second. On each license for one month, twenty-five dollars;

Third. On each license for three months, fifty dollars;

Fourth. On each license for six months, seventy-five dollars.

SEC. 9. In each case of a license delivered, there shall be paid to the collector fifty cents, as a fee to the clerk; and no person shall be permitted to sell property at auction, of any kind, unless he shall have resided in this state six months next preceding the time of making application for license. Clerk's fee to be paid.

SEC. 10. Before any license shall be granted, the applicant shall give bond to the state of Missouri, in a sum not exceeding three thousand dollars, nor less than five hundred dollars, with one or more sufficient securities, residents of the county, (the amount of the bond and the sufficiency of the security 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 any account shall last have been rendered, until such of the said days as shall next thereafter ensue, and so on in succession, from one of the said days to another, so long as he shall continue to exercise the calling 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. Bond to be given. Condition.

SEC. 11. 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 vendor of merchandise, so that he render true account of the sales, Auctioneer may sell without license, &c.

Digitized by Google

CHAP. 15.

and pay the like duty thereon as if such sales were made at auction.

Duty on sales. Rates. Sess. acts of 1838–9, sec. 1.

SEC. 12. There shall be levied and paid upon the proceeds of the sales of all property at auction, (except as hereinafter excepted,) a duty to the state, as follows:

First. On the proceeds of all sales of personal property, one and a half per cent;

Second. On the proceeds of all sales of real estate, or leasehold interest in lands, one-eighth of one per cent.

Owner or auctioneer buying, sale subject to duty.

SEC. 13. 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.

Sales of part to fix the price, deemed a sale of the whole.

SEC. 14. 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.

Free of duty in certain cases.

SEC. 15. 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. When sold by any trustee, in conformity to a deed of trust, to secure the payment of debts.

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, in 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.

Digitized by Google

Eighth. Land or leasehold interest therein, sold on the premises.

Auctioneers to pay duty to collectors.

SEC. 16. 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 out of the proceeds of the property sold, and shall be allowed a commission of one per centum on the amount so paid.

To render account according to the condition of their bond.

SEC. 17. Auctioneers shall render their accounts according to the condition of their bond, to the clerk of the county court of the respective counties in which they transact their business, and shall make oath or affirmation, before such clerk, to the truth of every such account rendered; in default of which, such account shall be deemed truly rendered, according to the condition of their bond.

Clerk to give auctioneer certificate.

SEC. 18. 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.

Clerk to charge collectors and certify to auditor.

SEC. 19. The clerk shall charge the collector with the amount rendered, and certify the same to the auditor of public accounts, without delay, and the auditor shall charge the collector accordingly.

Condition of the bond fulfilled, clerk to endorse certificate thereon.

SEC. 20. 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 his bond, which shall be *prima facie* evidence of the condition, down to that time.

Auctioneer failing to comply with bond, clerk to prosecute him.

SEC. 21. 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.

Collector to prosecute for fines, &c. Sess. acts of 1838–9, p. 9.

SEC. 22. 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.

SEC. 23. The preceding sections of this act shall not be construed so as to permit any person to sell goods or other

Digitized by Google

CHAP. 16.

This act not to permit persons to sell at auction without license, except, &c.

property at auction, in any town or city in this state, where there is a licensed auctioneer, without having first obtained a license for that purpose, except officers of the town or city, or of the county or state, or of the United States, in discharge of their duty; executors, administrators, guardians or other persons, in discharge of a duty imposed on them by law, and farmers, who may wish to sell horses or other live stock, when taken to market.

Approved March 27th, 1845.

CHAPTER 16.

BANKING, ILLEGAL.—CURRENCY.

AN ACT to prevent illegal banking and the circulation of depreciated paper currency within the limits of this state. (a)

SEC. 1. No person without authority of law to create, or put in circulation, any note, bill, &c., as a circulating medium.

2. Punishment by fine of not less than two hundred dollars, for issuing, putting in circulation, &c.

3. Forfeiture of fifty dollars for passing, vending, receiving, &c.

4. No corporation, broker, or exchang dealer, to pass or receive any note less than ten dollars.

5. No corporation to pass or receive bank note, or post note of suspended, or non-specie-paying bank.

6. Contracts made by corporation, broker or exchange dealer, founded on such prohibited currency, declared null and void.

7. No corporation to exercise banking privileges. No court to enforce any liability whatever, incurred by any corporation exercising such privileges. Not to enforce liability to such corporation incurred by any other corporation, or individual, in certain cases.

8. Penalty of not less than five hundred dollars, on officer or member of corporation, for receiving, &c., prohibited bank notes, &c.

SEC. 9. All officers and members of corporations, (except bank of Missouri,) offending in their official capacity, shall be fined not less than five hundred dollars.

10. Charters of all corporations violating or evading the provisions of this act, to be forfeited. May be pleaded in bar, when. Change of venue may be awarded, when.

11. Penalty of one thousand dollars fine on money broker or exchange dealer, for violating the provisions of this act.

12. No person, corporation, or agent of foreign corporation, shall keep a banking house, &c.

13. Penalty of one thousand dollars fine for violating the provisions of the preceding section.

14. Every day in which such banking house is kept open, declared a distinct offence.

15. All bonds, bills, notes, &c., loaned or advanced by any foreign banking company, or agent thereof, utterly void and of no effect

16. In suits brought on such bonds, bills, notes, &c., what defendant may give in evidence under plea of general issue.

(a) *Vide*, acts of 1835, p. 95. Sess. acts of 1836-7, p. 24. Sess. acts of 1842-3, p. 20.

Digitized by Google

CHAP. 16.

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

SECTION 1. No person, unauthorized by law, shall 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 curreney, or medium of trade, in lieu of money. (*b*)

No person without authority of law to create or put in circulation any note, bill, &c. as circulating medium. Rev. C., 1835, p. 96.

SEC. 2. If any person issue, put in circulation, sign, countersign, or endorse any such note, bill, check or ticket, he shall be fined not less than two hundred and fifty dollars, one half to go to the prosecutor, and the other half to the county in which the offence shall be committed.

Punishment by fine of not less than $200 for issuing, &c. *Ibid.*

SEC. 3. If any person vend, pass, receive or offer in payment, any such note, bill, check or ticket, or other such currency, he shall forfeit fifty dollars, to be recovered by action of debt, to the use of any person who shall sue for the same, before any justice of the peace of the county.

Forfeiture of $50 for passing, vending, receiving, &c.

SEC. 4. No corporation within the limits of this state, (the bank of the state of Missouri and its branches, inclusive,) nor any money broker or exchange dealer, shall pass or receive, within the limits of this state, any bank note or other paper currency of any kind, promissory, or ordering the payment of money or other thing, of less denomination than ten dollars.

No corporation, broker or exchange dealer, to pass or receive any note less than ten dollars. Acts. 1843, p. 20.

SEC. 5. No corporation within the limits of this state, (the bank of the state of Missouri and its branches, inclusive,) nor any money broker or exchange dealer, shall pass or receive, within the limits of this state, any suspended or non-specie paying bank note, or post note, issued as a currency.

No corporation to pass or receive notes of suspended, or non-specie paying banks.

SEC. 6. All contracts and transactions whatever, made by any corporation, (the bank of the state of Missouri and its branches, inclusive,) or by any money broker, or exchange dealer, within the limits of this state, founded upon loans or payments made in such prohibited notes or currency, shall be null and void, and of no force or effect in any court in this state.

Contracts made by corporation, broker or exchange dealer founded on such prohibited currency, declared null and void.

SEC. 7. No corporation within the limits of this state (the bank of the state of Missouri and its branches excepted,) shall exercise any banking privileges, either by issuing notes,

No corporation to exercise banking privileges.

(*b*) Downing vs. The State, 4 Missouri Rep., 572.

Digitized by Google

CHAP. 16. or any species of paper currency whatever, or by receiving money on deposite, or by discounting notes, bills or bonds, or by buying and selling bills of exchange, or otherwise dealing in the same, or by lending or collecting money, or by doing any other kind of banking business whatever, and no court shall enforce any liability to any other corporation or individual, incurred by any other corporation prohibited by this act from exercising banking privileges, by issuing notes or any other species of paper currency, or by receiving money or bank notes on deposite, or by discounting notes, bills or bonds, or by buying or selling bills of exchange, or by borrowing money for banking purposes, or by collecting money, or by doing any other kind of banking business: nor shall any court enforce any liability to such corporation incurred by any other corporation or individual, by reason of such other corporation or individual being the maker, endorser, drawer or acceptor of any note, bill or bond purchased or discounted by such corporation, nor any liability to such corporation, incurred by any other corporation or individual for money borrowed, nor any other liability growing out of the exercise of banking privileges by such prohibited corporation,

No court to enforce any liability whatever incurred by corporation exercising such privileges.

Not to enforce liability to such corporation.

SEC. 8. Any officer or member of a corporation, prohibited by the preceding section, from exercising banking privileges, who shall receive money or bank notes offered to be deposited, or who shall receive money or bank notes on deposite, or who shall pay out money, bank notes or bills of exchange, as the proceeds of any note, bill or bond, sold or discounted by such corporation, or who shall receive money or bank notes borrowed by such corporation, for banking purposes, or who shall pay out any money or bank notes loaned by such corporation, or who shall aid or assist in doing any other kind of banking business prohibited by the preceding section, shall be fined not less than five hundred dollars for each offence, one half to go to the prosecutor, and the other half to the state. (c)

Penalty not less than $500, on officer or member of corporation for receiving, &c. prohibited bank notes, &c.

SEC. 9. All officers and members of any corporation within the limits of this state, (the officers and members of the bank of the state of Missouri, inclusive,) offending, in their official capacity, against any of the provisions of this act, shall be fined not less than five hundred dollars, one-half to go to the prosecutor, and the other half to the state.

Penalty not less than $500, on all officers and members of corporations offending in their official capacity.

(c) The provisions creating an informer, originated with the session of 1844–5.

Digitized by Google

Charters of all corporations, violating or evading the provisions of this act, to be forfeited.

SEC. 10. The charters of all corporations, within the limits of this state, (the bank of the state of Missouri and its branches, inclusive,) violating or evading any of the provisions of this act, shall be forfeited for any such violation or evasion, and the fact of such forfeiture, or any violation or evasion of this act, or any part thereof, may be pleaded in bar to any suit brought by them, and, if denied, the trial of the question of such forfeiture, violation or evasion, shall be adjourned under the direction of the court, and change of venue awarded, upon the application of the defendant, to some county in which such corporation is not situate.

May be pleaded in bar.

Change of venue may be awarded.

Penalty on broker or exchange dealer for violating this act. Acts of 1837, p. 27.

SEC. 11. Any money broker, or exchange dealer, who shall violate or evade any of the provisions of this act, shall be fined not less than one thousand dollars, one-half to go to the prosecutor, and the other half to the state.

No person, corporation, or agent of foreign corporation, shall keep a banking house.

SEC. 12. No person, association of persons or corporation, as the agent of any foreign corporation or incorporated banking company, shall, within the limits of this state, keep any banking house, agency office, office of discount and deposite, or of deposite only, or of discount only, or in any manner deal in buying or selling bills of exchange, checks, drafts, or in discounting bills or notes, or by or through the means of such banking house, agency office, office of discount and deposite, or of deposite only, or of discount only, loan, issue, emit, circulate, pass or pay, or tender in payment, any notes or bills of such foreign corporation or unincorporated banking company.

Penalty of $1000 for violating the provisions of preceding section.

SEC. 13. If any person, association of persons, or corporation, shall violate the provisions of the preceding section, such person, association of persons, or corporation, shall forfeit the sum of one thousand dollars, to be recovered by indictment or action of debt, in the name of the state, one-half to the use of the prosecutor, and the other half to the state.

Every day in which such banking house is kept open, declared a distinct offence.

SEC. 14. Every day during which, or any part of which, such prohibited banking house, agency or office, is kept open, or such prohibited business, or any of it, is transacted, shall constitute a distinct offence.

All bonds, &c. loaned or advanced by foreign banking company, or agent thereof utterly void, &c.

SEC. 15. All bonds, bills or notes, or other instruments of writing, securing the payment of any money or bank notes loaned or advanced by any foreign corporation, or unincorporated banking company, situated or located, or which is doing business by its officers or agents, within this state, to such

CHAP. 17.

foreign corporation or unincorporated banking company, or executed to any agent, or person holding himself out as agent of such corporation or unincorporated banking company, or to any corporation or person, whether such bond, bill or note, or other instrument of writing, be made payable, or made to secure the payment of such loan of money or bank notes, to such foreign corporation or unincorporated banking company, or to the agent thereof, for the use of the same, or to such agent, or to any other person or corporation, either directly or indirectly, for the use of such foreign corporation or unincorporated banking company, in whatever name or form the same may be drawn, shall be taken and held as utterly void and of non-effect.

In suits brought on such bonds, bills, &c. what defendant may give in evidence under plea of general issue.

SEC. 16. The defendant in any suit brought upon such bond, bill or note, or other instrument of writing, may, under the plea of the general issue, give in evidence for whose use such bond, bill or note, or other instrument of writing, was given or executed, and whether the consideration of the same was money, or bank notes loaned or advanced, or checks, drafts, or bills sold or discounted by such foreign corporation or unincorporated banking company, or by the agent, or person, or corporation holding himself or itself out as the agent thereof, and the fact of the agency of any person or corporation.

Approved March 26, 1845.

CHAPTER 17.

BILLIARD TABLES.

AN ACT to license and tax billiard tables.

SEC. 1. County court clerk to issue blank licenses.
2. Collectors to grant licenses; taxes thereof.
3. County courts to settle with collector at every term.
SEC. 4. Clerk to certify to auditor the amount charged to collector.
5. Penalty for keeping billiard table without license.
6. Penalty for permitting minors to play billiards.

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

Clerk to issue blank licenses. 1835, p. 96.

SECTION 1. The county courts shall have power to license the keepers of billiard tables, and at each term the clerk of said courts shall prepare and deliver to the collectors of their

Digitized by Google

counties, as many blank licenses for the keepers of billiard tables, as the respective courts shall direct, which shall be signed by the clerk, and attested by the seal of the court.

Collectors to grant licenses, tax thereof.

SEC. 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 clerk shall countersign all such licenses before delivering them to the applicant.

County court to settle with collector at every term.

SEC. 3. The county court shall charge the collectors with all blank licences delivered to them, and at any regular term shall settle with the collectors for all such licenses delivered to them, and credit them with all the blank licenses which 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.

Clerk to certify to auditor the amount charged to collector.

SEC. 4. The collectors shall stand chargeable with all the blank licenses not returned, and the county court at each regular term shall cause the clerks to certify to the auditor of public accounts, the amounts with which the collectors stand chargeable, who shall charge the respective collectors accordingly.

Penalty for keeping billiard table without license.

SEC. 5. Every person who shall keep, or permit to be used and kept, any billiard table, without having a license therefor, shall forfeit and pay four hundred dollars, for the use of the state, to be recovered by indictment.

Penalty for permitting minors to play billiards.

SEC. 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 his father, master or guardian of such minor first granted, shall forfeit and pay to such father, master or guardian, for every such offence, fifty dollars, to be recovered by action of debt.

Approved February 21, 1845.

Digitized by Google

CHAPTER 18.

BILLS OF EXCHANGE.

AN ACT concerning bills of exchange and negotiable promissory notes.

SEC. 1. Acceptance to be in writing.
2. On separate paper, when to bind acceptor.
3. Unconditional promise to accept, effect of.
4. Refusal to write acceptance on bill, dishonor.
5. Construction of preceding section.
6. Destruction or refusal to deliver bill deemed an acceptance.
7. Damages on bills protested for non-acceptance.
8. Damages on bills protested for non-payment.
9. Construction of the two preceding sections.
10. Damages to be recovered by certain persons only.
11. No damages allowed if paid within twenty days.
12. Damages in lieu of interest charges of protest and other charges.
13. Bills payable in money of the United States, rate of exchange disregarded.
14. Bills payable in foreign currency, rate of exchange to govern.
15. Notes for money, when negotiable as inland bills of exchange.
16. Payees and endorsers, when they may sue the makers and endorsers.
17. Notes payable to the order of maker or fictitious person, if negotiated, its effects, &c.
18. Notarial protest, evidence of demand and refusal to pay.

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

Acceptance to be in writing. Rev. C., '35, p. 97.

SECTION 1. No person within this state shall be charged as an acceptor of a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

On separate paper, when to bind acceptor.

SEC. 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.

Unconditional promise to accept, effect of.

SEC. 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 shown, and who, upon the faith thereof, shall have received the bill for a valuable consideration.

Refusal to write acceptance on bill, dishonor.

SEC. 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.

Construction of preceding sections.

SEC. 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

Digitized by Google

of the party making such promise, on his refusal to accept such bill.

Destruction or refusal to deliver bill, deemed an acceptance.

SEC. 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.

Damages on bills protested for non-acceptance.

SEC. 7. When any bill of exchange, expressed to be for value received, (*a*) 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 holders (*b*) by the drawer and endorsers, 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, 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, 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 on any person, 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.

Damages on bills protested for non-payment.

SEC. 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

(*a*) To entitle a party to damages upon a protested bill of exchange, drawn or negotiated within this state, the bill must express to be for "*value received.*" Riggs vs. the city of St. Louis, 7 Missouri Rep., 438. A bill drawn, payable *in currency*, is not a bill of exchange within the meaning of our statute, concerning bills of exchange, consequently the holder is not entitled to damages allowed by the statute, in cases of dishonored bills. Farwell *et al* vs. Kennett, *et al*, 7 Missouri Rep., 595.

(*b*) Our statute in relation to damages on bills of exchange is not limited to the holder of the bill at the time it became due. Riggin vs. Collier & Pettus, 6 Missouri Rep. 568.

Digitized by Google

CHAP. 18. 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 therein specified.

Construction of the two preceding sections.

SEC. 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.

Damages to be recovered by certain persons only.

SEC. 10. The damages allowed by this act shall be recovered only by the holder of a bill, who shall have purchased the same, or acquired some interest therein for a valuable consideration.

No damages allowed if paid within twenty days.

SEC. 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.

Damages in lieu of interest, charges of protest and other charges.

SEC. 12. The damages allowed by this act shall be in lieu of interest, charges of protest, and other charges and expenses, incurred previous to, or at the time of giving notice, or at 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 the payment of the principal sum demanded.

Bills payable in the money of the United States, rates of exchange disregarded.

SEC. 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.

Payable in foreign currency, rate of exchange to govern.

SEC. 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 damages, shall be ascertained and determined by the rate of exchange, or the value of such foreign currency, at the time of payment.

SEC. 15. Every promissory note for the payment of money,

Digitized by Google

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. (c)

Notes for money when negotiable as inland bills of exchange.

SEC. 16. The payees and endorsers of every, such (m) negotiable note, payable to them or order, and the holder of every such note, payable to bearer, (n) 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. (o)

Payees and endorsers, when they may sue the makers and endorsers.

(c) A note, wherein the obligor promises "to pay R. M., or bearer, two hundred dollars," &c., is not a negotiable note within the meaning of this section, (sec. 6 of the acts of 1835) and consequently suit cannot be brought on such note in the name of the bearer, where there is no assignment. Beatty vs. Anderson, 5 Missouri Rep., 447. To make a note *negotiable*, within the meaning of this section, it must contain the words, for "value received, negotiable and payable without defalcation." It is not sufficient that it contains the words, "for value received, without defalcation." Austin & Haines vs. Blue, 6 Missouri Rep., 265. This section makes notes drawn in the manner therein prescribed, negotiable as inland bills of exchange. It does not avoid those not drawn as therein directed, but only takes away their negotiability as inland bills of exchange, that is, the holders of such notes will take them, subject to any defence the maker might have had against them. Muldrow vs. Caldwell, 7 Missouri Rep., 563; *Vide*, Maguire vs. Conran, 8 Missouri Rep., 107, and Glasgow vs. Pratte, 8 Missouri Rep., 336. Where a bill of exchange has been protested for non-payment, and no notice thereof given to the drawer, evidence of a subsequent promise to pay the bill at a particular time, or in a specified mode, should go to the jury as a waiver of notice. Pratte vs. McCall & Hawley, 1 Missouri Rep., 37, Jones, justice, dissenting. An endorser of a negotiable promissory note or bill of exchange, is liable before the remedy is exhausted against the maker. Hunter vs. Price, 1 Missouri Rep., 54. A bill drawn 27th November, at St. Louis, on New Orleans, at sixty days sight, is presented in time on the 25th February, so as to charge the payee by an endorser, and when the bill has been kept in circulation such a presentation is good. Little's, administrator vs. Pratte, 1 Missouri Rep. 202.

(m) The word "*such*" did not occupy this position in the revision of 1835. For the reason of its insertion now, see Pococke vs. Blount, 6 Missouri Rep., 343.

(n) Beatty vs. Anderson, 5 Missouri Rep., 447.

(o) This section applies not to the form of the action to be used by the holder of a negotiable note, but was intended to give the holder the same remedy against the maker and endorser respectively, as in case of inland bills of exchange, and consequently, petition in debt may be maintained by the holder against the maker thereof; Warne vs. Hill, 7 Missouri Rep., 40. *Vide*, Bogy vs. Keil, 1 Missouri Rep., 743; Himes vs. McKinney, 3 Missouri Rep., 383; Singleton vs. Mann, administrator, 3 Missouri Rep., 461. It is not necessary that an order should state, that it was drawn for value received of the drawer. Griffith vs. Cotrill's administrator, 1 Missouri Rep., 480. In Klunk vs. O'Fallon, administrator, 1 Missouri Rep., 481. Pettibone J. says the rule is well settled, that, as between the endorsee and his immediate endorser, the consideration may be inquired into, and the endorsee can recover no more than the consideration which he has paid for the bill, and cites Brown vs. Mott, 7 John's. Rep., 361; Brolau vs. Hess, 13 John's. Rep., 52; Wiffin vs. Roberts, 1 Esp. N. P., 261. A demand of payment at the counting-room of the acceptor, of his clerk, is sufficient, without showing any special authority given to the clerk, in regard to such matters, by his principal. Demand of payment and protest of a bill on the third day of grace is proper. The notary's protest is evidence of presentment and refusal to pay. The notary may prove presentment for payment, refusal and notice, although he keeps a register of these matters. Where payment of a bill is demanded, it should be produced. Proof that notice was sent by mail to Hannibal, the place of residence of the drawer, and that witness believed (but was not positive,) there was a post office there in that

Digitized by Google

CHAP. 19.

Notes to the order of maker, or fictitious person, if negotiated, its effects, &c.

SEC. 17. 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.

Notarial protest evidence of demand and refusal to pay.

SEC. 18. A notarial protest is evidence of a demand and refusal to pay a bill of exchange, or negotiable promissory note at the time and in the manner stated in such protest.

Approved March 8, 1845.

CHAPTER 19.

BOATMEN.

AN ACT concerning boatmen.

SEC. 1. Contracts to be specifically performed.
2. May be in writing.
3. To be acknowledged.
4. Original copy evidence.
5. Memorandum of the day and hour, boatman to render himself.
6. Upon complaint made, justice may issue a warrant.
7. Justice shall determine complaint in a summary manner.
SEC. 8. Crew liable for negligence,
9. Boatman making complaint justice to issue a summons.
10. May discharge complainant.
11. Master or owner not to sell or barter certain things to boatmen.
12. Charge for spirituous liquors not recoverable, except in some cases.
13. Penalty for harboring boatmen.
14. No sum above five dollars to be recovered until end of voyage.

year, is insufficient. Draper vs. Clemons, 4 Missouri Rep., 52. When the endorser of a bill boarded with the drawer, but transacted business in a different house, notice of non-payment delivered to the drawer, was held insufficient, to charge endorser. The notice should have been served on the endorser, or left at his dwelling house, if he had one, or place of transacting business, or facts shown from which notice might have been inferred; Baily vs. The Bank, 7 Missouri Rep., 467. The *bona fide* vendors of a bill of exchange, on which the endorsement of the payee is forged, are entitled to notice of the dishonor of the bill. The holder must use reasonable diligence: what is reasonable diligence, must depend upon the circumstances of the case; per Tompkins, J., in Collier & Pettus vs. Budd, 7 Missouri Rep., 485. In this case the judgment below was in favor of the plaintiff, appellee. Scott, J., on the authority of the case of the Bank of the United States vs. the Bank of Georgia, 10 Wheat., 333, was in favor of reversing the judgment. Napton, J., dissenting. *Vide*, the following cases: Little's administrator, vs. Pratte, 1 Missouri Rep., 202; The Bank vs. Hall, 7 Missouri Rep., 273; Bent vs. Brainard, 1 Missouri Rep., 283; Holms & Elliott vs. Auld et al, 1 Missouri Rep., 420; Robinson vs. Johnson, 1 Missouri Rep., 435; Mense vs. Osborn, 5 Missouri Rep., 544; Sweeney vs. Willing, 6 Missouri Rep., 174; Thoms vs. Greene, 6 Missouri Rep., 482; Moore vs. The Bank, 6 Missouri Rep., 379; Warne vs. Anderson & Thompson, 7 Missouri Rep., 46, and to the last case, see note (*a*) to the act regulating the practice at law; Glasgow & Harrison vs. Copeland, 8 Missouri Rep., 268; Shepard vs. Citizens' Ins. Co., 8 Missouri Rep., 272. Notice of the dishonor of a bill may come from any person who holds the bill when it is dishonored, or is a party to the bill, and the holder may avail himself of the notice given, in due time, by any other party to the bill, against any other person upon the bill who would be liable to him, if he, the holder, had himself given due notice of the dishonor; Glascock vs. Bank of Missouri, 8 Missouri Rep., 443.

Digitized by Google

Sec. 15. Note taken from boatman and ante-dated, void.
16. Proceedings to conform to proceedings in civil cases.
17. Trial by jury.
18. Proceedings to be summary.
Sec. 19. Boatman shall not be arrested until arrearages are paid, &c.
20. Appeal allowed.
21. This act to extend to contracts made without the state.

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

SECTION 1. All contracts and agreements entered into by any person, for rowing or navigating any boat or vessel of any description, on the navigable waters within the jurisdiction of this state, shall be specifically performed, according to the intent and meaning thereof. Contract to be specifically performed. Rev. C. 1835. p. 99.

SEC. 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 boatman engaged on board such boat or vessel, in the navigation thereof, declaring the voyage, the term of time, and the wages for which such boatman shall be engaged. May be in writing.

SEC. 3. Such contract shall be acknowledged by the parties, before some justice of the peace or notary public, and filed by said officer in his office. To be acknowledged.

SEC. 4. The original, or a copy of such contract, duly certified under the hand of such officer, shall be received in evidence in any court in this state. Original copy evidence.

SEC. 5. At the foot of every such contract, there shall be a memorandum of the day and hour, in which such boatman shall render himself on board the boat or vessel, for which he has engaged, and for every hour he shall neglect or [to] render himself on board, he shall forfeit one day's pay. Memorandum of the day and hour boatman to render himself.

SEC. 6. If any boatman shall wholly neglect or refuse to render himself on board of any such boat or vessel, or having rendered himself, shall afterwards desert, or shall misbehave, 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. Upon complaint made justice may issue warrant.

SEC. 7. 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 Justice shall determine complaint in a summary manner.

Digitized by Google

CHAP. 19.

render judgment against him, for any sum not exceeding ninety dollars, unless he will enter into bond to the master or commander, with sufficient sureties, 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.

Crew liable for negligence.

SEC. 8. 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 as many of them as can be found, and recover the value of the property so lost, injured or destroyed.

Boatman making complaint, justice to issue a summons.

SEC. 9. If any boatman 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 boatman is engaged, has failed to supply him with necessary provisions, or treated him with unusual severity or cruelty, or has otherwise failed 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.

May discharge complainant.

SEC. 10. If he find it just, he may discharge the complainant, and such boatman may recover against such master or commander, the wages justly due him, according to the services rendered, notwithstanding such contract may be entire, in any court having jurisdiction, and may also have his action for any injury he may have sustained by reason of the conduct or fault of the master or commander.

Master or owner not to sell, or barter certain things to boatman.

SEC. 11. It shall not be lawful for the master, commander or owner of any boat or vessel, to sell or barter any flour, biscuit or other provisions to any boatman, whilst said boatman is in his service, and during the voyage.

Charge for spirituous liquors not to be recoverable, except in some cases.

SEC. 12. No charge made against any boatman for spirituous liquors, while employed or during his engagement, shall be recoverable or allowed, but at a reasonable rate, nor for any sum exceeding the one-tenth part of his wages, for the time in which the charges shall be made.

Penalty for harboring boatmen.

SEC. 13. 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

Digitized by Google

harbor or secrete such boatman, to be recovered, by the master or commander, in an action of debt. CHAP. 19.

SEC. 14. 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. No sum above five dollars to be recovered. until end of voyage.

SEC. 15. If any person shall take a 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 void; and the person taking the same, his aiders and abetters, 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 having jurisdiction. Note taken from boatman and antedated, void.

SEC. 16. 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. Proceedings to conform to proceedings in civil cases.

SEC. 17. When the sum in controversy exceeds twenty dollars, either party may require a jury, as in other cases. Trial by jury.

SEC. 18. In all cases under this act, proceedings shall be summary; and the justice shall proceed to the hearing, determination, and execution, in the most speedy manner that justice and the nature of the case will permit. Proceedings to be summary.

SEC. 19. 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. Boatmen shall not be arrested until arrearages are paid.

SEC. 20. Either party may appeal to the circuit court, as in other cases of appeals from justices' courts; 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. Appeal allowed.

SEC. 21. The provisions of this act shall extend to all written contracts made without the limits of this state, for rowing or navigating boats upon the navigable waters within this This act to extend to contracts made without the state.

Digitized by Google

CHAP. 20. state, or bordering thereon, whensoever any boat concerning which such contract has been made, and the hands thereof are found within the jurisdiction of this state.

Approved February 13, 1845.

CHAPTER 20.

BOATS AND VESSELS.

AN ACT concerning boats and vessels.

SEC. 1. Liability of master, owner, agent or consignee of boat or vessel.
2. Priority of claim. Precedence of lien.
3. Suits may be instituted against the boat or vessel; proceedings.
4. What the complaint shall set forth; affidavit required.
5. Warrant to issue; what it shall contain.
6. Warrant, how returnable; proceedings.
7. Who may appear and plead.
8. Power of court to prescribe the time of pleading; trial, when to be had.
9. If bond be given to plaintiff by captain, owner, &c., before final judgment, boat to be discharged.
10. If bond be given to the sheriff, &c., boat to be delivered.
11. Application to be made for order of sale, when. Order. Notice. Sale. Return.
12. Master, owner, &c., may at any time give bond before sale.
13. Officer selling, to execute to purchaser a bill of sale.
14. Upon such sale, court to appoint a time when creditors shall appear and exhibit their demands. Notice to be given.
15. Exhibition of demands; duty of court and proceedings thereon.
16. Claims allowed, to be classed according to the order of liens. Court to order distribution. Proceedings thereon.
17. Continuance may be granted. Duty of court in case of continuance, or appeal.
18. Upon final rejection of claim, where the money has been retained, distribution how made.
19. Costs, by whom paid.
SEC. 20. Judgment under this act. What it shall specify. *Fieri facias* thereon.
21. Judgment may be rendered against the principal and security in the bond, when.
22. Executions, how issued and returned.
23. Justices of the peace have jurisdiction in certain cases. Plaintiff in suits before justices, to make affidavit. Nature thereof.
24. Proceedings in such suits, how conducted. Justice not to order sale of boat or vessel.
25. Warrant issued by justice, returnable forthwith.
26. How served and returned.
27. Continuance not granted to plaintiff, unless, &c.
28. Fees allowed officers, &c.
29. Appeal to be allowed. Writ of error may be prosecuted.
30. No person to bind boat by admission of indebtedness.
31. Captain or clerk becoming interested, in demand, shall be no longer a lien.
32. Wages, what shall be recovered. Suit, when to be instituted.
33. All suits, except first class, to be commenced within six months.
34. Boat taking cord word without consent of owner, to pay treble damages, and $20 penalty.
35. Boat or vessel may institute suit, when. Lien on transported property.
36. Joint owner or owners may institute suit against boat, when. To notify other owners.
37. Majority of owners may appoint a master and dismiss him. Such master, when dismissed, to deliver over boat, effects, &c.

Digitized by Google

Sec. 38. Failure to deliver, proceedings to compel. Application to justice.
39. Justice to hear cause in a summary manner. Judgment.
Sec. 40. Majority in interest of owners, to determine in what trade boat may be employed. Proceedings in case part owner refuses. Bond to be given, &c.

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

Liability of master, owners, agent or consignee of boat or vessel. Rev. C. 1835, p. 102.

SECTION 1. Every boat or vessel used in navigating the waters of this state, shall be liable and subject to a lien in the following cases:

First. For all wages due to hands or persons employed on board such boat or vessel, for work done or services rendered on board the same, except for wages which may be due to the master or the clerk thereof.

Second. For all debts contracted by the master, owner, agent or consignee of such boat or vessel, on account of stores or supplies furnished for the use thereof, or on account of labor done, or materials furnished, by mechanics, tradesmen or others, in the building, repairing, getting out, furnishing or equipping thereof.

Third. For all sums due for wharfage or anchorage of such boat or vessel within this state.

Fourth. 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 such boat or vessel; and for damages for injuries done to persons or property by such boat or vessel. (*a*)

Priority of claim. Precedence of lien.

SEC. 2. The classes of claims above specified, shall have priority according to the order in which they are above enumerated, and the liens under this act, shall have precedence of all other liens and claims against such boat or vessel.

Suit may be instituted against boat or vessel; proceedings.

SEC. 3. Every person claiming the benefit of a lien in either of the classes above enumerated, may commence his suit under this act, against the boat or vessel, by name, by filing a complaint against such boat or vessel, with the clerk of the circuit court of the county in which the boat or vessel may be found; and in St. Louis county the suit may also be commenced by filing the complaint with the clerk of the court of common pleas.

(*a*) Bridgeford *et al.* vs. steamboat Elk, 6 Missouri Rep., 356. Erskine & Gore vs. steamboat Thames, 6 Missouri Rep., 371. Perpetual insurance company vs. steamboat Detroit, 6 Missouri Rep., 374. Camden & co. vs. steamboat Georgia, 6 Missouri Rep., 381. Russel vs. steamboat Elk, 6 Missouri Rep., 563.

Digitized by Google

CHAP. 20.

What the complaint shall set forth. Affidavit required.

SEC. 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 some credible person for him, and shall stand in lieu of a declaration. (*b*)

Warrant to issue. What it shall contain.

SEC. 5. When such complaint shall be filed, the clerk shall issue a warrant thereon, commanding the sheriff to seize the boat or vessel, mentioned in the complaint, with her tackle, apparel and furniture, and retain the same until discharged by due course of law.

Warrant, how returnable, proceedings.

SEC. 6. Such warrant shall be returnable to the same term as a summons issued at the same time would be made returnable, and upon the return thereof, proceedings shall be had against the boat or vessel, in the same manner as if suit had been instituted against the person on whose account the demand accrued.

Who may appear and plead.

SEC. 7. The owner, captain, agent, consignee or any creditor of such boat or vessel, may appear to the action, on behalf of the boat or vessel, and plead thereto, and defend the same, but no person shall have power to confess judgment for such boat or vessel, or in any manner to admit the plaintiff's demand, unless he is authorized in writing by all the owners to do so.

Power of court to prescribe the time of pleading.

SEC. 8. The several courts shall have power by rule to prescribe the time and manner of filing the pleadings or other papers, and of taking any needful steps in suits under this act, where the same is not herein prescribed, but in all such suits the trial shall be had at the first term, unless a continuance shall be granted for cause shown; but no continuance shall operate to discharge the boat or vessel from custody.

If bond be given to plaintiff by captain, owner, &c., before final judgment, boat to be discharged.

SEC. 9. If the captain, owner, agent, or consignee, shall, before final judgment, give bond to the plaintiff, with sufficient security, to be approved by the court, or the judge or clerk thereof in vacation, or the justice of the peace before whom the action may be pending, conditioned to satisfy the amount which may be adjudged in favor of the plaintiff, against such boat or vessel, with all costs, the boat or vessel, with its tackle, apparel and furniture, shall be discharged from further

(*b*) Byrne vs. steamboat Elk, 6 Missouri Rep., 555. Steamboat General Brady vs. Buckley & Randolph, 6 Missouri Rep., 55 8. Johnson vs. Strader, *et al.*, 3 Missouri Rep., 254.

Digitized by Google

detention, by the officer having custody thereof, and shall be discharged from the lien of the plaintiff's demands.

If bond be given to the sheriff, &c. boat to be delivered.

SEC. 10. If the captain, owner, agent, or consignee, of any boat or vessel seized and held by virtue of any warrant under this act, shall give bond to the sheriff, or other officer having custody thereof, with good security, to be approved by such officer, in double the value of the boat or vessel, conditioned for the return of the same at a time and place to be therein specified, the sheriff or other officer shall deliver the boat or the vessel to the person giving such bond; but the lien of the claim sued on shall not be discharged or affected by such proceedings.

Application to be made for order of sale, when.

SEC. 11. If a boat or vessel shall be seized under this act, and no person shall, within five days after the seizure, give bond, according to some one of the two preceding sections, the sheriff, or other officer having custody thereof, shall make a statement of the facts to the circuit court or the court of common pleas of the county, or the judge thereof in vacation, and apply for an order of sale, and such court or judge shall hear the application without delay, and may make an order that the sheriff or other officer shall sell the boat or vessel to the highest bidder, for cash, after giving such notice as may be prescribed in the order, not less than twenty days, by publication in some newspaper published in, or nearest to the county; and upon such sale being made, the officer making the same shall retain the money arising therefrom, subject to the order of the court under whose authority the sale was made; and the officer making the sale shall make return of his proceedings, under the order of sale, into the court from which the order issued.

Order.

Notice.

Sale.

Return.

Master, owner, &c. may at any time give bond before sale.

SEC. 12. The master, owner, agent, or consignee of the boat or vessel, may, at any time before a sale is made under the last preceding section, give bond, as provided either in the ninth or tenth section of this act, and with the effect in the said sections prescribed.

Officer selling, to execute to purchaser a bill of sale.

SEC. 13. When any boat or vessel shall be sold, under the eleventh section of this act, the officer making the sale shall execute to the purchaser a bill of sale therefor, and such boat or vessel shall, in the hands of the purchaser and his assigns, be free and discharged from all previous liens and claims under this act.

SEC. 14. When a boat or vessel shall be sold under the foregoing provisions of this act, the court, by whose authority

Digitized by Google

CHAP. 20.

the sale was made, shall appoint a time at which all creditors of the boat, having a lien upon the same, shall appear and exhibit their demands in such court, against such boat, and the court shall cause a notice of such appointment to be given to the creditors of the boat, by a proper publication in some newspaper, which notice shall be in the form, and published in the manner, which the court may prescribe in each case.

Upon such sale, court to appoint a time when creditors shall appear and exhibit their demands.

Notice to be given.

SEC. 15. At the time appointed by the court for the exhibition of demands against the boat or vessel sold, the creditors of such boat or vessel shall exhibit their demands to the court, and the court shall proceed to hear and allow, or reject the same, and any party interested in the boat, or a creditor thereof, or any agent therefor, may appear and object to the allowance of any demand; and if either party require a jury, the claim shall be submitted to a jury under the direction of the court, without any formal pleadings, the court having power to grant a new trial as in ordinary suits at law, and with the same right of appeal, by either party, as in ordinary suits.

Exhibition of demands, duty of court and proceedings thereon.

SEC. 16. When the claims against a boat or vessel are decided, those that are allowed shall be classed according to the order of liens, as in this act prescribed, and the court shall order the distribution of the nett proceeds of the sale of the boat or vessel, among the creditors whose claims are thus allowed, applying the money to the entire payment of claims in a prior class, before any payment shall be made upon claims in a subsequent class; and when the money to be applied to any class, shall be insufficient to pay all the claims of that class, it shall be apportioned rateably among the claims in such class.

Claims allowed, to be classed according to the order of liens. Court to order distribution.

Proceedings thereon.

SEC. 17. The court may grant a continuance upon cause shown by either party, when a claim is exhibited; but in such case, or in case of an appeal from the decision of the court upon a claim exhibited, the court shall proceed to distribute the money arising from the sale of the boat, among the creditors whose claims are allowed according to the classification before directed, retaining in the hands of the officer making the sale, or subject to the order of the court, so much of the money as will satisfy the amount to which such claimant may become entitled, if his claim shall be finally allowed, together with the costs of the proceeding.

Continuance may be granted.

Duty of court in case of continuance, or appeal.

SEC. 18. Upon the final rejection of any claim, when a continuance may have been granted, or an appeal taken, the

On final rejection of claim, &c.

Digitized by Google

money retained under the order of the court to be applied to such claims, shall be distributed among the creditors whose claims have been allowed as before directed. Distribution how made.

SEC. 19. The costs, in all cases where a demand shall be rejected, shall be paid by the claimant; where the demand is allowed, the costs shall be paid out of the money arising from the sale of the boat. Costs, by whom paid.

SEC. 20. If judgment, in any suit under this act, be rendered against any boat or vessel, the judgment shall specify to which class of liens the demand belongs; and a special writ of *fieri facias* shall be issued thereon, also specifying the class of liens to which the demand belongs, and commanding the sheriff to sell the boat or vessel, with her tackle, apparel and furniture, to satisfy the payment and all costs, and upon such writ, the sheriff may sell such part of the boat or vessel, or her tackle or furniture, or such interest therein, as may be necessary to satisfy the judgment and costs. (*c*) Judgment under this act. What it shall specify. *Fieri facias* thereon.

SEC. 21. If bond and security be given, according to the ninth section of this act, and the plaintiff shall recover judgment, the judgment shall be rendered against the principal and security on the bond, and not against the boat or vessel, and executions shall be issued against them, as upon ordinary judgments at law. Judgment may be rendered against the principal and security in the bond, when.

SEC. 22. Executions issued under this act shall be proceeded on and returned, as in case of executions issued in ordinary suits at law. Executions how issued and returned.

SEC. 23. Justices of the peace in their repective townships, shall have jurisdiction of all cases under this act, when the demand shall not exceed the sum of ninety dollars; but every plaintiff, at the time of instituting a suit before a justice of the peace, against a boat or vessel, shall make affidavit that he has not then any other demand against such boat or vessel, which is a lien thereon; and if it shall be made to appear, in any suit before a justice of the peace, that the plaintiff has divided his demand, in order to give jurisdiction thereof to justices of the peace, such plaintiff shall lose all lien upon the boat or vessel. Justices of the peace have jurisdiction in certain cases. Plaintiff in suit before justice to make affidavit. Nature thereof.

SEC. 24. In all suits before justices of the peace, under this act, the proceedings shall conform to the law governing Proceedings in such suits, how conducted.

(*c*) Dobyns vs. sheriff of St. Louis county. 5 Missouri Rep., 256.

Digitized by Google

CHAP. 20.

justices' courts, and as nearly as may be to the provisions of this act, as applying to the circuit courts; but no justice of the peace shall have power to order the sale of any boat or vessel, as provided for in the eleventh section of this act.

Justice not to order sale of boat or vessel.

Warrant issued by justice returnable forthwith.

SEC. 25. Every warrant issued by a justice of the peace, under this act, shall be returnable forthwith, and upon the return thereof the justice shall hear and determine the complaint in a summary manner.

How served and returned.

SEC. 26. All warrants issued under this act shall be served and returned as writs of attachment are served and returned.

Continuance not granted to plaintiff, unless, &c.

SEC. 27. No continuance shall be granted by a justice of the peace to the plaintiff, unless a continuance has previously been granted on the application of some person defending the boat or vessel; and in such case if the plaintiff, at the time to which the suit has been continued, shall show good and sufficient cause for a continuance, the justice of the peace may grant one continuance to the plaintiff.

Fees allowed officers.

SEC. 28. Sheriffs, constables, and other officers, shall receive the same fees and compensation for their services under this act, as are allowed for like services in suits by attachment.

Appeal to be allowed. Writ of error may be prosecuted.

SEC. 29. The captain, agent, owner, consignee, or other person interested in the boat or vessel, or any creditor thereof, may appeal from any judgment rendered against the boat or vessel, or may prosecute a writ of error to reverse such judgment.

No person to bind boat by admission of indebtedness.

SEC. 30. Neither the captain, clerk, nor other officer, of any boat or vessel, shall have power to bind the boat or vessel by giving bonds or notes, or by making any other admission of the indebtedness of the boat to any person whatever.

Demand no longer a lien, when.

SEC. 31. If the captain or clerk shall become interested in any demand of any other person, against the boat or vessel of which he is an officer, such demand shall not be longer a lien upon the boat or vessel.

Wages, what shall be recovered. Suit when to be instituted.

SEC. 32. No more than two months' wages shall be recovered in any suit upon a lien in the first class above enumerated; and every person claiming a lien in that class shall commence his suit within thirty days after he shall have earned two months' wages; or if the contract for service be terminated in a shorter time than two months, then the suit

Digitized by Google

shall be commenced within thirty days after such termination of the contract. CHAP. 20.

All suits, &c., except first class, shall be commenced within six months.

SEC. 33. All suits upon liens, in any other than the first class above enumerated, shall be commenced within six months after the cause of action shall accrue; and any failure to commence suit as in this or the last preceding section required, shall discharge the boat or vessel from the lien of the demand claimed.

Boat taking cord-wood without consent of owner, to pay treble damages and twenty dollars penalty.

SEC. 34. If the master or other officer of any steamboat shall take, or cause to be taken, for the use of such boat, any cord-wood from any wood-yard in this state, without the consent of the owner, or, having such consent, shall refuse to pay the price agreed upon, or depart without paying the same, or shall wilfully pay for less than the quantity taken, and refuse to pay for the balance, such master or other officer shall be liable to pay, and the steamboat shall also be liable to pay, to the owner of such cord-wood, three times the value thereof, and also the sum of twenty dollars; and the treble value of the wood taken, as also the penalty of twenty dollars, shall be a lien of the second class upon such steamboat, and may be recovered before any court having competent jurisdiction, by like proceedings and in like manner, as other demands are recoverable according to the provisions of this act.

Boat or vessel may institute suit, when. Lien on transported property.

SEC. 35. Any boat or vessel may institute suit, in the name of such boat or vessel, through the owner, master, agent or consignee thereof, for all freights due to such boat, for money advanced, and other charges and expenses incurred by, and due to such boat, in receiving, transporting, and supplying merchandize or any other articles transported in such boat, and shall have a lien on such property for the payment thereof; but such lien shall not continue after the property has been delivered by the master of the boat, and removed therefrom.

Joint owner, or owners may institute suit against boat, when. To notify other owners.

SEC. 36. One or more joint owners of a boat or vessel, may institute a suit under this act, against the boat or vessel by name, for all demands due to him or them, on account of such boat or vessel, for repairs, supplies furnished, money advanced, or other cause of indebtedness whatever, but no such suit shall be instituted, unless the plaintiff or plaintiffs shall have notified all the other owners of the boat or vessel, in writing, of his or their intention to commence such suit, at least twenty days before the commencement of the action.

Digitized by Google

CHAP. 20.

Majority of owners may appoint a master and dismiss him.

SEC. 37. The majority in interest of the owners of any boat or vessel, shall have power to appoint a master for such boat or vessel, and dismiss him at pleasure; and whenever a master shall be thus dismissed, he shall deliver up the boat or vessel, with all its books, papers, tackle, apparel and furniture, and all other property and effects in his possession, or under his control as master, to such owners, or to the person appointed by them to receive the same.

Such master when dismissed to deliver up boat, effects, &c.

Failure to deliver, proceedings to compel.

SEC. 38. If any master shall fail or refuse to deliver up a boat, with its property, when demanded by a majority of the owners in interest, any of such owners may make application to any justice of the peace in any county where the boat may be, and file with such justice an affidavit, stating that a majority in interest of the owners of such boat or vessel, have dismissed the master, or person acting as master, from their service as such master, and have demanded possession of the boat, with its property, and that the master has refused to deliver the same in conformity to such demand; and, thereupon, the justice of the peace shall forthwith issue a warrant to the proper constable, commanding him to take the master of such boat or vessel, and bring him forthwith before such justice of the peace, which warrant shall be executed without delay.

Application to justice.

Justice to hear cause in a summary manner.

SEC. 39. When the master shall be brought before the justice of the peace, the justice shall hear the cause in a summary manner, and hear testimony on either side; and if it shall appear that the claimants are a majority in interest of the owners of the boat or vessel, and that they have demanded possession thereof, and that the same has been refused, the justice shall render judgment that the boat or vessel, with its books, papers, tackle, apparel, and furniture, and other property belonging thereto, be restored to the claimants, and that the person proceeded against as master, pay the costs; and he shall issue a writ of restitution, commanding the constable to take the boat or vessel, with its books, papers, tackle, apparel, and furniture, and other property belonging thereto, and deliver the same to the claimants, and that he make the costs out of the goods and chattels of the defendant.

Judgment.

Majority in interest of owners, to determine in what trade boat may be

SEC. 40. The majority in interest of the owners of any boat or vessel shall have the right to determine in what trade the same shall be employed; but if any part owner shall refuse to consent that the boat or vessel shall be employed in a parti-

Digitized by Google

cular trade, the other owners may give him bond and security for the safe return of the boat or vessel, and may then employ the boat or vessel in such trade without his consent, and they shall be responsible for the safety of the boat while engaged in such trade; but the refusing owner shall have no share in the profits or loss of the boat whilst engaged in such trade, nor shall he be responsible for the debts contracted in such trade; he shall, however, be entitled to demand and recover at law, from the other owners who employ the boat in such trade, a reasonable compensation for the use of his share of the boat, whilst she shall be thus employed. The sufficiency of the bond required in this section, and of the security therein, shall be judged and approved by the clerk of the circuit court of the county in which the boat may be, who shall endorse his approval thereon.

employed. Proceedings in case part owner refuses, bond to be given, &c.

Approved March 26, 1845.

CHAPTER 21.

BONDS AND NOTES.

AN ACT concerning bonds and notes.

SEC. 1. Bonds and notes shall import a consideration.
2. Assignable; assignee may sue in his own name.
3. Set-off or discount allowed; when not allowed.
4. Nature of defence not changed by assignment.
5. Assignor shall not release after assignment.
6. Assignee may maintain action against assignor.

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

SECTION 1. All notes in writing, (*a*) made and signed by any person or his agent, (*b*) whereby he shall promise (*c*) 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.

Bonds and notes shall import a consideration. 1835, p. 104.

(*a*) An acknowledgment of indebtedness in writing, in a specific sum and for a valuable consideration, raises a promise to pay, and is in law a note. Finney vs. Shirley & Hoffman, 7 Missouri Rep., 42. 10 Wend. 677. 2 Cowen, 536.

(*b*) In an action on a promissory note, plea non-assumpsit, the court will not permit the note to be given in evidence if it appear to have been executed by an agent, unless the authority of the agent be first proved. Wahrendorff & Ober vs. Whitaker, *et. al.*, 1 Missouri Rep., 206. Bank vs. Scott, 1 Missouri Rep., 744.

(*c*) Where a person endorses a promissory note, in blank, not being a payee or endorsee, he is equally liable with the maker of the note, and may be sued as an original promissor, whether the note is negotiable like an inland bill of exchange or not. Powell vs. Thomas, 7 Missouri Rep., 440.

Digitized by Google

CHAP. 21.

Assignable; assignee may sue in his own name.

SEC. 2. All bond and promissory notes (*d*) for money or property shall be assignable (*e*) by an endorsement on such bond or promissory note, and the assignee may maintain an action thereon in his own name (*f*) 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. (*g*)

SEC. 3. The obligor or maker shall be allowed every just

(*d*) Where the bond is altered or changed in a material part by the obligee, as by the erasure of the names of some of the obligors without the assent of the others, all the obligors are discharged; Briggs & Briggs vs. Glenn & Bryan, 7 Missouri Rep., 572; 1 Missouri Rep., 312. A bond given by one of several debtors for a debt due by simple contract is an extinguishment of the simple contract, and becomes the sole debt of him who executed the bond; Settle & Bacon vs. Davidson & Saunders, 7 Missouri Rep., 604; *vide* Brown vs. Lockhart, 410; Kennerly vs. Weed, 673; and Bailey vs. Thornhill, 711, 1 Missouri Rep.

(*e*) A note given for the payment of a certain sum in *work* is not assignable so as to enable the assignee to maintain an action thereon in his own name. Bothicks administrator vs. Purdy, 3 Missouri Rep., 83. See Able & Isbell vs. Shields, *et. al.*, 7 Missouri Rep., 120, and J. & P. Miller vs. Newman & Paulsel, 8 Missouri Rep., 355, for the law as it stood before this act was passed. When a conditional assignment of a note is made, the law does not impose upon the maker the burden of ascertaining whether the condition has been performed, and the title of the assignee consequently extinguished. Able & Isbell vs. Shields, *ubi supra*. A note transferred by delivery for a valuable consideration, may be the subject of set-off. The transfer or assignment need not be in writing. Frazier & Delliner vs. Gibson, 7 Missouri Rep., 271. A transfer of a *bill* or note payable to order can only be made by the person who is legally interested, and if the person to whom it is assigned, when he took the paper, knew that the person making the transfer, had no right to make it, such transfer is inoperative. McDaniel & Ousley vs. Wood & Oliver, 7 Missouri Rep., 543.

(*f*) Our statute making promissory notes assignable, and authorizing the assignee to sue in his own name, makes the assignee the legal owner of the instrument, and, consequently, erroneous to institute suit in the name of the assignor, for the benefit of the assignee. Jeffers vs. Oliver, 5 Missouri Rep., 433. *Vide*, Thomas vs. Wash & Savage, 1 Missouri Rep., 666. *Vide*, also, Neyfong vs. Wells, Hard., 562. One of two payees to a note, may assign all his interest in such note to the other payee, who may sue as the legal owner of the note. Smith vs. Oldham, 5 Missouri Rep., 483. *Vide*, Hubbard vs. Prather & Smiley, 1 Bibb, 180, and Bibb vs. Skinner, 2 Bibb. 57. As to endorsements in blank, see Wiggins vs. Rector's executor, 1 Missouri Rep., 478, and Menard vs. Wilkinson, 3 Missouri Rep., 92. *Vide*, Ragland vs. Ragland, 5 Missouri Rep., 54; Thomas vs. Cox, 6 Missouri Rep., 506. An assignment of all the assignors "*goods and chattels, effects and property of every kind*," for the purpose of paying debts due by the assignor, is not such an assignment of a bond, held by an assignor at the time of the assignment, as will enable the assignee to maintain an action thereon in his own name. Millers vs. Paulsel & Newman, 8 Missouri Rep., 355. The assignment of a bond or note must be in writing, to enable the assignee to maintain an action thereon in his own name, and the writing itself should show whether the assignment has been made; parol evidence is not admissible to prove the fact. *Ibid.* A. executed his bond to B, who assigned it to C; sometime afterwards, C brought the bond to B, with his assignment thereon erased, and B, thereupon, at the request of C, assigned the bond to E; *held*, that the erasure of the assignment did not divest C of the legal title to the bond; and, consequently, that E could not sue in his own name, as the legal owner thereof. Davis vs. Christy, 8 Missouri Rep., 569.

(*g*) This section does not apply to covenants in the strict sense of the common law. They are left, as at common law, not assignable, so as to enable the assignee to sue thereon in his own name. Thomas vs. Cox, 6 Missouri Rep., 506.

Digitized by Google

set-off (*h*) and discount against the assignee, or the assignor, before assignment, unless it shall be expressed in the bond or note that the sum therein specified shall be paid without defalcation or discount. (*i*)

Set-off or discount allowed: when not allowed.

SEC. 4. 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. (*j*)

Nature of defence, not changed by assignment.

SEC. 5. It shall not be in the power of the assignor, after assignment, to release any part of the demand (*k*) nor shall any assignee ever obtain greater title to, or interest in, any bond or note than the person had from whom he acquired it.

Assignee shall not release after assignment.

SEC. 6. The assignee of a bond or note may maintain an action against the assignor upon failure to obtain payment from the obligor or maker, only in one of the following cases: (*p*) *First*, If he use due diligence (*q*) 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. (*r*) *Second*, If the obligor or maker is insolvent,

Assignee may maintain action against assignor.

(*h*) The maker of a bond or note cannot set off claims against the assignor, accruing after the commencement of suit by the assignee. Frazier & Delliner vs. Gibson, 7 Missouri Rep., 271.

(*i*) In a suit by an assignee of a note, payable without defalcation, but not negotiable like inland bills of exchange, for want of the words, "negotiable and payable," the payer cannot plead a set-off, though he may plead a total failure of consideration. Maupin & Jameson vs. Smith, 7 Missouri Rep., 402. The provisions of the statutes concerning off-sets, do not apply to a note, which expresses to be payable without defalcation. Collins vs. Waddle, 4 Missouri Rep., 450.

(*j*) Ewing vs. Miller, 1 Missouri Rep., 234. This section was intended to embrace equitable, as well as legal defences. Administrator of Barton vs. Rector, *et al.*, 7 Missouri Rep., 524. Note the third and fourth sections are transposed in this revision. The third section of the revision of 1835 is the fourth of this, and fourth the third.

(*k*) Cleveland vs. Marks & Davis, 3 Missouri Rep., 332; S. C., 4 Missouri Rep., 206. Although it is well settled that the declaration of an assignor of a note, made after the assignment, cannot be admitted to affect the interest of the assignee, yet, the assignor himself may be examined. Porter & Moore vs. Rea, 6 Missouri Rep., 48.

(*p*) This section was intended to embrace all paper by the law merchant. *Vide*, Pococke vs. Blount, 6 Missouri Rep., 338. In an action against the assignor of a note, not negotiable, the declaration must aver the existence of some fact, which, under the statute, renders the assignor liable. *Vide*, Wimer vs. Shelton, 7 Missouri Rep., 266.

(*q*) In a suit against the assignor of a promissory note, the declaration must state the diligence made use of to recover the money from the maker of the note, that the court may judge whether *due diligence* was used. Collins vs. Warburton & Risley, 3 Missouri Rep., 202, Tompkins j. dissenting. *Vide*, Harris vs. Harman, 3 Missouri Rep., 451.

(*r*) Harman vs. Armstrong, 5 Missouri Rep., 374.

Digitized by Google

CHAP. 22. (s) or is not a resident of, or residing within, this state, so that a suit would be unavailing, or could not be instituted.

Approved January 31, 1845.

(s) It does not seem necessary that the insolvency of the maker should be proved by his taking the insolvent debtor's oath—that it was not in the power of the plaintiff at any time to have made the money due on the note from the maker by suit, seems sufficient proof of insolvency, which is a mixed question of law and fact, and must be left to the determination of the jury, subject to the instructions of the court. Pococke vs. Blount, 6 Missouri Rep., 338. Suit by the assignee of a promissory note, against the administrator of the assignor, on the ground of the insolvency of the maker, proof that the visible property of the maker was not equal in value to the amount of his indebtedness, held sufficient to establish the insolvency. Pillard vs. administrators of Darst, 6 Missouri Rep., 358. Although the assignee of a note not negotiable, cannot sue a remote assignor, at law, yet he may in equity. A court of equity will give him a remedy by making *him* immediately liable, who is alternately liable, on the principle that the court entertain jurisdiction to avoid multiplicity of suits, and in such case the original assignor may make the same defence against the remote, that he could make against his immediate assignee: Smith vs. Harley, *et. al.*, 8 Missouri Rep., 559. *Vide*, Jacobs vs. McDonald, *Ibid*, 565.

CHAPTER 22.

BRIDGES.

AN ACT to provide for building bridges.*

SEC. 1. County court to determine what bridges shall be built at the public expense.
2. When to be built by county.
3. Court may order bridge built by county to be attached to road district, &c.
4. Court to determine how, and of what materials, bridge shall be built. To appoint a commissioner.
5. Oath of commissioner.
6. To do nothing towards building until appropriation made.
7. Court to require commissioner to make an estimate of costs of building bridge. To report. Not to exceed estimate.
8. Cost to be certified to road overseer; when.
9. Letting of bridges to be advertised.
10. To be let by public out-cry to lowest bidder. Bond to be given.
11. Expense to be paid, out of what fund.
12. Proceedings when moiety of estimated expense is raised by individual subscription. Petition. Order.
13. Bridge over water-course dividing counties, how to be built. Expenses, how paid.
14. When moiety of expense of such bridge is raised by subscription, proceedings.
15. Court shall make appropriation to repair bridge, when.
16. Proceedings when bridge requires repairs. Commissioners to employ undertakers.
17. If repairs not made, some other person to be employed.
18. No commissioner shall be undertaker or security.
19. His compensation.
20. To take necessary rock and timber from adjoining lands.
21. Court may allow compensation for the same.
22. Court to appoint viewers to assess damages.

* *Vide*, Revised Code of 1835, p. 106.

Digitized by Google

CHAP. 22.

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

SECTION 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. County court to determine what bridges shall be built.

SEC. 2. Where the estimated expense of a bridge shall exceed fifty dollars, it shall be built by the county. When to be built by the county.

SEC. 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; but when the repairs necessary at one time shall exceed in value fifty dollars, the same shall not be required to be done by such road district. Court may order bridge built by county to be attached to road district.

SEC. 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, to be determined by the county court. Court to determine how and of what materials bridge shall be built. Commissioner to be appointed.

SEC. 5. Said commissioner shall take an oath, faithfully to perform the duties enjoined on him by this act. To take an oath.

SEC. 6. The commissioner shall do nothing towards building the bridge, until an appropriation for the same shall first be made by the county court. To do nothing till appropriation is made.

SEC. 7. Unless the court, from its own information, shall be satisfied as to the expense of building the bridge, and shall make an appropriation accordingly, it shall be the duty of the said court to require the commissioner to proceed to the spot where the bridge is to be built, and make an accurate estimate of the cost of building the same, according to any plan or plans ordered by the court, or such as in his opinion may be best, and without delay make report thereof, and the court then may, or may not, in its discretion, make an appropriation for building the bridge, which shall, in no event, exceed the estimate made by the commissioner. Court to require commissioner to make an estimate of cost of building bridge. To report.

SEC. 8. If the estimated cost of the bridge shall be less than fifty dollars, then that fact shall be certified to the overseer of the road district in which the road is to be built. Cost to be certified to road overseer, when.

SEC. 9. The commissioner shall advertise the time and

Digitized by Google

CHAP. 22.

Letting of bridge to be advertised.

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.

To be let by public outcry, to lowest bidder.

SEC. 10. He shall let the same by public outcry, to the person making the lowest bid, which shall, in no event, exceed the appropriation, and shall take bond, payable to the county, with two good and 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.

Bond to be given.

Expense to be paid, out of what fund.

SEC. 11. The court may order the expense of building such bridge, to be paid out of any money in the county treasury.

Proceedings when moiety of estimated expense is raised by individual subscription.

SEC. 12. When one moiety of the estimated expenses 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, all things considered, the interest of the public will be promoted by building the bridge at that time, they shall make an order for building the same, and for the payment of the residue of the estimated expenses of building said bridge out of the county revenue.

Petition.

Order.

Bridge over streams dividing counties, how to be built.

Expenses, how paid.

SEC. 13. 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 expense 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.

When moiety of expense is raised by subscription, proceedings.

SEC. 14. When one moiety of the estimated expense of building such bridge shall be raised by subscription, both county courts, if satisfied of the expediency of so doing, shall forthwith unite to cause such bridge to be built, and shall pay the residue of the expense of the bridge in the proportion hereinbefore directed.

Court shall make appropriation to repair bridge, when.

SEC. 15. The county court shall, whenever it is necessary, without delay, make an appropriation to repair any public bridge in the county, and whenever any bridge shall be repaired, the like preliminary steps shall be had as in case of building a bridge, and the commissioner shall have the

Digitized by Google

same powers, proceed in like manner, as the commissioner for building a bridge.

When bridge requires repairs, proceedings.

SEC. 16. If any public bridge require repairing, which by contract is to be kept in repair, the commissioner of such bridge, or if he be absent, or fails, or is incapable of acting, then a commissioner, to be appointed by the county court, shall give notice, in writing, to any one or more of the undertakers, or to his or 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.

Commissioner to employ undertakers.

If repairs not made, some other person to be employed.

SEC. 17. 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 or assumpsit.

Commissioner shall not be undertaker, nor security.

SEC. 18. No commissioner shall be an undertaker for building a bridge of which he is commissioner, nor be security for any undertaker.

His compensation.

SEC. 19. 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 or treasuries.

To take necessary rock and timber from adjoining lands.

SEC. 20. He may take, or cause to be taken, from the adjoining or most convenient lands, such quantity of rock and timber as may be necessary for the building or repairing of such bridge.

Court may allow compensation for the same.

SEC. 21. When timber or rock shall be taken from the lands of any individual, the county court may allow compensation for the same.

Court to appoint viewers to assess damages.

SEC. 22. If any person be aggrieved by the cutting of such timber, or taking such rock, such person may apply to the county court of the proper county, who shall appoint three disinterested householders as viewers, who, after taking the proper oath or affirmation, shall proceed to assess the damages, if any, which shall be paid out of the county treasury or treasuries.

Approved February 13, 1845.

Digitized by Google

CHAPTER 23.

BROKERS AND EXCHANGE DEALERS.

AN ACT to license and tax money brokers and exchange dealers.

SEC. 1. No person shall exercise the business of a broker or exchange dealer, without a license.
2. Statement in writing, on oath, to be delivered to collector before license issues.
3. Tax to be paid before license delivered. Rate of tax on licenses.
SEC. 4. Certain persons not amenable to the provisions of this act.
5. The selling of lottery tickets a distinct business.
6. Form of license. Collector, how to account.
7. Penalty for violation of this act.

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

No person shall exercise the business of a broker or exchange dealer without a license.

SECTION 1. No person, or association, or company of persons, shall carry on the business of dealing in, or buying, or selling, or shaving, any kind of bills of exchange, checks, drafts, bank notes, promissory notes, bonds, or other kind of writings obligatory, or in procuring the gold and silver of the country to dispose of the same for a premium, in this state or elsewhere, without a license for that purpose continuing in force.

Statement in writing on oath to be delivered to collector, of capital, &c.

SEC. 2. Before any person, or association, or company of persons, shall receive a license to deal as a money broker or exchange dealer, he or they shall deliver to the collector of the proper county a statement in writing, verified by oath or affirmation, showing the amount of business expected to be done, and the capital to be employed in his or their business, for the six months next ensuing the delivery of such statement.

Tax to be paid before license delivered.

SEC. 3. Such license shall be for the period of six months, and the tax thereon shall be paid to the collector before its delivery by him, and shall be levied according to the amount of business expected to be done, or the amount of capital to be employed, whichever is greatest in amount, and at the following rates: *First*, When the amount is five thousand dollars, or less, fifty dollars. *Second*, When the amount is more than five thousand dollars, and does not exceed ten thousand dollars, seventy-five dollars. *Third*, When the amount is more than ten thousand, and does not exceed fifteen thousand dollars, one hundred dollars. *Fourth*, When the amount is more than fifteen thousand, and does not exceed twenty thousand dollars, one hundred and twenty-five dollars. *Fifth*, When the amount is more than twenty thousand, and does not exceed thirty thousand dollars, one hundred and

Rates of tax on licenses.

Digitized by Google

seventy-five dollars. *Sixth*, When the amount is more than thirty thousand, and does not exceed fifty thousand dollars, two hundred and fifty dollars. *Seventh*, When the amount is more than fifty thousand, and does not exceed seventy-five thousand dollars, three hundred dollars. *Eighth*, When the amount is more than seventy-five thousand, and does not exceed one hundred thousand dollars, three hundred and fifty dollars. *Ninth*, When the amount is more than one hundred thousand, and does not exceed one hundred and fifty thousand dollars, four hundred dollars. *Tenth*, When the amount is more than one hundred and fifty thousand, and does not exceed two hundred thousand dollars, four hundred and fifty dollars. *Eleventh*, When the amount is more than two hundred thousand, and does not exceed three hundred thousand dollars, five hundred dollars. *Twelfth*, When the amount exceeds three hundred thousand dollars, six hundred dollars.

Certain persons not amenable to the provisions of this act.

SEC. 4. Persons who do not deal as money brokers or exchange dealers, except as incidental exigencies may arise, or at such times as the convenience of their other business may require, are not amenable to the provisions of this act.

The selling of lottery tickets a distinct business.

SEC. 5. The selling of lottery tickets is a distinct business from that of a money broker and exchange dealer, and no person shall sell lottery tickets by virtue of his license as a money broker or exchange dealer.

Form of license, &c.

SEC. 6. The form of license and manner of issuing them, under this act, shall conform, as near as may be, to the provisions of the act to license and tax merchants; and the collectors shall settle with the county courts, account for, and pay over, the tax on such license, in the manner prescribed in that act. (*a*)

Collector, how to account.

Penalty for violation of this act.

SEC. 7. Persons convicted of a violation of this act shall be fined in a sum not less than ten thousand dollars.

Approved March 4, 1845.

(*a*) See the act to license and tax merchants.

Digitized by Google

CHAPTER 24.

CENSUS.

AN ACT regulating the mode of taking the census.

SEC. 1. Sheriff to take the census of his county. The particular manner in which census to be taken.
2. Deaf and dumb, and blind persons to be specified, &c.
3. Secretary of state to prepare blank forms for taking the census, &c.
4. Sheriff to commence taking the census on the first of September, in every fourth year, after 1844, and return an abstract of the same to secretary of state, before the first Monday in November, &c.
5. Sheriff shall ascertain and specify the number of inhabitants in each township and corporate town of his county, &c.
6. Original books to be deposited in office of the clerks of the county courts, &c.
7. Compensation to the sheriff for taking the census.
8. Penalty for failing to perform the duties imposed by this act; how recovered.
9. Compensation when allowed.
10. Penalty for knowingly enumerating any persons not residents of the county.

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

Sheriff to take the census of his county; particular manner in which census to be taken. See act Feb'y, 13th, 1841, p. 26.

SECTION 1. The sheriff of each county shall take an enumeration of the inhabitants, residents of his county, distinguishing the free white males from the females, and the free persons of color from the slaves, and shall designate in separate columns, all free white persons under ten years of age; those ten years of age, and under eighteen; those of eighteen, and under twenty-one years; those of twenty-one, and under forty-five; and those of forty-five years and upwards; and shall also express in columns, the aggregate of all free white persons between the ages of six and eighteen; and the number of free white persons in his county that have been taught to read and write.

Deaf and dumb and blind persons to be specified, &c.—*Ibid.*

SEC. 2. The sheriff shall, also, in addition to the designation above required, specify in separate columns, the number of deaf and dumb persons, and the number of blind persons, together with their ages, sexes and colors, and what number of such persons have been taught to read and write.

Secretary of state to prepare blank forms for taking the census, &c.—*Ibid.*

SEC. 3. It shall be the duty of the secretary of state, on or before the fifteenth day of June, every fourth year, after the year eighteen hundred and forty-four, to prepare blank forms, embracing and showing all the distinctions and classifications required by the two preceding sections, and forward one or more to the sheriff of each county in this state, which form the sheriff shall use in making the returns required by this act; all the columns in said form shall be added together, so as to show the aggregate of each classification required by

Digitized by Google

this act, and all the classifications shall be added so as to show the entire population of the county.

Sheriff to take the census on the 1st of Sep. in every 4th year; to make returns to the secretary of state, when. 1841, p. 26.

SEC. 4. The sheriff shall commence the enumeration on the first day of September, every fourth year, after the year eighteen hundred and forty-four, and make out an abstract in the form above mentioned, and return the same to the secretary of state, by mail, or other safe conveyance, before the first Monday of November of the same year, who shall cause the abstract of the enumeration of each county to be laid before the general assembly, during the first week of the succeeding session. (a)

Sheriff shall make return of the number of persons in each township and corporate town of his county, &c.—*Ibid.*

SEC. 5. In taking the census, the sheriff shall ascertain the number of inhabitants in each township and corporate town in his county, according to the distinctions and classifications above required, and extend the same so as to show the whole number of inhabitants in each township and corporate town.

Original books to be deposited in office of the clerks of the county courts, &c. *Ibid.*

SEC. 6. After making and forwarding the abstract required by this act to the secretary of state, the original books shall be deposited in the office of the clerks of the respective county courts; and it shall be the duty of the said clerks to preserve the same among the records of the county.

Compensation to the sheriff for taking the census.—*Ibid.*

SEC. 7. The sheriff shall be allowed out of the state treasury, one dollar and fifty cents for every day he may be employed in taking the census and preparing his abstract; but no sheriff shall be allowed for more than fifty days' service under this act.

Penalty for failing to perform the duties imposed by this act, how recovered.

SEC. 8. Every sheriff failing to perform the duties required by this act, shall forfeit the sum of five hundred dollars, to be recovered by action of debt, in the name of, and for the use of the county.

Compensation when allowed.

SEC. 9. On presentation of the certificate of the clerk of the county court, showing the compensation granted to the sheriff for taking the census, the auditor of public accounts shall audit and allow the same.

Penalty for knowingly enumerating any persons not residents of the county.

SEC. 10. If any sheriff, or his deputy, in the performance of the duties enjoined on him by this act, shall knowingly enumerate and list any person, or persons, not a resident of his county, he shall be deemed guilty of a misdemeanor, and

(a) This has been made September, because the election of sheriffs occurs the first Monday in August, the year the census is taken; there may be a change in the officer, and the work performed by the old sheriff might be of no avail.

Digitized by Google

CHAP. 25. on conviction thereof, by indictment, he shall forfeit his office, and be incapable of holding any office of trust or profit in this state for ten years, and shall be fined in a sum not exceeding five hundred, nor less than two hundred dollars.

Approved January 8, 1845.

CHAPTER 25.

CLERKS.

AN ACT regulating clerks.

SEC. 1. Supreme court to appoint a clerk. Tenure of his office.
2. Vacancy, how filled. Where clerk of supreme court shall keep his office.
3. Clerks of circuit and county courts to be elected, when.
4. The clerk to be elected every six years from the time he was first elected.
5. In cases of vacancy, court to appoint clerk.
6. Court shall order a special election, when.
7. To be held at the regular election, when.
8. Elections of clerks; how conducted.
9. Qualifications of a clerk.
10. Clerk to give bond. Condition of the bond.
11. Securities of clerk of supreme court need not be residents of the county.
12. Certificate of election and bond of clerk to be filed with secretary of state.
13. Certificate and oath of office to be recorded.
14. If security of clerk is non-resident, &c. or bond insufficient, court to cause clerk to give a new bond. Failing to give such bond, office to be vacated.
15. Clerks' bonds to be recorded by secretary. Copy to be evidence.
16. Duties of clerk.
17. Where clerk shall keep his office.
18. Clerk may remove records, &c., when.
19. Clerk to keep a record. Issue process. Keep accounts, &c.
20. May appoint deputies. Qualifications of deputies.
21. Clerk guilty of a misdemeanor, when.
22. Duty of court, &c., when clerk has been guilty of a misdemeanor, to give notice to attorney general. May suspend clerk. May appoint a temporary clerk. Powers and duties.
23. Duty of attorney general in such cases. Notice to be given.
24. Notice and copy of charges to be delivered, when. Witnesses to be summoned.
25. Clerk to appear and plead, when.
26. May be tried by jury, or submitted to court.
27. Clerk found guilty, to be removed from office, and fined not over $1,000.
28. If acquitted, to be reinstated. Costs.
29. Additional proceedings against clerk.
30. Executors or administrators of clerks, to deliver records, books, papers, &c.

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

Supreme court to appoint a clerk. Tenure of office. 1843, p. 48–9 and 50.

SECTION 1. The supreme court, or a majority of the judges thereof, shall appoint a clerk for said court, who shall hold his office for six years, and until a successor is appointed and qualified.

Digitized by Google

Vacancy, how filled.

SEC. 2. When a vacancy happens in said office, it shall be filled by the court, or by the judges, or a majority of them in vacation, and the clerk so appointed shall continue in office until the expiration of the term for which his predecessor was appointed, and until a successor is qualified. The clerk of the supreme court shall keep his office in the capitol in the city of Jefferson.

Where clerk of supreme court shall keep his office.

Clerk of circuit court, &c. to be elected, when.

SEC. 3. The qualified voters of each county shall, on the first Monday in August, every sixth year after the year eighteen hundred and forty-one, except as is hereinafter excepted, elect a clerk of the circuit court, and a clerk of the county court, for their respective counties; and the qualified voters of St. Louis county shall also, at the same times, elect a clerk of the court of common pleas, and a clerk of the criminal court.

Clerk to be elected every six years from the time he was first elected.

Act Feb'y 15, 1841, sec. 1, p. 29.

SEC. 4. When there shall be a clerk in any county of this state, whose term of service commences and ends at a time different from that of those clerks who were elected at the last general election for clerks in eighteen hundred and forty-one, the qualified voters of such county shall, every six years from the time such clerk was first elected, hold an election for clerk.

In cases of vacancy, courts to appoint clerks.

SEC. 5. If, from any cause, there be a vacancy in the office of clerk of the circuit court, or county court, court of common pleas, or criminal court, the court, or judge, or judges thereof, in vacation, shall appoint some person to fill the vacancy, until a successor be elected and qualified.

Court shall order a special election, when.

SEC. 6. At the next term after such vacancy is made, [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, who shall hold the office during the remainder of the term for which the clerk was formerly elected, and until his successor be elected and qualified; or if it be an original vacancy in the office, then the clerk elected shall hold his office for the term of six years, and until a successor is qualified.

To be held at the regular election, when.

SEC. 7. If such vacancy occurs within six months before any regular election, the election of clerk shall be held at the regular election of clerk next after the occurrence of the vacancy.

Elections of clerks, how conducted.

SEC. 8. Elections for clerks shall be conducted as other elections are, but the returns of elections shall be made to

Digitized by Google

CHAP. 25. 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 belongs.

Qualifications of a clerk.

SEC. 9. No person shall be appointed or elected clerk of any court, 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 county for which he is elected three months before the election; and every clerk shall, after his election, reside in the county for which he is the clerk.

Clerk to give bond.

SEC. 10. Every clerk, before he enters on the duties of his office, shall enter into bond, payable to the state of Missouri, with good and sufficient securities, who shall be residents of the county for which the clerk is appointed or elected, 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 moneys 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, belonging to his office.

Condition of bond.

Securities of clerk of the supreme court need not be residents of the county.

SEC. 11. Nothing contained in the preceding section shall be construed so as to require the sureties of the clerk of the supreme court, to be residents of the county in which the court is holden.

Certificate of election, and bond of clerk to be filed with secretary of state.

SEC. 12. The certificate of the election of any clerk, signed by the presiding justice of the county court, and the bond of every clerk, shall be deposited in the office of the secretary of state, with the approval of the court or judges endorsed thereon.

Certificate and oath of office to be recorded.

SEC. 13. A certificate of his election shall be delivered by the presiding justice of the county court, to each clerk elected, which, with the oath of office endorsed thereon, shall be recorded in the office of the recorder of the county, before any other duty of his office is discharged.

If security of clerk non-resident, &c., or insufficient, court to cause clerk to give new bond.

SEC. 14. If, at any time, any court shall be satisfied, that any surety of the clerk of the said court is a non-resident of the county in which such clerk is acting, is deceased or insolvent, or otherwise insufficient, or in danger of becoming insufficient, or that the penalty of the bond of the clerk is not

Digitized by Google

sufficiently large, 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 clerk is regularly elected and qualified.

Failing to give such bond, office shall be vacated.

SEC. 15. 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.

Clerks' bonds to be recorded by secretary.

Copy to be evidence.

SEC. 16. Each clerk shall preserve the seal and other property belonging to his office, and shall provide and preserve suitable books, stationery and furniture for his office, and keep a correct account thereof, and each court shall audit such accounts, and allow such sums as shall be reasonable; but no article charged on any such account shall be allowed, unless it properly comes within the description of those expressly named, (a) nor shall any charge for fuel be allowed. All such allowances, made to the clerk of the supreme court, shall be paid by the state, and those made to other clerks, by the proper county.

Duties of clerk.

Act Feb'y 13, 1839, p. 27 and 28, sec. 3.

SEC. 17. 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, seal and property belonging to his office, and transact his official business.

Where clerk shall keep his office.

SEC. 18. 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 is removed.

Clerk may remove records, &c., when.

SEC. 19. Every clerk shall seasonably record the judgments, rules, orders, and other proceedings of the court, and 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 moneys coming to his hands, on account of costs or otherwise, and punctually pay over the same.

Clerk to keep record.

Issue process.

Keep accounts, &c.

(a) *Vide*, county of Boone vs. Todd. 3 Missouri Rep., 103.

Digitized by Google

CHAP. 25.

May appoint deputies. Act Jan'y 27, 1841, p. 29. Qualification of deputies. Their duties.

SEC. 20. Every clerk may appoint one or more deputies, to be approved by the judge or judges, or a majority of them in vacation, or by the court, who shall be at least seventeen years of age, and have all other qualifications of their principals, and take the like oath, and may, in the name of their principals, perform the duties of a chief clerk; but all clerks and their sureties shall be responsible for the conduct of their deputies.

Clerk guilty of a misdemeanor, when.

SEC. 21. If any clerk shall knowingly and wilfully do any act contrary to the duties of his office, or shall knowingly and wilfully fail to perform any act or duty required of him by law, he shall be deemed guilty of a misdemeanor in office.

Duty of court, &c. when clerk has been guilty of misdemeanor, to give notice to attorney general. May suspend clerk. May appoint a temporary clerk. Powers and duties.

SEC. 22. When any court, or the judge or judges, or a majority of them in vacation, shall believe from their own knowledge, or from the information of others, on oath or affirmation, that the clerk of the court in which they preside, has been guilty of a misdemeanor in office, they shall give notice thereof to the attorney general, 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 the same oath, and give the like bond as other clerks, and who shall possess the same power, perform the same duties, and receive the like fees, as other clerks, and shall continue in office until the regular clerk shall resume his office, or a successor shall be elected.

Duty of attorney general in such cases. Notice to be given.

SEC. 23. Whenever the attorney general shall be required to prosecute charges against any clerk, he shall make out each charge in due form, and cause a copy thereof to be served on him, together with a notice requiring him to appear before the supreme court on some day in term time, to be specified in such notice, and answer the said charges.

Notice and copy of charges to be delivered, when. Witnesses to be summoned.

SEC. 24. Such notice and a copy of the charges, shall be delivered to such clerk, thirty days at least before the day so appointed, and the attorney general shall file such charges in the office of the clerk of the supreme court, and shall cause witnesses to be summoned to support the same, and shall prosecute such charges with all convenient speed.

Clerk to appear and plead, when.

SEC. 25. The clerk, against whom such charges shall be exhibited, shall appear and plead at the first term of such court, after he shall have been served with notice, and the

Digitized by Google

cause shall be tried at such term, unless good cause for a continuance is shown.

Trial by jury.

SEC. 26. A jury may be summoned to try the truth of the charges, if they are denied, or the whole matter may be submitted to the court for its determination.

Clerk found guilty, to be removed from office, and fined not over $1,000.

SEC. 27. If any clerk, against whom charges shall be exhibited as aforesaid, shall be found guilty thereof, he shall be removed from his office, and be fined at the discretion of the court, in any sum not exceeding one thousand dollars, to the use of the county of which he was clerk, or, if a clerk of the supreme court, for the use of the state, and he shall pay all the costs of the proceeding.

If acquitted, to be reinstated.

SEC. 28. If any such clerk shall be acquitted, he shall be reinstated in his office, and the county of which he is the clerk, or, if a clerk of the supreme court, the state, shall pay the costs.

Costs.

Additional proceedings against clerk.

SEC. 29. In addition to the mode herein provided, any clerk may, for any misdemeanor in office, be removed, and otherwise punished by indictment in the circuit court.

Executors or administrators of clerks to deliver records, books, papers, &c.

SEC. 30. If any clerk die, resign, or be removed, 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.

Approved March 27, 1845.

CHAPTER 26.

COMMISSIONER OF THE PERMANENT SEAT OF GOVERNMENT.

AN ACT providing for the election of a commissioner of the permanent seat of government, and for other purposes.

SEC. 1. Commissioner of the permanent seat of government, how elected. Term of service.
2. Vacancy, how filled.
3. Commissioner to give bond, and take oath, &c.
4. His duties.
5. He shall deposit in a place of safety, perishable public property.
6. Shall have charge and control of the capitol, &c.
7. Shall prosecute for trespasses and injuries done to public property.
8. Shall provide fuel and furniture for the general assembly.
9. Shall contract for, and superintend the repairs and construction of public buildings, &c.
10. Shall keep accounts, &c., and report to the general assembly.

Digitized by Google

CHAP. 26.

SEC. 11. Shall deliver up all public property and papers to his successor, &c.
12. Compensation of commissioner.
13. He may appoint a watch for the capitol, &c.
14. Penalty for committing trespass or injury done to public property.
15. Proceedings in case of such offences.
16. Judge of circuit court of Cole county shall give this act in charge to the grand jury, &c.
17. Fines, &c., accruing under this act, to what purposes applied.
18. Penalty for writing on the walls of the capitol.
19. Guardian, &c., liable, when such offence committed by an infant.

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

Commissioner of seat of government, how elected; term of service.—1837, p. 31.

SECTION 1. There shall be elected at each session of the general assembly, by the two houses thereof, on joint ballot, a commissioner of the permanent seat of government, who shall hold his office until his successor is elected and qualified.

Vacancy, how filled.—*Ibid.*

SEC. 2. If a vacancy occurs in said office, during the recess of the general assembly, the governor shall fill the same.

Commissioner to give bond, take oath, &c. *Ibid.*

SEC. 3. Each commissioner, before entering upon the duties of his office, shall enter into a bond to the state in the sum of ten thousand dollars, with sufficient security, to be approved by the attorney general, conditioned for the faithful discharge of the duties of his office, and shall moreover take an oath or affirmation to discharge the duties of his office faithfully and impartially, a certificate of which shall be endorsed on his bond, and the bond filed in the office of the secretary of state.

His duties. *Ibid.*

SEC. 4. It shall be the duty of the commissioner to preserve from waste and damage all public lots and squares, and all other public property at the seat of government, and prevent injuries and encroachments on the streets, alleys, avenues, public squares and commons, within the limits of the city of Jefferson, and to prevent the removal of timber and stone from the same.

He shall deposite in a place of safety, perishable public property.

SEC. 5. 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.

Shall have charge and control of the capitol, &c. See act Feb'y 3, 1841, p. 120, sec. 16.

SEC. 6. He shall have charge and control of the capitol, and shall take care that the same be not injured or get out of repair; he shall keep all rooms not occupied, and all other places, clean and in good condition. Rooms not in use shall be locked. He shall place all the furniture and articles belonging to the state, and used about the capitol, in some secure part of the building, and shall keep the keys of the same. He shall take care that no combustible matter be

Digitized by Google

brought into or accumulate in or about the capitol, and shall use all precautions against accidents from fire and other causes.

Shall prosecute for trespasses and injuries done to public property. See Digest, 1835, p. 115.

SEC. 7. He shall prosecute, in the name of the state, for all trespasses and injuries of every kind done to the public buildings and other property, and shall attend to the suits relative to the same; and the attorney general shall give counsel or prosecute suits whenever required by the commissioner.

Shall provide fuel and furniture for the general assembly—*Ibid.*

SEC. 8. He shall provide fuel, candles, and the necessary furniture for the accommodation of the general assembly, previous to each meeting thereof, and take care of the same.

Shall contract for and superintend the repairs and construction of public buildings, &c.—*Ibid.*

SEC. 9. He shall contract for and superintend the repairs and construction of any public buildings or improvements that may be required by law, at the seat of government, when no other person or officer is directed to do the same.

Shall keep accounts, &c., and report to the general assembly—*Ibid.*

SEC. 10. He shall keep accurate accounts between himself and the state, and shall make a report of all his official acts to the general assembly, during the first week of each regular session thereof.

Shall deliver up all public property and papers, to his successor, &c. *Ibid.*

SEC. 11. He shall deliver to his successor all property and papers of every kind in his possession, relative to the affairs of the state, make an inventory thereof, upon which he shall take a receipt of his successor, and deliver the same to the secretary of state.

Compensation of commissioner.

SEC. 12. His compensation shall be two hundred and fifty dollars per annum, payable quarterly.

He may appoint a watch for the capitol. Act Feb'y 6, 1837.

SEC. 13. He may appoint a watch for the capitol, at a salary not exceeding twelve dollars a month, whose duty it shall be to see that no injury is done to it, keep it in order, prevent all persons from entering it at unseasonable hours, give information to the commissioner of all offences committed against this act, to attend all visitors, at seasonable hours, who may wish to go through and see the building, and do all other acts, in relation thereto, that may be required by the commissioner.

Penalty for committing trespass or injury to public property. Act Feb'y 19, 1835, sec. 1, p. 148.

SEC. 14. Any person who shall cut any timber, or commit any waste, trespass, or other injury, upon any of the lots, or out-lots remaining unsold, within the limits of the city of Jefferson, or upon any public buildings or other property belonging to the state, at the seat of government, shall, upon conviction

Digitized by Google

CHAP. 26.

thereof, by indictment, be fined in a sum not exceeding five hundred dollars, and not less than double the damages sustained by the unlawful act.

Proceedings in case of such offences. Act Feb'y 13, 1839, sec. 2, p. 148.

SEC. 15. It shall be the duty of every conservator of the peace for the county of Cole, upon information upon oath, or of their own knowledge, to cause all persons committing any of the offences aforesaid, to be brought before him, by the like process as in other criminal cases, to cause such persons to enter into recognizance, with sufficient surety, for their appearance at the next term of the circuit court for said county, or to commit them to jail, in default of their entering into such recognizance.

Judge of circuit court of Cole to give this act in charge to the grand jury. *Ibid*, sec. 3.

SEC. 16. It shall be the duty of the judge of the circuit court of Cole county, to give this act in charge to the grand jury at each term of said court, who shall enquire into, and make presentments of all offences committed under this act, and it shall be the duty of the commissioner to give information to each grand jury, of any offence committed against this act, which may have come to his knowledge.

Fines, &c., accruing under this act, to what purposes applied. *Ibid*, sec. 4.

SEC. 17. All fines, penalties and forfeitures, accruing under this act, shall be applied to the improvement of the streets of the city of Jefferson, under the direction of the corporate authorities of said city.

Penalty for writing on the walls of the capitol.

SEC. 18. It shall not be lawful for any person to write or scribble on the walls or other parts of the state house, or mark the same with pictures, or otherwise, under the penalty of ten dollars, to be recovered by action of debt, before any justice of the peace of Cole county, in the name of the state.

Guardians, &c., liable when such offences committed by an infant.

SEC. 19. Should such offence be committed by an infant under the age of twenty-one years, his guardian or parent, as the case may be, shall be liable to the penalty prescribed by this act, to be recovered as above directed.

Approved February 13, 1845.

Digitized by Google

CHAPTER 27.

COMMISSIONER OF THE PERMANENT SEAT OF GOVERNMENT.

AN ACT further to define the duties of the commissioner of the permanent seat of government.

SEC. 1. Commissioner to proceed against constable or sheriff, refusing to perform duty in the name of the state.
2. Duty of present commissioner.
3. To bring suit against former commissioner, when in default.
SEC. 4. Commissioner to pay certain costs, when.
5. To make report to general assembly.
6. Auditor to allow commissioner expenditures, paid out by virtue of this act.

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

SECTION 1. That it shall be the duty of the commissioner of the permanent seat of government, and he is hereby required to proceed against any constable or sheriff, who has heretofore, or may hereafter [refuse to] perform any duty in the name of the state, in the same way, and to the full extent that any other plaintiff in an action, might or could do. Commissioner to proceed against constable or sheriff in certain cases.

SEC. 2. That the present commissioner of the permanent seat of government, is hereby authorized and required to ascertain if any one of the former commissioners of the permanent seat of government has received, and retains in his hands, any fee or costs, due any justice or justices' of the peace, for services rendered in, and about the collection of any debts due the state. Duty of present commissioner.

SEC. 3. If any one of said commissioners is found to have received any moneys, as specified in the last preceding section, then the present commissioner of the permanent seat of government, is authorized to bring suit or suits against such commissioner or commissioners so in default, in the name of the state, before a justice of the peace, by action of debt, on an account for moneys had and received. To bring suit against former commissioner, when in default.

SEC. 4. In all cases where a justice of the peace, or other officer, has, or may hereafter perform, any lawful service at the instance of any one of the former, or present commissioner of the permanent seat of government, in and about the collection of debts due the state, and the costs have not, nor cannot be made out of the defendant, then, and in all such cases, the commissioner of the permanent seat of government shall pay the same fees that other plaintiffs are bound to pay for similar services, and no other. To pay certain costs, when.

SEC. 5. The commissioner shall make report to each To report.

Digitized by Google

CHAP. 28. succeeding general assembly of all moneys received or paid out under the provisions of this act.

Auditor to allow certain expenditures.

SEC. 6. The auditor of public accounts shall allow said commissioner, on settlement, for moneys legally paid out by virtue of this act.

This act to take effect, and be in force, from and after its passage.

Approved March 25, 1845.

CHAPTER 28.

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. In certain cases to give a new bond.
4. After the approval of the new bond, the sureties of the former bond discharged.
5. How vacancies to be filled; bond to be given, &c.
6. Bond to be filed with clerk; suits for breach of, by whom brought; limitation of suits on the bond.
7. May appoint deputies; liable for their conduct.
8. Withholding money collected, may be removed from office, when and how.
9. May serve criminal process, warrants and subpœnas, throughout their counties.
10. In case of vacancy in the office of constable in any township, or refusal of the proper constable to serve, &c., by whom civil process to be served.
11. Whenever summary proceedings are given against a constable, his sureties liable, &c.
12. If any township be divided, the constable in office shall continue to be the constable of the township in which he resides, &c.
13. Constables and their sureties liable for money collected, whether collected by process or not.

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

Constables, by whom elected: contested election or a tie, by whom determined.—Act Jan'y 28, 1837, p. 39.

SECTION 1. At each general election, the qualified electors of each township in every county of this state, shall elect a constable, except the township of St. Louis in St. Louis county, which shall elect two for the township outside of the limits of the city of St. Louis, and one for the first and second wards, one for the third and fourth wards, and one for the fifth and sixth wards, and hereafter one for every additional two wards, as they may be created, whose residence shall be within the limits for which he may be elected, and who shall be elected by the qualified voters within the said limits, respectively; the constable shall be a resident of the town-

Digitized by Google

ship for which he is elected, and 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 that tribunal.

Shall give bond; condition of the bond; bond to be approved. Act Jan'y 4, 1841, p. 31.

SEC. 2. Every constable, within ten days after his election or appointment, shall give bond to the state, with good securities, residents of the county, 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 over all money received by him by virtue of his office, and in every respect discharge all the duties of constable according to law; the said bond shall be approved by the court or the clerk in vacation; and if taken by the clerk, in vacation, shall be approved or rejected by the court at the next term. (a)

In certain cases to give a new bond. *Ibid.*

SEC. 3. Whenever any surety of a constable shall die, remove from the county in which he executed the bond, or become insolvent, or when, from any other cause, the county court shall have reason to believe that the sureties to a constable's bond, are likely to become, or have become insufficient, the court shall require the constable, at a time to be appointed, to show cause why a new bond should not be given, and unless such cause be shown, the constable shall be required, within a given time, to enter into a new bond, and in default thereof, the office shall be vacant, which shall be filled as other vacancies.

After approval of new bond, sureties of former bond discharged.

SEC. 4. After the approval of such new bond by the court, the sureties of the former bond shall be discharged from all liabilities that may thereafter accrue.

How vacancies to be filled, bond to be given, &c.

SEC. 5. If any vacancy occur in the office of constable, a majority of the justices of the peace of 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 execute a bond similar to that given by a constable who is elected.

Bond to be filed with clerk, suits for breach of, by whom to be brought, &c.

SEC. 6. The constable's bond shall be filed with the clerk of the county court, and may be sued upon at the instance of any person injured by its breach, if brought within two years

(a) The failure of the county court to approve or reject a constable's bond taken by the clerk, in vacation, will not invalidate the bond. The duty enjoined upon the county court, in this respect, was intended for the security of the public, and their omission to perform such duty, cannot injure the constable and his securities. Jones, *et. al.* vs. the state, to the use of Blow, 7 Missouri Rep., 81.

Digitized by Google

CHAP. 28.

from the expiration of the time for which the constable was elected or appointed.

May appoint deputies, liable for their conduct.

SEC. 7. 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.

Withholding money collected, may be removed from office, when and how.

SEC. 8. 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.

May serve criminal process; warrants and subpœnas, throughout their counties. 1843, p. 75, sec. 2.

SEC. 9. Constables may serve criminal process, warrants and subpœnas, and all process against a constable and his sureties, as such, throughout their respective counties, and all other process, throughout their respective townships, except where it is otherwise expressly directed.

In case of vacancy in the office of constable, &c. by whom civil process to be served.

SEC. 10. In case of a vacancy in the office of constable in any township, or refusal of the proper constable to serve the civil process directed to the constable of such township, [the same] may be executed by the constable of any adjoining township in which there may be an acting constable, to be designated by the plaintiff, or justice issuing such process, in the same manner, and with like effect, as if executed and returned by the constable of the township in which the vacancy exists, or refusal occurs.

Summary proceedings given against a constable, his sureties liable, &c.—1841, p. 31-2. sec. 5.

SEC. 11. Whenever summary proceedings are given against a constable, his sureties, jointly and severally, shall be liable to the same, and may, or may not, be joined with him, and such recovery may be had against them as is given against the constable.

If any township be divided the constable in office shall continue to be the constable, &c.

SEC. 12. 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 constable shall be appointed for the other township, as in case of a vacancy.

Constables and their sureties liable for money collected, whether collected by process or not.

SEC. 13. It shall be the duty of every constable elected or appointed after the taking effect of this act, to receive and receipt for every claim within the jurisdiction of a justice of the peace of his township that may be tendered him for collection, and such constable and his securities, in his official bond, shall be liable for the amount which may be collected

Digitized by Google

by said constable, on such claim, whether the same be collected by process or otherwise. CHAP. 29.

Approved February 25, 1845.

CHAPTER 29.

CONGRESSIONAL DISTRICTS.

AN ACT to lay off the state into congressional districts.

SEC. 1. The state divided into five congressional districts, the qualified voters of each district to elect one member to congress.
2. First district.
3. Second district.
4. Third district.
5. Fourth district.
6. Fifth district.
SEC. 7. Election for members to congress, when and where to be held. One member to be elected from each district.
8. Returns, how made.
9. General law in relation to penalties and fines, to be in force.
10. Candidate elected, governor to grant certificate of election.

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

SECTION 1. This state is hereby divided into five congressional districts, the qualified voters of each district to elect one member to the congress of the United States. The state divided into five districts.

SEC. 2. The first congressional district shall be composed of the counties of St. Louis, Jefferson, St. François, Ste. Genevieve, Perry, Madison, Shannon, Cape Girardeau, Wayne, Stoddard, Scott, New Madrid and Ripley. 1st district.

SEC. 3. The second congressional district shall be composed of the counties of Marion, Ralls, Pike, Audrain, Callaway, Montgomery, Lincoln, Warren, St. Charles, Franklin, Gasconade, Osage, Pulaski, Crawford and Washington. 2d district.

SEC. 4. The third congressional district shall be composed of the counties of Scotland, Clark, Lewis, Monroe, Boone, Howard, Chariton, Randolph, Macon, Shelby, Cooper, Morgan, Cole, Miller and Camden. 3d district.

SEC. 5. The fourth congressional district shall be composed of the counties of Adair, Linn, Grundy, Livingston, Carroll, Ray, Caldwell, Daviess, Clay, Platte, Clinton, Buchanan, Andrew and Holt. 4th district.

SEC. 6. The fifth congressional district shall be composed of the counties of Jackson, La Fayette, Saline, Van Buren, Johnson, Pettis, Henry, Benton, Bates, St. Clair, Dallas, 5th district.

Digitized by Google

CHAP. 30. Polk, Dade, Jasper, Greene, Newton, Barry, Taney, Wright and Decatur, [Ozark.]

Election for members of congress, when and where held.

SEC. 7. An election shall be held, at the several places of holding elections within the several counties of the respective districts aforesaid, to commence on the first Monday in August, in the year one thousand eight hundred and forty-six, and every second year thereafter, for the election of one member to the house of representatives of the congress of the United States from each of said districts; and said elections shall be conducted in every respect as elections of members of congress from this state have heretofore been conducted.

One member from each district.

Returns how made.

SEC. 8. The returns of the elections held within each district, shall be made in the same manner as returns have heretofore been made, of the elections of members to congress.

General law in relation to penalties or fines to be in force.

SEC. 9. All penalties and fines imposed on any clerk, sheriff or other officer, for failing to make returns, or for any neglect of duty as required by the general law of this state, in relation to general elections, shall apply, and be in full force, in relation to the elections held under, and by virtue of this act.

Governor to grant certificates of election.

SEC. 10. The candidate having the highest number of votes in any one district, shall be considered as duly elected from such district, and the governor shall grant to him a certificate of his election, under the seal of the state.

This act to be in force from its passage.

Approved February 21, 1845.

CHAPTER 30.

CONGRESSIONAL DISTRICTS.

AN ACT supplementary to an act, entitled "An act to lay off the state into congressional districts," approved February 21, 1845.

SEC. 1. New counties organized, how attached to congressional districts.

SEC. 2. Counties hereafter organized to constitute part of the district from which they are taken.

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

SECTION 1. The counties organized at the present session of the general assembly of this state shall be, and the same

Digitized by Google

are, hereby attached to and made to form a part of the congressional districts established by the act, to which this act is supplementary, as follows: The counties of Oregon, Mississippi, Reynolds, and Dunklin, shall form and constitute a portion of the first district, in said act mentioned. The county of Texas shall form and constitute a portion of the second district, in said act mentioned. The counties of Schuyler, Knox, and Moniteau, shall form and constitute a portion of the third district, in said act mentioned. The counties of Nodaway, Gentry, Harrison, Sullivan, Atchison and Mercer, shall form and constitute a portion of the fourth district in said act mentioned. The counties of Lawrence, Hickory and Cedar, shall form and constitute a portion of the fifth district, in said act mentioned.

New counties, how attached to congressional districts.

SEC. 2. If any county, other than those enumerated in the first section of this act, shall be organized at the present session of the general assembly, or when any new county shall hereafter be organized, such county thus organized shall form and constitute a portion of the same congressional district, embracing at the time the county or counties from which such new county shall be thus organized; and if any such county shall be thus organized, from two or more counties, lying in different congressional districts, then such county thus organized shall form and constitute a part of the congressional district, embracing, at the time, the greater portion of the territory constituting such county thus organized.

Counties hereafter organized, to constitute part of the district from which they are taken.

This act shall take effect from its passage.

Approved March 27, 1845.

CHAPTER 31.

CONTRACTS AND PROMISES.

AN ACT concerning contracts and promises.

SEC. 1. Joint contracts declared joint and several.
2. When joint contract or debt shall survive against heir, &c.
3. When such contract shall survive against the heirs, &c., of all the deceased obligors.
SEC. 4. When suit may be brought against one or more co-partners, &c.
5. Scrawl equivalent to a seal.
6. What covenant or contract to repair, shall impose upon tenant.

Digitized by Google

CHAP. 31. *Be it enacted by the General Assembly of the State of Missouri, as follows:*

Joint contracts declared joint and several.

SECTION 1. All contracts which, by the common law, are joint only, shall be construed to be joint and several. (*a*)

When joint debt or contract shall survive against heirs, &c.

SEC. 2. 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.

When such contract shall survive against the heirs, &c. of all the deceased obligors.

SEC. 3. 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 and promisors.

Suits may be brought against one or more copartners, &c.

SEC. 4. 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. (*b*)

Scrawl equivalent to seal.

SEC. 5. Every instrument of writing, expressed on the face thereof, to be sealed, and to which the person executing the sames hall affix a scrawl by way of seal, shall be deemed and judged to be sealed. (*c*)

SEC. 6. No covenant or contract to repair shall impose upon a tenant the obligation to rebuild or repair any building

(*a*) A. and B. entered into articles of agreement with C., D., E., and F., by which the latter agreed to wagon certain articles, for which each were to be paid in accordance with the amount hauled by him. Held to be a several, not a joint contract. Sublette & Vasques vs. Noland; 5 Missouri Rep., 516.

A bond given by one of several debtors, for a debt due by simple contract, is an extinguishment of the simple contract debt, and becomes the sole debt of him who executed the bond, Settle vs. Davidson; 7 Missouri Rep., 604.

(*b*) If a note is presented to one partner of a firm, for payment, it is sufficient. Hunter vs. Hemphill; 1 Missouri Rep., 48.

A bond executed to A., in the name and style of A. & Co., is the several bond of A., and he only is liable. Fletcher vs. Vanzant; 1 Missouri Rep., 139. Kennerly vs. Weed; *Ibid*, 480.

When a person executes a bond to A. or B., both must join in a suit on the bond. Baily vs. Thornhill: 1 Missouri Rep, 519

When A. borrows money of B. himself, without saying anything about a firm, although the firm of which A. is a partner, may exist, and the money be applied to the payment of its debts, yet A., and not the firm, is responsible, especially when the fact is found that the loan was made on the responsibility of A. 1 Missouri Rep., 85; Wiggins vs. Hammond.

(*c*) An instrument of writing will not be considered sealed, unless by some expression in the body of the instrument itself, the maker should show that he intended it to be considered a specialty. Cartmill vs. Hopkins; 2 Missouri Rep., 79; Boynton vs. Reynolds; 3 Missouri Rep., 57. Nor will the word *indenture* be considered as expressing such intention. Walker vs. Keil, 8 Missouri Rep., 301. Nor the word *seal*, written in full within the scrawl. Glascock vs. Dodd; 8 Missouri Rep., 377

To constitute a sealed instrument, under our statute, it must express on its face to be sealed; and there must be fixed a scrawl to the name, by way of seal; a mere flourish at the end of the signature, not made by way of seal, is insufficient. Grimsley vs. administrators of Michael Riley; 5 Missouri Rep., 280.

Digitized by Google

destroyed or damaged by fire, without the procurement, connivance or neglect of such tenant, his agents or servants, during the continuance of the term for which such building was leased or let, unless such tenant shall specially covenant or contract to rebuild or repair, in case of the destruction or damage of such building by fire. CHAP. 32. What covenant or contract to repair shall impose upon tenant.

Approved February 14, 1845.

CHAPTER 32.

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 grantor after conveyance by lien, enures to grantee.
4. Deeds valid, notwithstanding adverse possession.
5. Entails not allowed; the remainder in fee simple, to whom it shall pass.
6. A remainder limited to take effect on the death of any person without heirs of his body, &c., shall be construed to mean heirs or issue living at the death of the ancestor.
7. A remainder limited to the heirs, &c., of a person having a life estate in the same premises, on the termination of the life estate, the heirs, &c., shall take as purchasers.
8. Lineal and collateral warranties abolished.
9. An estate limited in remainder to the son or daughter of any person to be begotten, such son or daughter born after the death of his or her father, shall take in the same manner as if born in the lifetime of the father. An estate of freehold or inheritance, may be limited by deed to take effect in future.
10. A future estate on the contingency of the death of any person without issue, &c., defeated by the birth of a posthumous child, &c.
11. Grants of rents, &c., good without attornment of tenants, but tenant who has paid rent without notice shall not suffer damage thereby.
12. Attornment of tenant to a stranger, void, except, &c.
13. Tenancy in common, when. Joint tenancy can only exist in certain cases.
14. The words "grant, bargain and sell," how to be construed; their operation.
15. Conveyance in fee, or of a freehold, to be signed and sealed by the person from whom the estate is to pass, or his agent.
16. Every conveyance of land to be acknowledged, or proved and certified.
17. By whom proof or acknowledgment of instruments, &c., to be taken.
18. Certificate of proof or acknowledgment to be endorsed on such instrument or conveyance.
19. Certificate, how made.
20. Acknowledgment not to be taken, unless grantor be personally known or identified.
21. What facts certificate of acknowledgment shall state.
22. What proof shall be required of the execution of instruments that convey real estate.
23. When proof by subscribing witness shall be taken.
24. What facts the subscribing witnesses shall prove, before certificate shall be granted.
25. What facts the certificate shall set forth.

Digitized by Google

CHAP. 32.

SEC. 26. Proof when the grantor and witnesses are dead.
27. Certificate of such proof, when it shall be granted.
28. What facts the certificate shall set forth.
29. Subscribing witnesses, when and how summoned to prove the execution of the instrument.
30. Remedy against persons refusing to appear and answer, &c.
31. Married woman may relinquish her dower, &c., to be acknowledged and certified.
32. Before whom such relinquishment shall be taken.
33. Married women, if not personally known, identity to be ascertained, &c.; relinquishment, how taken.
34. What facts the certificate shall set forth.
35. Married woman and her husband may convey real estate of wife, &c.
36. Effect of covenants in such deeds, against the married woman and her heirs.
37. By whom acknowledgment of such deeds may be taken.
38. Acknowledgment not to be taken, unless she be personally known or identified, &c.
39. What facts the certificate shall set forth.
40. Deeds, &c. to be recorded.
41. Shall impart notice to all persons, &c., from time of filing for record.
42. No such instrument shall be valid, except in certain cases, until delivered to the recorder.
43. Powers of attorney, how acknowledged, proved and recorded.
44. When such power shall be deemed to be revoked.
45. Instruments acknowledged, proved and certified, may be read in evidence.
46. When a certified copy of the instrument may be read in evidence.
47. The certificate, acknowledgment, record, &c., of such instrument, shall not be conclusive evidence.
48. When such instrument shall not be received in evidence, until established by other proof.
49. The extent and construction of the term "real estate."
50. This act not to embrace in its provisions last wills and testaments.
51. Conveyances of military bounty lands, how acknowledged, and when to be recorded.
52. Such instrument valid, when.
53. Such instrument filed for record, to impart notice, &c.
54. May be used in evidence without proof of execution.
55. Certified copies, when to be used in evidence.

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

Operation of conveyance to use, &c.

SECTION 1. That where any person or persons, stand or be seized, or at any time hereafter shall stand or be seized of and in any lands, tenements or hereditaments, to the use, confidence or trust of any other person or persons, or of any body politic, by reason of any bargain, sale, feoffment, covenant, contract, agreement, will or otherwise, by any manner of means whatsoever, in every such case, all and every such person or persons, and bodies politic, that have, or hereafter shall have, any such use, confidence or trust, in fee simple, for term of life or of years, or otherwise; or any use, confidence or trust in remainder or reversion, shall from thenceforth stand and be seized, deemed and adjudged in lawful seizin, estate and possession of and in the same lands, tenements and hereditaments, with their appurtenances, to all intents, constructions and purposes in law, of and in such like estates, as they had, or shall have in use, confidence or trust of or in the

Digitized by Google

same, and that the estate, right, title and possession, that was, or shall be in such person or persons, that were, or hereafter shall be, seized of any lands, tenements or hereditaments, to the use, confidence or trust of any such person or persons, or of any body politic, be found henceforth clearly deemed and adjudged to be in him, her or them, that have, or hereafter shall have, such use, confidence or trust, after such quality, manner, form or condition, as they had before in or to the use, confidence or trust that was, or shall be in them.

The term "heirs" not necessary to convey a fee simple estate, &c.

SEC. 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 intent to pass a less estate shall appear, by express terms, or be necessarily implied in the terms of the grant.

Title acquired by grantor after conveyance by him enures to grantee.

SEC. 3. If any person shall convey any real estate, by 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 valid as if such legal estate had been in the grantor at the time of the conveyance.

Deeds valid, notwithstanding adverse possession.

SEC. 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.

Entails not allowed, the remainder in fee simple, to whom it shall pass.

SEC. 5. That from and after the passage of this act, where any conveyance or devise shall be made, whereby the grantee or devisee shall become seized in law or equity, of such estate, in any lands or tenements, as under the statute of the thirteenth of Edward the first, (called the statute of entails) would have been held an estate in fee tail, every such conveyance or devise shall vest an estate for life only in such grantee or devisee, who shall possess and have the same power over, and right in such premises, and no other, as a tenant for life thereof would have by law, and upon the death of such grantee or devisee, the said lands and tenements shall go and be vested in the children of such grantee or devisee, equally to be divided between them as tenants in common, in fee, and if there be only one child, then to that one, in fee, and if any child be dead, the part which would

Digitized by Google

CHAP. 32.

have come to him or her, shall go to his or her issue, and if there be no issue, then to his or her heirs.

Remainder limited to take effect on the death of any person without issue, shall be construed, how.

SEC. 6. Where a remainder in lands or tenements, goods or chattels, shall be limited, by deed or otherwise, to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

Remainder limited to the heirs, &c. of a person having a life estate, how disposed of.

SEC. 7. Where a remainder shall be limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises shall be given, the persons who, on the termination of the life estate, shall be the heirs, or heirs of the body of such tenant for life, shall be entitled to take as purchasers, by virtue of the remainder so limited in them.

Lineal and collateral warranties abolished.

SEC. 8. Lineal and collateral warranties, with all their incidents, are abolished, but the heirs and devisees of every person who shall have made any covenant or agreement, shall be answerable upon such covenant or agreement, to the extent of the lands descended or devised to them, in the cases and in the manner prescribed by law.

An estate limited in remainder to the son or daughter of any person to be begotten, how disposed of.—Stat. 10 and 11 of William 3.

SEC. 9. When an estate hath been, or shall be, by any conveyance, limited in remainder to the son or daughter, or to the use of the son or daughter of any person to be begotten, such son or daughter born after the decease of his or her father, shall take the estate, in the same manner as if he or she had been born in the lifetime of the father, although no estate shall have been conveyed to support the contingent remainder after his death. And, hereafter, an estate of freehold, or of inheritance, may be made to commence in future by deed, in like manner as by will.

A future estate on the death of any person without heirs, how defeated.

SEC. 10. A future estate, depending on the contingency of the death of any person without heirs, or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

Grants of rents, &c. good, without attornment of tenants, &c. Stat. 4, Ann.

SEC. 11. Grants of rents, or of reversion, or remainders, shall be good and effectual without attornments of the tenants, but no tenant who, before notice of the grant, shall have paid the rent to the grantor, shall suffer any damage thereby.

Attornment of tenant to a stranger void, except, &c. 11 Geo. 2.

SEC. 12. The attornment of a tenant to any stranger shall be void, unless it be with the consent of the landlord of such tenant, or pursuant to, or in consequence of, the judgment of a court of law, or the order or decree of a court of equity.

Digitized by Google

Tenants in common, when.

SEC. 13. 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.

The words "grant," "bargain," and "sell," how to be construed. Their operation.

SEC. 14. The words "*grant*," "*bargain*," and "*sell*," in all conveyances in which any estate of inheritance in fee simple is limited, shall, unless restrained by express terms contained in such conveyances, 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 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 assurances of such real estate to be made by the grantor and his heirs to the grantee and his heirs and assigns, and may be sued upon in the same manner as if such covenants were expressly inserted in the conveyance.

Every conveyance to be signed and sealed, &c.

SEC. 15. Every conveyance in fee, or of a freehold estate, shall be subscribed and sealed by the person from whom the estate or interest conveyed is intended to pass, or his lawful agent. (*a*)

To be acknowledged, &c.

SEC. 16. Every instrument in writing, whereby any real estate is conveyed, or may be affected in law or equity, shall be acknowledged, or proved and certified in the manner hereinafter prescribed.

By whom proof or acknowledgment of instrument, &c. to be taken.

SEC. 17. The proof or acknowledgement of every conveyance or instrument in writing, affecting any real estate in law or equity, 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 affected 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,

(*a*) See the cases of Moss vs. Anderson; 7 Missouri Rep., 337; and McCabe vs. Hunter's heirs, *ibid*, 355; Walker vs. Keil, 8 Missouri Rep., 301.

Digitized by Google

by any court of any state, kingdom or empire, having a seal, or the mayor of any city having an official seal.

Certificate of proof, &c. to be endorsed on such conveyance.

SEC. 18. Every court or officer that shall take the proof or acknowledgment of any conveyance or instrument of writing, affecting any real estate in law or equity, or the relinquishment of the dower of a married woman in the real estate of her husband, shall grant a certificate thereof, and cause such certificate to be endorsed on such instrument or conveyance.

Certificate, how made.

SEC. 19. Such certificate shall be: *First*, When granted by a court, under the seal of the court. *Second*, When granted by the clerk of the court, under the hand of the clerk and seal of the court to 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.

Acknowledgment not to be taken, unless grantor be personally known or identified.

SEC. 20. No acknowledgment of any instrument in writing, that conveys any real estate, or whereby any real estate may be affected 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. (*b*)

What facts certificate of acknowledgment shall state.

SEC. 21. The certificate of 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 names shall be inserted in the certificate.

What proof shall be required of the execution of instruments that convey real estate.

SEC. 22. The proof of the execution of any instrument in writing, that conveys any real estate, or whereby any real estate may be affected 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 handwriting of the party, and of at least one subscribing witness, given by at least two credible witnesses to each signature.

SEC. 23. No proof by a subscribing witness shall be taken,

(*b*) In certifying to the acknowledgment of a sheriff's deed, the certificate need not state that the sheriff was personally known to the court. Laughlin vs. Stone, 5 Missouri Rep., 43.

Digitized by Google

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. When proof by subscribing witness shall be taken.

SEC. 24. No certificate of such proof shall be granted, unless each 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. What facts subscribing witness shall prove before certificate shall be granted.

SEC. 25. 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. What facts the certificate shall set forth.

SEC. 26. No proof by evidence of the hand-writing 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. Proof when the grantor and witnesses are dead.

SEC. 27. 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 knew 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 knew his signature, (stating their means of knowledge) and believe the name subscribed thereto as a witness, was thereto subscribed by such person. Certificate of such proof, when it shall be granted.

SEC. 28. The certificate of such proof shall set forth the names of the witnesses examined, the fact that such witnesses What facts the certificate shall set forth.

Digitized by Google

CHAP. 32.

were sworn, and the evidence required by the last preceding section to be by them given.

Subscribing witnesses, when and how summoned to prove the execution of the instrument.

SEC. 29. Upon the application of any grantee in any instrument in writing, required, by this act, to be recorded, or if 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 authorised to take the acknowledgment or proof of such instrument, may issue a subpœna, requiring such witness to appear before such court or officer, and testify touching the execution thereof.

Remedy against persons refusing to appear and answer.

SEC. 30. Every person, who being served with such subpœna, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath, touching the matters aforesaid, shall forfeit to the party injured, one hundred dollars, to be recovered by action of debt, and may also be committed to prison by the officer who issued such subpœna, there to remain, without bail, until he shall submit to answer upon oath as aforesaid.

Married woman may relinquish her dower, &c.

SEC. 31. 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.

Before whom such relinquishment shall be taken.

SEC. 32. Such relinquishment shall be taken before some court or officer, authorised by this act to take the proof or acknowledgment of instruments in writing, conveying real estate or affecting the same.

Married woman, if not personally known, identity to be ascertained, &c.; relinquishment, how taken.

SEC. 33. 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.

What facts the certificate shall set forth.

SEC. 34. The certificate of such relinquishment shall set forth, that such married woman was personally known to at

Digitized by Google

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.

Married woman and her husband may convey real estate of the wife, &c. 1841, p. 29. sec. 30.

SEC. 35. 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 having a seal, or some judge, justice, or clerk thereof. (c)

Effect of covenant in such deeds against the married woman and her heirs.

SEC. 36. 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.

By whom acknowledgment of such deeds may be taken.

SEC. 37. Any court, judge, or clerk, authorised 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 affected in law or equity, may take and certify the acknowledgment of a married woman to any such conveyance of her real estate.

Acknowledgment not to be taken unless she be personally known, or identified, &c.

SEC. 38. No such acknowledgment shall be taken, unless such married woman shall be personally known to at least one judge of the court, or to the judge, justice, or clerk, 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.

What facts the certificate shall set forth.

SEC. 39. The certificate of such acknowledgment, shall set forth, that such married woman was personally known to

(c) A conveyance by husband and wife of land held in the right of the wife, made after the introduction of the common law in 1816, and before the act of 1821, expressly authorising such conveyance, is valid, both by the Spanish law and the common law. Lindell vs. McNair, 4 Missouri Rep., 380.

Digitized by Google

CHAP. 32.

at least one judge of the court, or to the judge, justice, or clerk, 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.

Deeds, &c. to be recorded.

SEC. 40. Every instrument in writing, that conveys any real estate, or whereby any real estate may be affected, 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.

Shall impart notice to all persons, &c. from time of filing for record.

SEC. 41. Every such instrument in writing, certified and recorded in the manner hereinabove 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 mortgagees, shall be deemed in law and equity to purchase with notice. (*f*)

Not to be valid, unless, &c.

SEC. 42. 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. (*g*)

Powers of attorney, how acknowledged, proved, &c.

SEC. 43. 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 affected in law or equity, shall be acknowledged or proved, and certified and recorded as other instruments in writing, conveying or affecting real estate, are required to be acknowledged or proved, and certified and recorded.

When deemed to be revoked.

SEC. 44. 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

(*f*) A deed not duly acknowledged, though recorded, cannot be read as a recorded deed. Smith vs. Mounts, 1 Missouri Rep., 512.

(*g*) As to notice, see Gallagher & McCabe, vs. Hunter, 5 Missouri Rep., 507; Truesdell vs. Callaway, 6 Missouri Rep., 605; Bartlett vs. Glasscock, 4 Missouri Rep., 62; Roundtree vs. Gordon, 8 Missouri Rep., 19; Halsa vs. Halsa, *Ibid*, 303; Hill vs. Paul, 8 Missouri Rep., 479.

Digitized by Google

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.

Instruments may be read in evidence, when.

SEC. 45. Every instrument in writing, conveying or affecting real estate, which shall be acknowledged or proved, and certified as hereinbefore prescribed, may, together with the certificates of acknowledgment, or proof and relinquishment, be read in evidence, without further proof.

When a certified copy may be read in evidence.

SEC. 46. Where any such instrument is acknowledged, or proved, 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 the transcript of such record, certified by the recorder under the seal of his office, may be read in evidence, without further proof.

Shall not be conclusive evidence, when.

SEC. 47. Neither the certificate of the acknowledgment, nor of the proof of any such instrument, nor the record, nor the transcript of the record of such instrument, shall be conclusive, but the same may be rebutted.

Shall not be received in evidence until, &c.

SEC. 48. 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.

Construction of the term "real estate."

SEC. 49. 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.

This act not to extend to last wills and testaments.

SEC. 50. None of the provisions of this act, in relation to the acknowledgment, proof or recording of instruments in writing, affecting real estate, shall be construed to extend to last wills and testaments.

Conveyances of military bounty lands how acknowledged and where to be recorded.

SEC. 51. Every instrument in writing, which conveys or in any manner affects, in law or equity, any real estate situate in this state, and being part of the military bounty land in this state, which has been, or may hereafter be made and executed out of this state, and within the United States, and which has been, or may hereafter be acknowledged or proved, in conformity with the laws and usage of the state, territory or district in which such instrument has been, or may hereafter be made, executed, acknowledged or proved, for the execution,

Digitized by Google

CHAP. 32.

acknowledgment or proof of instruments in writing, conveying or affecting real estate, within such state, territory or district, shall be recorded in the county in this state, in which such land may be situated.

Such instrument valid, when.

SEC. 52. Every such instrument, thus acknowledged or proved, is hereby declared effectual and valid, to all intents and purposes, as if such acknowledgment or proof had been made in accordance with the laws of this state.

Such instrument filed for record to impart notice, &c.

SEC. 53. Every such instrument which has been filed for record, or recorded in the proper office, although such filing or recording may not have been in accordance with any law in force, shall hereafter impart the same notice as if the same had been filed or recorded in accordance with law, and all such deeds, hereafter filed or recorded, shall, from the time of filing or recording the same, impart the same notice as if the same had been acknowledged or proved, and filed or recorded in accordance with the laws regulating the acknowledgment or proof [of] such instruments executed without [within] this state.

May be read in evidence, when.

SEC. 54. All such instruments filed for record, and recorded as provided in the three preceding sections, may be read in evidence on the trial of any cause, without other proof of the execution thereof.

Certified copies, when to be read in evidence.

SEC. 55. Copies of such instruments, or of the record of the same, duly certified by the recorder of the county in which the same may have been recorded, shall, upon proof of the loss or destruction of the original instrument, be read in evidence, with like effect as if such original instrument were produced and read in evidence.

Approved March 25, 1845.

Digitized by Google

CHAPTER 33.

CORONERS.

AN ACT concerning coroners.

SEC. 1. Coroners to take oath and give bond, &c.
2. Shall serve and execute all writs, and process in certain cases.
3. Coroner to act as sheriff in case of death of the sheriff, and until his successor is appointed, &c.
4. Shall be conservator of the peace, and take inquests of violent deaths, &c.
SEC. 5. The county court shall, once in each year, inquire into the sufficiency of the bond of coroner, and if insufficient, may require him to give a new bond.
6. If coroner neglect to give bond, &c., his office shall be deemed vacant.
7. In case of vacancy, the clerk shall certify the same to the governor.
8. Coronors exempt from serving on juries and working on roads.

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

SECTION 1. All coroners, before they enter upon the duties of their office, shall take the oath prescribed by the constitution, and shall give bond to the state of Missouri, in the penalty of at least one thousand dollars, with sufficient securities, residents of the county, conditioned for the faithful performance of the duties of their office.

Coroner to take oath and give bond, &c. Act Jan. 4, 1841, p. 31.

SEC. 2. Every coroner, within the county for which he is elected or appointed, shall serve and execute all writs and precepts, and perform all other duties of the sheriff, when the sheriff shall be a party, or when it shall appear to the court, out of which the process shall issue, or to the clerk thereof in vacation, that the sheriff is interested in the suit, related to, or prejudiced against, any party thereto, or in any wise disqualified from acting.

Shall serve and execute writs and process in certain cases.

SEC. 3. When the office of sheriff shall be vacant by death or otherwise, the coroner of the county is authorized to perform all the duties which are by law required to be performed by the sheriff, until another sheriff for such county shall be appointed and qualified; and such coroner shall have notice thereof, and in such case, said coroner 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.

Coroner to act as sheriff in case of the death of the sheriff, &c., and until his successor is appointed. &c. 1842, p. 28.

SEC. 4. The coroner shall be a conservator of the peace throughout his county, and shall take inquests of violent and casual deaths happening in the same, or where the body of any person coming to his death shall be discovered in his county.

New section.

Shall be a conservator of the peace, take inquests of violent deaths, &c.

Digitized by Google

CHAP. 34.

The county court shall once in each year inquire into the sufficiency of the bond of coroner. 1841, p. 31.

SEC. 5. The county court shall, once in every year, in each county, examine into the sufficiency of the official bond given by [the] coroner, and the sureties thereto; and if it shall appear that the bond of any coroner, or the sureties thereto, are insufficient, the said court shall cause a record thereof to be made by their clerk, and shall give notice thereof to such coroner, and require him to give a new bond to the satisfaction of said court, within such time as they shall order.

If coroner neglect to give bond, &c., office vacated.

SEC. 6. If a coroner neglect to give bond and qualify within twenty days after his election, or shall fail to give bond when required under the preceding section, his office shall be deemed vacant.

In case of vacancy, clerk to certify to governor.

SEC. 7. Whenever any vacancy shall happen in the office of coroner, the clerk of the county court shall certify the fact to the governor.

Coroners exempt from serving on juries, &c.

SEC. 8. All coroners shall be exempted from serving on juries and working on roads.

Approved February 13, 1845.

CHAPTER 34.

CORPORATIONS.

AN ACT concerning corporations.

ARTICLE I. Of the general powers, privileges and liabilities of corporations.

II. Of the mode of procedure against corporations.

ARTICLE I.

*Of the general powers, privileges, and liabilities of corporations.**

SEC. 1. General powers of corporations.
2. Above powers shall vest in every corporation hereafter created.
3. No corporation to exercise powers, except such as are necessary.
4. No corporation, unless created for banking purposes, shall discount bills, notes, &c.
5. What shall form a board to transact business of corporation.
6. Corporate powers to cease, if not organized within a year.
7. Every charter of corporation subject to repeal.
8. Parol contracts binding on aggregate corporations, when.
9. First meeting of corporation, how called.

* Most of the provisions in this article are new. *Vide*, Revised Laws of Massachusetts, New York, and Maine.

Digitized by Google

SEC. 10. When a justice shall issue a warrant directing a call of a meeting of the corporation.
11. Meeting, how called on such warrant.
12. When the acts of a meeting of corporation shall be valid.
13. Individual property of members of corporation, &c., liable to be taken on execution to double the amount of stock invested. Liability to continue after judgment recovered, &c.
14. Officer to levy upon property of stock-holder, how. To give notice of intention, amount of debt, &c.
15. Creditor at his election may sue stock-holders jointly, or severally.
16. Clerk, &c., of corporation, to furnish officer with names, &c.
17. Corporations may sue members, &c.
18. Annual notice to be given of all the existing debts of the corporation. Failing to do so, stock-holders liable for all debts of the corporation.
19. Directors paying dividends when corporation is insolvent, &c., shall be liable for all debts of the corporation.
20. Debts of corporation shall not exceed amount of capital, &c.
21. This act not to extend to literary or benevolent societies.
22. Corporations of other states, &c., liable to be sued, how.
23. Corporations may convey land by deed, how. To be authenticated and recorded.
24. On the dissolution of corporation, president, directors, &c., to be trustees. Their powers and duties.
25. Members of municipal corporations competent witnesses.

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

SECTION 1. Every corporation, as such, has power: *First*, To have succession by its corporate name for the period limited in its charter, and when no period is limited, for twenty years. *Second*, To sue and be sued, complain and defend, in any court of law or equity. *Third*, To make and use a common seal, and alter the same at pleasure. *Fourth*, To hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited in its charter. *Fifth*, To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation. *Sixth*, To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock. (a) General powers of corporations.

SEC. 2. The powers enumerated in the preceding section shall vest in every corporation that shall hereafter be created, Above powers shall vest in every corporation, hereafter created.

(a) A corporation created by one government can sue in the courts of another. Bank of Edwardsville vs. Simpson; 1 Missouri Rep., 129. As to the seals of corporations, see Perry vs. Price; 1 Missouri Rep., 474. Where an act of the legislature gives to individuals a corporate capacity, upon the performance of certain acts, a person contracting with these individuals, by their corporate name, is precluded from denying the performance of those acts which were necessary to give them a corporate existence. Hamtramck vs. Bank of Edwardsville; 2 Missouri Rep., 137. A fine imposed on an individual by a corporation, for exhibiting a caravan of animals within the limits of the corporation, before any ordinance existed on that subject, is, in its nature, a judicial sentence, and is illegal. Sellick vs. Town of Fayette; 3 Missouri Rep., 73.

Digitized by Google

CHAP. 34.

although they may not be specified in its charter, or in the act under which it shall be incorporated.

No corporation to exercise powers, except such as are necessary.

SEC. 3. In addition to the powers enumerated in the first section of this article, and to those expressly given in its charter, or in the act under which it is, or shall be, incorporated, no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated and given.

No corporation, unless created for banking purposes, shall discount bills, notes, &c.

SEC. 4. No corporation created, or to be created, and not expressly incorporated for banking purposes, shall, by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying gold and silver, bullion, or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, upon loan, or for circulation as money.

What shall form a board to transact business of corporation.

SEC. 5. When the corporate powers of any corporation are directed by its charter to be exercised by any particular body or number of persons, a majority of such body or persons, if it be not otherwise provided in the charter, shall be a sufficient number to form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board, shall be valid as a corporate act.

Corporate powers to cease, when.

SEC. 6. If any corporation hereafter created by the legislature shall not organize and commence the transaction of its business within one year from the date of its incorporation, its corporate powers shall cease.

Every charter of corporation subject to repeal.

SEC. 7. The charter of every corporation that shall hereafter be granted by the legislature, shall be subject to alteration, suspension, and repeal, in the discretion of the legislature.

Parol contracts binding on aggregate corporations, when.

SEC. 8. Parol contracts may be binding upon aggregate coporations, if made by an agent, duly authorized by a corporate vote, or under the general regulations of the corporation; and contracts may be implied, on the part of such corporations, from their corporate acts, or those of an agent whose powers are of a general character.

First meeting of corporation, how called.

SEC. 9. The first meeting of all corporations shall, unless otherwise provided for in their acts of incorporation, be called by a notice, signed by some one or more of the persons named in the act of incorporation, and setting forth the time, place, and purposes of the meeting, and such notice

Digitized by Google

shall, seven days at least before the meeting, be delivered to each member, or published in some newspaper of the county where the corporation may be established, or if there be no such newspaper, then in the nearest newspaper.

When justice shall issue a warrant directing the call of a meeting of the corporation.

SEC. 10. Whenever, for want of sufficient by-laws for the purpose, or of officers duly authorized, or from the neglect or refusal of such officers, or from other legal impediments, a legal meeting of any corporation cannot otherwise be called, any justice of the peace in the county where it is desirable to hold such meeting, or where such corporation is established, if it be local, may, on a written application of two or more members thereof, issue a warrant to either of said members, directing him to call a meeting of the corporation, by giving such notice as is required in the preceding section.

Meeting, how called.

SEC. 11. Whenever any meeting of any corporation shall be called, by warrant from a justice of the peace, the person to whom such warrant is directed, may call the meeting to order, and preside therein, until a presiding officer is chosen and qualified, if there be no officer present, whose duty it may be to preside.

When the acts of a meeting shall be valid.

SEC. 12. When all the members of a corporation shall be present at any meeting, however called or notified, and shall sign a written consent thereto on the record of such meeting, the acts of such meeting shall be as valid, as if legally called and notified.

Individual property of members of corporation, &c. liable to be taken on execution to double the amount of stock invested.

SEC. 13. In all corporations hereafter created by the legislature, unless otherwise specified in their charter, in case of deficiency of corporate property, or estate liable to execution, the individual property, rights and credits of every member of the co-partnership, or body politic, having a share or shares therein, shall be liable to be taken on execution, to double the amount of his stock, and no more, for all debts of the corporation, contracted during his ownership of such stock, and such liability shall continue, notwithstanding any subsequent transfer of such stock, for the term of one year after the record of the transfer thereof, on the books of the corporation, and for the term of six months, after judgment recovered against such corporation, in any suit commenced within the year aforesaid: *Provided*, That in every such case, the officer holding the execution, shall first ascertain and certify upon such execution, that he cannot find corporate property or estate.

Liability to continue after judgment recovered, &c.

Digitized by Google

Officer to levy upon property of stockholder, how.

SEC. 14. In such case, the officer may cause the property of such stockholder to be levied upon, by execution, in the same manner, as if the same were against him individually,

To give notice of intention, amount of debt, &c.

after giving him forty-eight hours previous notice of his intention, and the amount of the debt or deficiency, if he reside within the county, or, if not within the county, to his agent, if he have any within the county, otherwise to the clerk or cashier, or some other officer of the corporation, unless such stockholder, his agent, or the clerk, or other officer, on demand and notice as aforesaid, shall disclose and show to the execution creditor, or the said officer, corporate property or estate, subject to execution, sufficient to satisfy said execution and all fees.

Creditor at his election may sue stockholders jointly, or severally, &c.

SEC. 15. Such creditor, after demand and notice, as mentioned in the preceding section, at his election, may have an action on the case against any such stockholder, or stockholders, on whom such demand and notice may have been served jointly or severally, or so many of them as he may elect to recover of him, or them, individually, the amount of his execution and costs, or of the deficiency as aforesaid, not exceeding the amount of the stock held by such stockholder or stockholders.

Clerk of corporation to furnish officer with names, &c.

SEC. 16. The clerk, or other officer, having charge of the books of any corporation, on demand of any officer holding any execution against the same, shall furnish the officer with the names, places of residence, so far as to him known, and the amount of liability of every person liable as aforesaid.

Corporations may sue members, &c.

SEC. 17. That all bodies corporate, by any suit at law, in any court in this state, may sue for, recover and receive, from their respective members, all arrears or other debts, dues and other demands, which now are, or hereafter may be owing to them, in the like mode, manner and form, as they might sue for, recover, and receive the same, from any indifferent person, who might not be one of their body, any law, usage, or custom, to the contrary thereof, notwithstanding.

Annual notice to be given of all the existing debts of the corporation.

SEC. 18. Every corporation hereafter created, shall give notice annually, in some newspaper printed in the county where the corporation is established, and in case no paper is printed therein, then in the nearest paper, [of] the amount of all the existing debts of the corporation, which notice shall be signed by the president and a majority of the directors, and if

Digitized by Google

any of the said corporation shall fail so to do, all the stockholders of the corporation, shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted before such notice shall be given.

Failing to do so, stockholders liable for all debts of the corporation.

SEC. 19. If the directors of any corporation hereafter created, shall declare and pay any dividend, when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation, then existing, and for all that shall be thereafter contracted as long as they shall respectively continue in office: *Provided*, That the amount for which they shall all be so liable, shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall file their objection in writing with the clerk or other officer of the corporation having charge of the books, they shall be exempted from the said liability.

Directors paying dividend, when corporation is insolvent, &c., shall be liable for all debts of the corporation.

SEC. 20. The whole amount of the debts, which [of] any corporation hereafter created, (except banking companies) shall not exceed the amount of its capital stock actually paid in, and in case of any excess, the directors, under whose administration it shall happen, shall be jointly and severally liable to the extent of such excess, for all the debts of the company then existing, and for all that shall be contracted, so long as they shall respectively continue in office, and until the debts shall be reduced to the said amount of the capital stock: *Provided*, That any of the directors, who shall be absent at the time of contracting any debt, contrary to the foregoing provisions, or who shall object thereto, may exempt themselves from the said liability, by forthwith giving notice of the fact to the stockholders, at a meeting which they may call for that purpose.

Debts of corporation not to exceed am'nt of capital.

Directors liable for excess.

Proviso.

SEC. 21. None of the provisions of this article, imposing liabilities on the stockholders and directors of corporations shall extend to literary or benevolent institutions.

This act not to extend to literary and benevolent societies.

SEC. 22. Any corporation, incorporated by any other state or country, and having property in this state, shall be liable to be sued, and the property of the same shall be subject to attachment, in the same manner as individuals, residents of other states or countries, and having property, are now liable to be sued, and their property subject to be attached

Corporations of other states, &c. liable to be sued, how.

Digitized by Google

Corporations may convey land by deed, how.

To be authenticated and recorded.

SEC. 23. That it shall be lawful for any corporation to convey lands by deed, sealed with the common seal of said corporation, and signed by the president, or presiding member or trustee of said corporation, and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the usual form prescribed for other conveyances for lands, shall be recorded in the recorder's office of the county where the land lies, in like manner with other deeds.

On the dissolution of corporations, president, directors, &c. to be trustees.

Their powers and duties.

SEC. 24. 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 to settle the affairs, collect the outstanding debts, and divide the moneys 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 money and property will enable them, 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. (*b*)

Members of municipal corporations competent witnesses.

SEC. 25. In all cases in which any county, city, town, district or township, or any school district, shall be, in their corporate capacity, parties to, or interested in any suit, whether of a civil or criminal nature, any member of such corporation may be admitted as a competent witness, to testify on the trial, or to give his deposition: *Provided*, There be no sufficient objection to his competency, except that of his being such member of the corporation.

ARTICLE II.

Of the mode of procedure against corporations.

SEC. 1. Actions against corporations, how instituted.
2. Summons issued against incorporated company, may be served on president, &c.
3. Officer to express in his return, on whom he executed the summons, &c.
4. Suits shall be commenced, where.
5. Notices, &c., how served.
6. Summons returned, not served, court to order appearance to be entered, when.
7. Copy of order to be published, when, how and where.
8. Execution to be a *fieri facias*,
9. Return of *nulla bona* on *fieri facias*. Proceedings. Attachment.

(*b*) Legal proceedings, regularly commenced against a corporation, are not affected by the expiration of the charter, before the determination of such proceedings. Lindell vs. Benton, *et. al.*, 6 Missouri Rep., 361.

Digitized by Google

Sec. 10. Attachment shall be executed by summoning, &c.
11. Moneys, &c., of corporation bound from the issuing of the attachment until the judgment is satisfied.
12. Proceedings against garnishees, how conducted.
13. For what garnishees shall have credit.
14. Other writs of attachment may issue, when.
15. Moneys in hands of officer to be paid to corporation, when.
16. This act not to extend to municipal corporations.

Actions against corporations, how instituted.

SECTION 1. In all actions which may be instituted in law or equity against any 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. (c)

Summons issued against corporate company may be served on president, &c. Act Feb'y 13. 1841, p. 30.

SEC. 2. When any such summons shall be issued against any banking, 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 the absence or want of these officers, then on any director or manager of such company, or in case there be no such officers, then on the last president or other chief officer, or in his absence, on the last cashier or chief clerk, treasurer or secretary, or in want or the absence of those officers, then on any of the last directors or managers 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.

Officer to express in his return on whom he executed the summons. &c.

SEC. 3. On the return of such summons, served as aforesaid, the officer serving the same shall express in his return, distinctly, on whom, and when 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 cannot be found, and if on any other than the last chief officer, he shall express the absence of such officer, or that he cannot be found, and so to the absence of the cashier or chief clerk, treasurer or secretary; when the service shall be made on any of the last directors or managers, and when the service is on any of the

(c) In a suit against the mayor, aldermen, &c., of the city of St. Louis, on treasury warrants of that city, the plaintiff should allege in his declaration, a demand on the city treasurer, and not on the defendants. Ferguson vs. Mayor, &c., of St. Louis, 6 Missouri Rep., 499. See Lindell vs. Wash, 3 Missouri Rep., 358. The statute of set-off is not restricted to natural persons, but extends to corporations, and the right of set-off exists in suits by corporations, before justices of the peace. City of St. Louis vs. Rogers, 7 Missouri Rep., 19.

Digitized by Google

CHAP. 34.

last officers of such company, it shall also express the want or absence of all the existing officers of the company, on whom process can be served.

Suits shall be commenced, where.

SEC. 4. Suits against corporations shall be commenced in the proper court of the county wherein the general meetings of the members, or the officers of such corporation, have usually been holden, or by law, ought to have been holden.

Notices, &c., how served.

SEC. 5. All notices, orders and rules, required to be served in the progress of any cause, shall be served in like manner as a summons.

Summons returned not served, court to order appearance to be entered when.

SEC. 6. In case the sheriff, or other officer, shall return any summons 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.

Copy of order to be published, when, how and where.

SEC. 7. A copy of such order shall be inserted in some newspaper 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 case of a summons, duly served.

Execution to be a *fieri facias*.

SEC. 8. The first process upon a judgment against any corporation, shall be a *fieri facias*, which the sheriff or other officer, shall levy on the moneys, goods and chattels, lands and tenements, of such corporation, and proceed thereon as in other cases.

Return of *nulla bona* on *fieri facias*, proceedings.

SEC. 9. In case the sheriff or other officer, shall return upon any such writ of *fieri 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. (*d*).

Attachment.

Attachment, how executed.

SEC. 10. Such attachment shall be executed by summoning, as garnishee, any person having any moneys or effects belonging to such corporation, and any debtor to such corporation, who may be found within his county, to appear

(*d*) In a writ of attachment against corporations, under this section, it is not necessary to set out the names of the garnishees, neither is it necessary that the sheriff should state, in his return, that he was directed to summon such garnishees. Lindell vs. Benton *et. al.*, 6 Missouri Rep., 361.

Digitized by Google

before the circuit court at the return of the writ, and then and there answer, touching any moneys or effects of such corporation in his hands, or any debt he may owe to the same.

Moneys, &c., of corporation bound from the issue of attachment until the judgment is satisfied.

SEC. 11. From the time of making such service, all moneys 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, moneys or effects, as 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.

Proceedings against garnishees, how conducted.

SEC. 12. Proceedings against garnishees, under the provisions of this act, shall be the same as against the garnishee summoned in the case of an original attachment, 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.

For what garnishee shall have credit.

SEC. 13. For all moneys paid by any garnishee, under this act, he shall have credit against the corporation, to whom it was due.

Other writs of attachment may issue, when.

SEC. 14. 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.

Moneys in hands of officer to be paid to corporation when.

SEC. 15. If any moneys 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.

This act not to extend to municipal corporations.

SEC. 16. Nothing contained in this article shall be construed to extend to any county or township, or to any public university, academy, seminary or school, incorporated by the laws of this state.

Approved March 19, 1845.

Digitized by Google

Chap. 35.

CHAPTER 35.

COSTS.

An Act concerning costs.

Article I. Of costs in civil cases.
II. Of costs in criminal cases.

ARTICLE I.

Of costs in civil cases.

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 to dismiss suit, &c.
3. Appellee not required to give securify, when.
4. Plaintiff may sue as a pauper, when. Counsel to be assigned him by the court.
5. When clerk shall issue writ without fees for the same.
6. Costs, who shall recover in civil actions.
7. Costs on motions.
8. Costs, when given in the discretion of the court.
9. When one of several counts in a declaration bad, costs, how awarded.
10. In case of several defendants, judgment in favor of one or more, costs, how recovered.
11. In actions *ex delicto*, damages claimed to determine jurisdiction of court.
12. If plaintiff recovers amount below the jurisdiction of the court, judgment for costs to be rendered against him.
13. In cases of *certiorari*, successful party to recover costs.
14. In appeals from county courts or justices' courts, costs, how adjudged *against* appellant.
15. Costs, how adjudged in *favor* of appellant.
16. Appeal not prosecuted, judgment to be affirmed, &c.
Sec. 17. In appeals or writs of error from circuit courts, costs, how adjudged.
18. Costs in equity, how adjudged.
19. In suits on contracts made with state, &c., costs, how adjudged.
20. General judgment for costs against the state not to be given, &c.
21. Person to whose use action is brought, liable to pay costs. Judgment for costs in such cases, effect of.
22. Costs in petitions for partition, how regulated and adjudged.
23. When tender is made before suit, plaintiff not to recover costs.
24. Tender in court after suit brought, when plaintiff shall pay all costs from the time of such tender.
25. Duty of clerk in taxing bills of costs.
26. Retaxation of costs, when made. Effect thereof.
27. Supreme court to re-tax costs, when.
28. Costs of re-taxation to be paid by clerk.
29. Clerks of inferior courts in appeals or writs of error, shall append to transcript to supreme court, a concise index, &c. Failure of clerk supreme court to make out record. His fees therefor.
30. Construction of foregoing section.
31. Fee bills and executions for costs, when to be issued.
32. Judgment for costs and damages to be rendered against attorney, when.

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

Section 1. In all actions on office bonds for the use of any person, actions on the bonds of executors, administrators, or

Digitized by Google

guardians, *qui tam* actions, actions on penal statutes when the penalty is given to the informer, 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 written undertaking 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 undertaking, the court, on motion, may dismiss the same, unless such undertaking be filed before the motion is determined, and the attorney of the plaintiff shall be ruled to pay all costs accruing thereon. (*a*)

Security for costs, in what cases required before action commenced. 1835, p. 127.

SEC. 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 rule 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 undertaking 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, unless such undertaking shall be filed before the motion is determined. (*b*)

In what cases security to be given after suit commenced.

On failure, court to dismiss suit, &c.

SEC. 3. On an appeal from a justices' court to the circuit court, if the plaintiff be appellee, he shall not be required to give security for costs.

Appellee not required to give security, when.

SEC. 4. 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

Plaintiff may sue as a poor person, when.

(*a*) *First.* This section does not apply to suits commenced in a justices' court; McCurdy vs. Gibson and Brown; 8 Missouri Rep., 549.

Second. A bond to the defendant, and to the several officers, and to all others interested, for the payment of all costs which may be awarded to be paid, is good and sufficient under this section; Baggs vs. Lanning and others; 1 Missouri Rep., 261.

(*b*) A judgment will not be reversed because a motion to rule the party to give security for costs remained undecided; Morgan vs. Taggart; 1 Missouri Rep., 403.

Digitized by Google

CHAP. 35.

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 poor 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; but if judgment is entered for the plaintiff, costs shall be recovered, which shall be collected for the use of the officers of the court.

Counsel to be assigned him by the court.

When clerk shall issue writ without fees for the same.

SEC. 5. 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 fees, for the same. But the court may, in its discretion, refuse or permit the further prosecution of the suit.

Costs, who shall recover.

SEC. 6. In all civil actions, or proceedings of any kind, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law. (c).

Costs, on motions.

SEC. 7. On all motions, the court may give or refuse costs, at its discretion, unless where it is otherwise provided by law.

Costs, when given in the discretion of court.

SEC. 8. When any defendant in any action 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.

When one of several counts bad, costs how awarded.

SEC. 9. Where there are several counts in any declaration, and any one of them be adjudged insufficient; or a verdict, on any issue joined thereon, shall be found for the defendant, costs shall be awarded at the discretion of the court.

In case of several defendants, costs how recovered.

SEC. 10. Where several persons are made defendants to any action, and any one or more of them shall have judgment in his favor, every person so having judgment, shall recover his costs in like manner as if such judgment had been entered 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.

(c) On a plea of release, pleaded *puis darrein* continuance, costs should be awarded to the plaintiff to the time of filing; to the defendant after that time; Nettles vs. Sweazea and others, 2 Missouri Rep., 100.

Digitized by Google

Damages to determine the jurisdiction of the court, when.

SEC. 11. In all actions *ex delicto*, the damages claimed in the declaration shall determine the jurisdiction of the court, and if the plaintiff recover any damages, he shall recover his costs.

If plaintiff recovers amount below the jurisdiction of court, judgment for costs to be rendered against him.

SEC. 12. In all actions of debt, covenant, and assumpsit, and all other actions founded on contract, if the plaintiff recover an amount, which, exclusive of interest, is below the jurisdiction of the court, unless the plaintiff's claim, as established on the trial, shall be reduced, by set-offs, to an amount below the jurisdiction of the court, he shall recover judgment therein, but the costs shall be adjudged against him.

In *certiorari*, successful party to recover costs.

SEC. 13. 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.

In appeals from county courts, or justices' courts, costs how adjudged against appellant.

SEC. 14. 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 in 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.

Costs, how adjudged in favor of appellant.

SEC. 15. If such appeal shall be from a judgment in favor of the appellant, costs 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 costs of the appellate court. *Second*, If, on the appeal, the appellant recover nothing, or the judgment be against him, he

Digitized by Google

CHAP. 35.

shall pay costs in both courts. *Third*, If the appellant recover more than the judgment below, he shall recover costs in both courts.

Appeal not prosecuted, judgment to be affirmed, &c.

SEC. 16. In all cases when 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.

In appeals or writs of error from circuit court, costs how adjudged.

SEC. 17. If any person shall sue out a writ of error on, or take an appeal from a judgment of a circuit court, in an action at law, and the judgment shall be affirmed, or the writ of error or appeal discontinued or quashed, or the plaintiff in error or appellant nonsuited, 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.

Costs in equity, how adjudged.

SEC. 18. Upon the complainant dismissing his bill in equity, or defendant dismissing the same for want of prosecution, the defendant shall recover against the complainant his costs; and in all other cases in equity, it shall be in the discretion of the court to award costs or not, except in those cases in which a different provision is made by law.

In suits on all contracts made with the state, &c., costs how adjudged.

SEC. 19. 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 to a county or the use of a county, and not brought on the relation, or in behalf, or for the use of any private person, if the plaintiff shall recover any debt or damages, costs shall also be recovered as in other cases; but if such plaintiff suffer a discontinuance, or be non-suited, or *non prossed*, or if a verdict shall be found in favor of the defendant, he shall recover his costs.

General judgment against the state, &c., not to be given.

SEC. 20. In all such cases, the judgment against the state or county shall not be for costs generally, but the amount thereof shall be expressed in the judgment, and no such judgment shall afterwards be amended so as to increase the amount for which it was originally entered; and upon a transcript of such judgment, together with a certified copy of the fee-bill, shewing the items of cost, being presented to the auditor of public accounts, or the county court, the same shall be audited and allowed.

Person to whose use action is brought liable to pay costs.

SEC. 21. When any suit or proceeding instituted in the name of the state or any county, on the relation or in behalf, or for the use of any private person, and where a suit shall

Digitized by Google

be commenced in the name of one person to the use of another, the person for whose use the action is brought shall be held liable to the payment of all costs. And in all such cases, as well when there is security for costs, or where the attorney is liable for the same, judgment for the costs shall be rendered against the person for whose use the action is brought, the security or attorney, in like manner and to the same extent as if the suit or proceeding had been instituted in his own name.

Judgment for costs in such cases, effect of.

SEC. 22. In all cases founded on the statute concerning the partition of land, the petitioner or petitioners 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 among the several parties, and cause the same to be paid out of the money arising from such sale, or a fee-bill may issue for the collection of the costs.

Costs in petition for partition, how adjudged and regulated.

SEC. 23. That in all actions where, before suit brought, 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.

When tender is made, plaintiff not to recover costs.

SEC. 24. That if, in any suit pending, the defendant shall at any time bring into court, and deposite with the clerk, for the use of the plaintiff, the amount of the debt or damages he admits to be due, together with all costs that have then accrued, and the plaintiff shall refuse to accept the same in discharge of his suit, and shall not afterwards recover a larger sum than the sum so brought into court, exclusive of interest and costs, he shall pay all costs that may accrue from and after the time such money was so brought in and deposited as aforesaid.

Tender in court after suit brought, when plaintiff shall pay all costs from the time of such tender.

SEC. 25. 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

Duty of clerk in taxing bills of costs.

Digitized by Google

CHAP. 35.

case allow any item or charge, unless the service for which it was made was actually performed in the cause.

Re-taxation of costs, when made.

SEC. 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,

Effect thereof.

and if the party aggrieved shall have paid any unlawful charge by reason of the first taxation, the clerk shall pay the costs of re-taxation, and also, to the party aggrieved, the amount which he may have paid by reason of the allowing of such unlawful charge.

Supreme court to re-tax costs, when.

SEC. 27. In all cases of appeal and writs of error in the supreme court, it shall be the duty of that court, whenever the transcript of a record shall contain any unnecessary matter had before the inferior court, to re-tax the bill of costs of the clerk of the inferior court, although no motion for that purpose is made by either party; and when 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, which order may be enforced by attachment.

Costs of re-taxation to be paid by clerk.

SEC. 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.

Clerks of inferior courts in appeals or writs of error, shall append to transcript to supreme court a concise index, &c.

SEC. 29. The clerk of the inferior court shall append to the transcript of the record for the supreme court, on appeals and writs of error, a concise index, referring, by number, to the pages on which are contained the proceedings preparatory to the commencement of the suit, the declaration or bill, writ, amended declaration or bill, the pleadings and the action of the court thereon, all motions and the action of the court thereon, and the exceptions thereto, the default of either party, and the judgment or decree thereon, writ of enquiry, verdict, final judgment, bill of exceptions, evidence of each witness, and all the subsequent steps in the cause: And the proceedings shall be stated in the transcript in the order in which they transpired in court, and if any record be made out otherwise, or in a manner not legible, it shall be the duty of the supreme court, although no motion for that purpose be made, to direct their clerk to make out a proper record, if practicable, from the transcript certified by the clerk from

Failure, clerk of supreme court to make out record.

Digitized by Google

below, and the clerk of the supreme court shall receive, as a compensation for his services herein, the fees allowed by law to the clerk of the inferior court for the transcript, who shall not be entitled to any fee therefor; and if he has received the same, the court shall order him to pay it to the clerk of the supreme court, and may enforce such order by attachment. His fees therefor.

SEC. 30. Nothing contained in the foregoing section shall be construed to require the insertion of any matter in the transcript of the record of a cause, which is not necessary for its proper determination in the supreme court. Construction of foregoing section.

SEC. 31. In all cases where either party shall be adjudged to pay costs before final judgment, the party in whose favor such costs are adjudged shall have a fee-bill therefor; and for costs awarded upon final judgment execution may be issued. Fee-bills and executions for costs, when to be issued.

SEC. 32. If an 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 erroneously 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 damages in consequence thereof. Judgment for costs and damages to be rendered against attorney, when.

ARTICLE II.

Of costs in criminal cases.

SEC. 1. What costs in capital cases shall be paid by the state.
2. In what cases costs shall be paid by county.
3. In capital cases, in case of acquittal, state to pay costs. In all other cases of acquittal, costs to be paid by county.
4. Informer or prosecutor to pay costs, when.
5. If public officer prosecutes, when costs to be paid by county.
6. Prosecutors in misdemeanors liable for costs unless grand jury determine that county shall pay.
7. If a person charged with an offence is discharged by officer, prosecutor to pay costs, unless, &c. Officer to issue execution, when. Proceedings, when certified to county court.
SEC. 8. Costs not to be taxed against state or county.
9. If a person charged with felony is discharged by examining officer, or is committed, &c., costs to be paid by state, when.
10. In certain cases jury to determine whether prosecutor or county to pay costs.
11. No fees except for board, &c. shall be paid by state or county on conviction.
12. Fees of officers curtailed fifty per cent., when.
13. Convicted slave shall be sold to pay costs, unless, &c.
14. Officer how to proceed in selling slave. Proceeds, how applied.
15. When slave is reprieved, &c., shall be sold to satisfy costs.
16. When convicted and executed, state to pay costs.

Digitized by Google

SEC. 17. Subpœnas in criminal cases, how and when issued. Duty of clerk.
18. Witness recognized or subpœnaed, shall attend till discharged.
19. Court to make allowance for ironing prisoner, when.
20. Fines, penalties and forfeitures incurred in any county, shall be paid into the treasury thereof, for the benefit of said county.
SEC. 21. Clerk to deliver fee-bills to circuit attorney, when. Failing to perform such duty, treble the amount of costs to be recovered against him.
22. Duty of judge and circuit attorney to examine fee-bills. Shall certify to auditor or county court.
23. Original fee-bill to be preserved by clerk.
24. Costs not to be taxed against state or county for more than three witnesses to one fact.

What costs in capital cases shall be paid by the state. 1843, p. 29.

SECTION 1. The costs shall be paid by the state in all capital cases in which the defendant shall be convicted, and shall be unable to pay them; and in all cases in which the defendant shall be sentenced to imprisonment in the penitentiary, and shall be unable to pay them.

In what cases costs shall be paid by county.—*Ibid.*

SEC. 2. The county in which the indictment is found, shall pay the costs in all cases when the defendant is sentenced to imprisonment in the county jail and fine, or to either of these modes of punishment, and is unable to pay them.

In capital cases, &c., in case of acquittal, state to pay costs.—*Ib.* In all other cases of acquittal, costs to be paid by county.

SEC. 3. In all capital cases, and those in which imprisonment in the penitentiary is the sole punishment for the offence, if the defendant is acquitted, the costs shall be paid by the state; and in all other trials on indictments, if the defendant is acquitted, the costs shall be paid by the county, unless in those in which the prosecutor shall be adjudged to pay them.

Informer or prosecutor to pay costs, when.

SEC. 4. In all prosecutions for any fine, penalty, or forfeiture, instituted otherwise than by indictment, unless the same is commenced by the attorney general, or circuit attorney, or some other officer whose duty it is to institute the same, the informer, or person commencing the prosecution, although he may not be entitled to any part of the said fine, penalty, or forfeiture, shall be adjudged to pay all costs, if the defendant is acquitted.

If public officer prosecutes, when to be paid by county.

SEC. 5. If such prosecutions are commenced by a public officer, whose duty it is to institute the same, if the defendant is acquitted, or is convicted and unable to pay the costs, the same shall be paid by the county.

Prosecutors in misdemeanors liable for costs, unless grand jury determine, &c.

SEC. 6. In all cases, except those in which death or imprisonment in the penitentiary is the sole punishment, where any person shall be committed, or recognized to answer a criminal offence, and no indictment shall be found against such person, the prosecutor shall be liable for the costs,

Digitized by Google

unless the grand jury, taking the matter in consideration, shall determine that the county, and not the prosecutor, shall pay the same; and the opinion of a majority of the grand jury, certified by the foreman, stating who shall be liable for costs, shall be conclusive on the court in rendering judgment for the same.

Sess. acts, 1843, p. 30 and 34.

If person charged be discharged by officer, prosecutor to pay costs, unless, &c.

SEC. 7. If a person charged with an offence not punishable with death, or imprisonment in the penitentiary alone, shall be discharged by the officer taking his examination, the costs shall be paid by the prosecutor, or person on whose oath or information the same shall have been instituted, unless the officer shall certify that there was probable cause for the prosecution, in which event they shall be paid by the county in which the offence was committed. When the prosecutor is condemned to pay the costs, the officer, taking the examination, shall issue execution for them forthwith, if demanded. When the bill of costs shall be certified to the county court for payment, the same shall be strictly examined by the court, and no allowance shall be made but for such services as are expressly compensated by law.

Execution to be issued, when.

Proceedings when certified to county court.

Costs not to be taxed against state or county, when.

SEC. 8. In all prosecutions instituted otherwise than by indictment, if the offender is convicted and unable to pay the costs, the same shall not be taxed against the state or county.

Person charged with felony discharged by examining officer, or committed, &c., costs to be paid by state, when.

SEC. 9. If a person, charged with an offence punishable with death, or imprisonment in the penitentiary alone, shall be discharged by the officer taking his examination; or, if recognized or committed for any such offence, and no indictment be preferred against him, the costs shall be paid by the state, which shall be certified for allowance in the manner hereinafter declared.

In certain cases, jury to determine whether prosecutor or county shall pay costs.

SEC. 10. If, upon the trial of an 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.

No fees, except for board, paid by state, &c., on conviction.

SEC. 11. Whenever any person shall be convicted of any crime or misdemeanor, no costs incurred on his part, except fees for board, shall be paid by the state or county.

SEC. 12. When the costs in any criminal case shall be taxed against the state or county, the fees of the clerk,

Digitized by Google

CHAP. 35.

Fees of officers curtailed fifty per cent., when.

sheriff, justice, constable, attorney general, circuit attorneys, and all other ministerial officers, shall be curtailed fifty per cent.

Convicted slave shall be sold to pay costs, unless, &c. Rev. code of 1835, p. 497.

SEC. 13. 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 master or owner appear and pay the same within sixty days after they become due. (*d*)

Officer how to proceed in selling slave.

SEC. 14. The sheriff or officer having the custody of such slave, shall detain him, and if the costs be not paid within the time 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 costs and expenses of sale, and the balance paid to the owner on demand.

Proceeds, how applied.

When slave reprieved, &c., shall be sold to satisfy costs.

SEC. 15. 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 second preceding section.

Convicted and executed, state to pay costs.

SEC. 16. If a slave be convicted of any capital offence and executed, the costs shall be paid by the state.

Subpœnaes in criminal cases, how and when issued.

SEC. 17. No subpœna for a witness in any criminal case shall be issued, unless the name of such witness is endorsed on the indictment, or the circuit attorney, or the prosecutor in the cause, or the defendant or his attorney, shall order the same; and no subpœna shall be issued for any witness, unless the accused is in custody, or on bail, or unless the clerk shall be satisfied that he will be in attendance on the court at the return term of the process; and all costs, unnecessarily incurred by a violation of this provision, shall be taxed against the clerk.

Duty of clerk.

Witness recognized or subpœnaed shall attend until discharged.

SEC. 18. Whenever a witness in a criminal case is once recognized or subpœnaed, he shall attend under the same until he is discharged by the court, and no costs shall be allowed for any subsequent recognizance or subpœna against the same witness.

County court to make allowance for ironing prisoner, when.

SEC. 19. Whenever the county court of any county in which the offender shall have committed any crime for which

(*d*) The words "owner or master," in this section, are synonymous, and mean the owner and not the temporary master of the slave. Reed vs. Circuit Court of Howard County, 6 Missouri Rep., 44.

Digitized by Google

he is imprisoned, may be satisfied of the necessity of so doing, they may make an allowance for ironing the prisoner, and may allow a moderate compensation for medical services, fuel, bedding and menial attendance for any prisoner, which shall be paid out of the county treasury.

Fines, penalties, &c., to be paid for benefit of county.

SEC. 20. All fines and penalties imposed, and all forfeitures incurred in any county, shall be paid into the treasury thereof, for the benefit of the said county.

Clerk to deliver fee-bills to circuit attorney, when.

SEC. 21. The clerks of the several courts in this state, in which any criminal cause shall have been determined, or continued generally, and in which the state or county shall be liable for the costs, shall, before the next term succeeding that during which the cause shall have been determined or continued, tax all costs which shall have accrued in the same, and make out and deliver to the circuit attorney of said court, within the time aforesaid, a complete fee-bill, specifying each item of service and the fee therefor; and if any clerk fail to perform the duties hereby enjoined on him, any person, injured by such neglect, may, by motion in the said court, giving two days notice thereof, which may be served on the clerk or his deputy, recover against the clerk, treble the amount of costs to which he is entitled in the cause in which the clerk shall have failed to make out and deliver to the circuit attorney a fee-bill.

Failing to perform such duty, treble the amount of costs to be recovered against him.

Duty of judge and circuit attorney to examine fee-bills.

SEC. 22. It shall be the duty of the judge and circuit attorney of every court in this state, having criminal jurisdiction, to meet together in term time, and examine strictly each bill of costs which shall have been delivered to the circuit attorney of said court, for allowance against the state or county, and ascertain, as far as practicable, whether the services have been rendered for which charges are made, and whether compensation is expressly given by law for the services charged, or whether greater charges are made than the law authorizes; and if they shall find that the said fee-bill has been made out in conformity to law, and if not, after correcting all errors therein, they shall certify to the auditor of public accounts, or clerk of the county court, accordingly as the state or county is liable, the amount of costs due by the state or county on the said fee bill, which shall be delivered to the clerk to be collected without delay, and paid over to those entitled to the fees allowed. And any clerk failing to collect said fees, or having collected them, and shall refuse to pay

Shall certify to auditor or county court.

Digitized by Google

CHAP. 36.

the same on demand, shall be subject to the penalties prescribed in the preceding section, to be recovered in like manner.

Original fee-bill to be preserved by clerk.

SEC. 23. The original fee-bill, signed by the judge and circuit attorney, a copy of which shall be certified to the auditor of public accounts, or county court, shall be carefully preserved by the clerk, in his office, and shall be evidence of the facts therein contained, without further proof.

Costs not to be taxed vs. state or county for more than three witnesses, when.

SEC. 24. The judge and circuit attorney shall be careful and not tax the state or any county with more than the costs of three witnesses, to establish any one fact.

Approved March 25, 1845.

CHAPTER 36.

COUNTY BOUNDARIES.

AN ACT defining the limits of the several counties in this state.

North of the Missouri river.

SEC. 1. Adair.
2. Andrew.
3. Audrain.
4. Atchison.
5. Boone.
6. Buchanan.
7. Caldwell.
8. Callaway.
9. Carroll.
10. Chariton.
11. Clark.
12. Clay.
13. Clinton.
14. Daviess.
15. De Kalb.
16. Gentry.
17. Grundy.
18. Harrison.
19. Holt.
20. Howard.
21. Knox.
22. Lewis.
23. Lincoln.
24. Linn.
25. Livingston.
26. Macon.
27. Marion.
28. Mercer.
29. Monroe.
30. Montgomery.
31. Nodaway.
32. Pike.
SEC. 33. Platte.
34. Putnam.
35. Ralls.
36. Randolph.
37. Ray.
38. Schuyler.
39. Scotland.
40. Shelby.
41. St. Charles.
42. Sullivan.
43. Warren.

South of the Missouri river.

44. Barry.
45. Bates.
46. Benton.
47. Camden.
48. Cape Girardeau.
49. Cedar.
50. Cole.
51. Cooper.
52. Crawford.
53. Dade.
54. Dallas.
55. Dunklin.
56. Franklin.
57. Gasconade.
58. Green.
59. Henry.
60. Hickory.
61. Jackson.
62. Jasper.
63. Jefferson.

Digitized by Google

SEC. 64. Johnson.
65. La Fayette.
66. Lawrence.
67. Madison.
68. Miller.
69. Mississippi.
70. Moniteau.
71. Morgan.
72. New Madrid.
73. Newton.
74. Oregon.
75. Osage.
76. Ozark.
77. Perry.
78. Pettis.
79. Polk.
80. Pulaski.
81. Reynolds.
82. Ripley.
83. Saline.
84. Scott.
85. Shannon.
86. Stoddard.
87. St. Clair.
88. St. François.
89. St. Louis.
90. Ste. Genevieve.
91. Taney.
92. Texas.
93. Van Buren.
94. Washington.
95. Wayne.
96. Wright.
97. Territories.
98. Boundaries by water courses.
99. Surveying of county lines.
100. Notice thereof to be given.
101. Returns from surveyors.
102. Fees for surveying; approval of the line, &c.

NORTH OF THE MISSOURI RIVER.

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

SECTION 1. The county of *Adair* shall be bounded as follows: beginning at a point in the middle of range thirteen, on the township line dividing townships sixty and sixty-one; thence west on said township line to the range line dividing ranges seventeen and eighteen; thence north on said range line to a point three miles north of the township line dividing townships sixty-three and sixty-four; thence east (*a*) on a line parallel to said township line, to the centre of township sixty-four, in range thirteen; thence south to the beginning. Adair.

SEC. 2. *Andrew*, beginning at the north-east corner of Buchanan county; (*b*) thence north with the former western boundary of the state, to the line dividing townships sixty-one and sixty-two; thence west to the middle of the main channel of the Nodaway river; thence down in the middle of the main channel of said river to the southern crossing of said river of the range line dividing ranges thirty-six and thirty-seven; thence south with said range line to the middle of the main channel of the Missouri river; thence down said river Andrew.

SEC. 1. (*a*) Along the subdivisional lines to the centre, &c.

SEC. 2. (*b*) On the former western boundary line of the state, being at a point where said state line is intersected by the line between sections 21 and 28, township 58 north, range 33 west; thence north along said state line, and the western boundary of De Kalb and Gentry counties, to its intersection with the line dividing townships 61 and 62; thence west along said township line, to the middle of the main channel of Nodaway river; thence down and along said channel, to the most southern crossing of said river with the line between ranges 36 and 37; thence south with said range line, to the middle of the main channel of the Missouri river; thence down said channel to a point where a western production of the line between fractional sections 19 and 30, township 58, range 35, would intersect the said channel, being the north-west corner of Buchanan county; thence eastward along the subdivisional lines to the point of beginning.

Digitized by Google

CHAP. 36.

in the middle of the main channel thereof, to the south-[north] west corner of Buchanan county; thence east with the north line of Buchanan county, to the beginning.

Audrain. SEC. 3. *Audrain*, beginning at the north-west corner of section thirty-one, in township fifty-three, and range twelve; thence east to the north-east corner of section thirty-one, in township fifty-three, and range seven; thence (*a*) a little east of south with said county line, to the south-west corner of Pike county, to where the township line between townships fifty and fifty-one intersects the range line between ranges four and five; thence west with said township line, to where it intersects the range line between ranges six and seven; thence south to the north-east corner of Callaway county, where the township line between townships forty-nine and fifty intersects the range line between ranges six and seven; thence west with said township line, to where it intersects the Boone county line; thence north with said county line, to where it intersects the township line between townships fifty-one and fifty-two; thence west with said township line, to where it intersects the range line between ranges twelve and thirteen; thence north, to the beginning.

Atchison. SEC. 4. *Atchison*, beginning in the middle of the main channel of the Missouri river, at a point where a line running through the centre of township sixty-three, extended, would intersect the same; thence east with (*a*) *said township line* to the line of Nodaway county; thence north (*b*) with said line to the northern boundary of the state; thence with the same [west] to the middle of the main channel of the Missouri river; thence down said river in the middle of the main channel thereof, to the beginning.

Boone. SEC. 5. *Boone*, beginning in the middle of the main channel of the Missouri river, at the south-east corner of Howard county, (*a*) *and running thence with the eastern boundary*

SEC. 3. (*a*) South to the south-east corner of said section 31; thence east, with the line between townships 52 and 53, to the intersection with the west boundary of Ralls county; thence with said county line to the south-east corner of township 51 north, range 5 west; thence west with the township line to the south-west corner of township 51, range 6; thence south to the south-east corner of township 50, range 7; thence west with the township line to the south-west corner of section 36, township 50, range 11; thence north with the subdivisional lines to the north-west corner of section 1, township 51, range 11; thence west with the township line to the south-west corner of township 52, range 12; thence north along the range line to the beginning.

SEC. 4. (*a*) The subdivisional lines—

(*b*) -ward, and following said lines to the northern, &c.

SEC. 5. (*a*) Being a point opposite the mouth of Moniteau creek; thence up along said creek to its intersection with the line between townships 48 and 49; thence in a direct line—

Digitized by Google

of said county to the north-east corner of township fifty-one, range fourteen west; thence (*b*) *due east* with the township line between townships fifty-one and fifty-two, 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 (*c*) 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 (*d*) *where the range line between eleven and twelve crosses said creek the second time*; thence [south] with said [range] 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.

Buchanan.

SEC. 6. *Buchanan*, beginning at the north-west corner of Platte county; (*a*) thence east (*b*) with the line of said county, (*c*) to the north-east corner thereof; thence north with the line of Clinton and De Kalb counties, (*d*) to the section line which divides sections twenty-one and twenty-eight, township fifty-eight, range thirty-three; thence west with (*e*) *said line* to the middle of (*f*) the Missouri river, and down the same to the beginning.

Caldwell.

SEC. 7. *Caldwell*, beginning at a point where the township line, dividing townships fifty-four and fifty-five, intersects the range line dividing ranges twenty-five and twenty-six; thence north, along said range line, to the division line between townships fifty-seven and fifty-eight; thence west, along said line, to the division line between ranges twenty-nine and thirty; thence south, along said line, to the division line between townships fifty-four and fifty-five; thence east, along said line, to the point of beginning.

Callaway.

SEC. 8. *Callaway*, beginning at a point in the middle of the main channel of the Missouri river, to which a (*a*) *projection* of the range line, between ranges six and seven west, would lead; thence north, with the said range line, to the (*b*)

SEC. 5. (*b*) East—(*c*) About—
(*d*) The most southern crossing with the line between ranges 11 and 12—
SEC. 6. (*a*) Being a point in the middle of the main channel of the Missouri river, at a western intersection of the line between townships 54 and 55.
(*b*) Along said township line, and—(*c*) Of Platte—
(*d*) Along the former west boundary of the state—
(*e*) The before designated subdivisional lines—
(*f*) The main channel of—
SEC. 8. (*a*) Southern prolongation—
(*b*) North-east corner of township 49 north, range 7 west—

Digitized by Google

CHAP. 36. *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 (*e*) *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.

Carroll. SEC. 9. *Carroll,* beginning in the middle of the (*a*) Missouri river, (*b*) *opposite* the point where the range line between twenty-five and twenty-six strikes the same; thence north, following said line, to the township line dividing townships fifty-five and fifty-six; thence east, following said township line, to the middle of Grand river; thence down Grand river, in the middle of the main channel thereof, to the middle of the Missouri river; thence up said river, in the middle of the main channel thereof, to the beginning.

Charlton. SEC. 10. *Charlton,* beginning at a point in the middle of (*a*) the Missouri river, where (*b*) the line between sections seventeen and twenty, township fifty-one, range seventeen west, intersects the same; thence, with the western line of Howard county, to the north-west corner (*c*) *of Howard county;* thence, with the north line of Howard county, (*d*) *to* the (*e*) sectional line which divides range sixteen into equal parts (*f*); thence north (*g*) to the line between townships fifty-six and fifty-seven; thence west, with said line, to a point where Locust creek crosses the same; thence down the middle of said creek to the middle of the main channel of Grand river; thence down said river, in the middle of the main channel thereof, to the Missouri river; thence down said Missouri river, in the middle of the main channel thereof, to the beginning.

Clark. SEC. 11. *Clark,* beginning at the north-east corner of

SEC. 8. (*c*) To its most southern crossing with the—
SEC. 9. (*a*) Main channel of the—
(*b*) South of—
SEC. 10. (*a*) The main channel of—
(*b*) A western prolongation of—
(*c*) Thereof, being a point 1 1-2 miles west of the north-east corner of township 52 north, range 17 west—
(*d*) Being a direct line towards the south-west corner of township 52 north, range 14 west—
(*e*) Point where the—
(*f*) Intersects the same.
(*g*) Along the subdivisional lines—

Digitized by Google

Lewis county, in the middle of the main channel of the Mississippi river; (a) thence west, with the northern boundary line of Lewis county to the corner of sections eighteen and nineteen, on the range line between ranges nine and ten, in township sixty-three; thence north with the range line between ranges nine and ten, to the middle of the main channel of the Des Moines river; (b) to the middle of the main channel of the Mississippi river; thence down the middle of the main channel of the Mississippi [river] to the place of beginning.

Clay.

SEC. 12. *Clay*, beginning (a) *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 (b) to the old state line; thence (c) south to the Missouri river, and down the same in the middle of the main channel thereof, to the beginning.

Clinton.

SEC. 13. *Clinton*, beginning at the north-west corner of Clay county; (a) thence north (b) to the middle of township fifty-seven; (c) thence east, (d) to a point due north of the north-east corner of Clay county; (e) thence south to (f) the northern line of Clay county, and with (g) *said line* to the beginning.

Daviess.

SEC. 14. *Daviess*, beginning at the range line dividing ranges twenty-five and twenty-six, at the south-west [east] corner of township fifty-eight, of range twenty-six; thence north on said range line to the north-east corner of section thirty-six, in township sixty-two, range twenty-six; thence west on said section line *from the corner*, to the north-west corner of section thirty-one, township sixty-two, of range twenty-

SEC. 11. (a) At a point where an eastern production of the line between sections 13 and 24, township 63 north, range 6 west would intersect the same,
(b) Thence down along said channel.
SEC. 12. (a) At a point in the middle of the main channel of—
(b) With the subdivisional lines—
(c) With the said line—
SEC. 13. (a) At a point where the line between sections 27 and 34, township 54 north, range 33 west, intersects the former west boundary of the state;
(b) Along said state line, being also the eastern boundary line of Platte and Buchanan counties;
(c) Where the line between sections 16 and 21 east of the state line would intersect the same;
(d) Along the subdivisional lines—
(e) Being the corner of sections 13 and 24, on the east boundary of township 57, range 30;
(f) The north-east corner of Clay county being the corner of sections 35 and 36, township 54, range 30; thence west along—
(g) The subdivisional lines—

Digitized by Google

CHAP. 36. nine; thence south on said range line dividing ranges nine and thirty, to the south-west corner of township fifty-eight, [range twenty-nine;] thence along the township line between townships fifty-seven and fifty-eight, to the beginning.

De Kalb. SEC. 15. *De Kalb*, beginning at the north-east corner of Clinton county; (*a*) thence [north] to the township line dividing townships sixty and sixty one; thence west to the former western boundary line of this state; thence south with said boundary line to the north-west corner of Clinton county; thence east with the north boundary of Clinton county to the beginning.

Gentry. SEC. 16. *Gentry*, beginning at a point where the township line dividing townships sixty and sixty-one intersects the range line between ranges twenty-nine and thirty; thence north with the same to the township line dividing townships sixty-four and sixty-five; thence west to the old western boundary line of this state; thence south with the old state boundary line to the township line dividing townships sixty and sixty-one; thence east to the beginning.

Grundy. SEC. 17. *Grundy*, beginning at the (*a*) north-east corner of Livingston [county]; thence north with the sectional line, to the corner of sections nine, ten, fifteen and sixteen, in township sixty-three; (*b*) thence west, (*c*) *parallel with the township line dividing townships sixty-three and sixty-four*, to the range line dividing ranges twenty-five and twenty-six; thence south with said range line to the north-west corner of Livingston county; (*d*) thence east with said county line to the place of beginning.

Harrison. SEC. 18. *Harrison*, beginning at the north-east corner of Daviess county; (*a*) thence north on the range line between ranges twenty-five and twenty-six, twenty-four miles; thence due west to the range line between ranges twenty-nine and thirty; thence south on said range line to the north-west corner of Daviess [county]; (*b*) thence east along the northern line of Daviess [county,] to the beginning.

SEC. 15. (*a*) Being at the corner of sections 13 and 24, in township 57 north, range 30 west;

SEC. 17. (*a*) Corner of sections 33 and 34 on the south boundary of township 60 north, range 22 west;

(*b*) Range 22 west;

(*c*) With the sub-divisional lines—

(*d*) Being the south-west corner of township 60 north, range 25 west;

SEC. 18. (*a*) Being at the corner of sections 25 and 36, township 62 north, range 26 west;

(*b*) Being at the corner of sections 30 and 31, township 62 north, range 29 west;

Digitized by Google

SEC. 19. *Holt*, beginning in the middle of the main channel of the Missouri river, at a point where the line dividing ranges thirty-six and thirty-seven, extended, would intersect the same; thence south [north] (*a*) with said range line to the middle of the main channel of the Nodaway river; thence up the middle of the main channel of said river to the (*b*) *line* of Atchison county; thence west with said line to the middle of the main channel of the Missouri river; thence down the middle of the main channel thereof, to the beginning. Holt.

SEC. 20. *Howard*, beginning in the middle of the main channel of the Missouri river, opposite the mouth of the 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,] and range fourteen west; thence in a direct line to a point one and a half miles west of the north-east corner of township fifty-two, range seventeen west; thence in a direct line to a point in the middle of the main channel of the Missouri river, where (*a*) the line between sections seventeen and twenty, township fifty-one, range seventeen west, intersects the same, and down the same to the beginning. Howard.

SEC. 21. *Knox*, beginning (*a*) *at the south-west corner of Scotland county;* thence south, in the middle of range thirteen, to the township line dividing townships fifty-nine and sixty; thence east, with said line, to the range line dividing ranges nine and ten (*b*); thence north, with said range line, (*c*) to the south-east corner of Scotland county; thence west with the line of Scotland [county] to the beginning. Knox.

SEC. 22. *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 [west] with the northern boundary line of Marion county, on the line between townships fifty-nine and sixty, to the range line between ranges nine and ten west; thence north, with (*a*) said last mentioned range line, to the Lewis.

SEC. 19. (*a*) Corrected from the original bill.
(*b*) South-east corner—
SEC. 20. (*a*) A western production of—
SEC. 21. (*a*) At the corner of sections 3 and 4, township 63 north, range 13 west;
(*b*) Being the south-west corner of Lewis county;
(*c*) Along the west boundary line of Lewis and Clark counties,
SEC. 22. (*a*) The east boundary line of Knox county and the—

Digitized by Google

CHAP. 36. the corner of sections eighteen and nineteen, on the range line last named, in township sixty-three north; thence east with the section line between sections eighteen and nineteen, through the middle of the township numbered sixty-three, to the Mississippi river; thence east to the middle of the main channel; thence down said river, in the middle of the main channel thereof, to the beginning.

Lincoln. SEC. 23. *Lincoln*, beginning (*a*) *in* the Mississippi river opposite the mouth of the river Cuivre; thence with the northern boundary of St. Charles county, (*b*) to the fifth principal meridian line; thence south to the corner of townships forty-seven and forty-eight, ranges one east and one west; thence west with said township line to the corner of sections thirty-four and thirty-five, in township number forty-eight, range number two west; thence (*c*) west four miles to the corner of sections seven and eighteen, on the line dividing ranges number two and three west; thence due north four miles to the corner of sections twenty-four and twenty-five (*d*) on said range line; thence west four miles to the corner of sections number twenty, twenty-one, twenty-eight and twenty-nine, in township number forty-nine, range three west; thence due north four miles to the corner of sections four and five, township forty-nine, range three west; thence due east to the corner of townships forty-nine and fifty, on the line dividing ranges two and three west; thence north with said range line to the corner of townships number fifty-one and fifty-two north; thence with said township line, east to the (*e*) Mississippi river; and thence (*f*) *to* the middle of the main channel of said river, to the place of beginning.

Linn. SEC. 24. *Linn*, beginning at the south-east corner of township fifty-seven of range eighteen; thence west to Locust creek; thence down said creek in the middle of the main channel thereof, to Grand river; thence up Grand river in the middle of the main channel thereof, to a point where the line in the middle of range twenty-two crosses Grand river; thence with the said line in the middle of range twenty-two, north, to the township line dividing townships sixty and sixty-

SEC. 23. (*a*) At a point in the middle of the main channel of—
(*b*) Along Cuivre river and Eagle fork,
(*c*) North with the subdivisional lines four miles to the corner of sections 10, 11, 14 and 15, township 48 north, range 2 west; thence—
(*d*) Township 49 north, range 3 west;
(*e*) Middle of the main channel of the—
(*f*) Down, along—

Digitized by Google

one; thence east (*a*) *to the range line dividing ranges seventeen and eighteen;* thence south, (*b*) to the beginning.

SEC. 25. *Livingston*, beginning at the south-west corner of township fifty-six, range twenty-five; thence north to the township line between townships fifty-nine and sixty; thence east to the middle of range twenty-two; thence south to Grand river; thence down Grand river in the middle of the main channel thereof, to a point where the township line dividing [townships] fifty-five and fifty-six crosses said river; thence west with said township line, to the beginning. Livingston.

SEC. 26. *Macon*, beginning at the (*a*) *north-east corner of Randolph county;* thence north with the range line dividing ranges twelve and thirteen (*b*) to the township line dividing townships fifty-nine and sixty; thence west to the line dividing sections thirty-three and thirty-four; (*c*) thence north with said sectional line to the township line dividing townships sixty and sixty-one; thence west with said line to the range line dividing ranges seventeen and eighteen; thence south with said line to the township line dividing townships fifty-six and fifty-seven; thence east with said line to the middle of range sixteen; thence south to the (*d*) *north-west corner of Randolph county;* thence east with the northern boundary of Randolph (*e*) *county*, to the place of beginning. Macon.

SEC. 27. *Marion*, beginning in the middle of the main channel of the Mississippi river, at a point due east of the the eastern termination of the line between townships fifty-six and fifty seven; thence west, to the termination of said line; thence west with the last mentioned line to the north-east corner of section six, township fifty-six, range seven; thence due south to the south-east corner of section seven in said last mentioned township; thence due west with the section line to the range line between ranges eight and nine; thence north with said range line to the township line between townships fifty-nine and sixty; thence east with said township line to its termination on the Mississippi river; thence due east Marion.

SEC. 24. (*a*) To the north-east corner of township 60 north, range 18 west;
(*b*) Along the line between ranges 17 and 18,
SEC. 26. (*a*) South-east corner of township 56 north, range 13 west, being also the south-west corner of Shelby county;
(*b*) Being the west boundary of Shelby county;
(*c*) Township 60 north, range 13 west;
(*d* Corner of sections 33 and 34, township 56 north, range 16 west;
(*e*) And Monroe counties,

Digitized by Google

CHAP. 36.

to the middle of the main channel of said river; thence down the same, in the middle of the main channel thereof, to the place of beginning.

Mercer. SEC. 28. *Mercer*, beginning at the north-east corner of Grundy county (*a*); thence due north to the northern [north] boundary line of the state; thence due west [with said boundary] twenty-one miles; thence due south, to the north-west corner of Grundy county (*b*); thence east with (*c*) *said county line* to the place of beginning.

Monroe. SEC. 29. *Monroe*, beginning at the south-east corner of section seven, in township fifty-six, in range seven west; thence south (*a*) to the south-east corner of section thirty, in township fifty-three, in range seven west; thence west (*b*) to the south-west corner of section thirty, in township fifty-three, in range twelve west; thence north to the north-west corner of township fifty-five, in range twelve west; thence east to the north-east corner of said township fifty-five, [range twelve west;] thence north to the south-west corner of section seven, in township fifty-six, of range eleven; thence east, to the beginning.

Montgomery. SEC. 30. *Montgomery*, beginning at (*a*) *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.

Nodaway. SEC. 31. *Nodaway*, beginning in the middle of the main channel of the Nodaway river, opposite the line dividing townships sixty-one and sixty-two; thence up said river, in the middle of the main channel thereof, to the mouth of the

SEC. 28. (*a*) Being the corner of sections 9, 10, 15 and 16, township 63 north, range 22 west;

(*b*) Being the corner of sections 7 and 18, township 63 north, on the line between ranges 25 and 26 west;

(*c*) The north boundary of Grundy county,

SEC. 29. (*a*) With the subdivisional lines—

(*b*) With the subdivisional lines—

SEC. 30. (*a*) A point in the middle of the main channel of the Missouri river, south of the line between ranges 4 and 5 west, being the south-west corner of Warren county; thence north, along said range line, to the corner of sections 7, and 18, township 47 north, range 4 west; thence east with the subdivisional lines to the corner of sections 8, 9, 16 and 17, township 47 north, range 3 west; thence north along the subdivisional lines, to the corner of sections 4 and 5, township 49 north, range 3 west; thence east to the south-east corner of township 50 north, range 3 west; thence north to the north-east corner of township 50 north, range 3 west; being at the corner of Pike county; thence west along the line between townships 50 and 51, being the lines of Pike and Audrain counties, to the northwest corner of township 50 north, range 6 west; thence south along the line between ranges 6 and 7 west, and with the lines of the counties of Audrain and Callaway—

Digitized by Google

brook in what is known by the name of the Roland grove; thence west to the dividing ridge between the waters of the Big Tarkio and Nodaway rivers; thence north [northward] upon the top of said dividing ridge to the (*a*) *state line;* thence east with the same to the former (*b*) *western boundary line* of the state; thence south with the (*c*) *same*, to the township line dividing townships sixty-one and sixty-two; thence west with said line to the beginning.

Pike.

SEC. 32. *Pike*, beginning at the north-east corner of Lincoln county, (*a*) and running thence west with the northern boundary of Lincoln county (*b*) 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 middle of the main channel thereof, to the place of beginning.

Platte.

SEC. 33. *Platte*, beginning at the south-west corner of Clay county (*a*); thence, with the western line of Clay and Clinton counties, (*b*) *to the south-east corner of section thirty-three, township fifty-five, range thirty-three;* thence west (*c*) to the Missouri river (*d*) and down the same, in the middle of the main channel thereof, to the beginning.

Putnam.

SEC. 34. *Putnam*, beginning at a point three miles north of the line dividing townships sixty-three and sixty-four, where the Chariton river crosses the northern line of Adair county; thence up said river in the middle of the main

SEC. 31. (*a*) North boundary of the state—
(*b*) North-west corner—
(*c*) Former west boundary of the state—
SEC. 32. (*a*) Being a point in the middle of the main channel of the Mississippi river, due east of the line between townships 51 and 52 north—
(*b*) Along said township line—
SEC. 33. (*a*) Being a point in the middle of the main channel of the Missouri river, opposite the mouth of Kanzas river, where the former west boundary of the state struck the same—
(*b*) Along the former west boundary line of the state to the line between townships 54 and 55 north—
(*c*) Along said township line—
(*d*) Prolonged west, until it strikes the main channel.

Digitized by Google

CHAP. 36.

channel thereof, to the northern boundary line of this state; thence west with said boundary line to the (*a*) *line dividing ranges twenty and twenty-one;* thence south (*b*) to the line dividing townships sixty-four and sixty-five; thence [east] to the line dividing ranges seventeen and eighteen; thence south (*c*) with said line to the north-west corner of Adair county; thence east to the place of beginning.

Ralls. SEC. 35. *Ralls*, beginning (*a*) *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 (*b*) to the township line between townships fifty-two and fifty-three; thence east to the line of Pike county; thence on [in] a direct line to the south-west [east] corner of section sixteen, township fifty-four, range five west; thence on [in] a direct line to a point (*c*) *in the Mississippi river opposite to the line between townships fifty-five and fifty-six; and thence* to the beginning.

Randolph. SEC. 36. *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 (*a*) 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.

Ray. SEC. 37. *Ray*, beginning (*a*) *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-four and fifty-five; thence west to the division line between ranges twenty-nine and thirty; thence south to (*c*) the Missouri river, and down the same, in the middle of the main channel thereof, to the beginning.

Schuyler. SEC. 38. *Schuyler*, beginning at the north-east corner of

SEC. 34. (*a*) North-east corner of Mercer county, being a northern prolongation of the subdivisional centre line of range 22 west—
(*b*) Along said centre of range 22—
(*c*) Three miles—
SEC. 35. (*a*) At a point in the middle of the main channel of—
(*b*) Along the subdivisional lines—
(*c*) On the Mississippi river where the line between townships 55 and 56 north, strikes the same; thence due east to the middle of the main channel of said river; thence up the river along the said channel—
SEC. 36. (*a*) With the subdivisional lines,
SEC. 37. (*a*) At a point in the middle of the main channel of—
(*b*) South of—
(*c*) A point in the middle of the main channel of—

Digitized by Google

Adair county (*a*); thence north (*b*) to the northern boundary line of this state; thence west, along the state line, to the middle of the main channel of the Chariton river; thence down the said river to the northern line of Adair county; thence east, with the northern line of Adair county, (*c*) to the beginning.

SEC. 39. *Scotland*, beginning on the township line dividing townships sixty-three and sixty-four, in the middle of range thirteen; thence north, in the middle of said range, to the northern boundary of the state; thence east, on said boundary, to a point where the range line dividing ranges nine and ten, when produced, would intersect the same; thence south, on said range line, to the township line dividing townships (*a*) *fifty-three and fifty-four*; thence west with said line to the beginning. Scotland.

SEC. 40. *Shelby*, beginning at the south-east corner of section twelve, township fifty-six, range nine west; thence due west to where said line intersects the line dividing the ranges eleven and twelve; thence due south to the south-east corner of township fifty-six in range twelve; thence due west to where said line will strike the range line dividing ranges twelve and thirteen; thence due north to where said range line intersects the township line dividing townships fifty-nine and sixty; thence due east to where said township line intersects the range line dividing ranges eight and nine; thence due south to the place of beginning. Shelby.

SEC. 41. *St. Charles*, beginning in the (*a*) Mississippi river opposite the mouth of the river Cuivre; thence up the same [Cuivre river] to a point opposite the mouth of Eagle fork; thence up the same [Eagle fork] to [the line of] the fifth principal meridian; thence south to the (*b*) Missouri river; thence down the same to the (*c*) Mississippi river; thence up the same to the beginning. St. Charles.

SEC. 42. *Sullivan*, beginning at the north-east [south-west] corner of Linn [Adair] county, where it joins Adair Sullivan.

SEC. 38. (*a*) Being the south-east corner of section 16, township 64 north, range 13 west—
(*b*) With the subdivisional lines—
(*c*) With the subdivisional lines along the middle of township 64 north,
SEC. 39. (*a*) Corresponds with the original, engrossed and enrolled bills, ought to read—"sixty-three" and "sixty-four."
SEC. 41. (*a*) Middle of the main channel of the—
(*b*) Middle of the main channel of the—
(*c*) Middle of the main channel of the—

Digitized by Google

CHAP. 36. [Linn] county; thence with the line of Linn county west to the (*a*) *north-west corner of said county of Linn;* thence due north in the middle of range twenty-two, with the eastern line of Grundy (*b*) county, to the line dividing townships sixty-four and sixty-five, to include all of township sixty-four; thence east with the line of townships sixty-four and sixty-five, to the line dividing ranges seventeen and eighteen, to include all of range eighteen; thence due south with said line, dividing [ranges] seventeen and eighteen, to the place of beginning.

Warren. SEC. 43. *Warren*, beginning at the south-west corner of St. Charles county, at the point where the [line of the] fifth principal meridian crosses the (*a*) Missouri river; thence north with said meridian, and the western line of St. Charles county, to the southern line of Lincoln county; thence due west on said southern line of Lincoln county, eight miles, to where the line dividing sections number thirty-four and thirty-five, in township forty-eight (*b*) intersects said township line; running thence due north, four miles, to the corner of sections ten, eleven, fourteen and fifteen, in township forty-eight, of range number two west; thence due west four miles to the corner of sections seven and eighteen, on the line dividing ranges number two and three west; thence north four miles to the corner of sections twenty-four and twenty-five on said range line; thence due west four miles to the corner of sections number twenty, twenty-one, twenty-eight and twenty-nine, in township forty-nine, range three west; thence south to the south-west corner of section nine, township forty-seven north, of range three west; thence west to the north-west corner of section eighteen, township forty-seven, range four west; thence due south to (*c*) the Missouri river; thence down the same to the place of beginning.

SOUTH OF THE MISSOURI RIVER.

Barry. SEC. 44. *Barry*, beginning at the north-east corner of section thirty-six, in township twenty-six of range twenty-five; thence west to the north-west corner of section thirty-six, of township twenty-six, of range twenty-nine; thence

SEC. 42. (*a*) Subdivisional centre line of range 22 west, being the east boundary line of Grundy—
(*b*) And Mercer counties—
SEC. 43. (*a*) Line of the middle of the main channel of the—
(*b*) Range 2 west—
(*c*) A point in the middle of the main channel of—

Digitized by Google

south (*a*) to the southern boundary line of this state; thence east to the line dividing ranges twenty-four and twenty-five; thence north (*b*) to the place of beginning.

SEC. 45. *Bates*, beginning on the western boundary line of the state, (*a*) at the south-west corner of Van Buren county; thence east to the south-east corner of said county (*b*); thence south, on the range line dividing ranges twenty-eight and twenty-nine, to the township line dividing townships thirty-*three* (*c*) *and thirty-four*; thence west on said township line to the western line of the state; thence north with said line to the beginning. Bates.

SEC. 46. *Benton*, beginning at the north-east corner of township forty-three, of range twenty; thence south to the south-east corner of section one, of township thirty-eight, of range twenty; thence west to the south-west corner of section six, in township thirty-eight, and range twenty-three; thence north to the south-west corner of section seven, of township forty-three, and range twenty-three; thence east, to the south-east corner of section twelve, of township forty-three, and range twenty-two; thence north to the township line dividing townships forty-three and forty-four; thence east to the place of beginning. Benton.

SEC. 47. *Camden*, beginning in the middle of the main channel of the Osage river, where the range line dividing ranges fifteen and sixteen, in running south, first crosses said river; thence up said stream, in the middle of the main channel thereof, to a point where the section line, one mile north of the township line between townships thirty-nine and forty, intersects the left bank of said river; thence west, along said sectional line, to the intersection of the left bank of the Osage river; thence west to the centre of the main channel of said river; thence up [said] stream, in the main channel of said river; to the point where the range line, between ranges nineteen and twenty, crosses said river; thence south, with said range line, to the township line dividing townships thirty-six and thirty-seven; thence east, on said township line, to the range line dividing [ranges] Camden.

SEC. 44. (*a*) With and along the corresponding subdivisional lines—
(*b*) Along the said range line—
SEC. 45. (*a*) Where it is intersected by the line between townships 40 and 41—
(*b*) Being the north-east corner of township 40 north, range 29 west—
(*c*) Four and thirty-five; thence east to the corner of sections 1 and 2, township 34 north, range 29 west; thence south along the sectional lines to the south boundary of that township—

Digitized by Google

CHAP. 36. seventeen and eighteen; thence south, on said range line, to the township line dividing townships thirty-three and thirty-four; thence east, with said township line, to the top of the ridge dividing the waters of Bear creek from the waters of the Osage fork of the Gasconade river; thence in a north-eastern direction, on the top of said ridge, to the range line between ranges thirteen and fourteen; thence north, with said range line, to the southern boundary line of Miller county (*a*); thence west (*b*) with the south boundary of Miller county, to the range line between ranges fourteen and fifteen; thence, with the Miller county line, (*c*) to the place of beginning.

Cape Girardeau. SEC. 48. *Cape Girardeau*, beginning (*a*) *in* the Mississippi river, opposite the mouth of Apple creek; thence up said creek to the line between townships thirty-three and thirty-four north; thence west with said line to the dividing ridge between the rivers Castor and Whitewater; 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 main channel thereof, 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 Whitewater; thence down the main channel thereof, to the line between townships twenty-eight and twenty-nine north; thence to and following the main channel of the big swamp to where the same strikes the Cape la Cruche creek; thence down said creek to the mouth of the same; thence due east to the middle of the main channel of the Mississippi river; thence up the same in the middle of the main channel thereof, to the beginning.

Cedar. SEC. 49. *Cedar*, beginning at the north-west corner of township thirty-five, and range twenty-four; thence west on the township line dividing townships thirty-five and thirty-six, to the north-west corner of section four, of township thirty-five, of range twenty-six; thence north to the northwest

SEC. 47. (*a*) Being at the corner of sections 13 and 24, township 38 north, range 14 west;

(*b*) Along the subdivisional lines—

(*c*) In a straight line to the point where the middle of the main channel of the Osage river intersects the north boundary of township 39 north, range 16 west; thence down along said channel to where it intersects the line between ranges 15 and 16 west; thence north along said range line—

SEC. 48. (*a*) At a point in the middle of the main channel of—

Digitized by Google

corner of section sixteen, township thirty-six, and range twenty-six; thence west to the south-west corner of section seven, township thirty-six and range twenty-eight; thence south upon the line dividing the counties of St. Clair and Bates, continuing upon the line dividing the counties of Dade and Jasper, to the south-west corner of section twenty-four, of township thirty-three of range twenty-nine; thence east to the west boundary of Polk county; *thence north on the line dividing the counties of Dade and Polk, to the north-east corner of Dade county; thence west one mile;* thence north on [along] the western boundary line of Polk county, to the place of beginning.

Cole. SEC. 50. *Cole,* beginning at the south-west corner of section thirty-two, in township forty-three, in range fourteen; thence in a direct line to the Missouri river at a point where the south-east corner of [fractional] section twelve, [township forty-six, range fourteen] intersects the [same] [*range line between ranges thirteen and fourteen*]; thence [east] in a direct line to the middle of the main channel of the Missouri; thence down the middle of the main channel thereof, to a point where the middle of the main channel of the Osage river intersects the same; thence up the middle of the main channel of the Osage river to a point where the range line between ranges eleven and twelve crosses the said river; thence south with the said line to the south-east corner of township forty-two, of range twelve; thence west with [the south boundary of township forty-two, range twelve,] *said line* to the middle of the main channel of said river; thence up the same to a point in the middle of the main channel thereof, *at a point* where [the] *said* township line [between townships forty-one and forty-two] crosses the same a second time; thence west with said line to the south-west corner of township forty-two, in range thirteen; thence north to the north-west corner of said township; thence west with the township line dividing townships forty-two and forty-three, to the beginning.

Cooper. SEC. 51. *Cooper,* beginning in the Missouri river at a point [in the middle of the main channel thereof,] 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

Digitized by Google

CHAP. 36.

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 terminate; thence north to the middle of the main channel of said river; thence down the same to the beginning.

Crawford. SEC. 52. *Crawford*, beginning at the south-west corner of Washington county; thence west, to the middle of range eight; thence north to the township line between townships thirty-nine and forty; thence [east] along said line to the south-east corner of Gasconade county; thence *south* [north] to the *line* [south-west corner] of Franklin county; thence east to the north-west corner of Washington county; thence south, with the line of Washington county, to the beginning.

Dade. SEC. 53. *Dade*, beginning at the south-east corner of section twenty-four, township thirty-three, of range twenty-five; thence west, to the south-west corner of section twenty-four, township thirty-three, and range twenty-nine; thence south to the township line dividing townships twenty-nine and thirty; thence east to the range line dividing ranges twenty-four and twenty-five; thence north to the place of beginning.

Dallas. SEC. 54. *Dallas*, beginning at the south-east corner of section twelve, township thirty-one, and range eighteen; thence west to the range line between ranges twenty and twenty-one; thence north to the township line dividing townships thirty-six and thirty-seven; thence east to the range line dividing ranges seventeen and eighteen; thence south to the place of beginning.

Dunklin. SEC. 55. *Dunklin*, beginning in the middle of the main channel of the St. Francois river, at the point where [an eastern prolongation of] the state line between the states of Missouri and Arkansas, in latitude thirty-six degrees and thirty minutes north, *leaves* [would leave] said river; thence due east, to the western line of New Madrid county; thence south, with said line, to the southern boundary of the state; thence west, on the southern boundary, to the middle of the main channel of the St. Francois river; thence up the middle of the main channel of the St. Francois to the place of beginning.

Digitized by Google

Franklin.

SEC. 56. *Franklin*, beginning at the north-west corner of St. Louis county [being a point in the middle of the main channel of the Missouri river]; thence south [along the line of ranges two and three east] to the line between townships forty-two and forty-three; thence [in a] direct [line] to the north-east corner of Washington county, [being a point sixteen chains north of the quarter section corner on the line between sections fourteen and fifteen, in township forty north, range two east of the fifth principal meridian]; thence west to the middle of range four west; thence north to [a point in the middle of the main channel of] the Missouri river; thence down said *river* [channel,] to the [point of] beginning.

Gasconade.

SEC. 57. *Gasconade*, beginning at the north-west corner of Franklin county, [being a point due north of the subdivisional centre line of range four west, in the middle of the main channel of the Missouri river]; thence south to the line between townships thirty-nine and forty; thence west to the range line between [ranges] six and seven; thence due north to [a point in the middle of the main channel of] the Missouri river; thence down the main channel of said river, to the place of beginning.

Greene.

SEC. 58. *Greene*, 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 range line dividing ranges twenty-four and twenty-five; thence north with said range line until it intersects the Polk county line, [being at the north-west corner of section eighteen, township thirty-one north, range twenty-four west]; thence east, [with the subdivisional lines,] to the range line dividing ranges seventeen and eighteen; thence south with said [range] line, to the beginning.

Henry.

SEC. 59. *Henry*, beginning at the south-west corner of section thirty, township forty-four, range twenty-eight [west]; 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, [being the north-east corner of section thirty-six, township forty-four north, range twenty-four west]; thence west, [with the subdivisional lines] to the beginning.

Digitized by Google

CHAP. 36.

Hickory. SEC. 60. *Hickory*, beginning at the south-east corner of township thirty-seven north, of range twenty west; thence north to the north-east corner of section twelve, township thirty-eight north, of range twenty west; thence west along the *section line* [sectional lines] to the north-west corner of section seven, township thirty-eight north, and of range twenty-three west; thence south on the range line to the south-west corner of township thirty-seven north, of range twenty-three west; thence west to the north-west corner of section three, township thirty-six north, of range twenty-four west; thence south *on* [along] the sectional lines to the south-west corner of section three, in township thirty-five north, of range twenty-four west; thence east *on* [along] the sectional lines to the *north* [south] east corner of section one, township thirty-five north, of range twenty-one west; thence north on the range line to the north-west corner of township thirty-six north, and range twenty west; thence east *on* [along] the township line, to the place of beginning.

Jackson. SEC. 61. *Jackson*, beginning in the Missouri river at the place where the western line of the state crosses it [in the middle of the main channel thereof;] 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 middle of the main channel of] the Missouri river; thence up the same to the beginning.

Jasper. SEC. 62. *Jasper*, beginning at the south-west corner of section one, in township twenty-seven, of range twenty-nine; thence west [with the subdivisional lines] to the western boundary line of this state; thence north, on the state line, to the line dividing townships thirty-three and thirty-four; thence east, on said line, to the north-west corner of section one, of township thirty-three, of range twenty-nine; thence south [with the subdivisional lines] to the place of beginning.

Jefferson. SEC. 63. *Jefferson*, beginning at the south-east corner of St. Louis county; thence with the southern boundary thereof to the line between ranges two and three east; thence south to the north-west corner of township forty-two north, range three east; thence direct to the north-east corner of Washington county; thence, with the Washington line, to the southern corner of section fifteen, township thirty-eight north, range four east; thence direct to the south-east corner of

Digitized by Google

thirty-nine north, range five east; thence direct to the south-east corner of section twenty-three, township thirty-eight north, range six east, till it intersects the north fork of the Isle au Bois creek; thence down the said creek to the [middle of the main channel of the] Mississippi river; thence up the same to the beginning.

Johnson. SEC. 64. *Johnson*, beginning at the south-east corner of La Fayette county; thence *westwardly* with [and along] the southern boundary of La Fayette county to the *Johnson* [Jackson] county line; thence south [along the Jackson and Van Buren county lines], through the middle of range twenty-nine, to the south-west corner of section twenty-seven, in township forty-four; thence east [along the subdivisional lines] to the range line between ranges twenty-three and twenty-four; thence north to the beginning.

La Fayette. SEC. 65. *La Fayette*, beginning in the Missouri river [at a point in the middle of the main channel thereof,] opposite [and due north of] 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 [along the sectional lines] to [a point in the middle of the main channel of] the Missouri river, and [thence] down the same to the beginning.

Lawrence. SEC. 66. *Lawrence*, beginning at the corner of sections twenty-five and thirty-six, on the range line between ranges twenty-four and twenty-five, of township twenty-six; thence north with said range line to the township line between townships twenty-nine and thirty; thence west with said township line to where it intersects the east line of Jasper county; thence south with the east line of the counties of Jasper and Newton, to the corner of sections twenty-five and twenty--six, and thirty-five and thirty-six, of township twenty-six north, of range twenty-nine west; thence east, to the place of beginning.

Madison. SEC. 67. *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 Whitewater; thence in a direct line to the dividing ridge

Digitized by Google

CHAP. 36. 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. Francois; thence west to the south-east corner of section thirty-one, in township thirty north, range three east; thence due north with said section line to the township line dividing townships thirty-three and thirty-four; thence east to the range line dividing ranges three and four; thence north on said range line, to the place of beginning.

Miller. SEC. 68. *Miller*, beginning [at a point] where the township line between townships forty-two and forty-three crosses the range line between ranges fifteen and sixteen, [being also a corner of Morgan and Moniteau counties]; thence [south] with said range line to where said line crosses the Osage river the second time; thence up said river until it comes to the point where the township line between townships thirty-nine and forty crosses said river; thence [south-easterly] on a direct line to a point on the range line between ranges fourteen and fifteen, in the middle of township thirty-eight; thence east to the range line between ranges eleven and twelve; thence north to the township line between townships forty-one and forty-two; thence west with said township line to the middle of the main channel of the Osage river; thence up the middle of the main channel of said river to the range line between ranges twelve and thirteen; thence to the south-eastern corner of township forty-two, in range thirteen; thence with the township line between townships forty-one and forty-two, to where the same intersects the range line between ranges thirteen and fourteen; thence [north] with said range line to the [line between] townships forty-two and forty-three; thence west with said township line to the place of beginning.

Mississippi. SEC. 69. *Mississippi*, beginning [at a point] in the middle of the main channel of the Mississippi river, opposite to the middle of Buffalo island; thence down the middle of the main channel, with the state line, [to a point therein south of and] opposite to the mouth of James' bayou; thence westwardly with the northern boundary of New Madrid county, to a point in the swamp two miles due east of the *northern boundary line* [north-east corner] of a certain tract of land situated in the upper end of the big prairie, originally granted to one Moses Hurley; thence in a north-eastwardly direction to the point

Digitized by Google

of beginning, so as to include the residence of Carroll V. Randal.

SEC. 70. *Moniteau*, beginning at a point where the range line between ranges fourteen and fifteen, [west of the fifth principal meridian,] extending north will intersect the middle of the main channel of the Missouri [river;] thence in a direct line to the corner of townships forty-five and forty-six, [north] of ranges fifteen and sixteen; thence south to the north-east corner of section *seven*, [twelve,] in township forty-five and range sixteen; thence west to the north-west corner of section seven, in township forty-five, in range seventeen; thence south to the north-west corner of section seven, in township forty-four of range seventeen; thence [south-easterly] in a direct line to the south-west corner of township forty-three in range fifteen; thence east to the south-west corner of section thirty-two, in township forty-three, in range fourteen; thence [north-eastwardly] in a direct line to a point *in* [on] the the Missouri river, where the *south-east corner of* [line between fractional] sections twelve [and thirteen,] in township forty-six in range fourteen intersects the [same] *range line between ranges thirteen and fourteen;* thence [east] in a direct line to the middle of the Missouri river; thence up the *same* [said river] in the middle of the main channel thereof, to the beginning. Moniteau.

SEC. 71. *Morgan*, beginning in the middle of the main channel of the Osage river, at a point where the range line dividing ranges fifteen and sixteen crosses said river; thence up said river in the middle of the main channel thereof, to a point where the section line one mile north of the township line between townships thirty-nine and forty intersects the left bank of said river; thence west along said sectional line to the intersection of the left bank of the Osage river; thence west to the centre of the main channel of the Osage river; thence up said river in the middle of the main channel thereof, to the point where the range line between ranges nineteen and twenty crosses said river; thence north along said range line to the north-west corner of section seven, township forty-five, range nineteen; thence east to the north-west corner of section seven, township forty-five, range seventeen; thence south to the north-west corner of section seven, township forty-four, range seventeen; thence in a direct line to the south-west Morgan.

Digitized by Google

CHAP. 36. corner of township forty-three, range fifteen; thence south to the beginning.

New Madrid. SEC. 72. *New Madrid*, beginning [at a point] in the middle of the main channel of the Mississippi river, opposite [and south of] the mouth of James' creek or bayou; thence in a direct line [north] to the mouth of said creek or bayou; thence [in a direct line in] a north-*west* [westerly] course to a point in the swamp two miles east of the north-east *boundary* [corner] of a tract of land situate in the upper end of big prairie, originally granted and confirmed to Moses Hurley; and thence westwardly on a parallel with the northern boundary line of said tract of land to the Whitewater; thence with the Stoddard county line, [to the south-east corner of Stoddard county; thence south] to the state line; thence east to the [middle of the main channel of the] Mississippi river; thence up the same, following the middle of the main channel thereof, to the beginning.

Newton. SEC. 73. *Newton*, beginning at the south-east corner of section one, of township twenty-seven, of range twenty-nine; thence south [along the corresponding subdivisional lines] to the south boundary [line] of this state; thence west, to the south-west corner of this state; thence north, with the western line of this state, to a point one mile south of the point where the township line between townships twenty-seven and twenty-eight strikes the said western boundary line of this state; thence east [with the subdivisional lines] to the place of beginning.

Oregon SEC. 74. *Oregon*, beginning at the south-east corner of township twenty-eight, and range three, and running west to the range line dividing ranges nine and ten; thence south with said line to a point on the top of a ridge of land which divides the waters of Big north fork of White river and Bennett's bayou, from the waters of Spring river and Eleven points river; thence, on the top of said ridge, [southward until it strikes the south boundary of the state; thence, with that boundary, east, to the top of the ridge dividing the waters of Eleven points and Current rivers; thence northward with said ridge until it strikes the line of ranges two and three west; thence north to the beginning,] *to a point where it strikes the western line of Ripley county; thence north with said line to the place of beginning.*

Digitized by Google

SEC. 75. *Osage*, beginning at a point in the middle of the main channel of the Missouri river opposite the range line between ranges six and seven; thence south to, and along said line to the line between townships thirty-nine and forty; [thence] west to the line between ranges eleven and twelve; thence north to the [middle of the main channel of the] Osage river; thence down the same in the middle of the main channel thereof, to the Missouri river; thence down the same in the middle of the main channel thereof, to the beginning. Osage.

SEC. 76. *Ozark*, beginning at a point on the south boundary line of this state, where the range line dividing ranges sixteen and seventeen strikes the same; thence east with the state line to a point where the same crosses the ridge dividing the waters of Bennett's bayou, Spring, Eleven points and Current rivers; thence in a northwardly direction along said ridge to the range line dividing ranges nine and ten; thence with said range line north, to the *township* line dividing townships twenty-seven and twenty-eight; thence west with said township line to the range line dividing ranges sixteen and seventeen; thence south with said range line to the place of beginning. Ozark.

SEC. 77. *Perry*, beginning in the [middle of the main channel of the] Mississippi river, *opposite* [due east of] the mouth of Apple creek; thence up said creek to the line between townships thirty-three and thirty-four north; thence west with said line 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 the St. Laurent creek; thence in a direct line to the middle of the main channel of the Mississippi river; thence down the same in the middle of the main channel thereof, to the beginning. Perry.

SEC. 78. *Pettis*, beginning at the north-west corner of section nineteen, in township forty-eight, and range twenty-three; thence east [with the subdivisional lines] to the range line dividing ranges nineteen and twenty; thence south on said range line to the township line dividing [townships] forty-three and forty-four; thence west to the range line dividing ranges twenty-one and twenty-two; thence south to the south- Pettis.

Digitized by Google

CHAP. 36.

east corner of section twelve, in township forty-three, and range twenty-two; thence west [along the subdvisional lines] to the range line dividing ranges twenty-three and twenty-four; thence north to the place of beginning.

Polk. SEC. 79. *Polk*, beginning at the south-east corner of section one, in township thirty-five, of range twenty-one; thence west on a section line to the south-west corner of section three, in township thirty-five, of range twenty-four; thence north to the township line dividing townships thirty-five and thirty-six; thence west to the range line dividing ranges twenty-four and twenty-five; thence south to the township line dividing townships thirty-four and thirty-five; thence east to the north-west corner of section six, township thirty-four, of range twenty-four; thence south on the range line dividing ranges twenty-four and twenty-five, to the south-west corner of section seven, in township thirty-one, of range twenty-four; thence east to the south-east corner of section twelve, township thirty-one, of range twenty-one; thence north on the range line dividing ranges [twenty and] twenty-one, to the beginning.

Pulaski. SEC. 80. *Pulaski*, beginning on the range line dividing ranges eleven and twelve, where the same crosses the line dividing townships thirty-nine and forty; thence east on said township line to the centre of range eight; thence south in the centre of said range, to the line dividing townships thirty-three and thirty-four; thence west on said township line to the top of the ridge dividing the waters of Bear creek from the waters of the Osage fork of the Gasconade river; thence a north-eastern direction on the top of said ridge to the range line between ranges thirteen and fourteen; thence north on said range line to the centre of township thirty-eight; thence east to the line dividing ranges eleven and twelve; thence north to the beginning.

Reynolds. SEC. 81. *Reynolds*, beginning at the south-east corner of township twenty-eight north, range two east; thence due west with said township line until the same strikes the dividing ridge dividing the waters of Black river and Current river; thence northwardly with the main divide of said ridge, until the same strikes the northern boundary line of Shannon county; thence east with said line until it intersects the north-west corner line of Madison county; thence due south with said line until it strikes the south-west corner of

Digitized by Google

Madison county; thence west to Black river, where it strikes the boundary line of Wayne county; thence southerly [with the line of Wayne county,] to the north-east corner of Ripley county; thence west, to the beginning.

Ripley.

SEC. 82. *Ripley*, beginning at the southern boundary of the state, at a point where the state line, running east and west, crosses the ridge that divides the waters of the river Eleven points from the waters of the river Lafourche de Thomas, commonly known by the name of Forche Demans; thence with said ridge, on the top thereof, to a point at which such line intersects the range line dividing ranges two and three; thence north, with said line, to the township line which divides townships twenty-seven and twenty-eight; thence east, with said township line, to a point *on* [where it intersects] the western line of Wayne county; thence south-westwardly, with said line, to the southern boundary of the state; and thence [west] with said line to the beginning.

Saline.

SEC. 83. *Saline*, beginning in the centre of the main channel of the Missouri river, where the range line dividing ranges twenty-three and twenty-four crosses said river, at the north-east corner of La Fayette county; thence due south, with said range line, to the north-west corner of section nineteen, of township forty-eight, [range twenty-three;] 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.

Scott.

SEC. 84. *Scott*, beginning at a point in the middle of the main channel of the Mississippi river, opposite to the middle of Buffalo Island; thence *southwardly* [south-westwardly] along the northern boundary of Mississippi county to New Madrid county; thence west to Whitewater river; 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 Cape La Cruche creek; thence down said creek to the mouth of the same; thence due *east* [north] to [a point in] the middle of the main channel of the river Mississippi; thence down the same, in the middle of the main channel [thereof,] to the beginning.

Shannon.

SEC. 85. *Shannon*, beginning on the line dividing ranges

Digitized by Google

CHAP. 36. *line* six and seven [west,] and also on the township line dividing [townships] twenty-seven and twenty-eight [north;] thence north, with said range line, to the township line dividing thirty-three and thirty-four; thence east, until it strikes the western boundary line of Reynolds; thence southwardly with said line, on a dividing ridge, dividing the waters of Black and Current rivers, until it strikes the township line dividing townships twenty-seven and twenty-eight; thence west with [and following] said township line to the place of beginning.

Stoddard. SEC. 86. *Stoddard*, beginning [at a point] in the [middle of the] main channel of the St. Francois river at the mouth of Black Mingo; thence up *the same* [Black Mingo] until it strikes the main channel of the swamp; thence along *the* [that] 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 Whitewater; thence down Whitewater to its junction with the Castor river; thence due 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 thirty-six degrees and thirty minutes [north;] thence due west [along said parallel of latitude, being the Dunklin county line, to the middle of the main channel of St. Francois river; thence up along said channel] to the point of beginning, *in the St. Francois river.*

St. Clair. SEC. 87. *St. Clair*, beginning at the north-west corner of township thirty-nine, and range twenty-eight; thence south with the range line to the south-west corner of section seven, township thirty-six, and range twenty-eight; thence east to the south east corner of section eight, township thirty-six, in range twenty-six; thence south to the line dividing townships thirty-five and thirty-six; thence east along said township line to the middle of range twenty-four; thence north to the township line dividing townships thirty-six and thirty-seven; thence east to the range line dividing ranges twenty-three and twenty-four; thence north to the township line dividing townships thirty-nine and forty; thence west to the place of beginning.

St. François. SEC. 88. *St. Francois*, beginning at the south-west corner of section one, township thirty-four north, range eight east; thence in a direct line to a rock, around which several trees are notched and blazed, it being at the point of intersection

Digitized by Google

with the line surveyed by J. M. Stevenson, M. Frissell and W. B. Wilkerson, in pursuance of an act entitled "an act to ascertain the lines between St. François and Ste. Genevieve counties," approved February fifteenth, one thousand eight hundred and forty-one; thence south forty-five degrees, and fifty-two minutes west, on a direct line to a rock, from which the corner of sections six and seven, on the line between ranges seven and eight east, township thirty-four north, bears north twenty-eight degrees west, eight chains and forty-eight links, and a black oak nine inches diameter, bears north eight degrees east, one hundred and seventeen links, and a post oak twenty inches diameter, bears north seventy-seven degrees west, eighty-nine links distant; thence north forty-four degrees and eight minutes west, on a direct line to a rock, from which the corner of sections twenty-six and twenty-seven, thirty-four and thirty-five, township thirty-seven north, range five east, bears north twenty-five degrees east, fifteen chains and seventy-eight links, and a black oak sixteen inches diameter, marked S. T. G. C., bears south seventy-three degrees, east eighty-six links, and a post oak, seven inches diameter marked S. T. F. C. bears south twenty-eight degrees, west forty-four links distant; thence north forty-five degrees and fifty-two minutes east, to a post with three rocks around it, on a line passing through the south-east corner of section twenty-three, township thirty-eight north, range six east, six chains and forty-three links, south fifty-one and a half degrees east of the south-east corner of said section; from said post and rocks, a sugar tree, twenty inches diameter, marked S. T. G. C., bears south thirty degrees, west fifty links, and a white oak thirty inches diameter, marked S. T. F. C., bears south eighty-one degrees, west one hundred and twenty-one links distant; thence on a direct line to the south-east corner of township thirty-nine north, range five east; thence on a direct line to the south-west corner of section fifteen, township thirty-eight north, range four east; thence south in a direct line to the south-west corner of section thirty-four, township thirty-six north, range four east; thence *on a direct line*, [west] to the south-west corner of township thirty-six north, range four east; thence 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 north, range three east; thence west to the [line of the] fifth

Digitized by Google

CHAP. 36.

principal meridian; thence south to the line between townships thirty-three and thirty-four north; thence east with said line to the south-east corner of township thirty-four north, range three east; thence north three miles to the north-west corner of section nineteen, township thirty-four north, range four east; thence due east with the northern boundary line of Madison county, to the south-west corner of section fifteen, township thirty-four north, range eight east; thence in a direct line, to the place of beginning.

St. Louis.

SEC. 89. *St. Louis*, beginning [at a point] in the middle of the main channel of the Mississippi river, due east of the mouth of the river Meramec; thence due west to the middle of the main channel of the Meramec river, at the mouth thereof,; thence up the Meramec river, and in 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 Meramec river, where the said township line again crosses the same; thence up the Meramec 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 [range] line, to [a point in] the middle of the main channel of the Missouri river; thence down the Missouri river, in the middle of the main channel thereof, to the mouth of said river; thence down the Mississippi river, in the middle of the main channel thereof, to the place of beginning.

Ste. Genevieve.

SEC. 90. *Ste. Genevieve*, beginning [at a point in the middle of the main channel] of the Mississippi river, opposite the mouth of the 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 *west* [east of the fifth principal meridian;] thence in a direct line to a rock around which several trees are notched and blazed, it being at the point of intersection with the line surveyed by J. M. Stevenson, M. Frissell and W. B. Wilkerson, in pursuance of an act, entitled "an act to ascertain the lines between St. Francois and Ste. Genevieve counties," approved February 15th, 1841; thence south forty-five degrees and fifty-two minutes west, on a direct line to a rock from which the corner of sections six and seven on the line between ranges

Digitized by Google

seven and eight east, township thirty-four north, bears north twenty-eight degrees, west eight chains and forty-eight links, and a black oak nine inches diameter, bears north eight degrees, east one hundred and seventeen links, and a post oak twenty inches diameter, bears north seventy-seven degrees west eighty-nine links distant; thence north forty-four degrees and eight minutes west, on a direct line to a rock from which the corner of sections twenty-six, twenty-seven, thirty-four and thirty-five, township thirty-seven north, range five east, bears north twenty-five degrees east fifteen chains and seventy-eight links, and a black oak sixteen inches diameter, marked S. T. G. C., bears south seventy-three degrees east, *east* eighty-six links and a post oak seven inches diameter, marked S. T. F. C., bears south twenty-eight degrees west, forty-four links distant; thence north forty-five degrees and fifty-two minutes east, to a post with three rocks around it, on a line passing through the south-east corner of section twenty-three, township thirty-eight north, range six east six chains and forty-three links, south fifty-one and a half degrees east of the south-east corner of said section; from said post and rocks a sugar tree twenty inches diameter, marked S. T. G. C., bears south thirty degrees west fifty links, and a white oak thirty inches diameter, marked S. T. F. C., bears south eighty-one degrees west, one hundred and twenty-one links distant; thence in a direct line towards 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 said Isle au Bois creek to its mouth; *and* [thence in a north-easterly course to a point in the middle of the main channel of the Mississippi river;] thence down the Mississippi river [along said channel,] to the place of beginning.

Taney.

SEC. 91. *Taney*, beginning on the range line, dividing ranges twenty-four and twenty-five, on the line dividing townships twenty-six and twenty-seven; thence east, with said township line, to the range line dividing ranges sixteen and seventeen; thence south, with said range line, to the [south boundary line of the] state *line;* thence west, with the state line, to the range line dividing ranges twenty-four and twenty-five; thence north to the place of beginning.

Texas.

SEC. 92. *Texas*, beginning at the north-east corner of township thirty-three north, in range seven west; thence

Digitized by Google

CHAP. 36.

south to the township line, dividing townships twenty-seven and twenty-eight; thence west, with said line, to the middle of range twelve; thence north to the township line, dividing townships thirty-three and thirty-four north; thence east to the place of beginning.

Van Buren.

SEC. 93. *Van Buren*, beginning at the south-east corner of township forty-one, in range twenty-nine; thence north to the north-east corner of section thirty-six, of township forty-four, of range twenty-nine; thence west to the south-west corner of section twenty-seven, in township forty-four, in range twenty-nine; thence north to the north-west corner of section three, in township forty-six, in range twenty-nine; thence west, on the township line, [between townships forty-six and forty-seven] to the western boundary line of the state; thence south, on said state line; to the township line between townships forty and forty-one; thence [east] on said township line to the place of beginning.

Washington.

SEC. 94. *Washington*, beginning [at a point] 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 [being a point sixteen chains north of the quarter section corner, on the line between sections fourteen and fifteen, in township forty north, range two east;] thence due west, to the middle of the Meramec river; thence due south to *a point where* the line between townships thirty-three and thirty-four *north, extended would intersect the same*; thence [with the said township line eastward] *due east* to the *meridian* line [of the fifth principal meridian;] thence due north three miles; thence east [with the St. Francois line] to the middle of 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 *twenty-* [thirty] eight [north,] range four [east;] thence [west] 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 [point of] beginning.

Digitized by Google

Wayne.

SEC. 95. *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 [east] strikes Black river; thence up the same to a point due west of the Cedar cabin; thence east [passing] *to* the south-west corner of Madison county; *thence east* [and along] with the southern boundary of Madison county to the line of Cape Girardeau county; thence *north*- [south] wardly, along the line of Cape Girardeau county, until said line strikes the line of Stoddard county; thence southwardly, with the line of Stoddard county, to the southern boundary of the state; thence west to the [point of] beginning.

Wright.

SEC. 96. *Wright*, beginning at the south-west corner of township twenty-seven and range seventeen; thence north to the middle of township thirty-two; thence east to the middle of range twelve; thence south to the township line dividing townships twenty-seven and twenty-eight; thence west to the south-west corner of township twenty-eight, and range sixteen; thence south to the south-east corner of township twenty-seven, and range seventeen; thence west to the place of beginning.

Territories.

SEC. 97. All other portions of territory within the state, shall remain attached for civil and militia purposes, as now provided by law. (*a*)

Boundaries by water courses.

SEC. 98. 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 construed as conforming to the established surveys.

Surveying of county lines.

SEC. 99. When it shall appear to the satisfaction of any county court, that the boundaries of such county are not sufficiently ascertained, the county court shall issue an order to the county surveyor, requiring him to ascertain, survey, and mark such part thereof, as the court may designate, and a day shall be named by the court for the commencement of such survey.

Notice thereof to be given.

SEC. 100. It shall be the duty of the court making such order to give notice thereof, at least ten days prior to running and making 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

(*a*) A portion of territory, nine miles by thirty-three, formerly included in Wright county, is left by this act unattached to any county.

Digitized by Google

CHAP. 37.

the surveyor of the county giving notice, to survey and mark the line or lines designated in the order.

Returns from surveyors.

SEC. 101. The surveyors shall proceed to ascertain, mark and survey the lines designated in said order, and make a return of their proceedings to their respective courts, which, if approved by the courts, shall be recorded as evidence of the line in controversy.

Fees for surveying; approval of the lines, &c.

SEC. 102. The fees of the 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 the 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 28th, 1845.

CHAPTER 37.

COUNTY BUILDINGS.

AN ACT to provide for erecting county buildings.

SEC. 1. Court-house and jail to be erected, where.
2. Fire-proof buildings to be erected, when and where.
3. Territory attached to county, not to be taxed for such buildings.
4. If funds sufficient, &c., county court to order building, &c. Superintendent to be appointed.
5. Court to fill vacancy in the office of superintendent.
6. Court to designate the place of building.
7. If no suitable ground belong to the county, the superintendent shall select a piece, where.
8. Court to examine title.
9. If title be approved, duty of court.
SEC. 10. Superintendent to submit plan of building, &c.
11. If plan be approved, proceedings.
12. Bond to be taken from undertaker.
13. Superintendent to direct the execution of the work.
14. When court may order instalment to be paid to undertaker.
15. Not to be paid unless a due proportion of the work has been completed.
16. Compensation of superintendent.
17. Power of county court to alter, repair, &c., and take measures to preserve buildings.
18. Fourfold damages forfeited to the county, for waste, trespass, &c. on county buildings.

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

Court-house and jail to be erected, where.

SECTION 1. There shall be erected in each county, at the established seat of justice thereof, a good and sufficient court house and jail.

Digitized by Google

Fire-proof buildings to be erected, when and where.

SEC. 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 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.

Territory attached to county, not to be taxed for such buildings.

SEC. 3. The inhabitants of any territory attached to a county, for civil and military purposes, shall not be taxed by the county courts of such county, for the purposes of erecting county buildings. [a]

If funds sufficient, &c. county court to order building, &c.

SEC. 4. 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 provided for,) and there shall be sufficient funds in the county treasury for that purpose, 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 buildings, who shall take an oath or affirmation faithfully and impartially to discharge the duties enjoined on him by this act.

Superintendent to be appointed.

Court to fill vacancy.

SEC. 5. The county court shall, from time to time, fill any vacancy which may happen in the office of superintendent.

Court to designate the place of building.

SEC. 6. 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.

If no suitable ground belong to the county, the superintendent shall select a piece, where.

SEC. 7. If there is no suitable ground for that purpose belonging to the county, the superintendent 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.

Court to examine title.

SEC. 8. Such court shall examine its title, and certify its decision thereon to the county court.

If title be approved, duty of court.

SEC. 9. If the title to the land so purchased or received, 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.

Superintendent to submit plan, &c.

SEC. 10. When the ground for erecting any public building shall be designated as aforesaid, the superintendent shall

(a) Sess. acts of 1843, p. 34.

Digitized by Google

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.

If plan be approved, proceedings.

SEC. 11. When any plan shall be approved by the county court, the superintendent shall immediately advertise for receiving proposals for erecting such buildings, stating in his advertisement, a description of the 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.

Bond to be taken from undertaker.

SEC. 12. The superintendent 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 at least double the amount to be given for erecting the building.

Superintendent to direct the execution of the work.

SEC. 13. It shall be the duty of the superintendent to overlook 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.

Payment to the undertaker, when court may order.

SEC. 14. 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.

Not unless a due proportion of work is completed.

SEC. 15. No such order shall be made, unless the superintendent shall certify that a due proportion of the work has been completed and executed according to contract.

Compensation of superintendent.

SEC. 16. The superintendent 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.

Power of county court to alter, repair, &c.

SEC. 17. The county court of each county shall have power, from time to time to alter, repair, or build any county buildings which have been, or may hereafter 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.

Fourfold damages forfeited to the county for waste, &c.

SEC. 18. If any person commit any waste, trespass or other injury, in, or upon any county buildings, or other property belonging to any county, he shall forfeit and pay to the use of

Digitized by Google

the county fourfold damages, to be recovered in the name of the county, in such form of action as individuals may maintain for like injuries to their property. CHAP. 38.

Approved February 10, 1845.

CHAPTER 38.

COUNTIES—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. County court may appoint agent; his contract to bind county, when.
6. All actions local or transitory against any county, may be commenced and prosecuted to final judgment. County buildings not subject to execution.
7. Actions to be prosecuted to final judgment, where.
8. Summons against county, how served.
9. Inhabitants of county may be jurors, when.

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

SECTION 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, 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. Conveyances to counties or their use, effect of.—1835. p. 142.

SEC. 2. The county court may, by order, appoint a commissioner to sell and dispose of any real estate belonging to 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, Court may appoint commissioner to convey real estate, effect of conveyance.

SEC. 3. All notes, bonds, bills, contracts, covenants, agreements, or writings made, whereby any person shall be bound to any county, or to 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 Contracts with counties, binding.

Digitized by Google

matter or thing, for the use of any county, shall be as valid and effectual to vest in such county all the rights, interests and actions which would be vested in any individual, in any such contract made directly to him.

Suits on such contracts, how commenced and prosecuted.

SEC. 4. Suits may be commenced and prosecuted thereon, in the name of such county, or in the name of the person 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.

Contract of agent to bind county, when. 1837, sec. 1, p. 44.

SEC. 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 on behalf of such county, shall bind such county.

County building not subject to execution.

SEC. 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; but no court-house, jail, clerk's office, or any other public building, or the lots of ground on which they may be situated, shall be subject to the execution of any creditor of such county.

Actions to be prosecuted to final judgment, where.

SEC. 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.

Process against county how served.

SEC. 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.

Inhabitants of county may be jurors.

SEC. 9. In all actions brought by or against any county, the inhabitants of the county so sueing, or being sued, may be jurors,* if otherwise competent or qualified.

Approved January 14, 1845.

* See title "Corporations," of this revision, art. 1, sec. 24, for the reason of omitting the word "witness" in this section.

Digitized by Google

CHAPTER 39.

COUNTIES—THEIR ORGANIZATION.

AN ACT to provide for the organization of counties hereafter established.

SEC. 1. Commissioners shall be appointed, when.
2. Secretary of state to notify commissioners.
3. Commissioners to appoint a time and place of meeting. To give notice thereof, how.
4. Shall take an oath.
5. Select a site for the seat of justice.
6. May purchase or receive a donation of land.
7. Deeds of conveyance shall be executed.
8. Shall report to the circuit court. The place selected shall be the seat of justice, when.
9. Purchase money to be paid out of first sales.
10. Vacancy in the office of commissioner to be filled by county court.
11. Commissioner of seat of justice shall be appointed, when. Shall take an oath. Shall give bond; its conditions.
12. Bond shall be deposited with clerk. Copy to be evidence.
13. A town shall be laid off, when. Additional lots, when. Commissioner to make report to county court.
14. Lots for public buildings reserved. Sale of lots. Commissioner shall make deeds for lots sold.
15. Bond and security for lots sold, to be given, when. Commissioner to give certificate to purchaser.
16. Payments, how to be credited.
17. In default of payment, lots shall be forfeited, and sold at public auction. Ten days notice of sale to be given. Deeds made as in other cases. Delinquent to be credited with amount of sale. When commissioner shall enforce the payment of balance due.
18. Who shall prosecute suits.
19. Forfeited lots may be redeemed.
SEC. 20. Accounts to be kept by commissioner. Shall settle at each term of the county court, and pay the balance against him into the county treasury. Books, papers, &c., when to be delivered over to the order of county court.
21. Money from lot sales, how appropriated.
22. Power of county court over commissioner. May remove him from office. May fill vacancies in the office of commissioner. Commissioner, or his executors or administrators, compelled to settle with county court, when.
23. Compensation of commissioners for selecting seat of justice, how paid. Compensation of commissioner of seat of justice, how paid.
24. Courts, where held. County court to determine. When held at the seat of justice.
25. In case of new counties, or alteration of county lines, suits, &c., shall progress as if no alteration had been made. Officers shall have full power to execute all writs, &c.
26. Executors, &c., falling in new counties, shall continue to settle, &c., in old counties.
27. Accounts of executors, &c., may be transferred to new counties.
28. Justices of the peace may proceed as if counties had not been altered. May continue in office in new counties six months. Books and papers to be delivered over, when and to whom.
29. Governor to appoint justices of the county court, sheriff, &c., on organization of new counties. Circuit court to appoint clerk. County court to appoint clerk of county court and justices of the peace. Justices to appoint constable.

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

SECTION 1. When a new county is established, the general assembly, by a concurrent resolution of the two houses, shall appoint three commissioners, over twenty-one years Commissioners shall be appointed, when.

Digitized by Google

CHAP. 39. 1836–7, p. 38.

of age, residents of the state for one year, previous to their appointment, non-residents of the county so established, and owning or claiming no real estate therein, to select a seat of justice for such county.

Secretary of state to notify commissioners.

SEC. 2. The secretary of state shall immediately transmit to each of such commissioners, a certificate of his appointment, under the seal of his office.

Commissioners to appoint a time and place of meeting.

To give notice thereof, how.

SEC. 3. Such commissioners, or a majority of them, immediately after receiving such certificate of appointment, shall appoint a time and place, when and where they will assemble to discharge their duties, and shall cause a notice to be published in some newspaper printed or circulated in such new county, one month before such meeting, and shall cause advertisements to be put up in ten of the most public places in such county, notifying the inhabitants thereof, of the time, place, and object of their intended meeting, and if a majority of such commissioners shall not assemble according to such notice, those appearing shall publicly adjourn the meeting to some other day, and so on, as often as may be necessary, until a majority of them shall assemble, but no such adjournment shall be for a longer period than ten days.

Shall take an oath.

SEC. 4. Each commissioner before entering upon the duties of his office, shall take an oath to discharge faithfully his duties as commissioner, without favor, partiality, or prejudice, and the certificate of such oath shall be endorsed upon the certificate of his appointment.

Select a site for the seat of justice.

SEC. 5. Such commissioners, or a majority of them, when duly qualified and assembled, shall examine and select the most suitable place in such county for a seat of justice for the same, having due regard to the situation, extent of population, quality of the land, and the convenience and interest of the inhabitants.

May purchase, or receive a donation of land.

SEC. 6. Such commissioners, or a majority of them, are authorized to purchase, or receive as a donation, such parcels of land and town lots, including the place selected as a seat of justice for such county, as they may think proper, not exceeding one hundred and sixty acres, (if purchased,) and not less than fifty acres in any case.

Deed of conveyance shall be executed.

SEC. 7. The donor, or vendor, shall execute and deliver to such commissioners, a deed, conveying to such county the land so purchased or donated, in fee simple, without any reservation or condition, whatever, and an abstract of the

Digitized by Google

deeds, conveyances and assurances, through which such donor or vendor claimed to derive title.

Shall report to circuit court.

SEC. 8. Such commissioners shall make report of their proceedings, accompanied by such deed and abstract, to the circuit court of such county, at its next term, and if the court approve the title, it shall cause its decision to be certified to the tribunal transacting county business, and the title of the land so conveyed shall vest in such county, and the place selected shall be the permanent seat of justice thereof, but if the title to such land shall not be approved, the deed so given by the donor or vendor shall be of no effect, and shall be returned to him, together with all other title papers relating to the said land, and the commissioners shall proceed to make another selection, in the manner hereinbefore prescribed, except that no notice shall be required of their meeting for that purpose.

The place selected shall be the seat of justice, when.

Purchase money to be paid out of first sales.

SEC. 9. If the land whereon such county seat is located, shall have been purchased, the tribunal transacting county business, shall make an order that the consideration money be paid out of the first proceeds of the sale of lots to be laid out on such land.

Vacancy in the office of commissioners, to be filled by county court.

SEC. 10. If any vacancy shall happen in the office of such commissioners, by death, resignation, refusal to act, or otherwise, the tribunal transacting county business of such new county shall fill such vacancy, by appointing a commissioner, qualified as required by the first section of this act, who shall take the same oath, possess the same powers, and perform the like duties, as if originally appointed by the legislature.

Commissioner of seat of justice shall be appointed, when.

Shall take an oath.

To give bond.

Its conditions.

SEC. 11. When the seat of justice of any new county shall be established, the tribunal transacting county business of such county shall immediately appoint some competent person, inhabitant of the county, as commissioner of the seat of justice of such new county, who, before entering upon the duties of his office, shall take an oath that he will faithfully demean himself in the office of commissioner, and render a true and just account of his proceedings, according to law, and enter into bond to the state of Missouri, for the use of such county, in such sum, and with such securities, as such tribunal shall approve, conditioned that he will faithfully demean himself in office, account for, and pay over, and deliver all moneys, bonds, notes, securities, or property that may come to his hands, possession or power, in virtue of his office, and will

Digitized by Google

perform all the duties which may be enjoined on him by law as such commissioner. (a)

Bond shall be deposited with clerk.

Copy to be evidence.

SEC. 12. Such bond shall be deposited with the clerk of the tribunal transacting county business of such county, and by him recorded; and such record, or a copy thereof, certified under the seal of such tribunal, shall be evidence in any court in this state, with the same effect as the original.

A town shall be laid off, when.

Additional lots, when.

SEC. 13. If no town shall have been laid off at the place selected as the permanent seat of justice, the tribunal transacting county business shall order the same, or so much thereof, as it shall deem expedient to be laid off; or if such tribunal shall deem it expedient to lay off additional lots where a town shall have before been laid off, it may order the same to be done, and in either case, the commissioner of such seat of justice, shall proceed to lay off such land, or so much thereof as such tribunal shall direct, into lots, squares, avenues, streets, lanes and alleys, in such manner, and under such regulations, as such tribunal shall prescribe, and make report thereof to such tribunal, with a plat of the town, or part of a town so laid off, which, if approved by such tribunal, shall be deposited in the office of the recorder of the county, and by him carefully preserved.

Commissioner to make report to county court.

Lots for public buildings, reserved.

Sale of lots.

SEC. 14. The tribunal transacting county business, shall reserve from sale lots and squares of ground whereon it may be necessary to erect county buildings, and shall from time to time order the sale of the residue, prescribing the terms of such sale, and the commissioner shall make such sales accordingly, and when the purchase money shall be paid in full, the commissioner shall execute a deed to the purchaser, as commissioner for and on behalf of the county, conveying to the purchaser all the right, title and interest of the county to the premises so conveyed, and such deeds shall be acknowledged and recorded as other deeds.

Commissioner shall make deeds for lots sold.

Bond and security for lots sold to be given, when.

Commissioner to give certificate to purchaser.

SEC. 15. When any credit shall be given upon the sale of any lot, for any part of the purchase money, the purchaser shall give his note or bond, with sufficient sureties, to the commissioner, for the use of the county, to secure the payment of each instalment, and the commissioner shall deliver to the purchaser a certificate describing the lots sold, the

(a) *Vide*, McClintick vs. Bryant, *et al.*; 1 Missouri Rep., 598; McDonald vs. Franklin county; 2 Missouri Rep., 217; Ruggles vs. Washington county; 3 Missouri Rep., 496.

Digitized by Google

price, the amount paid, (if any,) the balance to be paid, when due, and how secured.

Payments, how to be credited.

SEC. 16. When any payment shall be made, the commissioner shall endorse the receipt on such certificate, if required, and give credit for such amount on the bond or note, and when full payment shall be made of the purchase money, the purchaser shall deliver up the certificate of purchase, and the commissioner shall make to him a deed in the manner prescribed in the fourteenth section of this act.

In default of payment, lots shall be forfeited,

SEC. 17. If default be made in the payment of the purchase money of any lot, or any part thereof, according to the terms of sale, or the tenor and effect of any bond or note given to secure the same, such lot shall be forfeited to the use of the county, and the commissioner shall re-sell the same for ready money, at public auction, to the highest bidder, at the place of holding courts for such county, for the time being, on some day during the sitting of the tribunal transacting county business, giving ten days previous notice of the time and place of sale, and the property to be sold, by advertisements put up at four of the most public places in the county, and, on receiving the purchase money, the commissioner shall make a deed to the purchaser, in the manner and with like effect as in cases of other sales under this act, and the purchase money shall be accounted for as other moneys received by the commissioner, and the amount thereof, after paying the expenses of the sale, shall be credited upon the bonds or notes of such delinquent purchaser, and if it be sufficient to pay the whole, such bonds or notes shall be cancelled, but no part shall be paid to such purchaser, although there may be more than sufficient to pay the debt due by him, and if the proceeds of such sale shall not be sufficient to satisfy the whole of the debt due by such purchaser, the commissioner shall proceed to enforce the payment of the residue by suit.

And sold at public auction.

Ten days notice of sale to be given.

Deeds made as in other cases.

Delinquent to be credited with amount of sale.

When commissioner shall enforce the payment of balance due.

Who shall prosecute suits.

SEC. 18. The attorney general and circuit attorneys, respectively, shall commence and prosecute all actions within their respective circuits.

Forfeited lots may be redeemed.

SEC. 19. The holder of any certificate of sale of any such forfeited lot, may redeem the lot at any time before the sale, by paying to the commissioner the whole amount then due, with interest, together with the expenses of advertising, and compensation of the commissioner, as hereinafter provided;

Digitized by Google

CHAP. 39.

in which case, such lot shall not be sold, but the proceedings shall be, in all things, as if no such delinquency had occurred.

Accounts to be kept by commissioner.

SEC. 20. The commissioner of any seat of justice shall keep regular and systematic accounts of all sales by him made, showing the lot sold, the name of purchaser, the amount paid, the balance to be paid, at what time, and how secured, the expenses by him incurred: he shall make settlement with the tribunal transacting county business, at each regular term thereof, and pay the balance that may be found against him into the county treasury; and when all the sales ordered by such tribunal shall be completed, and payments made, and deeds executed for all the lots sold; or in case of the resignation or removal from office of such commissioner, he, or in case of the death of such commissioner, his executors or administrators, shall, at the first term after such sales shall be completed, and payments made, or resignation, removal, or death, settle with such tribunal, and pay or deliver over, according to its order, all moneys, books, papers, notes, bonds, or other securities belonging to such county.

Shall settle at each term of the county court and pay the balance against him into the county treasury.

Books, moneys, papers, &c., when to be delivered over to order of county court.

Money from lot sales, how appropriated.

SEC. 21. The money arising from the sale of lots, after paying all the expenses accruing in the selection of the seat of justice, in laying out the town, and selling lots, shall be applied, first, to paying for the land purchased (if any,) and the residue shall be set apart as a specific fund, for the purpose of erecting county buildings, and shall be applied to no other purpose, until all the county buildings, required by law to be erected, shall be fully completed and paid for.

Powers of county court over commissioner.

SEC. 22. The tribunal transacting county business of each county in which a commissioner of the seat of justice shall be appointed, shall have a superintending control over such commissioner, and may make such orders, from time to time, in relation to the duties of his office, as to it shall seem expedient, and may enforce obedience thereto by attachment, and in case of any wilful disobedience of such order, or other wilful neglect or misconduct of such commissioner, may remove him from office; and in case of the death, resignation or removal from office, of any such commissioner, such tribunal shall supply such vacancy by appointing another, who shall take the like oath, give the like bond, perform the like duties, and be subject to the like proceedings against him as his predecessor, and such tribunal may compel the commissioner so resigning, or removed, or, in case of his death,

May remove him from office.

May fill vacancies in the office of commissioner.

Digitized by Google

his executors or administrators, to make settlement of his accounts, and pay and deliver over to such successor, or county treasurer, (as the case may require,) all moneys, books, papers, notes, bonds and other securities, received by such commissioner in virtue of his office.

Commissioner, or his executors, &c. compelled to settle with county court, when.

SEC. 23. The commissioners for selecting the seat of justice, appointed under the provisions of this act, shall receive such reasonable compensation for their services as shall be allowed by the tribunal transacting county business of such county, to be paid out of the county treasury; and the commissioner of the seat of justice shall receive for his services such compensation, for laying out lots, as such tribunal shall deem just and reasonable, and a commission of four per centum upon all moneys accruing from the sale of lots, and by him paid into the county treasury, to be paid out of the county treasury.

Compensation of commissioners for selecting seat of justice.

How paid.

Compensation of commissioner of seat of justice.

How paid.

SEC. 24. As soon as convenient buildings in which to hold the courts can be had, or a court house and jail erected, at the established seat of justice of any new county, the courts of such county shall be held at such seat of justice; and, until such a convenient building can be had, or a court house and jail erected, such courts shall be held at such places as the tribunal transacting county business shall deem most convenient, and such tribunal, as soon as a seat of justice shall be established, according to the provisions of this act, shall determine at what place the courts shall be held, and cause notice thereof to be given to each judge of such courts, and such tribunal shall cause the sheriff to make proclamation, at the court house door, that such courts will thereafter be held at the place so selected, but if the place so selected shall not be the established seat of justice, the courts to be held in such county, shall, as soon as a court house and jail are erected, or sooner, if the tribunal transacting county business shall deem it expedient, be removed to, and thereafter held, at such established seat of justice; and the tribunal transacting county business, shall notify the judges of the several courts of the completion of the county buildings, on their determination, as aforesaid, and such proceedings shall be had thereon, for the removal of such courts, as are hereinbefore prescribed.

Courts, where held.

County court to determine.

When held at the seat of justice.

SEC. 25. When a new county shall be established, or any county line altered, all suits, actions, process, prosecutions, and proceedings, civil and criminal, commenced before any

Digitized by Google

CHAP. 39.

court or justice of the peace, before the time of separation or alteration, shall be proceeded in to final judgment and execution; and all writs and process, before that time issued out of any court, or by any justice of the peace, shall be executed and returned in all respects as if such division, separation or alteration had not taken place; and all judgments then rendered, or which may be rendered, in any proceedings, civil or criminal, then commenced, all fees, fines, penalties and forfeitures, which have then accrued or become due, or which accrued in pursuance of any suit, process or proceeding, then commenced, all taxes then due or assessed, and all balances and arrearages, shall be collected, and the collection thereof enforced in the same manner as if such new county had not been established, or such alteration had not been made; and the sheriffs, coroners, constables, and collectors, respectively, shall have full power and authority to execute all writs and process, original and judicial, and to collect all moneys, fines, penalties and forfeitures, fees, taxes, balances and arrearages, which may be due, or become due, and to enforce the payment thereof from any person within their county, as it stood before such division or alteration, in the same manner that they might have done respectively, if such new county had not been established, or such alteration had not been made.

In case of new counties, or alteration of county lines, suits, &c. shall progress as if no alteration had been made.

Officers shall have full power to execute all writs, &c.

SEC. 26. All executors, administrators, guardians, and curators, who, by the establishment of a new county, or the alteration of county lines, shall cease to be inhabitants of the county in which they were appointed, or received their letters, shall nevertheless continue to render their accounts, and make settlements, and in all things proceed in the court by which they were appointed, or their accounts remain to be settled, in all respects, and be subject to the like proceedings therein as if such new county had not been established, or such alteration had not been made.

Executors, &c., falling in new counties, shall continue to settle, &c., in old counties.

SEC. 27. The courts in which the accounts of any such executor, administrator, guardian or curator remain to be settled, upon good cause shown, may transfer such accounts to the proper court of the county in which such executor, administrator, guardian or curator resides; in which case the clerk of such court shall make out a transcript of the records, and copies of accounts and papers touching such administration or guardianship, and cause the same to be transmitted by

Accounts of executors, &c. may be transferred to new counties.

Digitized by Google

some safe conveyance to the clerk of the court to which the accounts are to be transferred; and the clerk receiving such papers shall file the same in his office, and proceedings shall be had thereon, in all things, in the court to which the accounts are transferred, as if they had originated in such court; and the party applying for such removal shall pay all costs for making out such transcript and copies, and transmitting the same, before the same shall be delivered to be transmitted.

Justices of the peace may proceed as if counties had not been altered.

SEC. 28. All justices of the peace, whose residence by the establishment of a new county, or alteration of county lines, shall fall without the county for which he was originally appointed, shall, nevertheless, have full power and authority to proceed in all cases commenced, or judgments rendered before him, as a justice of the peace of such county, to final judgment and execution; and from the time of such separation, or alteration, he shall, and may act as a justice of the peace for the county in which he may fall, for the period of six months; and if he be not at, or before the expiration of that time, appointed a justice of the peace for such county, he shall deliver to some justice of the peace within the township in which he resides, all dockets, books, documents, and papers, which may belong or relate to his office of justice of the peace, whole, safe, and undefaced, and the justice to whom they are delivered, shall receive the same, and give a receipt therefor, and proceed therein in all unfinished business, in the same manner as if the same had been commenced before him.

May continue in office in new counties six months.

Books and papers to be delivered over, when and to whom.

Governor to appoint justices of the county court, sheriff, &c., on organization of new counties.

Circuit court to appoint a clerk.

County court to appoint clerk of county court and justices of the peace.

Justices to appoint constable.

SEC. 29. When a new county is established, the Governor shall appoint three suitable persons, residents of such new county, to act as justices of the county court thereof, and three suitable persons, residents of such new county, one to act as sheriff, one as county surveyor, and one as coroner thereof. The circuit court of such new county, shall appoint some suitable person to act as clerk of such court; the county court of such new county, shall appoint some suitable person to act as clerk of such court, and a proper number of persons, residents of the several townships in such new county, to act as justices of the peace in such townships, and a majority of the justices of the peace thus appointed in the several townships, shall appoint a suitable person, resident

Digitized by Google

CHAP. 40. of such township, to act as constable for such township, and every such appointee shall hold his office until the next general election, and until his successor is elected and qualified.

Approved February 6, 1845.

CHAPTER 40.

COUNTIES—REMOVAL OF SEATS OF JUSTICE.

AN ACT to provide for the removal of seats of justice.

SEC. 1. Seats of justice, how removed.
2. Citizens residing in any territory attached to a county, not to vote for the removal of the county seat thereof.
3. Qualifications of commissioner, &c.
4. County court to grant a certificate to the commissioners. Appoint a time and place for their meeting, and give notice, &c.
5. If a majority of the commissioners do not attend, how to proceed.
6. Commissioners to take oath, &c.
7. Commissioners to select a place within one mile of the place designated by the petition, whereon to erect the public buildings.
8. May purchase land or receive it as a donation for county purposes.
9. The vendor or donor to execute deed to the county, &c.
10. Commissioners to make report to the circuit court. If the judge approve the same, he shall so certify to county court, who shall order an election to determine the selection.
11. Sheriff to give notice of such election.
12. Election, where and how to be held.
13. Votes, how to be taken, &c.
14. County court to cast up the votes, &c.
15. The land, if purchased, shall be paid for out of the proceeds of the sale of town lots, &c.
16. If the title to such land be not approved by the circuit court, commissioners, how to proceed.
17. If commissioners select a place already laid out in town lots, they may accept a donation in money or public buildings, &c.
18. Vacancies in the office of commissioner, how filled.
19. Compensation of the commissioners.
20. Whenever any seat of justice shall be removed, the county court shall appoint a commissioner, &c.; his oath, duties, &c.
21. As soon as convenient buildings can be procured, &c., courts to be held there.
22. When any seat of justice is removed under this act, the owner of lots at the former seat of justice, purchased from the county, may re-convey the same, &c.
23. The attorney general, &c., shall examine such deed, and the records of the recorder's office, and of all courts whose judgment would be a lien on the property.
24. If he shall be satisfied that such owner has all the title conveyed by the county, and that the deed of conveyance is sufficient, he shall so certify.
25. Upon the presentation of such certificate, he shall be entitled to a credit in the purchase of lots at the new seat of justice, &c.
26. Certificate, how signed and countersigned. Persons entitled to the benefit of this act, when, &c.
27. If the owner of any lot at the former seat of justice be a minor, his guardian may act in his behalf.

Digitized by Google

SEC. 28. Persons taking the benefit of this act, may remove buildings from lot relinquished to the county, &c.
29. In all cases where the lot relinquished is within any donation to the county, the county to re-convey, &c.
30. If the lots were purchased by the county, they shall be sold, &c.
31. Seat of justice not to be removed after it has been fixed for two years, unless, &c.
SEC. 32. Three persons to be appointed to value lots under the preceding section, and tax to be levied to pay for the same.
33. Such lots shall thereby become the property of the county, &c.
34. When a county seat is located within five miles of the centre of the county, and has been the county seat for ten years, it shall not thereafter be removed, except in certain cases.
35. In case of removal, what proceedings to be had.

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

Seats of justice, how removed. 1835, p. 143.

SECTION. 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.

Citizens residing in attached territory, not to vote for the removal of the county seat.—1842–3, sec. 2, p. 34.

SEC. 2. In ascertaining whether three-fifths of the taxable inhabitants of any county have petitioned for a removal of their county seat, the citizens residing in any territory attached to said county for any purpose, shall not be included in the computation, nor shall any such citizen be permitted to vote in locating county seat, nor shall his signature to a petition, praying for a removal thereof, be regarded by the county court.

Qualifications of the commissioners, &c.

SEC. 3. Each commissioner [shall] be at least twenty-one years of age, and have resided in the state at least one year before his appointment, and shall not be a resident of, own, or claim any real estate in the county.

Court to grant a certificate to commissioners, appoint a time and place for their meeting, and give notice, &c.

SEC. 4. 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 in the county, one month before such meeting, notifying the inhabitants of the county of the time and purport of the meeting.

If a majority of commissioners do not attend, how to proceed.

SEC. 5. 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

Digitized by Google

CHAP. 40.

majority shall assemble; but no such adjournment shall be for a longer period than ten days at a time.

Commissioners to take oath, &c.

SEC. 6. It shall be the duty of each commissioner, before entering upon the duties hereinafter assigned him, to take an oath that he will faithfully perform the duties of commissioner, a certificate of which shall be endorsed on the paper evidencing his appointment.

Commissioners to select a place whereon to erect the public buildings.

SEC. 7. When the commissioners, [or] a majority of them, shall have been duly qualified, they shall select the most suitable place in said county, within one mile of the place designated in the petition, whereon to erect the public buildings.

May purchase land or receive it as a donation for county purposes.

SEC. 8. 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.

The vendor or donor to execute a deed to the county, &c.

SEC. 9. 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 shall also deliver an abstract of the title papers, deeds, conveyance and assurances, by or through which the title thereto is derived.

Commissioners to make report to the circuit court, if the judge approve it, proceedings thereon.

SEC. 10. 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.

Sheriff to give notice of election.

SEC. 11. 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, places, and purport of the election.

Election how to be held.

SEC. 12. 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 house-holder, inhabitant of said county.

SEC. 13. The votes shall be taken for or against the selec-

Digitized by Google

tion, and so expressed in the poll books, which the clerk shall lay before the county court, at the next term thereof. Votes, how to be taken, &c.

SEC. 14. The court shall cast up and arrange the votes; and if it shall appear that a majority of the inhabitants of the county, who pay taxes on land, and of the householders, have voted for the selection, the place so selected shall be the permanent seat of justice of the county; and the title to the land conveyed for that purpose shall be vested in the county. County court to cast up the votes, &c.

SEC. 15. 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 vendor a certificate accordingly. The land, if purchased, shall be paid for out of the proceeds of the sales of town lots, &c.

SEC. 16. If the title to such lands be not approved by the circuit court, the deed shall be of no effect, and shall be returned, together with the title papers, to the donor or vendor, and the commissioners shall proceed to make some other selection within the designated limits, proceeding in all things as hereinbefore provided, except that no notice shall be required of their meeting for that purpose. If the title to such land be not approved, commissioners how to proceed.

SEC. 17. 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 land or town lots. If the place selected is already laid out, how to proceed.

SEC. 18. 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. Vacancies in the office of commissioner, how filled.

SEC. 19. 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. Compensation of commissioners.

SEC. 20. Whenever any seat of justice shall be removed, the county court shall appoint a commissioner thereof, who shall take the oath, give 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 the like proceedings shall be had, in all other respects, as is provided by "An act to provide for the organization of counties hereafter established." Whenever any seat of justice shall be removed, the county court shall appoint a commissioner, &c.; his oath, duties, &c.

SEC. 21. 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 proclama- As soon as convenient buildings can be had, courts to be held there.

Digitized by Google

tion at the court-house door, in term time, that such court will thereafter be held at the place so selected.

When seat of justice is removed, the owner of lots, &c., may re-convey the same, &c.

SEC. 22. When any seat of justice shall be removed under this act, the owner of any lot or lots at the former seat of justice, which were purchased from the county or its agents, may re-convey the same to the county, by deed of relinquishment, duly executed, acknowledged and recorded.

Duty of attorney general, &c. in such cases.

SEC. 23. It shall be the duty of the attorney general, or circuit attorney of the county, to examine the deed of relinquishment, together with the records of the recorder's office of the county, and of all courts whose judgments and decrees might be a lien on such lot or lots.

If satisfied that owner has the title conveyed by county, and that the deed of re-conveyance is sufficient, he shall so certify.

SEC. 24. If he shall be satisfied that the person so proposing to relinquish any lot has all the title in the same originally conveyed by the county, and that the deed executed by the person offering to make the relinquishment is sufficient to re-convey all the title which the county originally held in the same, he shall certify accordingly.

Upon presentation of such certificate, he shall be entitled to a credit in the purchase of lots at the new seat of justice, &c.

SEC. 25. 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 for the lot relinquished.

Certificate, how signed and countersigned; persons entitled to the benefit of this act, when.

SEC. 26. The certificate shall be signed by the president of the court, and countersigned by the clerk, and 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.

If the owner be a minor, his guardian may act in his behalf.

SEC. 27. If the owner of any lot at the former seat of justice be a minor, his guardian may act in his behalf, for the relinquishment of such lot, in like manner as the owners of lots who are of full age.

Persons taking the benefit of this act may remove buildings from lots relinquished to the county, &c.

SEC. 28. Any person taking the benefit of the preceding sections, may, at any time within twelve months after relinquishing any lot to the county, remove any buildings, or other improvements, which may have been erected thereon, after the sale thereof by the county, whether the same originally accrued to the county by purchase or donation.

SEC. 29. In all cases where the lot relinquished is within

Digitized by Google

any donation made to the county, it shall be the duty of the county court to cause the same to be re-conveyed to the person who made such donation, or his heirs, on demand.

When the court shall order a re-conveyance to donor, &c.

SEC. 30. If any 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 the buildings and other improvements, within the time hereinbefore prescribed for that purpose.

If the lots were purchased by the county, they shall be sold, &c.

SEC. 31. When two years shall have elapsed, after the seat of justice shall be fixed, under the provisions of this act, and no petition within that time, made in good faith, and signed by at least a majority of the taxable inhabitants of the county, praying for a removal of the seat of justice, shall be presented, 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.

Seat of justice not to be removed after it has been thus fixed, for two years, unless, &c.

SEC. 32. 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, and report the valuation thereof to the county court, who shall, thereupon, cause the tax so assessed, to be levied and collected, and pay to each lot-holder the value of his lot and improvements.

Three persons to be appointed to value lots, &c. and tax to be levied to pay for the same.

SEC. 33. All such lots and improvements shall thereby become the property of the county, and may be sold by order of the county court, and conveyed to the purchaser by the person thereto authorized.

Such lots shall thereby become the property of the county, &c.

SEC. 34. When a county seat shall have been located within five miles of the centre of a county, and shall have continued to be the county seat for the term of ten years, and no petition within that time made in good faith, and signed by at least a majority of the taxable inhabitants of the county, praying for the removal of the seat of justice, shall have been presented, the same shall not thereafter be removed, unless the county court will first raise a tax sufficient to pay the appraised value of all lots, and the improvements thereon, at such county seat, which the holders thereof may desire to relinquish to the county.

When the county seat shall not be removed, except, &c. 1843, p. 122–3.

Digitized by Google

CHAP. 41.

In case of removal, what proceedings to be had.

SEC. 35. In case of such removal, the same proceedings shall be had, in order to ascertain the value of the lots and the improvements thereon, as is hereinbefore directed.

Approved March 8, 1845.

CHAPTER 41.

COUNTY TREASURIES.

AN ACT to establish and regulate county treasuries.

ARTICLE I. Of the appointment, qualifications, and duties of the treasurer.
II. Of the duties of collectors, clerks, and other officers.
III. Of the powers and duties of the court.
IV. Miscellaneous provisions.

ARTICLE I.

Of the appointment, qualifications, and duties of the treasurer.

SEC. 1. County court to appoint a treasurer.
2. Treasurer to give bond; condition of the bond.
3. His residence, duties, &c.
4. Shall keep an account of moneys 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; how the penalty may be recovered.

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

County court to appoint a treasurer.

SECTION 1. The county court of each county shall appoint a treasurer therefor, and when a vacancy occurs in the office, shall fill the same.

Treasurer to give bond, condition of the bond.

SEC. 2. So soon as he is appointed, the treasurer shall enter into bond to the county, in such sum, and with such securities, residents of the county, as shall be approved by the court, conditioned for the faithful performance of the duties of his office.

Digitized by Google

His residence, duties, &c.

SEC. 3. He shall reside within one mile of the place of holding the courts of the county, receive all moneys payable into the treasury thereof, and disburse the same on warrants drawn by order of the county court.

Shall keep an account of moneys recieved and disbursed, &c.

SEC. 4. He shall keep a just account of all moneys received and disbursed, and regular abstracts of all warrants drawn on the treasury and paid.

Duplicate receipts to be given, when; books, &c. subject to inspection.

SEC. 5. He shall make duplicate receipts in favor of the proper person, for all moneys 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.

Receipts and expenditures of county when to be furnished.

SEC. 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.

Annual settlement of his accounts to be made.

SEC. 7. He shall once in every year settle his accounts with the court; and if he resign, or be removed from office, he, or, if he die, his executor or administrator, shall immediately make such settlement, and deliver to his successor in office, all things pertaining thereto, together with all money belonging to the county; and at the close of every term for which such treasurer shall have been elected or appointed, from whatever cause it shall occur, the county court shall immediately proceed to ascertain, by actual examination and count, the amount of balances and funds, in the hands of such treasurer, to be accounted for, and to what particular fund it appertains.

To file and register all warrants on the treasury, &c.

SEC. 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.

Penalty for neglecting to pay warrants, if he has the money; how the penalty may be recovered.

SEC. 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 fourfold the amount thereof, which may be recovered by action of debt to the use of the party aggrieved, 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.

Digitized by Google

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 ten per cent. &c.
5. Court to enter judgment, with thirty per cent., unless, &c. when.
SEC. 6. If good cause be shown for setting aside the settlement, court may examine the accounts, settle and adjust the same, &c.
7. Amount due on every account, &c. to be a lien on real estate of delinquent from the date of such settlement.
8. Duty of clerk of court in certain cases, in keeping accounts, &c. To charge the treasurer with all moneys paid into the treasury, &c.

Collectors, clerks, &c. to make settlement at each stated term of the court.

SECTION 1. All collectors, sheriffs, clerks, constables and other persons, chargeable with moneys belonging to any county, 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.

Refusing to settle, court may adjust the accounts.

SEC. 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.

Court may refuse to allow commissions to delinquents.

SEC. 3. In such case, the court may refuse to allow any commissions to such delinquent, and he shall, moreover, without delay, pay into the county treasury, the balance found due as aforesaid.

Delinquent failing to pay the amount found to be due, to pay 10 per cent., &c.

SEC. 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 cent. on the amount then due.

At the next term after settlement, court to enter judgment with 30 per cent., unless, &c.

SEC. 5. Unless the delinquent appear on the first day of the next succeeding term, and show good cause for setting aside such settlement, the court shall enter up judgment for the amount due, with thirty per cent. per annum, until paid, and issue execution therefor. Such delinquent shall, moreover, be deemed guilty of a misdemeanor in office, and proceeded against accordingly.

Court may set aside settlement, &c.

SEC. 6. If good cause be shown for setting aside the settlement, the court may re-examine the accounts, settle and

Digitized by Google

adjust the same, according to law, and, in their discretion, remit the penalties imposed.

Amount due to be a lien on real estate of delinquent.

SEC. 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 in the county.

Duty of clerk of court in certain cases, in keeping accounts, &c.

SEC. 8. It shall be the duty of the clerks of the county courts: *First*, To keep regular accounts between the treasurer and the county, charging him therein with all moneys paid into the treasury, and crediting him with the amount he may have disbursed, between the periods of his respective settlements with the court. *Second*, To keep just accounts between the county and all persons, bodies politic and corporate, chargeable with moneys payable into the county treasury, or who may become entitled to receive moneys 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 seal of the clerk, shall be admitted to be read in evidence in all courts of law and elsewhere. *Fourth*, To issue warrants on the treasury for all moneys 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 powers 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. Court to ascertain at each spring term the amount of moneys which have accrued to the county from sale of 16th sections, the amount of interest in arrear on the loan of said money, the amount due by each borrower thereof, the amount of the three per cent. fund, and interest due thereon, and all appropriations that have been made of said fund by the court. The court to make out a statement of the debt due by the county, receipts and expenditures, &c.

SEC. 3. The facts and statements to be entered of record in the court, and published in each township of the county.

4. Form of a warrant for money to be drawn by the clerk.

5. Warrant to be drawn for the whole amount ascertained to be due to any one person, by whom signed and tested, numbered, &c.

6. Warrant to be paid to whom.

7. Warrant assignable; form of assignment.

8. Penalty on the treasurer for paying warrants contrary to law.

9. Last section not applicable to warrants drawn prior to the 1st of March, 1843.

Digitized by Google

Sec. 10. Appeals from the decisions of the county court, in cases of account, allowed to the circuit court.

Sec. 11. Court shall allow to the clerk and treasurer of the county, for their services, such compensation as may be just, &c.

Shall have power to audit, adjust and settle accounts, where the county is a party; to order suits to be brought, enforce collections, &c.

SECTION 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 county, to commence and prosecute the same, to issue all necessary process to secure the attendance of any person, whether party or witness, whom they may deem necessary to examine in the investigation of any account, and if any such person, being served with such summons, shall not appear, according to the command thereof, the said court may compel his appearance by attachment, and in order to procure the exhibition or delivery to them of any accounts, books, documents, or other papers, the said tribunal may issue a summons directed to the person in whose custody or care the said accounts, books, documents, or other papers, may be, commanding him to deliver or transmit the same to the said tribunal, which summons shall be served by the sheriff; and if the person named in such summons refuse to appear with or transmit the accounts, books, documents, or papers, or show good cause why he does not, at the time appointed for his appearance, the said tribunal may enforce the delivery thereof, by attachment; and the said courts and tribunals, respectively, may examine all parties and witnesses, on oath, touching the investigation of any accounts, and may commit to jail any person who shall refuse to answer any lawful question.

Court to ascertain at each spring term the amount of the sales of 16th sections, the amount of interest due on the loan of said money, the amount due by each borrower thereof, the amount of the 3 per cent. fund and inter-

SEC. 2. It shall be the duty of the several tribunals transacting county business, in the several counties of this state, at the regular spring term of their respective courts, in each year, to ascertain the amount of moneys that has accrued in their several counties from the sale of the sixteenth sections, or lands selected in lieu thereof, situate in their counties, the amount of interest in arrear on the loan of said moneys, and the amount due by each borrower thereof, respectively, the amount of the three per cent. fund belonging to the county, and the interest that has accrued on the same, the amount of interest in arrear, and those from whom it is due, and all

Digitized by Google

appropriations that have been made of said fund by the county court, specifying the objects of appropriation; and the said tribunals shall, at the same time, make out a statement of the amount of debt due by their counties, and a detailed account of the receipts and expenditures of the same for the preceding year, showing from what officer, and on what account, any money has been received, and to what individuals, and on what account, any money has been paid, and shall strike a balance, showing a deficit, if any, and the balance in the treasury, if any.

Amount due thereon, and all appropriations of said fund by the court. The court to make a statement of receipts, expenditures, &c. Act Feb. 12, 1841, p. 57, 58. Act Feb. 12, 1839, p. 104.

SEC. 3. The facts thus ascertained, and the accounts and statements thus made out, shall be entered of record in the said courts, and copies of the same shall be put up, in the most conspicuous place in each township of the county, by the sheriff, within three weeks after the adjournment of the term at which the proceedings above mentioned shall have been had; and in the county of St. Louis, shall be published in some newspaper printed in the city of St. Louis.

The facts and statements to be entered of record in the court and published in each township of the county. *Ibid.*

SEC. 4. 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 —— —— dollars, out of any money in the treasury appropriated for county expenditures, [or express the particular fund, as the case may require.] Given at the court-house, this —— day of ——, 18——. By order of the county court.

"Test: C. D., Clerk. A. B., President."

Form of a warrant for money to be drawn by the clerk.

SEC. 5. Every such warrant shall be drawn for the whole amount ascertained to be due to the person entitled to the same; and but one warrant shall be drawn for the amount allowed to any person at one time, and shall be written or printed in Roman letters, without ornament; it shall be signed by the president of the court whilst the court is in session; attested by the clerk, and numbered progressively throughout each year.

Warrant to be drawn for the whole amount due to any one person, by whom signed and tested, numbered, &c. Act Feb. 17, 1843, p. 132.

SEC. 6. No county treasurer, in this state, shall pay any warrant drawn on him, unless such warrant be presented for payment by the person in whose favor such warrant is drawn, or by his assignee, or executor, or administrator, and when presented for payment, if there be no money in the treasury for that purpose, the treasurer shall so certify on the back of the warrant, date and subscribe the same.

Warrant, to be paid to whom. *Ibid.*

Digitized by Google

CHAP. 41.

Warrant assignable, form of assignment.

SEC. 7. All warrants drawn on the treasurer of any county, shall be assignable, and every assignment of any such warrant, shall be in the following form: "For value received, I assign the within warrant to A. B., this —— day of —— 18——." ("Signed,"). "C. D."

No blank endorsement shall transfer any right to a warrant, nor shall it authorize any holder to fill up the same.

Penalty on the treasurer for paying warrants contrary to law.

SEC. 8. No county treasurer shall pay any warrant to any other than the person in whose favor the same is drawn, or his executor, or administrator, or the person to whom the same has been assigned, in the manner above directed. And any treasurer who shall violate the provisions of this act, shall be deemed guilty of a misdemeanor in office, and for every such violation, shall be fined any sum not less than ten, nor more than five hundred dollars, to be recovered by indictment.

Last section not applicable to warrants drawn prior to March 1, 1843.

SEC. 9. The last preceding section shall not extend to any warrants which were drawn or transferred, prior to the first day of March, one thousand eight hundred and forty-three.

Appeals allowed to the circuit court, when. Act Feb. 13, 1839, sec. 7, p. 28.

SEC. 10. If any account shall be presented against a county, and the same, or any part thereof, shall be rejected by the county court, the party aggrieved thereby, may prosecute an appeal to the circuit court, in the same manner as in other cases of appeal, from the county to the circuit court.

Compensation of the clerk and treasurer.

SEC. 11. The court shall allow to the clerk and treasurer of the county, for their respective services under this act, such compensation as may be deemed just and reasonable.

ARTICLE IV.

Miscellaneous provisions.

SEC. 1. Clerks of courts to keep accounts of moneys accruing to the county, ready for the inspection, at all times, of the judges of their respective courts.

2. Clerks of the circuit courts, criminal court, and court of common pleas, to certify to the county courts, the amount of fines, &c., imposed at each term of said courts, within ten days after the end of the term. Penalty on clerks for non-compliance.

3. Courts of record to settle with sheriff at each term, for money due the county, and certify the same, &c.

SEC. 4. Penalty on sheriff for not paying over money due the county.

5. Justices of the peace to report fines, &c., imposed by them to the use of the county, and the name of the officer who has collected, or ought to have collected, the same; to be delivered to clerk of county court; duty of clerk.

6. No sheriff, clerk, or collector, or the deputy of either, shall be eligible to the office of treasurer of the county.

7. County warrants may be received in payment of taxes, fines, forfeitures, &c.

8. This act to be given in charge to the grand jurors.

Digitized by Google

Clerks of courts to keep accounts of moneys accruing to the county.

SECTION 1. It shall be the duty of all clerks of courts of record, to keep just accounts of all fines, penalties, forfeitures, and judgments rendered, imposed or accruing, in favor of any county, ready at all times for the inspection of the judges of their respective courts.

Clerks of the circuit courts, &c., to certify to the county courts the amount of fines, &c., imposed at each term of said courts, when. Penalty for non-compliance. Act Feb. 27, 1843, p. 31.

SEC. 2. The clerks of the circuit court of each county in this state, and the clerk of the criminal court, and of the court of common pleas of St. Louis county, shall, within ten days after the end of each term of the respective courts of which they are clerks, certify to the county courts of said counties, the amount of fines imposed, and forfeitures incurred at said term, and against whom assessed, and by whom incurred, and forthwith deposite said certificates with the clerks of the county courts of their respective counties; and if any clerk shall fail to comply with this section, he shall forfeit and pay to the county, not less than ten, nor more than one hundred dollars, [to be recovered] by indictment.

Courts of record to settle with sheriff at each term for money due the county, and certify the same, &c.

SEC. 3. It shall be the duty of all courts of record, at each term thereof, to settle with the sheriffs of the counties for which said courts are holden, for all moneys by them received, or which they ought to have collected for the use of their respective counties, and have not before accounted for, they shall cause their clerks to make out a list of all sums chargeable to said sheriffs and payable to the counties, specifying on what account, and cause the same to be certified under the seal of the court, which certificates shall be immediately transmitted to the clerks of the county courts of the counties to which such moneys are payable, who shall charge the same accordingly.

Penalty on sheriff for not paying over money due the county. *Ibid.*

SEC. 4. If any sheriff shall fail to pay, without delay, the moneys with which he shall become chargeable on the settlement in the preceding section mentioned, he shall forfeit to the county, entitled to the said moneys, double the amount with which he is chargeable, to be recovered by motion in the circuit court, after ten days previous notice of said motion.

Justices of the peace to report fines, &c., imposed by them to the use of the county, &c.

SEC. 5. It shall be the duty of each justice of the peace, at each term of the county court, to make out a list of all fines by him imposed to the use of the county, stating therein the name of the officer who has, or ought to have collected the same, which he shall certify and deliver to the clerk of the county court, who shall charge the same accordingly.

Digitized by Google

CHAP. 42.

Who not eligible to office of treasurer.

SEC. 6. No sheriff, clerk or collector, or the deputy of either, shall be eligible to the office of treasurer.

For what county warrants may be received, &c.

SEC. 7. All collectors are hereby authorized and required to receive all county warrants in payment of taxes, fines, penalties and forfeitures, accruing to their respective counties.

This act given in charge, &c.

SEC. 8. This act to be given in charge to the grand jurors.

Approved March 27, 1845.

CHAPTER 42.

COURT OF COMMON PLEAS OF ST. LOUIS COUNTY.

AN ACT to establish a court of common pleas in the county of St. Louis.

SEC. 1. The St. Louis court of common pleas established.
2. Jurisdiction of the court declared and defined.
3. Change of venue in civil suits in the St. Louis circuit court, and court of common pleas, regulated.
4. Civil suits pending in either of the courts of St. Louis county, to be certified to the other under certain circumstances.
5. Change of venue allowed in certain cases.
6. The circuit court and court of common pleas to have jurisdiction in all cases transferred from one to the other.
7. The St. Louis circuit court to have jurisdiction in all cases in which a change of venue has been awarded from any other county to the county of St. Louis.
8. Practice and proceedings in the court of common pleas to be the same as in the circuit court, exceptions.
9. All cases in the court of common pleas triable at the first term, exception.
10. The court shall have power to prescribe times of pleading and regulate its practice, &c.
SEC. 11. Circuit court to have superintending control over the court of common pleas.
12. Appeals and writs of error to the supreme court allowed.
13. Proceedings in cases of appeals and writs of error to the supreme court, from the court of common pleas, regulated.
14. Proceedings in cases of appeals and writs of error to the circuit court regulated.
15. Judge of the court of common pleas, how appointed.
16. Qualifications of the judge, term of office; how removed, and for what causes.
17. Vacancies, how to be filled.
18. Compensation of the judge.
19. Clerk to keep an account of fees.
20. Judge of the court of common pleas a conservator of the peace; shall have like powers in relation to suits, &c., as a circuit judge; may grant writs of ne exeat and injunction, &c.; may take and certify acknowledgments of deeds, administer oaths and issue writs of habeas corpus.
21. Clerk of the court of common pleas.
22. Clerk shall procure a seal, &c.

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

The St. Louis court of common pleas established.

SEC. 1. A court of record, to be called the "St. Louis court of common pleas," is hereby established, within and for the county of St. Louis, which shall possess all the powers,

Digitized by Google

perform the duties, and be subject to the restrictions of a court of record, according to the laws of this state.

Jurisdiction of the court declared and defined.

SEC. 2. The said court, within said county, shall have power and jurisdiction as follows: *First*, Concurrent original jurisdiction in all civil actions at law with the circuit court. *Second*, Concurrent original jurisdiction with the circuit court in all actions founded on contract by and against boats and vessels. *Third*, A concurrent superintending control with the circuit court over justices of the peace, in civil cases; and concurrent appellate jurisdiction with that court from their judgments in all civil cases not expressly prohibited by law. *Fourth*, Concurrent original jurisdiction with justices of the peace in all civil actions not exclusively cognizable before a justice of the peace.

Change of venue in civil suits in the St. Louis courts regulated.

SEC. 3. Hereafter, no change of venue shall be allowed in any civil suit in the circuit court of the county of St. Louis, or the court hereby established, for the cause that the judge is interested or prejudiced, or is related to, or has been counsel for, or is under the influence of, either party, except in the cases hereinafter provided for.

Civil suits in either of the courts of St. Louis, to be certified to the other, when.

SEC. 4. Whenever any of the causes specified in the preceding section shall exist in any civil suit pending in either of the said courts, the same shall be certified to the other, in the same manner, and with like effect, as in the case of a change of venue from the circuit court of one county to that of another, except in the cases in the next section provided for.

Change of venue allowed in certain cases.

SEC. 5. A change of venue shall be allowed in any civil case in either of said courts, for either of the causes specified in the third section, if any one of said causes exists, as to the judges of both of said courts; it shall also be allowed in the circuit court in all cases which shall have been removed from the court hereby established, by appeal or writ of error, when either of said causes of objection exists as to the judge of the circuit court.

St. Louis courts to have jurisdiction in all cases transferred from one to the other.

SEC. 6. The circuit court, and the said court of common pleas, shall have jurisdiction to hear and determine all civil cases at law or in equity, which shall be transferred to them respectively, according to the foregoing provisions, and shall proceed to final judgment and execution, although such case would not otherwise be cognizable therein.

The St. Louis circuit court to have juris-

SEC. 7. All causes in which a change of venue shall be awarded by the circuit court of any other county, to the

Digitized by Google

diction in causes in which a change of venue has been awarded, when.

county of St. Louis, shall be certified and transferred to the circuit court as heretofore; and the said circuit court shall have power and jurisdiction to hear and determine the same, although such case would not otherwise be cognizable therein, under the provisions of this act.

Practice, &c., in the court of common pleas regulated.

SEC. 8. The practice, process, and proceedings, in the court hereby established, shall be the same in all respects as is or may be provided by law for the government of the circuit court, except as herein otherwise specially provided.

All cases in said court triable at the first term, exceptions.

SEC. 9. All cases originating in the said court of common pleas, where the process shall have been personally served on the defendant twenty days before the commencement of the term, and all appeals from justices of the peace, shall be heard at the first term, unless good cause for a continuance be shown.

Said court to prescribe times of pleading, regulate its practice, &c.

SEC. 10. The said court shall have power to prescribe, by rule, the times of pleading, and shall have the same power as the circuit courts, to regulate its practice, process, and proceedings in other respects.

Circuit court to have superintending control over the court of common pleas.

SEC. 11. The circuit court of St. Louis county shall have a superintending control over the said court of common pleas, and appellate jurisdiction from its final judgments and decisions, by appeal or writ of error, which shall be allowed and prosecuted in the manner, and with the effect prescribed by law in cases of appeal or writ of error, from the circuit to the supreme court; except that no such appeal, or writ of error, shall, in any case, operate as a supersedeas, or stay of execution, or other proceedings, on the judgment or decision of the court of common pleas.

Appeals and writs of error allowed to the supreme court.

SEC. 12. In all cases of final judgment, or decision, of the said court of common pleas, appeals and writs of error may be allowed and prosecuted directly to the supreme court, in the manner, and with the effect in all respects, as is, or may be provided by law, in cases of such appeal or writ of error, from the circuit court to the supreme court, in civil cases.

Proceedings in cases of appeals and writs of error to the supreme court from the court of common pleas, regulated.

SEC. 13. The power, practice, and proceedings of the supreme court, and the judges thereof, in cases of appeal or writ of error, and in all other matters touching the judgments and decisions, process and proceedings of the said court of common pleas, shall be the same in all respects, as is provided by law, in like cases, in respect to the circuit court.

SEC. 14. In all cases which shall be removed to the circuit

Digitized by Google

court, from the said court of common pleas, by writ of error or appeal, the circuit court shall proceed as is, or may be provided by law, for the government of the supreme court on appeals or writs of error, in civil cases, except that no stay of execution shall be allowed. Proceedings in cases of appeals and writs of error to the circuit court, regulated.

SEC. 15. The St. Louis court of common pleas shall be held by one judge, who shall be appointed in the same manner as judges of the circuit courts are appointed. Judge of the court of common pleas, how appointed.

SEC. 16. Such judge shall possess the qualifications of a circuit judge; shall hold his office for the term of six years, and until his successor is appointed and qualified; but may sooner be removed from office for the like causes, and in the same manner, as a circuit judge. Qualifications of the judge, term of office; how removed and for what causes.

SEC. 17. If a vacancy, from any cause, shall exist in such office in the recess of the general assembly, the Governor shall appoint some competent person to supply such vacancy, who shall hold his office until a successor is duly commissioned and qualified. Vacancies, how to be filled.

SEC. 18. The compensation of such judge, shall be one thousand dollars a year, payable out of the state treasury quarter-yearly, in the same manner as the salaries of circuit judges, and also, fees not exceeding the sum of one thousand dollars, to be levied, as follows: Fifty cents on each final judgment, in cases of appeal from justices of the peace, and the sum of one dollar on each final judgment in other cases. Said fees to be taxed, as other costs, against the unsuccessful party. Compensation of the judge.

SEC. 19. The clerk of said court shall keep an account of the fees taxed, as above directed, for each year, and if they amount to more than one thousand dollars, the sum annually allowed the judge out of the same, the excess shall be paid into the county treasury. Clerk to keep an account of fees.

SEC. 20. The judge of said court shall be a conservator of the peace, throughout the county, and shall have like powers in relation to suits, process, and proceedings in the said court of common pleas, as a circuit judge, by law, has in like cases in the circuit court; he may grant writs of *ne exeat* and injunction, returnable to the circuit court, take and certify the proof and acknowledgment of deeds, conveyances, and other instruments of writing, administer oaths, issue writs of habeas corpus, and hear and determine the same, in the same manner as a judge of the circuit court. Judge of the court of common pleas a conservator of the peace; powers, &c.

Digitized by Google

CHAP. 43.

Clerk of the court of common pleas.

SEC. 21. There shall be a clerk of the St. Louis court of common pleas, who shall possess the qualifications of a clerk of a circuit court.

Clerk shall procure a seal, &c.

SEC. 22. He shall procure and keep a seal, with such emblems and devices, as shall be prescribed by the court, or judge thereof, as the seal of said court.

Approved February 27, 1845.

CHAPTER 43.

CRIMINAL COURT OF ST. LOUIS COUNTY.

AN ACT to establish a criminal court in the county of St. Louis.

SEC. 1. Criminal court in the county of St. Louis established.
2. Powers and duties of the court declared.
3. Circuit court of St. Louis county deprived of original jurisdiction in criminal cases, and of appellate jurisdiction in cases tried before magistrates.
4. Criminal causes removed from other counties to St. Louis, how to be tried.
5. Circuit court of St. Louis county to exercise superintending control over the criminal court.
6. Appeals and writs of error allowed to the supreme court.
7. Judge of criminal court may stay proceedings in case of appeal or writ of error, and admit defendant to bail.
SEC. 8. Circuit court, in cases of appeal or writ of error, how to proceed.
9. Judge of criminal court, how appointed and commissioned.
10. Vacancies, how to be filled.
11. Qualifications of the judge and term of office.
12. How removed, and for what causes.
13. Compensation of the judge.
14. Judge of the criminal court a conservator of the peace; has all the powers of a circuit judge in criminal cases; may take and certify acknowledgments of deeds, administer oaths and issue writs of habeas corpus.
15. Clerk of the criminal court shall procure a seal.
16. Terms of the criminal court, when to be held.

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

Criminal court in the county of St. Louis established.

SECTION 1. A court of record, to be called the St. Louis criminal court, is hereby established in the county of St. Louis, which shall have all the original and appellate jurisdiction in criminal cases, vested in the several circuit courts of this state.

Powers and duties of the court declared.

SEC. 2. The court hereby established, shall possess all the powers, perform the duties, and be subject to the restrictions of a court of record, as such, according to the provisions of the laws of this state.

SEC. 3. The circuit court of St. Louis, shall not hereafter

Digitized by Google

exercise original jurisdiction in any criminal case, nor appellate jurisdiction of any offence, tried and determined before a justice of the peace, or other magistrate. Circuit court, not to have original jurisdiction &c.

SEC. 4. All criminal causes removed from any other county to the county of St. Louis, shall be tried and determined by the court hereby established. Criminal causes from other counties, how to be tried.

SEC. 5. The circuit court of St. Louis county shall exercise its superintending control over the said criminal court, only by appeal or writ of error, allowed and prosecuted in the manner, and with the effect, prescribed by law in cases of appeals or writs of error to the supreme court, except that the defendant shall, in no case, be let to bail on such appeal or writ of error. Circuit court of St. Louis county to exercise superintending control over the criminal court.

SEC. 6. Appeals and writs of error, in case of final judgment, or decision of said circuit or criminal court, may be allowed and prosecuted directly to the supreme court, in the manner, and with the effect, in all respects, as is prescribed by law, in cases of such appeal or writ of error from the circuit to the supreme court, in criminal cases. Appeals and writs of error allowed to the supreme court.

SEC. 7. The court hereby established, and the judge thereof, shall have power to stay proceedings on any judgment rendered in said court, in any case of appeal or writ of error, and to admit the defendant to bail, upon appeal or writ of error to the supreme court, in the manner, and for the causes prescribed by law for the government of the supreme and circuit courts, and the judges thereof, in such cases. Judge of criminal court may stay proceedings in case of appeal or writ of error, and admit defendant to bail.

SEC. 8. The circuit court, in all cases of appeal or writ of error, shall proceed as is provided by law for the government of the supreme court on appeals or writ of error in criminal cases. Circuit court, in cases of appeal or writ of error, how to proceed.

SEC. 9. The judge of said criminal court shall be nominated by the house of representatives, and appointed by and with the advice and consent of the senate, and commissioned by the governor. Judge of criminal court, how appointed and commissioned.

SEC. 10. If a vacancy shall happen in such office, in the recess of the general assembly, the Governor shall appoint some competent person to supply such vacancy, who shall hold his office until a successor be commissioned and qualified. Vacancies, how to be filled.

SEC. 11. The judge of the said criminal court shall possess the qualifications of a circuit judge, and shall hold his office for the term of six years, and until his successor is appointed Qualifications of the judge and term of office.

Digitized by Google

CHAP. 44.

and qualified, unless sooner removed from office, as in the next section provided.

How removed, and for what causes.

SEC. 12. Such judge may be removed from office for the same causes, and in the same manner, as a judge of the circuit court.

Compensation of the judge.

SEC. 13. The compensation of such judge shall be one thousand dollars a year, payable out of the state treasury quarter-yearly, in the same manner as the salaries of the judges of the circuit courts.

Judge of criminal court a conservator of the peace; powers, &c.

SEC. 14. The judge of said court shall be a conservator of the peace within the county, and shall have all the powers of the several judges of the circuit courts of this state, in criminal cases; may take and certify the proof and acknowledgment of deeds and conveyances, administer oaths, issue writs of habeas corpus, and hear and determine the same, in the same manner as the judges of the circuit courts.

Clerk of the criminal court shall procure a seal.

SEC. 15. There shall be a clerk of the said criminal court, who shall procure a seal, with such emblems and devices as shall be prescribed by the judge or court.

Terms of the criminal court, when to be held.

SEC. 16. Six terms of the criminal court shall be held in each year, in the court-house, in St. Louis county, commencing on the first Mondays of January, March, May, July, September, and November.

Approved March 15, 1845.

CHAPTER 44.

COURTS—JUDICIAL CIRCUITS—TERMS.

AN ACT to establish judicial circuits, and prescribe the time and places of holding courts.

SEC. 1. The state divided into 14 judicial circuits.
2. First judicial circuit.
3. Second judicial circuit.
4. Third judicial circuit.
5. Fourth judicial circuit.
6. Fifth judicial circuit.
7. Sixth judicial circuit.
8. Seventh judicial circuit.
9. Eighth judicial circuit.
10. Ninth judicial circuit.
11. Tenth judicial circuit.
12. Eleventh judicial circuit.
13. Twelfth judicial circuit.
14. Thirteenth judicial circuit.
15. Fourteenth judicial circuit.
SEC. 16. Two terms to be held in a year. Special terms may be held, when.
17. Times of holding court in the first judicial circuit.
18. Times of holding court in the second judicial circuit.
19. Times of holding court in the third judicial circuit.
20. Times of holding court in the fourth judicial circuit.
21. Times of holding court in the fifth judicial circuit.
22. Times of holding court in the sixth judicial circuit.

Digitized by Google

SEC. 23. Times of holding court in the seventh judicial circuit.
24. Times of holding court in the eighth judicial circuit.
25. Times of holding court in the ninth judicial circuit.
26. Times of holding court in the tenth judicial circuit.
27. Times of holding court in the eleventh judicial circuit.
28. Times of holding court in the twelfth judicial circuit.
29. Times of holding court in the thirteenth judicial circuit.
SEC. 30. Times of holding court in the fourteenth judicial circuit.
31. Four terms of county court to be held in each county annually, when and where.
32. County courts may hold adjourned terms.
33. May order a special term, when.
34. Notice thereof to be given.
35. Writs, when returnable.
36. Sales of property, when made.
37. Sales advertised to be made on any day of term heretofore established, to be made on same day of term under this act.

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

SECTION 1. That this state is divided into fourteen judicial circuits. Judicial circuits.

SEC. 2. The first judicial circuit shall consist of the counties of Osage, Cole, Cooper, Morgan, Miller, Camden, and Moniteau. 1st judicial circuit.

SEC. 3. The second judicial circuit shall consist of the counties of Audrain, Boone, Callaway, Howard, Randolph, and Macon. 2d judicial circuit.

SEC. 4. The third judicial circuit shall consist of the counties of Marion, Ralls, Pike, Lincoln, St. Charles, Warren, and Montgomery. 3d judicial circuit.

SEC. 5. The fourth judicial circuit shall consist of the counties of Monroe, Shelby, Lewis, Clark, Knox, Scotland, Adair and Schuyler. 4th judicial circuit.

SEC. 6. The fifth judicial circuit shall consist of the counties of Clinton, Clay, Ray, Carroll, Harrison, De Kalb, Daviess, and Caldwell. 5th judicial circuit.

SEC. 7. The sixth judicial circuit shall consist of the counties of Jackson, La Fayette, Johnson, Saline, Pettis, Van Buren, and Bates. 6th judicial circuit.

SEC. 8. The seventh judicial circuit shall consist of the counties of Dallas, Polk, Cedar, St. Clair, Henry, Benton, and Hickory. 7th judicial circuit.

SEC. 9. The eighth judicial circuit shall consist of the county of St. Louis. 8th judicial circuit.

SEC. 10. The ninth judicial circuit shall consist of the counties of Gasconade, Franklin, Washington, St. Francois, Ste. Genevieve, Jefferson, and Perry. 9th judicial circuit.

SEC. 11. The tenth judicial circuit shall consist of the 10th judicial circuit.

Digitized by Google

CHAP. 44. counties of New Madrid, Mississippi, Dunklin, Stoddard, Scott, Cape Girardeau, Madison, and Wayne.

11th judicial circuit. SEC. 12. The eleventh judicial circuit shall consist of the counties of Chariton, Grundy, Mercer, Putnam, Sullivan, and Livingston.

12th judicial circuit. SEC. 13. The twelfth judicial circuit shall consist of the counties of Atchison, Holt, Nodaway, Gentry, Andrew, Buchanan, and Platte.

13th judicial circuit. SEC. 14. The thirteenth judicial circuit shall consist of the counties of Dade, Lawrence, Jasper, Newton, Barry, Greene, and Taney.

14th judicial circuit. SEC. 15. The fourteenth judicial circuit shall consist of the counties of Crawford, Shannon, Reynolds, Ripley, Oregon, Ozark, Wright, Texas, and Pulaski.

Two terms to be held in a year. SEC. 16. Two terms of the circuit court shall be held in each county, in every year, and not oftener, at the places appointed for holding courts therein; but said courts, except the circuit court for the county of St. Louis, may hold special terms, for the purpose of trying criminal business, whenever the judge of the court shall make an order for that purpose.

Special terms may be held, when.

Times of holding court in the first judicial circuit. SEC. 17. The circuit court, within and for the county of Cole, shall be held on the third Mondays in February and August; for the county of Cooper, on the first Mondays in March and September; for the county of Moniteau, on the fourth Mondays in March and August; for the county of Morgan, the first Mondays after the fourth Mondays in March and September; for the county of Camden, second Mondays after the fourth Mondays in March and September; for the county of Miller, on the third Mondays after the fourth Mondays in March and September; for the county of Osage, on the first Mondays in May and November.

Times of holding court in the second judicial circuit. SEC. 18. That the circuit court, within and for the second judicial circuit, shall hereafter be held at the times following, to wit: For the county of Boone, on the third Mondays of March and August; for the county of Callaway, on the second Mondays of April and October; for the county of Audrain, on the fourth Mondays of April and October; for the county of Macon, on the first Mondays of May and November; for the county of Randolph, on the second Mondays of May and November; and for the county of Howard, on the first Mondays of June and December.

Digitized by Google

Times of holding court in the third judicial circuit.

SEC. 19. In the third judicial circuit, the circuit courts shall be held at the following times, to wit: In the year eighteen hundred and forty-five, in the county of Marion, on the first Monday in August; in the county of Ralls, on the fourth Monday in August; in the county of Pike, on the first Monday in September; in the county of Montgomery, on the second Monday in September; in the county of Warren, on the third Monday in September; in the county of Lincoln, on the fourth Monday in September; in the county of St. Charles, on the first Monday after the fourth Monday in September. For the year eighteen hundred and forty-six, and every subsequent year, the circuit courts, for the said circuit, shall be held at the following times, to wit: In the county of Marion, on the first Mondays in March and August; in the county of Ralls, on the fourth Mondays in March and August; in the county of Pike, on the first Mondays in April and September; in the county of Montgomery, on the second Mondays in April and September; in the county of Warren, on the third Mondays in April and September; in the county of Lincoln, on the fourth Mondays in April and September; in the county of St. Charles, on the first Mondays after the fourth Mondays in April and September.

Times of holding court in the fourth judicial circuit.

SEC. 20. In the fourth judicial circuit, the circuit courts shall be held at the following times, to-wit: For the year eighteen hundred and forty-five, in the county of Adair, on the first Monday in September; in the county of Schuyler, on the first Thursday after the first Monday in September; in the county of Monroe, on the third Monday in September; in the county of Shelby, on the fourth Monday in September; in the county of Knox, on the first Monday in October; in the county of Scotland, on the first Thursday after the first Monday in October; in the county of Clark, on the second Monday in October; in the county of Lewis, on the third Monday in October. For the year eighteen hundred and forty-six, and every subsequent year, the circuit courts for said circuit, shall be held at the following times, to-wit: In the county of Adair, on the first Mondays in April and September; in the county of Schuyler, on the first Thursdays after the first Mondays in April and September; in the county of Monroe, on the third Mondays in April and September; in the county of Shelby, on the fourth Mondays in April and

Digitized by Google

CHAP. 44.

September; in the county of Knox, on the first Mondays in May and October; in the county of Scotland, on the first Thursdays after the first Mondays in May and October; in the county of Clark, on the second Mondays in May and October; in the county of Lewis, on the third Mondays in May and October.

Times of holding court in the fifth judicial circuit.

SEC. 21. In the fifth judicial circuit, the circuit courts shall be held at the following times, to-wit: In the county of Clinton, on the Wednesday before the first Monday in March, and the Wednesday before the fourth Monday in September; in the county of Clay, on the first Monday in March, and fourth Monday in September; in the county of Ray, on the second Monday in March, and first Monday in October; in the county of Carroll, on the third Monday in March, and second Monday in October; in the county of Harrison, on the Thursday after the third Monday in April and October; in the county of De Kalb, on the fourth Mondays in April and October; in the county of Daviess, on the Thursday after the fourth Mondays in April and October; in the county of Caldwell, on the first Monday after the fourth Mondays in April and October.

Times of holding court in the sixth judicial circuit.

SEC. 22. In the sixth judicial circuit, the circuit courts shall be held at the following times, to-wit: In the county of Jackson, on the third Mondays in March and September; in the county of Van Buren, on the fourth Mondays in March and September; in the county of Bates, on the first Mondays in April and October; in the county of Johnson, on the second Mondays in April and October; in the county of Pettis, on the third Mondays in April and October; in the county of Saline, on the fourth Mondays in April and October; in the county of La Fayette, on the first Monday after the fourth Mondays in April and October.

Times of holding court in the seventh judicial circuit.

SEC. 23. The courts in the seventh judicial circuit shall be held, in the county of Hickory, on the second Mondays in March and September; in the county of Dallas, on the third Mondays of March and September; in the county of Polk, on the fourth Mondays in March and September; in the county of Cedar, on the first Mondays after the fourth Mondays in March and September; in the county of Saint Clair, on the second Mondays after the fourth Mondays in March and September; in the county of Henry, on the third Mon-

Digitized by Google

days after the fourth Mondays in March and September; in the county of Benton, on the fourth Mondays in May and November.

Times of holding court in the eighth judicial circuit.

SEC. 24. In the eighth judicial circuit, the circuit court shall be held at the following times, to wit: In the county of St. Louis, on the third Mondays in April and November.

Times of holding court in the ninth judicial circuit.

SEC. 25. In the ninth judicial circuit, the circuit courts shall be held at the following times, to wit: In the county of Gasconade, on the third Mondays in March and September; in the county of Franklin, on the first Mondays after the fourth Mondays in March and September; in the county of Washington, on the third Mondays in April and October; in the county of St. Francois, on the first Mondays in May and November; in the county of Perry, on the second Mondays in May and November; in the county of Ste. Genevieve, on the third Mondays in May and November; in the county of Jefferson, on the fourth Mondays in May and November.

Times of holding court in the tenth judicial circuit.

SEC. 26. In the tenth judicial circuit, the circuit courts shall be held at the following times, to wit: In the county of Scott, on the second Mondays of March and September; in the county of New Madrid, on the first Thursdays after the third Mondays in March and September; in the county of Mississippi, on the first Mondays after the fourth Mondays of March and September; in the county of Madison, on the second Mondays of April and October; in the county of Wayne, on the fourth Mondays of April and October; in the county of Stoddard, on the first Mondays after the fourth Mondays of April and October; in the county of Dunklin, on the second Mondays after the fourth Mondays of April and October; in the county of Cape Girardeau, on the fourth Mondays of May and November.

Times of holding court in the eleventh judicial circuit.

SEC. 27. In the eleventh judicial circuit, the circuit courts shall be held at the following times, to wit: In the county of Livingston, on the first Mondays in April and September; in the county of Grundy, on the second Mondays in April and September; in the county of Mercer, on the third Mondays in April and September; in the county of Putnam, on the first Thursday after the third Mondays in April and September; in the county of Sullivan, on the fourth Mondays in April and September; in the county of Linn, in the year eighteen hundred and forty-five, on the first Monday after the fourth Monday in September, and every year thereafter, on

Digitized by Google

CHAP. 44. the first Monday after the fourth Mondays in April and September; in the county of Chariton, for the year eighteen hundred and forty-five, on the second Monday in October, and every year thereafter, on the second Mondays in March and August.

Times of holding court in the twelfth judicial circuit.

SEC. 28. In the twelfth judicial circuit, the circuit courts shall be held at the following times, to wit: in the county of Atchison, on the first Mondays in March and September; in the county of Holt, on the first Thursday after the first Mondays in March and September; in the county of Nodaway, on the second Mondays in March and September; in the county of Gentry, on the first Thursday after the second Mondays in March and September; in the county of Andrew, on the third Mondays in March and September; in the county of Buchanan, on the fourth Mondays in March and September; in the county of Platte, on the first Mondays in April and October.

Times of holding court in the thirteenth judicial circuit.

SEC. 29. In the thirteenth judicial circuit, the circuit courts shall be held at the following times, to wit: in the county of Dade, on the second Mondays in April and October; in the county of Lawrence, on the third Mondays in April and October; in the county of Jasper, on the fourth Mondays in April and October; in the county of Newton, on the first Mondays after the fourth Mondays in April and October; in the county of Barry, on the second Mondays after the fourth Mondays in April and October; in the county of Greene, on the third Mondays after the fourth Mondays in April and October; in the county of Taney, on the fourth Mondays after the fourth Mondays in April and October.

Times of holding court in the fourteenth judicial circuit.

SEC. 30. In the fourteenth judicial circuit, the circuit courts shall be held at the following times, to wit: in the county of Crawford, on the fourth Mondays in April and September; in the county of Shannon, on the first Mondays in May and October; in the county of Reynolds, on the second Mondays in May and October; in the county of Ripley, on the third Mondays in May and October; in the county of Oregon, on the fourth Mondays in May and October; in the county of Ozark, on the first Mondays after the fourth Mondays in May and October; in the county of Wright, on the second Mondays after the fourth Mondays in May and October; in the county of Texas, on the third Mondays after the fourth Mondays in May and October; in the county of Pulaski

Digitized by Google

on the fourth Mondays after the fourth Mondays of May and October.

Four terms of county court to be held in each county annually.

SEC. 31. 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 in February, May, August and November. The county courts may alter the times for holding their stated terms, giving notice thereof in such manner, as to them shall seem expedient.

Time and place of holding.

May hold adjourned terms.

SEC. 32. Each county court may hold adjourned terms at any time.

May order a special term, when.

SEC. 33. The president, or any two justices of the county court, may order a special term, whenever the business and interest of the county may require it.

Notice thereof to be given.

SEC. 34. Notice of such special term shall be given to the justices who were absent when the same was ordered, and by advertisements placed up in five public places in the county, at least five days before the commencement of such term.

Writs, when returnable.

SEC. 35. All writs and process 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.

Sales of property, when made.

SEC. 36. 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.

Sales advertised to be made on any day of term, &c., to be made on same day of term under this act.

SEC. 37. 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.

SEC. 38. This act shall take effect, and be in force, on the first day of August next. (a)

Approved March 27, 1845.

(a) The above act does not fix the time for holding the court of common pleas, but leaves the time for holding the terms as fixed by the fourth section of an act, entitled "An act to fix the times of holding the circuit courts in the eighth judicial circuit, and the St. Louis court of common pleas;" approved February 6, 1843. Said fourth section is in these words:

"The St. Louis court of Common pleas shall be held at the following times, to wit: on the first Monday of February, and the third Monday of September, in each year."—See Sess. acts of 1842—3, p. 55.

This section is in force by virtue of the 19th and 20th sections of an act entitled "An act concerning the revised statutes;" approved March 27, 1845. See title, "Laws—Revised Statutes."

Digitized by Google

CHAPTER 45.

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. Statement of judge under oath of his age, to be filed.
5. Supreme court shall direct the form of writs and process, &c.
6. Power and jurisdiction of circuit courts.
7. The county courts, except the county court of St. Louis, shall be composed of three judges, &c.
8. Justices of the county court, how elected; their term of service.
9. Elections, how certified; in case of a tie, how decided.
10. Vacancies, how to be filled.
11. Clerks to certify names of persons elected, to the Governor, who shall commission them.
12. Compensation of the justices of the county courts.
13. Jurisdiction and power of county courts.
14. Shall have power to award process, and cause to come before them all persons interested in any lands, &c., belonging to any minor, &c.
15. Shall have the control of all property belonging to the county, &c.
16. Majority of justices constitute a quorum; a less number may adjourn.
17. President to be chosen.
18. Each court hereby established, to procure a seal, &c.
19. Where sealing is required, what shall be considered a sufficient sealing.
20. Where no official seal is provided, private seal may be used.
21. Courts established by this act, to be courts of record.
22. Records of proceedings 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 clerk of each court after the adjournment thereof. Papers to be attached.
25. Memoranda to be made on the margin of papers so attached.
SEC. 26. Papers so 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 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. Duty of judge to superintend and examine into the manner in which the rolls and records are kept, &c.
32. It shall be the duty of the judge of the circuit court to call over the execution docket, and see that proper returns have been made, &c.
33. Records to be kept in the English language.
34. The sittings of courts to be public.
35. Power of courts in issuing writs necessary to the exercise of their jurisdiction.
36. When the court may appoint a person to act as sheriff or coroner; his fees.
37. Courts may appoint interpreters and translators.
38. Courts may compel return of writs and payment of money, by attachment.
39. Judge of the supreme court interested or related to either party, not to sit.
40. Judge of the circuit court, or justice of the county court interested, &c., not to sit.
41. Judge interested, &c., venue may be changed.
42. Majority of county court interested, &c., papers to be certified to the circuit court.
43. If any court is not held on the first day of the term, it shall adjourn, &c.
44. If, after the commencement of the term, the court shall not be held according to its adjournment, it shall stand adjourned, &c.
45. If the judge appear and hold court within the time, there shall be no discontinuance, &c.
46. If the court do not sit within the time, it shall stand adjourned, &c.

Digitized by Google

SEC. 47. Adjourned terms may be held in continuation of the regular term.
48. Special terms of the circuit court to be held for the trial of persons charged with crime.
49. Notice thereof to be served on the attorney general, &c., and the persons to be tried.
50. Who may serve such notice.
51. The judge may order a grand jury to be summoned, and court shall possess all the powers of a circuit court in criminal cases, &c.
52. May, with consent of parties, exercise its ordinary jurisdiction, &c.
53. If the prisoner be bailed, special term need not be held.
54. Special terms not to interfere with regular terms.
55. No process, &c, discontinued or abated by adjournment of court, or lapse of time.
56. Justices of the county court to be conservators of the peace.
57. No judge shall act as counsellor or attorney.
58. No judge or justice shall have a partner in the practice, and no justice shall borrow money belonging to the school fund, &c.
SEC. 59. Justices violating the preceding section, how punished.
60. Court not to sit on Sunday, except, &c.
61. For what acts courts may punish as for a criminal contempt.
62. Manner and extent of punishments for contempt.
63. When summary punishment for contempt to be inflicted; when time allowed to make defence.
64. Circumstances of offence to be set forth, in order of commitment for contempt.
65. Construction of the preceding section.
66. Liable to be indicted for contempt, &c.
67. Sheriffs to attend court, to furnish stationery, fuel, &c.
68. Courts to audit and adjust accounts of sheriffs made under this act.
69. Such accounts accruing in the supreme court, paid out of the state treasury.
70. The audifor to draw his warrants accordingly.
71. 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:

SECTION 1. There shall be a supreme court, and circuit and county courts, to be held at such times and places as shall be prescribed by law. Supreme, circuit and county courts established.

SEC. 2. Every judge of the supreme and circuit courts, and every justice of the county courts, shall, previous to his appointment or election, have resided one year in this state, and be commissioned by the governor. Qualification of judge and justice of the courts.

SEC. 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; a certificate of having taken such oath shall be endorsed upon his commission. Oath of office to be taken.

SEC. 4. 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, which shall be conclusive evidence of the facts therein stated, against the judge making the affidavit. Statement of judge under oath of his age, to be filed.

Digitized by Google

CHAP. 45.

Supreme court shall direct the form of writs and process, &c.

SEC. 5. 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.

Power and jurisdiction of circuit courts.

SEC. 6. 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 the county courts and justices of the peace.

See justices courts. Act Feb. 16, 1841, sec. 7, p. 103.

Third. Concurrent original jurisdiction with justices of the peace in all 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 exceed fifty dollars, and not exceed ninety dollars; in all actions on bonds and notes for the payment of any sum of money exceeding fifty dollars, exclusive of interest, and not exceeding one hundred and fifty dollars; and in 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.

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, curators, minors, idiots, lunatics, and persons of unsound mind, and shall proceed therein according to the rules, usages, and practice of courts of equity.

County courts shall be composed of three judges, except St. Louis co.

SEC. 7. The county courts, except the county court of St. Louis, shall be composed of three members, to be styled "the justices of the county court."

Justices of the county court, how elected, their term of service.

SEC. 8. The justices of the county court shall be elected by the qualified electors in the several counties in this state, and shall hold their offices for the term of four years, and until their successors are duly elected and qualified.

Digitized by Google

Elections how certified; in case of a tie, how decided.

SEC. 9. The election shall be certified 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.

Vacancies how to be filled.

SEC. 10. 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 his office until the expiration of the term for which his predecessor was elected. If the remaining judges of the county court shall disagree in the nomination of a fit person to fill the vacancy, the said judges shall each recommend one fit person to the governor, one of whom shall be by him commissioned.

Clerks to certify to names of persons elected to the governor, who shall commission them. 1841, p. 57.

SEC. 11. The clerks of the county courts shall certify to the governor the names of the persons elected or nominated as county justices, who shall thereupon commission all such persons as justices of the county court for the term for which they may have been elected or nominated.

Compensation of the justices of the county court.—1837, p. 70–1.

SEC. 12. Justices of the county courts shall hereafter be allowed, as compensation for their services, two dollars a day, for each day's service, to be paid out of the county treasury; and the same fee for taking the acknowledgment of deeds as is allowed to justices of the peace.

Jurisdiction and power of county courts.

SEC. 13. The several county courts shall have 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, appointing and displacing the guardians of orphans, minors, and persons of unsound mind, in binding out apprentices, and in the settlement and allowance of accounts of executors, administrators, and guardians; to hear and determine all disputes and controversies whatsoever respecting wills, the right of executorship, administration and guardianship, or respecting the duties or accounts of executors, administrators or guardians, and all controversies and disputes between masters and their apprentices; to hear and determine all suits and other proceedings instituted against executors or administrators upon any demand against the estate of their testator or intestate, when such demand shall not exceed one hundred dollars, and concurrent jurisdiction with the circuit courts in all such cases, when the demand shall not exceed that sum, subject to appeal in

Digitized by Google

CHAP. 45.

all cases to the circuit court, in such manner as may be provided by law.

Shall have power to award process and cause to come before them all persons interested in any lands, &c. belonging to any minor, &c.

SEC. 14. The said courts shall have power to award process, and to cause to come before them all and every person whom they may deem it necessary to examine, whether parties or witnesses, or who, as executors, administrators, 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.

Shall have control of all property belonging to the county, &c.

SEC. 15. The said courts shall, moreover, have the control and management of the property, real and personal, belonging to the county, and full power and authority to purchase, or receive by donation, any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels, belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county.

Majority of justices constitute a quorum, &c.

SEC. 16. A majority of the justices of the county court shall constitute a quorum to do business; a single member may adjourn from day to day, and require the attendance of those absent.

President to be chosen.

SEC. 17. The justices of the county court, or a majority of them, shall choose one of their members to be president of the court, and, in case of his absence, may appoint a president pro tempore.

Each court hereby established to procure a seal, &c.

SEC. 18. Each of the courts hereby established shall procure and keep a seal, with such emblems and devices as the court may think proper.

What shall be considered a sufficient sealing.

SEC. 19. The impression of the seal of any court, by stamp, shall be a sufficient sealing in all cases where sealing is required.

When no official seal provided, private seal may be used.

SEC. 20. When no 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 this 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.

Digitized by Google

Courts of record.

SEC. 21. All courts established by this act shall be courts of record, and shall keep just and faithful records of their proceedings.

Records, how kept.

SEC. 22. The records of proceedings at law, shall be kept separate and distinct from the records of proceedings in equity.

Full entries of the records and proceedings, &c., when to be made up and read.

SEC. 23. Full entries of the orders and proceedings of all courts of records, 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.

Duties to be performed by clerks of courts after adjournment.

SEC. 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.

Memorandum to be made on the margin of papers so attached.

SEC. 25. The clerk 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 each 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.

Such papers to be preserved as roll of judgments, &c.

SEC. 26. The papers so attached, with the memoranda required by the preceding section, shall be carefully preserved as the roll of the judgments and decrees.

Bill of exceptions to be written out and attached to the roll.

SEC. 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.

Execution to be attached to the roll, when.

SEC. 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 be made a part thereof.

When bills of exception may be omitted.

SEC. 29. In making out transcripts of records, except on writs of error, the bills of exception shall not be inserted, unless specially requested by the applicant therefor.

Courts shall, by rule, direct the filing of papers, pleadings, &c.

SEC. 30. The courts respectively shall, by rule, direct the pleadings and other papers to be filed, 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.

Digitized by Google

CHAP. 45.

Duty of judge to superintend and examine into the manner in which the rolls and records are kept, &c.

SEC. 31. It shall be the special duty of every judge and justice of every court of record, to examine into, and superintend the manner in which the rolls and records of the court are made up and kept, to prescribe rules that will procure uniformity, regularity and accuracy, in the transaction of the business of the courts; to require that the return, trial, judgment and execution dockets, and all indexes to the records to be correctly made out at the proper time; that the papers are filed, and the entries made, and the duties of the clerks performed according to law; and if any clerk fail to comply with the law, the court shall proceed against him as for a misdemeanor.

Circuit court to call over execution docket, and see that proper returns have been made, &c. 1841, p. 58-9.

SEC. 32. It shall be the duty of the circuit court, at every term, to call over the execution docket, in order to see that proper returns have been made and entered of all process returnable to that term, and especially, that due diligence has been used to execute all process upon the part of the state, and the court, in such cases, may enforce obedience to law, by attachment.

Records to be kept in the English language.

SEC. 33. All writs, process, proceedings and records in 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.

The sittings of courts to be public.

SEC. 34. The sittings of every court shall be public, and every person may freely attend the same.

Power of courts to issue writs, &c.

SEC. 35. The courts hereby established, 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. (a)

When the court may appoint a person to act as sheriff or coroner, his fees.

SEC. 36. Where there is no sheriff or coroner, or neither of them qualified to act, or both interested or prejudiced, the court may appoint one or more persons to execute their process, and perform any other duty of the sheriff, who shal

(a) The circuit courts have a right, which is inherent, to make their own rules but those rules, before they become obligatory, shall have a reasonable publicity given to them. Rishor vs. Thomas, 2 Missouri Rep., 80.

Digitized by Google

be entitled to such fees for their services in each cause, as are allowed by law to sheriffs in like cases.

Courts may appoint interpreters and translators.

SEC. 37. 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.

Courts may compel return of writs and payment of money by attachment.

SEC. 38. Each court may enforce, by attachment, the return of any writ or process sent out of the same court, and the payment of any moneys had and received by any sheriff, coroner, constable, attorney, collector or solicitor, in his official capacity, and the delivery of papers entrusted to him, officially, and unlawfully withheld.

Judge of supreme court interested, not to sit.

SEC. 39. 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 proceeding which now is, or may be, instituted, shall sit on the determination thereof.

Judge of circuit court or justices of county court, interested, &c., not to sit. 1837, p. 58.

SEC. 40. No judge of the circuit court, nor justice of the county court, shall sit on the trial of any cause or proceeding in which he is interested, or related to either party, or shall have been of counsel; but it shall be the duty of the judge to try said cause or proceeding, by the consent or request of both parties thereto. (*b*)

Judge interested, &c., venue may be changed.

SEC. 41. Such cause or proceeding, if pending in the circuit court, shall be removed, when necessary, to some county where such objections do not exist, according to law.

Majority of county court interested, &c., papers to be certified to the circuit court.

SEC. 42. 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, which shall proceed thereon to final judgment and determination, in the like manner as the county court should have done.

If any court is not held on the first day of the term, it shall adjourn, &c.

SEC. 43. 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; and the supreme court shall stand adjourned, from day to day, until the evening of the sixth day.

When court shall stand adjourned, &c.

SEC. 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 court

(*b*) The owner of a slave cannot sit, as judge, and try him for any offence he may have committed; Jim vs. State, 3 Missouri Rep., 108.

Digitized by Google

CHAP. 45.

cannot attend any regular term, he may notify the sheriff of the county in which 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.

If judge appear &c., within time, no discontinuance. &c.

SEC. 45. If the judge 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.

When court shall stand adjourned.

SEC. 46. If the court do not sit within that time, it shall stand adjourned until the next regular term.

Adjourned terms may be held in continuation of the regular term.

SEC. 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 in the records of the court.

Special terms of circuit court to be held for the trial of persons charged with crime.

SEC. 48. Whenever any person, charged with an offence, shall be confined in any jail two months before the regular term of the circuit court in which he is to be tried, the jailor shall, without delay, inform the judge of such court thereof, who shall cause a special term of the said court to be held, for the trial of such prisoner.

Notice to be served on the attorney general, &c. and on the persons to be tried.

SEC. 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 prisoner or prisoners to be tried, ten days before the commencement of such term.

Who may serve such notice.

SEC. 50. The sheriff of the proper county, or any other person to be appointed by the judge, may serve such notice.

The judge may order grand jury to be summoned, &c.

SEC. 51. The judge, in his discretion, may order a grand jury to be summoned, and the court, at such special term, shall possess all the jurisdiction, and have all the powers of a circuit court in criminal proceedings at a regular term thereof. (c)

May, with consent of parties, exercise its ordinary jurisdiction, &c.

SEC. 52. At every such special term, the court may, with the consent of parties, exercise its ordinary jurisdiction in civil cases, and may hear and determine suits for partition and assignment of dower.

If prisoner be bailed, special term need not be held.

SEC. 53. If the prisoner shall be bailed, or discharged, the jailor shall give the judge notice of the fact, who shall, there-

(c) See the cases of Samuels vs. State, 3 Missouri Rep., 50; Nicholas vs. State, 6 Missouri Rep., 6.

Digitized by Google

upon, be exempted from the duty of holding a special term of his court.

Not to interfere with regular terms.

SEC. 54. No adjourned session or special term, shall interfere with any other court to be held by the same judge.

No process, &c. discontinued or abated by adjournment of court or lapse of term.

SEC. 55. No writ, process, plea, or proceedings, 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 failure or adjournment had happened.

Justices of county court conservators of the peace.

SEC. 56. Each justice of the county court shall be a conservator of the peace throughout his county.

No judge shall act as counsellor or attorney.

SEC. 57. No judge shall practice, or act as counsellor, solicitor or attorney, in any court within this state; nor shall any clerk practice, or act as counsellor, solicitor or attorney, in the court of which he is the clerk.

No judge nor justice shall have a partner in the practice, nor borrow money belonging to school fund, &c. 1843, p. 26.

SEC. 58. No judge nor justice of the county court shall have any partner practising in the court of which he is judge or justice. And no justice of the county court shall borrow, either directly or indirectly, for his own use, any money belonging to the school fund, to the three per cent. fund, or any money, whatever, belonging to the county, or over which he may have any control as a justice of the county court, nor shall he become security for any person whatever, who may borrow any such money.

Justices violating the preceding section, how punished. 1841, p. 58.

SEC. 59. Any justice of the county court violating the provisions of the preceding section, shall be deemed guilty of a misdemeanor in office, and shall be proceeded against accordingly, and the provisions of the said section shall be given in charge to the grand jury.

Court not to sit on Sunday, except, &c.

SEC. 60. No court shall be open, 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, nor shall it prevent the issuing and service of an attachment in a case where a debtor is about fraudulently to secrete or remove his effects.

Digitized by Google

CHAP. 45.

For what acts court may punish, as for a criminal contempt.

SEC. 61. Every court of record shall have power to punish, as for a criminal contempt, persons guilty of either of the following acts, and no other: *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 contumaceous 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.

Manner and extent of punishments for contempt.

SEC. 62. 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 shall 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.

When summary punishment for contempt to be inflicted, &c.

SEC. 63. 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.

Circumstances to be set forth in the order of commitment.

SEC. 64. 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.

Construction of preceding sections.

SEC. 65. 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.

Liable to be indicted for contempt, &c.

SEC. 66. 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.

Sheriffs to attend court, &c.

SEC. 67. The several sheriffs shall attend each court held in their counties, except where it shall otherwise be directed by law; and it shall be the duty of the officer attending any

Digitized by Google

court to furnish stationery, fuel, and other things which may be necessary for the use of the courts held in his county, whenever ordered by the court. CHAP. 46.

SEC. 68. The court shall audit and adjust the accounts of the officer attending any court, made pursuant to this act, and certify the same for payment. Courts to audit and adjust accounts, &c.

SEC. 69. All such expenditures accruing in the supreme court, shall be paid out of the state treasury. Accounts accruing in the supreme court, how paid.

SEC. 70. The auditor shall draw his warrants accordingly, for which the certificate of the court shall be sufficient voucher. Auditor to draw warrants accordingly.

SEC. 71. 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. Accounts accruing in circuit and county courts, how paid.

Approved March 27, 1845.

CHAPTER 46.

SUPREME COURT.

AN ACT prescribing the time and place of holding the supreme court.

SEC. 1. Supreme court shall hold its sessions in the capitol, &c.
2. Two sessions to be held annually, in January and July. Two shall be held annually in March and October, at which, causes from the eighth judicial circuit shall be tried.
3. Supreme court to appoint a marshal, and fill vacancies. Duties of marshal. Tenure of his office.
4. His compensation.
5. The clerk of the supreme court shall be allowed fuel, &c. for his office.

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

SECTION 1. The supreme court shall hold its sessions in the capitol, at the seat of government. Where supreme court shall hold its sessions.

SEC. 2. The said court shall hold two sessions annually, on the second Monday in January and first Monday in July, at which all cases coming from any part of the state, except the eighth judicial circuit, shall be heard and determined; and *that* two sessions of said court shall also be held annually on the third Mondays of March and October, at which causes coming from the eighth judicial circuit, shall be heard and determined. Two sessions to be held annually; in January and July. Two shall be held annually in March and October.

Digitized by Google

CHAP. 47.

Supreme court to appoint a marshal and fill vacancies.

SEC. 3. The supreme court shall appoint a marshal, and from time to time fill all vacancies that may occur in that office, and such marshal shall attend the sittings of the supreme court, and have all the powers, and perform all the duties enjoined by law on the officer attending that court. The said marshal shall hold his office during the pleasure of the court.

Duties of marshal.

Tenure of his office.

His compensation.

SEC. 4. The marshal shall receive as a compensation, one dollar and fifty cents for each day he shall attend the supreme court, and for other services, such fees as are by law allowed sheriffs for the same.

Clerk of supreme court allowed fuel.

SEC. 5. The clerk of the supreme court shall be allowed fuel necessary for his office.

Approved March 27, 1845.

CHAPTER 47.

CRIMES AND PUNISHMENTS.

AN ACT concerning crimes and their punishments.

ARTICLE I. Of offences against the government and the supremacy of the laws.
II. Of offences against the lives and persons of individuals.
III. Of offences against property, public and private.
IV. Of offences affecting records, currency, instruments or securities, public and private.
V. Of offences affecting the admininistration of justice.
VI. Of offences by persons in office, or affecting public trusts and public rights.
VII. Of offences against the public peace, or affecting the security of persons and property, and not before enumerated.
VIII. Of offences against public morals and decency, or the public police and other miscellaneous offences.
IX. Of general provisions.

Digitized by Google

Of offences against the government and the supremacy of the laws.

SEC. 1. Treason, its punishment.
2. Misprison of treason, its punishment.
3. Giving aid or comfort to the enemies of the state in time of war, its punishment.
4. Two or more combining to overturn or usurp the government, punishment for.
5. Twelve or more combining to levy war against the people of this state, or to remove them forcibly from their habitations, punishment.
6. Raising a rebellion or insurrection of slaves, punishment for.
7. Slaves who rebel, &c., punishment of.
8. Free persons aiding therein, punishment for.
9. Persons, bond or free, plotting insurrection, &c., without any overt act, punishment for.
10. Publishing opinions tending to insurrection, &c., with intent, &c., punishment.
11. Disqualification.

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

Treason; its punishment.

SECTION 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.*

Misprison of treason; its punishment.

SEC. 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 not less than four months, and fine not less than one thousand dollars.

Giving aid or comfort to the enemies of the state in time of war; its punishment.

SEC. 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, 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 exceeding ten years, or by fine not less than one thousand, nor exceeding five thousand dollars.

Two, or more, combining to usurp or overturn the government, punishment for.

SEC. 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 within the state to accomplish such purpose, the person so offending

* 1 Hawk., P. C. 37; 1 Hale, P. C. 131-2; 3 Inst., 10; 1 Burr, 650; 6. T. R., 527; 4 Black. C., 83; Fost., 216.

Digitized by Google

CHAP. 47.

shall be punished by imprisonment in the penitentiary for a period not exceeding five years, or, by fine, not less than five hundred nor exceeding five thousand dollars, and imprisonment in a county jail not less than four months.

Twelve or more combining to levy war, &c., punishment.

SEC. 5. If twelve or more persons shall combine to levy war against any part of the people of this state, or to remove them 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.

Raising rebellion, &c. of slaves, punishment for.

SEC. 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.

Slaves who rebel, punishment of.

SEC. 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.

Free persons aiding therein, punishment for.

SEC. 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 by death.

Persons, bond or free, plotting insurrection, &c. without any overt act, punishment for.

SEC. 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, if a freeman, by imprisonment in the penitentiary for a period not less than two years; and, if a slave, shall be punished in the manner prescribed in the thirty-fourth *and thirty-fifth* sections of the ninth article.

Publishing opinions tending to insurrection, &c. with intent, &c., punishment.—Sess. acts, 1836–7, p. 1.

SEC. 10. Every person who shall publish, circulate, or utter by writing, speaking, or printing, any statements, arguments, or opinions, tending directly to excite any slave or other colored person in this state to rebellion, insurrection, or murder, shall, upon conviction, be imprisoned in the penitentiary for the term of two years; and, upon conviction for the second offence, shall be imprisoned in the penitentiary for a term not less than five years.

Disqualification.

SEC. 11. Every white person who shall be convicted of any of the offences punishable by the provisions of this article,

Digitized by Google

and sentenced to imprisonment in the penitentiary, shall thereafter be incompetent to be a juror in any cause, and shall be for ever 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. Murder in the first degree.
2. Murder in the second degree.
3. Punishment for murder in the first and second degrees.
4. Justifiable homicide.
5. Excusable homicide.
6. Verdict of not guilty directed, in case of justifiable and excusable homicide.
7. Killing, without design to effect death, &c., manslaughter in the first degree.
8. Assisting another in self-murder, manslaughter in the first degree.
9. Killing of unborn quick child, manslaughter in the first degree.
10. Administering medicine, or using instrument to destroy quick child, manslaughter in the second degree.
11. Killing in the heat of passion, without a design to effect death, manslaughter in the second degree.
12. Killing any person unnecessarily while resisting attempt to commit felony, &c., manslaughter in the second degree.
13. Killing in heat of passion, without design, &c., in what case manslaughter in the third degree.
14. Killing, whilst person is committing trespass, &c., manslaughter in the third degree.
15. Owner of mischievous animal, which kills a person whilst running at large, deemed guilty of manslaughter in third degree.
16. Person navigating boat or vessel, declared guilty of manslaughter in third degree, when.
17. If captain, engineer, &c., of steamboat, through ignorance or neglect, create steam to burst the boiler, and any person is killed, deemed guilty of manslaughter in third degree.
18. Engineer running engine when not in good repair; punishment for.
19. Master, owner, or engineer of steamboat, running such boat when engine or machinery is out of repair; punishment.
20. If any person is killed by running such engine, &c., deemed manslaughter in the third degree.
21. Involuntary killing, deemed manslaughter in the fourth degree.
22. Killing, which would at common law be manslaughter, and not excusable or justifiable, deemed manslaughter in fourth degree.
23. Punishment for manslaughter in the first and second degree.
24. Punishment of manslaughter in the third degree.
25. Punishment of manslaughter in the fourth degree.
26. Rape; punishment for.
27. Carnally knowing a woman over ten years, &c.
28. Compelling a woman to marry, &c.
29. Taking a woman with intent to compel her to marry, &c. Punishment.
30. Taking females under eighteen from parents, &c. Punishment.
31. Rape by negro or mulatto. Punishment.
32. White person aiding such offence. Punishment.
33. Mayhem, &c.; punishment for.
34. Assault with deadly weapon, on purpose, and of malice aforethought, &c. Punishment.
35. Administering poison with intent to kill, where such poison is taken, &c. Punishment.
36. Mingling poison with food, drink, &c.
37. Assault, with intent to commit a felony.
38. Persons by whose act, procurement, or negligence, great bodily harm is done; how punished.
39. Medicine administered, or instruments used to procure abortion.

Digitized by Google

CHAP. 47.

SEC. 40. Kidnapping, &c.; punishment for.
41. Same subject.
42. Where these offences may be tried.
43. Decoying child under ten years, with intent to conceal, &c.
SEC. 44. Exposing child under the age of six years, with intent to abandon it, punishment by imprisonment, &c.
45. Disqualifications annexed to conviction of certain offences enumerated in this article.

Murder in the first degree.

SECTION 1. Every murder which shall be committed by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, and premeditated killing, (*a*) or which shall be committed in the perpetration, or attempt to perpetrate any arson, rape, robbery, burglary, or other felony, shall be deemed murder in the first degree.

Murder in the second degree.

SEC. 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. (1)

Punishment for murder in the first and second degrees.

SEC. 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.

Justifiable homicide.

SEC. 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 immediate 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.

Excusable homicide.

SEC. 5. Homicide shall be deemed excusable when committed by accident or misfortune, in either of the following

(*a*) As to what constitutes a wilful, deliberate, and premeditated killing, see Bower vs. The State, 5 Missouri Rep., 379–80. The court in that case held that, in the word *wilful*, the act meant that the murderer *intended* to kill; that this supposes an actual condition of the mind, in regard to the killing, when the deed takes place; and that the words *deliberate* and *premeditated* require that the killing must have been thought of before the act of killing began to take place, and that, in order to constitute murder in the first degree, there must be a killing with an intent to kill, and do the deed at the time the act took place; and, also, that, before the act took place, the murderer intended to do the deed.

(1) *Vide*, 3 Inst., 47; 1 Hawk., c 31, s 7; Arch., 13; 3 Inst., 48; Fost., 132; 1 Hale, 429; 1 Hale, 431; Leach, 127; 1 Hawk., c 31, s 4; 1 Hale, 432; 4 Car. and Payne, 398, 423; 1 Hawk., c 31, s 9; 1 Hale, 428; 3 Inst., 50; 1 Hawk., c 31, s 16; 1 Hale, 433; Arch., 313, 314; Fost., 257; 4 Black. Com., 201.

Digitized by Google

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 or 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. (2)

Verdict of not guilty directed in case of justifiable or excusable homicide.

SEC. 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 where, by any statute, or the common law, such homicide was justifiable or excusable, the jury shall return a general verdict of not guilty.

Killing without design to effect death, &c. manslaughter in the first degree.

SEC. 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 perpetrate 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.

Assisting another in self murder, manslaughter in first degree.

SEC. 8. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter in the first degree.

Killing of unborn quick child, manslaughter in first degree.

SEC. 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 manslaughter in the first degree.

Administering medicine, or using instrument to destroy quick child, manslaughter in the second degree.

SEC. 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.

Killing in heat of passion, without design, &c.

SEC. 11. The killing of a human being, without a design to effect death, in a heat of passion, but in a cruel or unusual

(2) *Vide*, 1 Hale, 481, 494, 501, 495, 496, 53, 488, 432, 473, 474; 2. Hale, 118, 119; Arch., 328, 329, 311, 320, 316, 317, 319, 322; 3 Inst., 52, 57; 4 Black. C., 179, 180, 182, 192, 193, 200; 1 Russell, 448, 551; Fost., 318, 271, 273, 277, 258, 261, 262, 263, 299; 1 Hawk., c 28, s 11, c 28, s 20, c 29, s 5; Doug., 359; 6 Barn. & Cress, 635; 1 Car. & Payne, 319; 5 Price, 525; Kel., 40.

Digitized by Google

CHAP. 47.

manner, unless it be committed under such circumstances as to constitute excusable or justifiable homicide, shall be deemed manslaughter in the second degree.

Killing person unnecessarily while resisting attempt to commit felony, &c. manslaughter in second degree.

SEC. 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.

Killing in heat of passion, without design, &c. in what case manslaughter in third degree.

SEC. 13. The killing of another, in a 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. (*b*)

Killing, while person is committing trespass, &c. manslaughter in third degree.

SEC. 14. The voluntary killing of a human being, by the act, procurement, or culpable negligence of another, whilst 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.

Owner of mischievous animal which kills a person, &c. deemed guilty of manslaughter in third degree.

SEC. 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.

Person navigating boat or vessel, deemed guilty of manslaughter in third degree, when.

SEC. 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.

If captain, engineer, &c. of steamboat through ignorance or neglect create steam, &c. and any person is killed, deemed guilty of manslaughter in the third degree.

SEC. 17. If any captain or other person having charge of any steamboat 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

(*b*) See Plummer vs. the State, 6 Missouri Rep.; 241-2-3-4.

Digitized by Google

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.

Engineer running engine when not in good repair, punishment for.—Sess. acts, 1842–3, p. 134.

SEC. 18. Any engineer having charge of a steamboat engine, who shall wilfully or negligently run said engine when it is not in good repair, or any of the machinery connected therewith is in a condition from which explosions or breakages may be reasonably expected; or shall wilfully or negligently fail to report to the master or owner the condition of such engine, or other machinery therewith connected, so being out of repair, or in a condition unsafe for navigation, shall be fined in a sum not less than one hundred nor more than one thousand dollars.

Master, owner, or engineer of steamboat, running such boat when engine or machinery is out of repair, punishment for. Sess. acts, 1842–3, p. 134–5.

SEC. 19. If any master or owner of a steamboat shall make, or cause to be made, a trip with such boat, after the engine or machinery connected therewith shall have been reported to him as unsafe, or out of repair, according to the provisions of the preceding sections, without making adequate repairs; or if any engineer shall wilfully or negligently take charge of and run an engine on such boat, knowing it has been so reported unfit or out of repair, unless in either case the engineer last aforesaid has followed *at* the business of steamboat engineer for five years, and upon examination of said engine and machinery, shall report upon oath and in writing that said engine and machinery are in good order, such master, owner, or engineer, shall be fined in a sum not less than five hundred dollars; and if any accident happen, by which any person is killed, shall be deemed guilty of manslaughter in the third degree.

Manslaughter in the third degree.

SEC. 20. If any physician, while in a state of intoxication, shall, without a design to effect death, administer any potion, 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.

Manslaughter in the fourth degree.

SEC. 21. The involuntary killing of another, by a weapon, or by means neither cruel nor unusual, in the heat of passion, in any cases other than justifiable homicide, shall be deemed manslaughter in the fourth degree.

Manslaughter in the fourth degree.

SEC. 22. 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 excus-

Digitized by Google

CHAP. 47.

able or justifiable, or is not declared in this article to be manslaughter in some other degree, shall be deemed manslaughter in the fourth degree. (c) (3)

Punishment for manslaughter in the first and second degrees.

SEC. 23. Persons convicted of manslaughter in the first and second 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, nor more than five years.

Punishment for manslaughter in the third degree.

SEC. 24. Every person convicted of manslaughter in the third degree, shall be punished by imprisonment in the penitentiary for a term not exceeding three years, or by imprisonment in the county jail not less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars, and imprisonment in the jail not less than three months.

Punishment for manslaughter in the fourth degree.

SEC. 25. Every person convicted of manslaughter in the fourth degree, shall be punished by imprisonment in the penitentiary for two years, or by imprisonment in the county jail not less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars, and imprisonment in the county jail not less than three months.

Rape; its punishment.

SEC. 26. 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. (4)

Carnally knowing a woman over ten years, &c.

SEC. 27. 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 pun-

(c) If a person assume to act as a physician, however ignorant of medical science, and prescribe with an honest intention of curing the patient, but, through ignorance of the qualities of the medicine prescribed, or of the nature of the disease, or both, the patient die in consequence of the treatment, contrary to the expectation of the person prescribing, he is not guilty of murder or manslaughter. But if the party prescribing have so much knowledge of the fatal tendency of the prescription, that it may be reasonably presumed that he administered the medicine from an obstinate, wilful rashness, and not with an honest intention and expectation of effecting a cure, he is guilty of manslaughter at least, though he might not have intended any bodily harm to the patient. Rice vs. the state; 8 Missouri Rep., 561.

(3) *Vide*, 4 Black. Com., 191; Fost., 295, 296, 297, 290, 291, 296, 308, 312, 319, 320, 321; 3 East, 581; 1 East, P. C., 215, 270; 1 Hale, 453, 466, 422, 452, 486, 455, 457, 459, 450, 616; 1 Leach, 151; Kel., 135; Arch., 318, 319, 324, 326, 327.

(4) *Vide*, 2 Inst., 180; 1 Hawk., c 41, s 1; 1 Hale, 630, 629; Starkie, 137, 1269, 1270; 1 East, P. C., 444.

Digitized by Google

ished by imprisonment in the penitentiary for a term not less than five years.

Compelling a woman to marry, &c.

SEC. 28. 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, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than three, nor exceeding five years.

Taking a woman with intent to compel her to marry, &c.

SEC. 29. 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.

Taking females under the age of eighteen years from parents, &c.

SEC. 30. 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.

Rape by negro or mulatto.

SEC. 31. If any negro or mulatto shall either, *First*, Commit, or attempt to commit a rape on a white female, as hereinbefore declared; or, *Second*, By force, menace, or duress, compel, or attempt to compel any white female to marry him, or any negro or mulatto 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 section, 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.

White person aiding such offence.

SEC. 32. 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-sixth section of this article. Punishment.

SEC. 33. Every person who shall, on purpose and of malice

Digitized by Google

CHAP. 47.

Mayhem, &c. punishment for.

aforethought, cut or bite off the ear, or cut 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, nor exceeding ten years.

Assault with deadly weapon, on purpose and of malice aforethought, &c.—6 Geo. 4th, c. 31, s. 12.

SEC. 34. 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 legal process, shall be punished by imprisonment in the penitentiary not exceeding ten years. (*d*)

Punishment.

Administering poison, with intent to kill, where such poison is taken, &c., punishment.

SEC. 35. 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.

Mingling poison with food, drink, &c.

SEC. 36. 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.

Assault with intent to commit a felony.

SEC. 37. Every person who shall be convicted of an assault, with intent to commit any robbery, rape, burglary, manslaughter or 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 less than six months, or by fine not lesss than five hundred dollars, or by both a fine not less than one hundred dollars, and imprisonment in the county jail not less than three months. (*e*)

(*d*) An indictment under this section must use the words—"on purpose, and of malice aforethought;" charging that defendant "unlawfully, feloniously, and with malice aforethought," did shoot at, &c., held insufficient. State vs. Comfort, 5 Missouri rep., 357. The intent may be charged in the words of the act, and it need not be charged "with intent feloniously to kill."—*Ibid.* An assault with intent to commit a rape, under this section, must be charged and proved to have been done "with deadly weapon," or other means likely to produce great bodily harm. Humphries vs. the state; 5, *Ibid*, 203.

(*e*) An assault, with intent to commit a rape, on a female child under the age of ten years, whether consenting or not, if made without deadly weapons, is indicta-

Digitized by Google

Persons by whose act, &c. great bodily harm is done, how punished.

SEC. 38. 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 cases not otherwise provided for, be punished by imprisonment in the penitentiary, not exceeding five years, or in a county jail not less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars, and imprisonment in a county jail not less than three months.

Medicines or instruments used to produce abortion. 9 Geo. 4, c. 31, s. 13.

SEC. 39. Every physician or other person who shall wilfully administer to any pregnant woman, any medicine, drug or substance, 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 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.

Punishment.

Kidnapping, &c., punishment for. 31 Car. 2, c. 2. 4 Black. Com., 219.

SEC. 40. Every person who shall, without lawful authority, forcibly seize and confine, or shall inveigle, decoy, or kidnap any other person with intent, *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.

Kidnapping, &c.

SEC. 41. 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.

Punishment.

SEC. 42. Every offence prohibited in either of the two last

ble under this section. State vs. Humphries, 5 Missouri Rep., 203. An assault, "with intent to kill," held good under this section. State vs. Johnson, 5 *Ibid*, p. 620. *Sed quære.*

Digitized by Google

CHAP. 47.

Where these offences may be tried.

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.

Decoying child under the age of ten years, with intent to conceal &c. 9 Geo. 4, c. 31. s. 21. Punishment.

SEC. 43. 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 less than six months, or by fine not less than five hundred dollars.

Exposing child under six years of age, with intent to abandon.

SEC. 44. If any father or mother of any child under the age of six years, or any other person to whom such child shall 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 less than six months.

Disqualification annexed to conviction of certain offences enumerated in this article.

SEC. 45. 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 penitentiary for any of the offences specified in the twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-second, thirty-fifth, thirty-sixth, fortieth, forty-first, forty-third and forty-fourth sections of this article, shall be for ever 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 in the first degree.
2. What house deemed a dwelling house.
3. Setting fire to dwelling house, &c., in day time, arson in the second degree.
4. Setting fire to warehouse, office, &c., arson in the second degree.
5. Setting fire to, or burning building in which public records are kept, arson in the second degree.
6. Arson in the third degree.
7. Setting fire to, or burning barn, or stable, &c., in the night time, arson in the third degree.
8. Setting fire to, or burning brewery, &c., in night time, arson in the third degree.
9. Setting fire to, or burning vessel, goods, &c., insured, arson in the third degree.
10. Arson in the fourth degree.
11. Setting fire to, or burning, in the day or night time, goods, &c., not subject of arson in third degree, arson in fourth degree.

Digitized by Google

SEC. 12. Punishment for arson in every degree.
13. Burglary in the first degree.
14. Breaking dwelling house in day time, &c., burglary in the second degree.
15. Breaking dwelling house in the night time, &c., burglary in the second degree.
16. Entering dwelling house by day or night, with intent, &c., and shall commit a felony, burglary in the second degree.
17. Breaking inner door with intent to commit a felony, burglary in the second degree.
18. Person admitted into dwelling house with consent, and breaking inner door with intent, &c., burglary in the second degree.
19. What deemed a dwelling house within the meaning of these sections.
20. Other instances of burglary in the second degree.
21. Burglary in the third degree.
22. Breaking out of a house, or the inner door, when not deemed burglary.
23. Punishment for burglary.
24. Burglary and larceny, both committed at the same time, how punished.
25. Robbery in the first degree.
26. Robbery in the second degree.
27. Robbery in the third degree.
28. Punishment for robbery.
29. Threatening letters sent with a view to extort money, deemed an attempt to rob; how punished.
30. Grand larceny.
31. Punishment for grand larceny.
32. Enticing off slaves with intent to procure their freedom, deemed grand larceny; how punished.
33. Aiding in offences specified in preceding section, how punished.
34. Attempt to commit same offence, how punished.
35. Petit larceny, punishment for.
36. Larceny in a dwelling house, boat or vessel, or by stealing from the person in the night time, how punished.
37. What deemed the value of certain paper securities stolen.
38. Marking, altering the mark, or killing the animal of another, deemed larceny, how punished.
39. Stealing or embezzling will or other instrument affecting real or personal property; grand larceny, how punished.
SEC. 40. Stealing or embezzling any record or other instrument filed in proper office; grand larceny, how punished.
41. Officers having the custody of papers specified in the two preceding sections, withdrawing or destroying such papers, how punished.
42. Severing from the soil, buildings, gates, &c. and converting to one's own use the thing severed, declared larceny.
43. Embezzling by clerks, servants, agents, &c., how punished.
44. Embezzlement of evidence of debt negotiable by delivery only; punishment.
45. Embezzlement by carriers or other bailees, how punished.
46. Embezzling or purloining by tenant or lodger, how punished.
47. Buying or receiving stolen property knowingly, how punished.
48. Conviction of principal not necessary in offence specified in the last section.
49. Obtaining money or property by false tokens or pretences.
50. Punishment increased when the false token is a promissory note, purporting to be issued by a bank not in existence.
51. Defendant in indictment under last two sections may be convicted of larceny.
52. Money obtained by personating another, deemed stealing.
53. Parties and privies to fraudulent conveyances, how punished.
54. Executing a second deed fraudulently without reciting the first.
55. Maliciously destroying or injuring boat or vessel, with intent to prejudice the owner or owners, how punished.
56. Administering or exposing poison to cattle, punishment.
57. Maliciously killing, wounding, &c., the cattle of another, how punished.
58. Malicious trespass upon dwelling house, gate, fence, &c., deemed a misdemeanor.
59. Malicious destruction of, or injury to, raft of lumber, wood, &c., deemed a misdemeanor.
60. Malicious injury to mill-dams, bridges, &c., deemed a misdemeanor.
61. Removing, defacing, or altering land-marks, deemed a misdemeanor.

Digitized by Google

CHAP. 47.

SEC. 62. Removing, defacing, or destroying mile-stones, &c., deemed a misdemeanor.
63. What shall be deemed *malice*, within the meaning of the eight preceding sections.
SEC. 64. Misdemeanors mentioned in this article, punishment by imprisonment in county jail, &c.
65. Disqualifications annexed to certain offences specified in this article.

Arson in the first degree.

SECTION 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 in the first degree. (5)

What shall be deemed a dwelling house.

SEC. 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 warehouse, 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.

Setting fire to dwelling, &c. arson in the second degree.

SEC. 3. Every person who shall wilfully set fire to, or burn, in the day time, any inhabited dwelling house, boat or vessel, which, if done in the night time would be arson [in] the first degree, shall, upon conviction, be adjudged guilty of arson in the second degree.

Setting fire to warehouse, &c. arson in the second degree.

SEC. 4. Every person who shall wilfully set fire to, or burn, in the night time, any shop, warehouse, office, storehouse, 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.

Setting fire to or burning building in which public records are kept, &c.

SEC. 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.

Arson in the third degree.

SEC. 6. Every person who shall wilfully set fire to, or burn, in the day time, any shop, warehouse, 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.

(5) *Vide*, 4 Black. Com., 220, 221, 222; 1 Hale, 569, 567; 2 East., P. C., 1031; Fost., 258; Arch., 259.

Digitized by Google

Setting fire to or burning barn or stable, &c. in the night time, arson in the third degree.

SEC. 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.

Setting fire to or burning brewery, &c. in night time, arson in the third degree.

SEC. 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 in the third degree.

Setting fire to or burning vessel, goods, &c. insured, arson in the third degree.

SEC. 9. Every person who shall burn any building, boat or vessel, or any goods, wares, or merchandise, 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.

Arson in the fourth degree.

SEC. 10. Every person who shall, in the day time, 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.

Setting fire to, &c. in the day or night time, goods, wares, &c. not subject of arson in third degree, declared arson in the fourth degree.

SEC. 11. Every person who shall, in the day or night time, wilfully set fire to or burn any goods, wares, merchandise, 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.

Punishment of arson.

SEC. 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 nor exceeding ten years; *Third*, In the third degree, in the penitentiary not less than five nor more than seven years; *Fourth*, In the fourth degree, in the

First degree.

Second degree.

Third degree.

Fourth degree.

Digitized by Google

penitentiary not more than four years, or by imprisonment in the county jail not less than six months.

Burglary in the first degree.

SEC. 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 felony, or any larceny 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 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. (6)

Breaking dwelling, &c. in day time, &c. burglary in the second degree.

SEC. 14. Every person who shall be convicted of breaking into a dwelling house in the day time, 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.

Breaking dwelling house in the night time, &c. burglary in the second degree.

SEC. 15. Every person who shall be convicted of breaking into a dwelling house in the night time, with intent to commit a felony or any larceny, 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.

Entering dwelling house by day or night, with intent, &c., and shall commit a felony, burglary in second degree.

SEC. 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 felony or any larceny, or being in the dwelling house of another, shall commit a felony or any larceny, 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.

Breaking inner door with intent to commit a felony, burglary in second degree.

SEC. 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

(6) *Vide*, 3 Inst., 63; 4 Black. Com., 224, 228; 1 Hale, 547, 566, 553, 552, 555, 562; 1 Hawk., c 38, s 5–18; 2 East, P. C. 52.

Digitized by Google

commit any felony or larceny, shall be adjudged guilty of burglary in the second degree.

Person, &c., breaking inner door with intent, &c., burglary in second degree.

SEC. 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 felony or larceny, shall be adjudged guilty of burglary in the second degree.

What deemed a dwelling house, or part thereof, under this act.

SEC. 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.

Persons convicted of certain offences, declared guilty of burglary in the second degree.

SEC. 20. Every person who shall be convicted of breaking 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, warehouse, or other building, or any boat or vessel in which there shall be, at the time, some human being, or any goods, wares, or merchandise, 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.

Burglary in the third degree.

SEC. 21. Every person who shall be convicted of breaking and entering, in the day time, 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.

Breaking out of dwelling house, &c., not deemed a burglary, when.

SEC. 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.

Punishment for burglary.

SEC. 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.

Burglary and larceny both committed at the same time, how punished.

SEC. 24. If any person in committing burglary, shall also commit a larceny, he may be prosecuted for both offences in the same count, 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.

Digitized by Google

CHAP. 47.

Robbery in the first degree.

SEC. 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. (7)

Robbery in the second degree.

SEC. 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.

Robbery in the third degree. 7-8 Geo. 4th, c. 39, s. 8.

SEC. 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.

Punishment for robbery.

SEC. 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, nor less than five years; if in the third degree, not exceeding five years.

Threatening letters sent with a view to extort money, deemed an attempt to rob, how punished. 7-8 Geo. 4th, c. 29, s. 8.

SEC. 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.

(7) *Vide*, 4 Black. Com., 242, 243; 1 Hawk., c 34, s 3, s 8; Russ. & Ry., 375, 419; 2 Russ., 87; Arch., 217.

Digitized by Google

Grand larceny defined.

SEC. 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, ass, mule, neat cattle, sheep or hog belonging to another, shall be deemed guilty of grand larceny. (8)

Punishment for grand larceny.

SEC. 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, except as provided in the two succeeding sections, by like imprisonment, not exceeding five years.

Enticing off slaves, &c., deemed grand larceny. 1842–3, p. 133.

SEC. 32. If any person shall entice, decoy, or carry away out of this state, any slave belonging to another, with intent to deprive the owner thereof of the services of such slave, or with intent to procure or effect the freedom of such slave, he shall be adjudged guilty of grand larceny, and punished by imprisonment in the penitentiary not less than five years.

Punishment.

Aiding and assisting in such offences, how punished. 1842–3, p. 133.

SEC. 33. If any person shall aid or assist in enticing, decoying, or persuading, or carrying away, or sending out of this state, any slave belonging to another, with intent to effect the freedom of such slave, or to deprive the owner thereof of the service of such slave, he shall be adjudged guilty of grand larceny, and, upon conviction, shall be punished by imprisonment in the penitentiary not less than five years.

Attempt to commit same offence, how punished.

SEC. 34. If any person shall attempt to entice, decoy, persuade, or carry away out of this state, any slave belonging to another, with intent to deprive the owner thereof of the services of such slave, or to effect the freedom of such slave, though such attempt does not succeed, he shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years.

New provision.

Petty larceny, punishment for.

SEC. 35. 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

(8) *Vide*, Black. Com., 229, 237, 231; 1 Hale, 513, 506, 508, 509, 511, 512; Arch., 168, 169, 177, 173, 175, 179, 178, 167, 161; 2 East, P. C., 568, 682, 556; 1 Leach, 420.

Digitized by Google

CHAP. 47.

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. (9)

Larceny in a dwelling house, how punished.

SEC. 36. 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.

What deemed the value of certain paper securities stolen.

SEC. 37. 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 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, 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 prima facie evidence of the value of the article so stolen.

Marking, altering the mark or killing the animal of another, deemed larceny, how punished.

SEC. 38. If any person 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 such animal with intent to steal or convert to his own use the carcase, 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.

Stealing or embezzling will or other instrument affecting real or personal property, grand larceny; how punished.

SEC. 39. 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 the county jail not less than six months, or by fine not exceeding one thousand dollars, or less than five hundred dollars, or by both a fine not less than one hundred dollars, and imprisonment in the county jail not less than three months.

(9) *Vide*, The State vs. Hurt, and the State vs. Sights; 7 Missouri Rep., 321.

Digitized by Google

Stealing or embezzling any record, or other document filed in proper office, grand larceny; how punished.

SEC. 40. 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 less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars, and imprisonment in the county jail not less than three months.

Officers having the custody of papers, &c. withdrawing or destroying the same, how punished.

SEC. 41. 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.

Severing produce, &c. from the soil and converting to one's own use, declared larceny.

SEC. 42. 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.

Embezzling by clerks, servants, agents, &c., how punished.

SEC. 43. 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, (*f*) 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

(*f*) An agent or bailee of a private incorporated company, is not liable under this section, but may be indicted under the forty-fifth section; Hamuel vs. The State, 5 Missouri Rep., 264.

Digitized by Google

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 stealing property of the kind or value of the articles so embezzled, taken or secreted.

Embezzlement of evidence of debt negotiable by delivery only; punishment.

SEC. 44. 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.

Embezzlement by carriers, or other bailees, how punished.

SEC. 45. If any carrier or other bailee (*g*) 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 stealing property of the nature or value of the articles so embezzled, taken or secreted.

Embezzlement by tenant or lodger, how punished.

SEC. 46. 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 stealing property of the value of the articles so stolen, purloined, or embezzled.

Buying or receiving stolen property knowingly, how punished.

SEC. 47. 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

(*g*) An indictment charging defendant as agent, will not be good under this section; he must be charged as a bailee. Hamuel vs. The State, 5 Missouri Rep., 264. The words, "other bailee," held to embrace a case of bailment of a horse, notwithstanding the clause referring to the "box, trunk, package or other things," in which property bailed was enclosed, would seem to limit the section to bailments of that character. Norton vs. The State, 4 *Ibid*, p. 61. *Sed quære.*

Digitized by Google

secreted, or stolen, shall, upon conviction, be punished in the same manner, and to the same extent, as for the stealing the money, property, or other thing so bought or received.

Conviction of principal not necessary in said offence.

SEC. 48. 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.

Obtaining money or property by false tokens, or pretences.

SEC. 49. 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 feloniously stealing the money, property, or thing so obtained.

Punishment.

Punishment increased when the false token is a promissory note, purporting to be issued by a bank not in existence.

SEC. 50. 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.

Defendant in indictment under two last sections, may be convicted of larceny.

SEC. 51. 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.

Money obtained by personating another, deemed stealing.

SEC. 52. 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 so 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.

Parties and privies to fraudulent conveyances, how punished.

SEC. 53. 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

Digitized by Google

subsequent purchasers, or to hinder, delay, or defraud creditors or other persons, and every person being privy to, or knowing of, any such conveyance, assignment, or charge, who shall willingly put the same in use, as having been made in good faith, shall, upon conviction, be adjudged guilty of a misdemeanor.

Executing a second deed fraudulently, without reciting the first, a misdemeanor.

SEC. 54. Every person who shall make, execute, or deliver any deed or writing for the conveyance or assurance of any lands, tenements or hereditaments, goods or chattels, which he had previously, by deed or writing, sold, conveyed, mortgaged, or assured, or covenanted to convey or assure, to any other person, such first deed being outstanding and in force, and shall not in such second deed or writing recite or describe such former deed or writing, or the substance thereof, with intent to defraud, and every person who shall knowingly take or receive such second deed or writing shall, on conviction, be adjudged guilty of a misdemeanor.

Maliciously destroying or injuring boat or vessel, with intent to prejudice the owner, or owners, how punished.

SEC. 55. 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 completed or in an unfinished state, or shall unlawfully or 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.

Administering, or exposing poison to cattle; punishment.

SEC. 56. 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 less than six months, or by fine not less than two hundred and fifty dollars, or by both a fine not less than one hundred dollars, and imprisonment in the county jail not less than three months.

Maliciously killing, &c. cattle, how punished.

SEC. 57. 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.

SEC. 58. Every person who shall wilfully, unlawfully and maliciously, break, destroy or injure, the door or window of

Digitized by Google

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.

Malicious trespass upon dwelling house, gate, fence, &c. deemed a misdemeanor.

SEC. 59. 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.

Malicious destruction, &c. of raft or lumber, wood, &c. deemed a misdemeanor.

SEC. 60. Every person who shall, wilfully and maliciously, cut down, injure, break, 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 or 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.

Malicious injury to mill dams, bridges, &c. deemed a misdemeanor.

SEC. 61. 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 subdivision thereof; or, *Second*, Deface or alter the marks upon any tree, post, or other monument made for the purpose of designating any point in 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.

Removing, defacing, or altering land marks, deemed a misdemeanor.

SEC. 62. 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.

Removing, defacing, or destroying mile stones, &c. deemed a misdemeanor.

SEC. 63. Every punishment and forfeiture imposed on any person, maliciously committing any offence prohibited by the

Digitized by Google

CHAP. 47.

What shall be deemed malice within the meaning of the eight preceding sections.

provisions of either of the eight last preceding sections, shall equally apply, and be in force, 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.

Misdemeanors mentioned in this article, how punished.

SEC. 64. Every person who shall be convicted of a misdemeanor, as prohibited by this article, the punishment for which is not hereinbefore prescribed, 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.

Disqualifications annexed to certain offences specified in this article.

SEC. 65. 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. Forgery in the first degree.
2. Additional acts constituting forgery in the first degree.
3. Forging certain seals, forgery in the second degree.
4. Altering, &c., records and returns, forgery in the second degree.
5. Altering entries in records or returns, forgery in the second degree.
6. Officers making false certificates of acknowledgment of deeds, &c., forgery in the second degree.
7. Counterfeiting gold or silver coin, forgery in second degree.
8. Forging notes, bills, &c., on any bank, forgery in second degree.
9. Selling, exchanging, &c., such note, bill, &c., forgery in second degree.
10. Having in possession, or bringing into this state, such note, bill, &c., with intent, &c., forgery in second degree.
11. Engraving, &c., plates, in similitude of bank bills, &c., forgery in the second degree.
SEC. 12. When plates deemed in similitude of genuine bills, &c.
13. Bringing into this state, having in possession, selling, &c., counterfeit gold or silver coin, forgery in third degree.
14. Selling, changing, or delivering, &c., such coin, forgery in third degree.
15. Counterfeiting, &c. process, plea, &c., of a competent court, forgery in third degree.
16. Counterfeiting instruments affecting pecuniary demands, forgery in third degree.
17. False entries in books of certain public officers, forgery in third degree.
18. False entries in books of moneyed corporations, forgery in the third degree.
19. Having in possession forged instruments, with intent, &c., forgery in the fourth degree.
20. Selling, delivering, exchanging, &c., such instrument, forgery in the fourth degree.
21. Passing or offering to pass counterfeit coin, forgery in the fourth degree.

Digitized by Google

SEC. 22. Total obliteration of writings, when deemed forgery.
23. Putting together different parts of several genuine instruments, with intent to defraud, forgery, &c.
24. What deemed a written instrument, &c.
25. Affixing pretended signatures to notes, &c., of corporations, deemed forgery.
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, forgery.
28. Impairing, clipping, &c., gold or silver coin, &c.
29. Punishment for the several degrees of forgery.
30. Making, keeping, &c., rolling press, &c., for forging, &c., how punished.
31. To cast, stamp, engrave, &c., or have tools for that purpose, with intent, &c., how punished.
32. Personating another in certain cases, how punished.
33. Tearing, cutting, burning any will, &c., how punished.
34. Aiding, assisting, counselling, &c., in the commission of any offences specified in this article, how punished.
35. Disqualifications annexed to above offences.

SECTION 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 authorised 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 officer authorised 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 authorised to make such certificate or endorsement, with intent to defraud, shall, on conviction, be adjudged guilty of forgery in the first degree. (10) Forgery in the first degree.

SEC. 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 Additional acts constituting forgery in the first degree.

(10) *Vide*, The State vs. Shoemaker, 7 Missouri Rep., 177; 2 East, P. C., 966, 991, 858, 950, 1001, 855; Arch., 283; 4 Black. Com., 247; 2 Russ., 335; 2 T. R., 606; 4 T. R., 28.

Digitized by Google

CHAP. 47.

money, goods, or valuable thing, shall be acknowledged, or which shall be, or purport to be receivable in payment 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.

Forging certain seals, forgery in the second degree.

SEC. 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.

Altering, &c., records and returns, forgery in the second degree.

SEC. 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 the 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.

Altering entries in records or returns, forgery in the second degree.

SEC. 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, upon conviction, be adjudged guilty of forgery in the second degree.

Digitized by Google

Officers making false certificates of acknowledgment of deeds, &c. forgery in the second degree.

SEC. 6. If any person, authorised 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.

Counterfeiting gold or silver coin, forgery in the second degree.

SEC. 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. (*b*)

Forging notes, bills, &c. on any bank, forgery in the second degree.

SEC. 8. Every person who shall forge or counterfeit, or 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 deposite, 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 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.

SEC. 9. Every person who shall sell, exchange, or deliver,

(*b*) In Mattison vs. The State, 3 Missouri Rep., 421, it was held that the 43d and 44th sections of the act concerning crimes and misdemeanors, in the Rev. Code of 1825, which embrace the same offences described in this, together with the 13th, 14th, and 21st sections following, were void, on the ground that congress possessed under the constitution of the United States, the exclusive power to provide for the punishment of counterfeiting the coin made or declared current. In the state vs. Shoemaker, (in vol. 7, p, 177) in which an indictment founded on the 21st section was considered, this question was not raised at the bar, or noticed in the opinion of the court. See Hendrick's case; 5 Leigh, 709; and State vs. Tuft; 2 Bailey, S. C. R., 44; and State vs. Randall; 2 Aiken, 1 R. (Vermont) centre. See, also, 3 Story Com., 21st section.

Digitized by Google

CHAP. 47.

Selling, exchanging, &c. such note, bill, &c. forgery in the second degree.

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 altered or passed, shall be adjudged guilty of forgery in the second degree.

Bringing into this state, or having in possession such note, bill, &c. with intent, &c., forgery in the second degree.

SEC. 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.

Engraving, &c. plates in similitude of bank bills, &c. forgery in the second degree.

SEC. 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, or order, check, certificate of deposite, 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

Digitized by Google

the same filled up and completed, or sold, passed, or uttered, shall, upon conviction, be adjudged guilty of forgery in the second degree.

When plate deemed in similitude of genuine bills, &c

SEC. 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.

Bringing into this state, having in possession, selling, &c. counterfeit gold or silver coin, forgery in the third degree.

SEC. 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 hereinbefore 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.

Selling, exchanging or delivering, &c. such coin, forgery in the third degree.

SEC. 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.

Counterfeiting, &c. plea, &c. of a competent court, forgery in the third degree.

SEC. 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.

Counterfeiting instruments affecting pecuniary demands, forgery in the third degree.

SEC. 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,

Digitized by Google

discharged, increased, or in any manner affected, the falsely making, altering, forging, or counterfeiting of which is not hereinbefore declared to be a forgery in some other degree, shall, on conviction, be adjudged guilty of forgery in the third degree.

False entries in books of certain public officers, forgery in the third degree.

SEC. 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.

False entries in books of moneyed corporations, forgery in the third degree.

SEC. 18. Every person who, with intent to defraud, shall make any false entries, or shall falsely alter any entry made in a book of accounts kept by any moneyed 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.

Having in possession forged instruments with intent, &c., forgery in the fourth degree.

SEC. 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 hereinbefore 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 intent 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.

Selling, delivering, exchanging, &c. such instrument, forgery in the fourth degree.

SEC. 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.

Digitized by Google

Passing or offering to pass counterfeit coin, forgery in the fourth degree.

SEC. 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 uttered instrument or writing, or any counterfeit or any imitation of any gold or silver coin, the altering, forging, or counterfeiting of which is hereinbefore 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 hereinbefore 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. (*i*)

Total obliteration of writings; when deemed forgery.

SEC. 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, or 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.

Putting together different parts of several genuine instruments with intent to defraud, forgery, &c.

SEC. 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.

What deemed a written instrument, &c.

SEC. 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.

Affixing pretended signatures to notes, &c. of corporations, deemed forgery, &c.

SEC. 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,

(*i*) In Shoemaker vs. The State, 7 Missouri Rep., 177, held that in an indictment under this section the coin counterfeited must be described as current at the time the counterfeit is made, and not necessarily when it is passed or offered; attempting to pass the counterfeit would still be an offence, though the genuine coin should have gone out of circulation.

Digitized by Google

CHAP. 47.

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.

Making false instruments, &c. in a pretended or fictitious name.

SEC. 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 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.

Making false instruments, &c. in his own name as the act of another, forgery.

SEC. 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.

Impairing, clipping, &c. gold or silver coin, &c.

SEC. 28. Every person who, with intent to defraud, shall impair, falsely 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.

Punishment for the several degrees of forgery.

SEC. 29. Persons 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 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 less than six months.

Making, keeping, &c. rolling press for forgery, &c.

SEC. 30. Every person who shall form, make or mend, have, or keep in his possession or custody, or sell, exchange, or deliver to another, any paper, rolling press, or other tool,

Digitized by Google

instrument or material, devised, adapted, or designed for the stamping, forging, and making any false or counterfeit bill, note, certificate, or other negotiable evidence of debt, issued by any incorporated bank, as specified in the eighth 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 hereinbefore prescribed for forging in the third degree. Punishment.

SEC. 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, upon conviction, shall be punished as hereinbefore prescribed for forgery in the fourth degree. To cast, stamp, engrave, &c., or have tools for that purpose, with intent, &c., how punished.

SEC. 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, authorised 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 a 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. Personating another in certain cases, how punished.

Digitized by Google

CHAP. 47.

Tearing, cutting, burning any will, &c. how punished.

SEC. 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 hereinbefore 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.

Aiding, assisting, counselling, &c. in the commission of offences specified in this article, how punished.

SEC. 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.

Disqualifications annexed to above offences.

SEC. 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 punishments.
3. Subornation of perjury.
4. Its punishment.
5. Attempt to procure perjury, how punished.
6. What sufficient in indictment for perjury.
7. What sufficient in indictment for subornation of perjury.
8. Bribing, &c., witnesses, &c., to withhold evidence, &c., how punished.
9. Jurors, arbitrators, &c., how punished for taking bribes.
10. Bribing, or attempting to bribe, jurors, arbitrators, &c., how punished.
11. Jurors guilty of certain improper conduct, how punished.
12. Attempting to influence jurors, arbitrators, &c., how punished.
13. Officers guilty of unfair conduct in summoning jurors, &c., how punished.
14. Compounding or concealing felonies, how punished.
15. Compounding, &c., misdemeanors, &c., how punished.
16. Conviction of principal, not necessary in the trial of offences specified in two last sections.
17. Obstructing process in cases of felony, how punished.
18. Obstructing process in civil cases and misdemeanors.
19. To assault, &c., officers in discharge of official duty, how punished.
20. Rescuing prisoner, convicted of capital offence, how punished.
21. Rescuing prisoners charged with the same.
22. Rescuing prisoners charged or convicted of felonies not capital.
23. Rescuing prisoners charged or convicted of offences other than felony.
24. Attempt to rescue prisoner charged or convicted of felony, how punished.
25. Attempt to rescue prisoner charged or convicted of offences not felonies, how punished.
26. Conveying instruments into jail or penitentiary to aid escapes of felons, how punished.

Digitized by Google

SEC. 27. Conveying instruments into jail, &c., to aid escapes of prisoners other than felons.
28. Aiding felon to escape from jail, &c., how punished.
29. Aiding prisoner, other than a felon, to escape, &c.
30. Aiding prisoner to escape from the custody of an officer, &c.
31. Punishment limited where the object is prisoner's own escape.
32. Punishment for breaking penitentiary, escaping, &c.
33. Punishment of escape from penitentiary.
34. Punishment for escape from penitentiary without breaking, &c.
35. Punishment of escape from county jail, when prisoner is confined for crime.
36. Punishment for escape before conviction, when the conviction is for a violation of a penal statute.
37. Escape from the penitentiary, &c., by force or violence, &c., how punished.
38. Escaping, or attempting an escape, from county jail, &c., by force or violence, &c., how punished.
39. Officer permitting disguised instruments to be conveyed into penitentiary or jail, how punished.
40. Officer permitting or conniving at escape, how punished.
41. Officer refusing to execute process on any person charged with crime, how punished.
42. Jailor refusing to receive prisoner, how punished.
43. Forfeiture of office annexed to certain offences.
44. Prisoner escaping, may be retaken, &c.
45. Common barratry, how punished.
46. Disqualification annexed to certain offences.

SECTION 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. (*k*) Perjury defined.

SEC. 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 proceeding, or in any other case, by imprisonment in the penitentiary for a term not exceeding seven years. Its punishment.

SEC. 3. Every person who shall procure any other person by any means whatsoever, to commit any wilful or corrupt perjury in 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. Subornation of perjury.

(*k*) *Vide*, State vs. Hamilton, 7 Missouri Rep., 300; 4 Black. Com., 137; n. 35 by Chr., *ibid*, 138; Arch., 425, 434; 2 Russ., 520, 551, 550, 554; 3 Salk., 269; 1 Hawk., P. C., c. 69, s 2; 1 Lord Raym., 256; 3 Inst., 164.

Digitized by Google

CHAP. 47.

Its punishment.

SEC. 4. Every person convicted of subornation of perjury, shall be punished in the same manner as hereinbefore prescribed, upon a conviction for the perjury which shall have been so procured.

Attempt to procure perjury, how punished.

SEC. 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.

What sufficient in indictment for perjury.

SEC. 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, (averring such court or person 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.

What sufficient in indictment for subornation of perjury.

SEC. 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, proceedings, 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.

Bribing, &c. witnesses, &c. to withhold evidence, &c., how punished.

SEC. 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 subpœna 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 exceedng three hundred dollars. (11)

SEC. 9. If any person summoned as a juror, or if any person chosen as an arbitrator, or appointed a referee, shall take any

(11) *Vide*, 4 Black. Com., 139, 140; Arch., 435; 1 Russ., 157, 158.

Digitized by Google

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 less than six months, or by fine, not less than five hundred dollars, or by a fine, not less than one hundred dollars, and imprisonment in the county jail, not less than three months.

Jurors, arbitrators and referees, how punished for taking bribes.

SEC. 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.

Bribing, or attempting to bribe, jurors, arbitrators, &c., how punished.

SEC. 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 a fine, not exceeding three hundred dollars, or by imprisonment in the county jail, not exceeding one year, or by both such fine and imprisonment.

Jurors guilty of certain improper conduct, how punished.

SEC. 12. Every person who shall attempt, improperly, to influence any juror in any civil or criminal case, or any one summoned as a 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.

Attempting to influence jurors, arbitrators, &c., how punished.

Digitized by Google

CHAP. 47.

Officers guilty of unfair conduct in summoning jurors, &c. how punished.

SEC. 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.

Compounding, or concealing felonies, how punished.

SEC. 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, undertaking, or engagement 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.

Compounding, &c. misdemeanors, &c., how punished.

SEC. 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, upon 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 fine and imprisonment.

Conviction of principal not necessary in trial of offences specified in the two last sections.

SEC. 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.

Obstructing process in cases of felony, how punished.

SEC. 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

Digitized by Google

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 less than six months, or a fine not less than five hundred dollars, or by a fine not less than one hundred dollars, and imprisonment in the county jail not less than three months.

Obstructing process in civil cases and misdemeanors, how punished.

SEC. 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 in 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, or by fine, not exceeding three hundred dollars, or by both such fine and imprisonment.

To assault, &c. officer in discharge of official duty, how punished.

SEC. 19. Every person who shall, knowingly and wilfully, assault, beat, or wound any such officer, while engaged in the service or execution, or attempt to serve or execute 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.

Rescuing prisoner convicted of capital offence, how punished.

SEC. 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 crime, 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.

Rescuing prisoners charged with the same.

SEC. 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.

Rescuing prisoners charged or convicted of felonies not capital.

SEC. 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

Digitized by Google

person so offending, shall be punished by imprisonment in the penitentiary, for a term not exceeding ten years.

Rescuing prisoners charged or convicted of offences other than felony.

SEC. 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.

Attempt to rescue prisoner charged or convicted of felony, how punished.

SEC. 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.

Attempt to rescue prisoner charged or convicted of offences not felonies, how punished.

SEC. 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 the county jail not exceeding six months.

Conveying instruments into jail, &c. to aid escape of prisoners who are felons, how punished.

SEC. 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.

Conveying instruments into jail, &c. to aid escape of prisoners other than felons; punishment.

SEC. 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

Digitized by Google

jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Aiding felon to escape from jail, how punished.

SEC. 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.

Aiding prisoner other than felon, &c.

SEC. 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.

Aiding prisoner to escape from the custody of an officer, &c.

SEC. 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.

Punishment limited, when the object is prisoners own escape.

SEC. 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 not exceed that prescribed by law upon conviction for his own escape.

Punishment for breaking penitentiary, escaping, &c.

SEC. 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.

Punishment for escaping from penitentiary, &c.

SEC. 33. If any person confined in the penitentiary for any term less than life, shall escape from such prison, or from the custody of the officers, he shall be liable to the punishment imposed for breaking the prison.

Punishment for escape from penitentiary, &c.

SEC. 34. If any person confined in the penitentiary for any term less than life, shall escape therefrom, without being guilty of breaking such prison, within the meaning of the

Digitized by Google

CHAP. 47.

preceding section, [section 32,] he shall, upon conviction, be punished by imprisonment in the penitentiary, for a term not exceeding three years, to commence at the expiration of the original term of imprisonment.

Punishment for escape from county jail when the prisoner is confined for crime.

SEC. 35. If any person confined in any county jail, upon conviction for any criminal offence, or held in custody going to such jail, shall break such prison or custody, and escape therefrom, he shall, upon conviction, be punished by imprisonment in the penitentiary, not exceeding three years, or in a county jail, not less than six months, to commence at the expiration of the original term of imprisonment.

Punishment of escape before conviction, when the charge is for a violation of a penal statute.

SEC. 36. 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, for the violation of any penal statute, 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 two years, or in a county jail, not less than six months.

Escape from the penitentiary, &c. by force or violence, how punished.

SEC. 37. 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.

Escaping or attempting an escape from county jail, &c. by force or violence, &c., how punished.

SEC. 38. Every person lawfully imprisoned in a county jail or other place of confinement, 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.

Officer permitting disguised instruments to be conveyed into the penitentiary or jail, how punished.

SEC. 39. 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

Digitized by Google

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.

Officer permitting or conniving at escape, how punished. Sess. acts, 1840-41, p. 112.

SEC. 40. If any officer, or his under officer or deputy, or any lessee, keeper, agent or guard, of the penitentiary, 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.

Officer refusing to execute process on any person charged with crime, how punished.

SEC. 41. 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. (*l*)

Jailor refusing to receive prisoner, how punished.

SEC. 42. 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.

Forfeiture of office annexed to certain offences.

SEC. 43. Every officer who shall be convicted of any of the offences specified in the four last preceding sections, shall forfeit his office.

Prisoner escaping may be retaken, &c.

SEC. 44. 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, re-taken and imprisoned again, notwithstanding the term for which he was sentenced to be imprisoned may have expired at the time he is re-taken, and remain so imprisoned until tried for such escape, or until he be discharged by a failure to prosecute therefor.

SEC. 45. Every person who shall be convicted of being a

(*l*) See practice and proceedings in criminal cases, Art. 2, Sec. 34.

Digitized by Google

CHAP. 47.

Common barratry how punished.

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.

Disqualification annexed to certain offences.

SEC. 46. 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.

SEC. 1. Bribery of officers, how punished.
2. Officers receiving such bribe, how punished.
3. Bribery, with a view to obtain appointment, &c., how punished.
4. Officers receiving such bribe, how punished.
5. Giving, procuring, &c., offices, in consideration of bribes.
6. Accepting offices procured in this way, punishment for.
7. Offering or attempting to bribe, in any way before specified, how punished.
8. Giving, or promising money or office, in consideration of election to office, &c., bribery.
9. Receiving money or office on such agreement, bribery, and how punished.
10. Any person having a right to vote, receiving a bribe, how punished.
11. Bribery of votes, how punished.
12. Selling office, or deputation thereof, how punished.
13. Buying or agreeing to pay for such office, &c., how punished.
14. Construction and qualification of two preceding sections.
SEC. 15. Such grants or deputations of office declared void, saving acts done previous to conviction.
16. Oppression, partiality, &c., in public officers, how punished.
17. Frauds committed by public officers, how punished.
18. Disqualifications annexed to the commission of preceding offences.
19. Punishment for exacting illegal fees.
20. Collector unlawfully collecting taxes; punishment.
21. General provisions touching the misconduct of public officers.
22. Forfeiture of office declared.
23. Usurpation of office, how punished.
24. Penalty for attempting unlawfully to influence voters.
25. Penalty for voting more than once at the same election.
26. Penalty for voting without being qualified.
27. Punishment for fraudulently giving voter printed ticket, &c.
28. Penalty for printing or circulating fraudulent tickets.
29. Penalty for bringing residents of other states into this state, with intent that they shall vote.

Bribery of officers, how punished.

SECTION 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

Digitized by Google

neglect, or omit the performance of any official duty, or to perform such duty with partiality or favor, 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.

Officers receiving such bribe, how punished.

SEC. 2. Every such officer who shall, directly or indirectly, accept or receive any 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 favorably 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 peformed 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 by imprisonment in the penitentiary for a term not less than two years.

Bribery with the view to obtain appointment, &c. how punished.

SEC. 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 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 emoluments, shall, on conviction, be adjudged

Digitized by Google

guilty of bribery, and shall be punished by imprisonment in the penitentiary for a term not exceeding seven years.

Officers receiving such bribe, how punished.

SEC. 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 punished as in the next preceding section is prescribed.

Giving and procuring offices, &c. in consideration of bribes, punishment.

SEC. 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.

Accepting offices procured in this way, punishment for.

SEC. 6. Every person who shall, directly or indirectly, accept, receive, or obtain any office, appointment, 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.

Offering or attempting to bribe in any way before specified, how punished.

SEC. 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 hereinbefore mentioned, he shall, on conviction, be punished by imprisonment in the penitentiary for a period not exceeding five years, or by imprisonment in the county jail

Digitized by Google

for a term not exceeding one year, and a fine not less than one thousand dollars.

Giving or promising money or office in consideration of election to office, &c. bribery.

SEC. 8. If any person shall, directly or indirectly, give, or procure to be given, or engage to give, 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.

Receiving money, or office on such agreement, bribery.

SEC. 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.

Any person having a right to vote, receiving a bribe, how punished.

SEC. 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.

Bribery of voter, how punished.

SEC. 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 claim 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

Digitized by Google

bribery, and punished as in the next preceding section is prescribed.

Selling office or deputation thereof, how punished.

SEC. 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.

Buying or agreeing to pay for such office, how punished.

SEC. 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.

Construction and qualification of two preceding sections.

SEC. 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.

Such grant or deputation of office declared void, saving acts done previous to conviction.

SEC. 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 authorised to make such appointment, shall be valid.

Oppression, partiality, &c. in public officer, how punished.

SEC. 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.

Fraud committed by public officer, how punished.

SEC. 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.

SEC. 18. Every person who shall be duly convicted of any of the offences mentioned in the preceding sections of this

Digitized by Google

article, shall be for ever disqualified from holding any office of honor, trust, or profit, under the constitution or laws of this state, and from voting at any election. Disqualifications annexed to commission of preceding offences.

SEC. 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, 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. Punishment for exacting illegal fees.

SEC. 20. Every collector of the revenue, who shall unlawfully collect taxes when none are due, or shall wilfully and unlawfully exact or demand more than is due, shall, upon conviction, 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, or by both such fine and imprisonment. Collector unlawfully collecting taxes; punishment. Sess. acts, 1842–3, p. 111.

SEC. 21. Every officer or person holding any 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. (*m*) General provisions touching the misconduct of public officers.

SEC. 22. 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 the other punishments prescribed for such offences, forfeit his office. Forfeiture of office declared.

SEC. 23. If any person shall take upon himself any office or public trust in this state, and exercise any power to 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, and punished by fine, not Usurpations of office, how punished.

(*m*) The fifth section of the act concerning justices of the peace, in the Rev. Code of 1825, embraces the same offence described in this section, in construing which the Supreme Court held, in the case of The State vs. Gardner, 2 Missouri Rep., 23, that the word "wilful" implied that the act was *knowingly and corruptly* done, and must be so charged in an indictment.

Digitized by Google

CHAP. 47.

exceeding five hundred dollars, or by imprisonment in the county jail, not exceeding one year.

Penalty for attempting unlawfully to influence voters.

SEC. 24. If any person, by menaces, threats or force, or by any other unlawful means, either directly or indirectly, attempt to influence any qualified voter 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.

Penalty for voting more than once at the same election.

SEC. 25. 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.

Penalty for voting without being qualified.—Sess. acts, 1841-2, p. 73.

SEC. 26. Every person, not being a qualified voter according to the constitution and laws of this state, who shall vote at any election within this state, knowing that he is not entitled to vote, shall be adjudged guilty of a misdemeanor, and punished by fine, not exceeding fifty, nor less than twenty dollars.

Penalty for fraudulently giving voter, printed tickets, &c.—*Ib.*

SEC. 27. Any person, who designedly gives a printed or written ticket, to any qualified voter of this state, containing the written or printed names of persons for whom said voter does not design to vote, for the purpose of causing such voter to poll his vote contrary to his known wishes, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by fine, not exceeding five hundred dollars, nor less than fifty dollars, or by imprisonment in the county jail, not exceeding three months, or by both such fine and imprisonment.

Penalty for printing or circulating fraudulent tickets.—*Ib.*

SEC. 28. Any person who shall cause to be printed and circulated, or who shall circulate any false and fraudulent tickets, which, upon their face, appear to be designed as a fraud upon voters, shall, upon conviction, be punished by fine, not exceeding five hundred dollars, or by imprisonment in the county jail, not exceeding three months, or by both such fine and imprisonment.

Penalty for bringing residents of other states into this

SEC. 29. Any person who shall bring into this state, any person or persons resident in another state, with intent that such persons, so imported, shall vote at any election within

Digitized by Google

this state before they shall possess the requisite qualifications, shall, on conviction, be adjudged guilty of a misdemeanor, and punished as in the preceding section is provided.

state, with the intent that they shall vote.—*Ib.*

ARTICLE VII.

Of offences against the public police, or affecting the security of persons and property, not before enumerated.

SEC. 1. Punishment for fighting duels. Seconds and aids, present, &c.; punishment.
2. Sending challenges, &c.; punishment.
3. Posting another for not fighting a duel, &c.; punishment.
4. Duty of judge or justice to issue his warrant against persons about to fight a duel.
5. Proceedings when such person is brought before judge or justice.
6. Three or more assemble together with intent to do an unlawful act, how punished.
7. If three or more persons assemble with intent to do an unlawful act, make some advances, but part without accomplishing their purpose, how punished.
8. If assembled with intent, or being assembled, shall agree to do an unlawful act, and part without doing it; punishment.
SEC. 9. If three or more persons thus riotously assemble, duty of judge or justice. To make proclamation.
10. If they do not disperse on such proclamation, power of the officer to disperse them.
11. In case of resistance, officer may summon the militia.
12. The militia required to render prompt obedience.
13. Additional penalty on riotous assembly for resisting officer, or refusing to disperse.
14. Taking or keeping possession of real estate by force or violence, punishment.
15. Riotously disturbing the peace in the night time, punishment.
16. Sending threatening or accusing letters, punishment for.
17. Conspiracies defined, punishment.
18. Overt acts necessary in certain conspiracies.
19. Punishment on officer for illegal arrests, &c.

SECTION 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.

Punishment for fighting duels. Seconds and aids present, &c., punishment.

SEC. 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 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.

Sending challenge, &c.

Punishment.

Digitized by Google

CHAP. 47.

Posting another for not fighting a duel, &c.

SEC. 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, 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.

Punishment.

Duty of judge, or justice to issue his warrant against persons about to fight a duel.

SEC. 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.

Proceedings when such person is brought before judge or justice.

SEC. 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.

Three or more assemble together with intent to do an unlawful act; how punished.

SEC. 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. (*n*)

If assembled with intent to do an unlawful act, make some advances, but part without accomplishing their purpose; how punished.

SEC. 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,

(*n*) In indictments for riots, the name of a prosecutor must be endorsed; State vs. McCourtney, 6 Missouri Rep., 649.

Digitized by Google

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.

If assembled with intent, or being assembled, agree to do an unlawful act, and part without doing it; punishment.

SEC. 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.

If three or more persons thus riotously assemble; duty of judge or justice; to make proclamation.

SEC. 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.

If they do not disperse on such proclamation, power of the officer to disperse them.

SEC. 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.

In case of resistance, officer may summon the militia.

SEC. 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.

The militia required to render prompt obedience.

SEC. 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

Digitized by Google

CHAP. 47.

officer so summoning them, under the penalty of fifty dollars for every neglect or refusal.

Additional penalty on riotous assembly for resisting officer or refusing to disperse.

SEC. 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.

Taking or keeping possession of real estate by force or violence; punishment.

SEC. 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 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.

Riotously disturbing the peace in the night time; punishment.

SEC. 15. If any 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.

Sending threatening or accusing letters, punishment for.

SEC. 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

Digitized by Google

county jail not exceeding six months, or by both such fine and imprisonment.

Conspiracies defined.

SEC. 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 a 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 the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment. Punishment.

Overt acts necessary in certain conspiracies.

SEC. 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.

Punishment on officer for illegal arrests, &c.

SEC. 19. If any sheriff, or other officer, or any person pretending to be an officer, 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.

Digitized by Google

ARTICLE VIII.

Of offences against public morals and decency, or the public police, and other miscellaneous offences.

SEC. 1. Bigamy defined, how punished.
2. Cases excepted.
3. Second marriage without the state, but cohabitation within, adjudged bigamy.
4. Where indictment may be found and trial had.
5. Punishment on the party not before married.
6. Incest, how punished.
7. Crime against nature.
8. Open and notorious adultery, public indecency, &c., how punished.
9. Fornication by guardian with his ward under eighteen, &c., how punished.
10. Penalty on ministers, &c., solemnizing marriages in certain cases.
11. Removing dead bodies from graves, how punished.
12. Receiving bodies so removed.
13. Opening graves with intent to remove, &c.; punishment.
14. Exception to three preceding sections.
15. Setting up or keeping certain gaming tables or devices; punishment.
16. Betting on such gaming table or other devices; punishment.
17. Suffering devices mentioned in fifteenth section, to be set up in any house.
18. Keeping a common gaming house, or bawdy house; penalty.
19. Leasing houses for the purposes set forth in the four preceding sections; penalty.
20. Who is deemed the keeper of gaming tables, houses, and brothels.
21. Lease of such houses declared forfeited.
22. Participators in such games compelled to testify, but not against themselves.
23. Duties of judge or justice, having knowledge of gaming table within his county.
24. Shall issue a warrant to apprehend the keeper, when.
SEC. 25. Power of the officer charged with the execution of such warrant.
26. Gaming table to be destroyed, how.
27. Wagering on elections prohibited.
28. Disturbance of public worship.
29. Keeping liquors or wines within a mile of camp-meeting, how punished.
30. The same offence punished by stripes, where the offender is a negro or mulatto.
31. Laboring, or compelling others to labor on Sunday, a misdemeanor.
32. Except where some other day is observed as a Sabbath.
33. Horse racing, cock fighting, card playing, on Sunday, a misdemeanor.
34. Selling goods, keeping open tippling houses on Sunday; punishment for.
35. Selling drugs, medicines, &c., excepted.
36. Selling poisons without labels, or to minors, or slaves, without written authority from guardian or master, punished.
37. Practising physicians not required to label, &c.
38. Cruelty to animals, punished.
39. Cruelty to slaves, punished.
40. Wilfully breaking open sealed letter, without authority, &c., how punished.
41. Publishing contents of letter so opened.
42. Not to extend to breaking open letters, when punished by laws of United States.
43. Running horse, &c., upon public road or highway; punishment.
44. Running horses to try speed on public road or highway; punishment for.
45. Disqualifications annexed to the commission of felony enumerated in this article.
46. Additional disqualifications to offences specified in sixth and seventh sections.

Bigamy defined.

How punished.

SECTION 1. Every person having a husband or wife living, who shall marry any other person, whether married or single, (except in the cases specified in the next section,) shall, on conviction, be adjudged guilty of bigamy, and punished by imprisonment in the penitentiary not exceeding five years, or

Digitized by Google

in a county jail not less than six months, or by fine not less than five hundred dollars, or by both a fine not less than one hundred dollars and imprisonment in the county jail not less than three months.

Cases excepted.

SEC. 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 legislative enactment, or other competent authority, and such person is not by law prohibited from again marrying, or the time of such disability has 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; the age of legal consent, as intended by this act, shall be of males fifteen years, and of females twelve years; nor, *Sixth*, Where the husband or wife, by such former marriage, shall have been sentenced to imprisonment in the penitentiary for life.

Second marriage without the state, but cohabitation within, adjudged bigamy.

SEC. 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.

Where indictment may be found and trial had.

SEC. 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.

Punishment on the party not before married.

SEC. 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

Digitized by Google

CHAP. 47.

imprisonment in the penitentiary not exceeding five years, or in the county jail not exceeding six months, or by fine not less than five hundred dollars, or by both such fine and imprisonment.

Incest, how punished.

SEC. 6. Persons within the degrees of consanguinity, within which marriages are by law declared 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.

Crime against nature.

Punishment.

SEC. 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.

Open and notorious adultery, public indecency, &c. how punished.

SEC. 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 behaviour, 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. (*o*)

Fornication by guardian with his ward, under eighteen, &c., how punished.

SEC. 9. If any guardian of any white female under the age of eighteen years, or 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 imprisonment in a county jail not less than six months, and a fine not exceeding one thousand dollars. (*p*)

Penalty on minister, &c. solemnizing marriages in certain cases.

SEC. 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,

(*o*) See State vs. Helm & Thornhill; 6 Missouri Rep., 263; Damron vs. The State; 8 Missouri Rep., 494.

(*p*) See State vs. Acuff. 6 Missouri Rep., 54.

Digitized by Google

any other legal impediment exists to such marriage, 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 less than five hundred dollars, or by both such fine and imprisonment.

Removing dead bodies from graves, how punished.

SEC. 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.

Receiving bodies so removed.

SEC. 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.

Opening graves with intent to remove, &c., punishment.

SEC. 13. Every person who shall open the grave, or other place of interment or sepulture, with the 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.

Exception to three preceding sections.

SEC. 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 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.

Setting up, or keeping certain gaming tables or devices. Sess. acts, 1840–1, p. 68.

SEC. 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

Digitized by Google

CHAP. 47.

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 adjudged guilty of a misdemeanor,

Punishment. and punished by imprisonment in a county jail, not exceeding one year, and by fine, not exceeding one thousand dollars.

Betting on such gaming table or device.

SEC. 16. Every person who shall bet any money or property, upon any gaming table, bank, or device, prohibited by the preceding section, or at, or upon any other gambling device, or who shall bet upon any game, played at, or by means of any such gaming table, or other gambling device, shall, on conviction, be adjudged guilty of a misdemeanor,

Punishment. and punished by fine, not exceeding twenty-five dollars, nor less than ten dollars. (q)

Suffering devices mentioned in 15th section to be set up in any house. Sess. acts, 1840–1, p. 89.

SEC. 17. Every person who shall permit any gaming table, bank, or device, prohibited by the fifteenth section, 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, nor less than fifty dollars, or imprisonment in a county jail, not exceeding six months, or by both such fine and imprisonment.

Punishment.

Keeping a common gaming house or bawdy house.

SEC. 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

Penalty. 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.

Leasing houses for the purposes set forth in the four preceding sections.

SEC. 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 devices, prohibited by the preceding provisions, or for the purpose of being used, or kept as a gaming house, brothel, or

Penalty. 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.

SEC. 20. Every person appearing, or acting as master or mistress, or having the care, use, or management, for the

(q) See Eubanks vs. The State, 5 Missouri Rep., 450.

Digitized by Google

Who is deemed the keeper of gaming tables, houses and brothels.

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.

Lease of such houses declared forfeited.

SEC. 21. Whenever any lessee of any house or building, shall be convicted of suffering any prohibited gaming table, bank or device, to be set up, or kept, or used therein, for the purpose of gaming, or of 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 on 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.

Participators in such games compelled to testify, but not against themselves.

SEC. 22. No person shall be incapacitated or excusted 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. (r)

Duty of judge or justice having knowledge of gaming table within his county, to issue warrant.

SEC. 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.

Shall issue a warrant to apprehend the keeper, when.

SEC. 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.

Power of the officer charged with the execution of such warrants.

SEC. 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.

Gaming table to be destroyed, how.

SEC. 26. It shall be the duty of every judge or justice of the peace, before whom any such prohibited gaming table or

(r) See Ward vs. The State, 2 Missouri Rep., 121.

Digitized by Google

CHAP. 47.

device shall be brought, to cause the same to be publicly destroyed, by burning or otherwise.

Wagering on elections, prohibited. Sess. acts, 1840-1, p. 80.

SEC. 27. Every person who shall bet or wager any money, or property, or other valuable thing, on the result of any election, authorized by the constitution or laws of the United States, or of this state, or on any vote to be given at such election, or who shall knowingly become stakeholder of any such bet or wager, shall be punished by fine not exceeding fifty dollars.

Penalty.

Disturbance of public worship.

SEC. 28. (*s*) 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.

Penalty for.

Keeping liquors or wines within a mile of camp meeting, how punished.—Sess. act, 1838-9, p. 101.

SEC. 29. Every person who shall erect or keep a booth, tent, stall or other contrivance, for the purpose of selling or otherwise disposing of any wine, or spirituous or fermented liquors, or any drink of which wine, spirituous or fermented liquors form a part, within one mile of any camp or field-meeting for religious worship, during the time of holding such meeting, shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding ten dollars.

If offender is a negro or latto, punished by stripes.—*Ib.*

SEC. 30. If a negro or mulatto be guilty of the offence specified in the preceding section, he shall, upon conviction before a justice of the peace, be punished by ten stripes.

Laboring or compelling others to labor on Sunday.

SEC. 31. 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.

Penalty.

Except when some other day is observed as a Sabbath.

SEC. 32. The last section shall not extend to any person who is a member of a religious society, by whom any other

(*s*) Circuit courts and justices of the peace have concurrent jurisdiction where the fine is limited to one hundred dollars, except assaults and batteries, of which the justices have exclusive jurisdiction. See Clay and others vs. The State, 6 Missouri Rep., 603.

Digitized by Google

than the first day of the week is observed as a Sabbath, so that he observes such Sabbath, nor to prohibit any ferry-man from crossing passengers on any day of the week.

Horse racing, cock-fighting, card playing on Sunday.

SEC. 33. 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.

Penalty.

Selling goods keeping open tippling houses on Sunday; punishment for.

SEC. 34. Every person who shall expose to sale any goods, wares, or merchandise, or shall keep open any ale or porter house, grocery, or tippling shop, or shall sell or retail any fermented or distilled liquor 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. (*t*)

Selling drugs, medicines, &c. excepted.

SEC. 35. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions, or other articles of immediate necessity.

Selling poisons without labels, or to minors, or slaves without written authority from guardian or master, how punished. Sess. acts, 1842-3, p. 102.

SEC. 36. 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 vial, box, vessel, or package containing the same; or who shall sell or deliver any tartar emetic, without having the true name written or printed on a label and attached to the vial, box, vessel, or package containing the same, or who shall sell or deliver any such substance or liquid to any minor or slave, without a written permission from the guardian of such minor or the master of such slave, specifying the kind of drug that such minor or slave is authorised to purchase, shall, on conviction, be adjudged guilty of a misdemeanor, and punished by fine not exceeding fifty dollars.

Practising physicians not required to label, &c.

SEC. 37. So much of the preceding section as requires the word "poison," or the name of the drug sold or delivered, to be labelled on the box, vial, or other package containing the same, shall not extend to any practising physician, who shall deliver any of the articles therein mentioned, with a prescription for the use of the article.

(*t*) No particular Sunday need be proved, provided the one proved be within twelve months before the finding of the indictment. Frazier vs. The State; 5 Missouri Rep., 536. See Brua vs. The State; 8 Missouri Rep., 196.

Digitized by Google

CHAP. 47.

Cruelty to animals, punished.

SEC. 38. 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.

Cruelty to slaves, punished.

SEC. 39. 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.

Wilfully breaking open any sealed letter without authority, &c.

SEC. 40. If any person shall wilfully open, or read, or cause to be read, any sealed letter, not addressed to himself, without authority to do so from the writer thereof, or from the person to whom it is addressed, he shall, on conviction, be adjudged guilty of a misdemeanor, and shall be punished

How punished.

by fine, not exceeding two hundred and fifty dollars, or by imprisonment in a county jail, not exceeding three months.

Publishing contents of letter so opened.

SEC. 41. 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 unlawfully opened, shall, on

Punishment.

conviction, be adjudged guilty of a misdemeanor, and punished as in the preceding section is specified.

Not to extend to certain cases.

SEC. 42. The two last sections shall not extend to the breaking open of letters which shall be punishable by the laws of the United States.

Running horse, &c. upon public highway, &c. punishment for.

SEC. 43. If any person shall run, or cause to be run, upon any public road or highway, in common use in this state, any horse or horses, so as to interrupt travellers thereon, or put to fright the horses or other animals, by them rode or driven, he shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by fine, not less than five, nor more than twenty dollars.

Running horses to try speed on public highway, &c., punishment for.

SEC. 44. If two or more persons shall run, or cause to be run, a match horse race, in any public road in common use, for the purpose of trying the speed of their horses, every person so offending, shall, upon conviction, be adjuged guilty of a misdemeanor, and punished by fine, not less than five, nor more than twenty dollars.

SEC. 45. Every person who shall be convicted of any felony,

Digitized by Google

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. Disqualifications, &c.

SEC. 46. Every person who shall be convicted of any of the offences specified in the [sixth and seventh] *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. Additional disqualifications.

ARTICLE IX.

General provisions concerning crimes and punishments.

SEC. 1. Punishment for attempts to commit offences.
2. When attempts not indictable.
3. Proceedings against persons for felony in another state, &c.
4. What defendant may plead in his defence.
5. Punishment of principals in second degree, and accessories before the fact.
6. Who deemed accessories after the fact, and how punished.
7. Punishment for second offences.
8. Convicts in other states liable to punishment for second conviction.
9. Sentence of persons convicted of two or more offences at the same time.
10. When imprisonment may extend to life time; never to be less than two years.
11. No fine can be imposed, when prisoner is sent to the penitentiary.
12. Punishment limited in certain cases.
13. Misdemeanors, where no punishment is prescribed, punished by fine, or imprisonment, or both.
14. Defendant may be convicted of a less degree of the offence charged.
15. Where no fine is prescribed in misdemeanor, fine may be imposed by court.
16. Acquittal is a bar to a prosecution for the same offence, and every inferior degree thereof.
17. When defendant may be tried again; when not.
18. Acquittal may be pleaded in bar, when.
19. Minor convicts, under sixteen, to be sentenced to county jail, &c.
20. Civil rights suspended during imprisonment in the penitentiary.
SEC. 21. Persons of convicts protected by the law from injury, &c.
22. Forfeiture of estates abolished.
23. Benefit of clergy abolished.
24. How disabilities may be removed.
25. How removed in case of minor convicts.
26. Civil action declared not merged in a felony.
27. Slaves punished by stripes.
28. How tried, and before whom.
29. When jury shall be summoned.
30. Fines under one hundred dollars recoverable before a justice of the peace.
31. Fines, forfeitures, &c., recoverable by indictment, or before justice where it does not exceed one hundred dollars.
32. Assaults and batteries not indictable, how to be prosecuted.
33. Jurisdiction of circuit court and justices of the peace, in criminal cases, defined.
34. Slaves convicted of felonies not capital, how punished.
35. Civil remedies against owner of a slave guilty of certain offences against persons or property.
36. Definition of the term "felony."
37. Definition of the term "infamous crime."
38. Definition of the term "misdemeanor."
39. Definition of the terms "crime," "offence," and "criminal offence."
40. Construction of the term "personal property."
41. What the term "real property," includes.
42. What the term "property," includes.
43. What the term "person," is construed to mean.
44. Persons with respect to whom any intent to defraud may be charged.

Digitized by Google

CHAP. 47.

Punishment for attempts to commit offences.

SECTION 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, 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 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, nor less than two months; *Fourth*, If the offence so attempted be punishable by imprisonment in the county jail 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.

When attempts not indictable.

SEC. 2. No person shall be convicted of an assault with 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.

Proceedings against persons stealing in another state, &c.

SEC. 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,

Digitized by Google

into or through which such stolen property shall have been brought. (*u*)

What defendant may plead in his defence.

SEC. 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.

Punishment of principals in the second degree and accessories before the fact.

SEC. 5. Every person who shall be a principal, in the second degree, in the commission of any felony, or who shall be an accessory, (*v*) 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. (*w*)

Who deemed accessories after the fact, and how punished.

SEC. 6. Every person who shall be convicted of having concealed any offender, after the commission of any felony, or of having given to such offender any other aid, knowing that he has committed a felony, with the intent, and in order that he may escape, or avoid arrest, trial, conviction, or punishment, and no other, shall be deemed an accessory after the fact, (*x*) and, upon conviction, shall be punished by imprisonment in the penitentiary, not exceeding five years, or in the county jail, not exceeding one year, nor less than six months, or by fine, not less than four hundred dollars, or by both a fine, not less than one hundred dollars, and imprisonment in a county jail, not less than three months.

Punishment for second offences.

SEC. 7. If any person, convicted of any offence, punishable by imprisonment in the penitentiary, or of petit larceny, or of 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,

(*u*) See practice and proceedings in criminal cases, Art. 4.

(*v*) A free man, accessory to a felony committed by a slave, is punishable in the same manner, as though the principal was a free man. Loughridge vs. The State, 6 Missouri Rep. 596.

(*w*) See practice and proceedings in criminal cases, Art. 4, Secs. 12 and 13.

(*x*) See practice and proceedings in criminal cases, Art. 4, Secs. 12 and 13.

Digitized by Google

then such person shall be punished by imprisonment in the penitentiary for 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 for 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.

Convicts in other states liable to punishment, for second conviction.

SEC. 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 in 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.

Sentence of persons convicted of two or more offences, at the same time.

SEC. 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 upon prior convictions.

When imprisonment may extend to lifetime; never to be less than two years.

SEC. 10. Whenever any offender is declared by law punishable, upon conviction, by imprisonment 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.

No fine can be imposed when prisoner is sent to the penitentiary.

SEC. 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.

Digitized by Google

Punishment limited in certain cases.

SEC. 12. 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, and no limit is fixed by law to the duration of imprisonment in the jail, or to the fine, in such cases the convict shall in no instance be sentenced to a longer term of imprisonment, in a county jail, than twelve months, nor shall the fine, in any such case, exceed one thousand dollars.

New provision.

Misdemeanors how punished when no other punishment is prescribed.

SEC. 13. 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.

Defendant may be convicted of a less degree of the offence charged.

SEC. 14. Upon 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. (y)

When no fine is prescribed, fine may be imposed by court.

SEC. 15. 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 upon the offender not exceeding one hundred dollars.

Acquittal is a bar to a prosecution for the same offence and every inferior degree thereof.

SEC. 16. 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 for an attempt to commit the offence charged in the indictment, or any degree thereof, provided he could have been legally convicted of such degree of offence, or attempt to commit the same, under the first indictment.

When defendant may be tried again; when not.

SEC. 17. 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 exceptions to the form or substance of the indictment, or where he shall be convicted, but the judgment shall, for any cause, be arrested,

(y) Provided such offence, of inferior degree, be embraced in the allegations of the indictment; State vs. Shoemaker, 7 Missouri Rep., 180; Mallison vs. The State, 6 *ib.*, 399; Plummer vs. The State, 6 *ib.*, 240. Under this section it is held, that, on an indictment for murder, defendant may, as at common law, be convicted of manslaughter; Watson's case, 5 Missouri Rep., 497; Mallison's case, 6 *ib.*, 399; Plummer's case, 6 *ib.*, 240. See, also, practice and proceedings in criminal cases, Art. 7, Sec. 1, and Art. 4, Sec. 16.

Digitized by Google

CHAP. 47.

he may be tried and convicted on a subsequent indictment for the same offence, or any degree thereof. (*z*)

Acquittal may be pleaded in bar, when.

SEC. 18. 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 or substance in the indictment, upon which such acquittal was had. (*aa*)

Minor convicts under 16, to be sentenced to county jail, &c.

SEC. 19. Whenever any person under the age of sixteen years shall be convicted of any felony, he shall 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.

Civil rights suspended during imprisonment in the penitentiary.

SEC. 20. A sentence of imprisonment in the penitentiary for a term less than life, suspends all civil rights of the person so sentenced, during the term thereof, and forfeits all public offices and trusts, authority and power; and a person sentenced to such imprisonment for life shall, thereafter, be deemed civilly dead.

Persons of convicts protected by the law from injury, &c.

SEC. 21. 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 authorised by law, shall be punishable in the same manner as if he was not sentenced or convicted.

Forfeiture of estates abolished.

SEC. 22. 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.

Benefit of clergy abolished.

SEC. 23. The benefit of clergy in criminal cases, and all appeals of felony, are forever abolished.

How disabilities may be removed.

SEC. 24. 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, and not otherwise, (*bb*) except in the case in the next section mentioned.

(*z*) See act concerning practice and proceedings in criminal cases, Art. 8, Sec. 10.

(*aa*) In such cases, no appeal or writ of error lies; State vs. Heatherly, 4 Missouri Rep., 479; State vs. Spear, 6 *ibid*, 644.

(*bb*) See senate jour., 1833-7, p. 160; Commonwealth vs. Green, 17 Mass. R., 551; Holdridge vs. Gillespie, 2 J. Ch. R., 35, in note.

Digitized by Google

How removed from minor convicts.

SEC. 25. 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.

Civil actions declared not merged in a felony.

SEC. 26. 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.

Slaves punished by stripes.

SEC. 27. 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 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 justice.

How tried and before whom.

SEC. 28. 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.

When jury shall be summoned.

SEC. 29. 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 empanelled, 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.

Fines under one hundred dollars recoverable before a justice of the peace.

SEC. 30. 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 may 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.

Fines, forfeitures, &c., how recovered.

SEC. 31. Whenever a fine, penalty, or forfeiture, is, or may be inflicted by any statute of this state, for any offence, the same may be recovered by indictment, (except as in the next section is provided,) notwithstanding another, or different remedy for the recovery of the same, may be specified in the

Digitized by Google

CHAP. 47.

act imposing the fine, penalty, or forfeiture: *Provided*, That, in all cases, the fine, penalty, or forfeiture, shall go to the state, county, corporation, person or persons, to whom the act imposing the same declares it shall accrue.

Assaults and batteries not indictable, &c. Sess. acts, 1838–9, p. 6.

SEC. 32. Assaults and batteries are not indictable, but shall be punished in a summary manner before a justice of the peace, in conformity to the act defining the jurisdiction and regulating the proceedings of justices' courts in cases of breach of the peace.

Jurisdiction of circuit court and justices of the peace, in criminal cases, defined.

SEC. 33. The circuit courts shall have exclusive original jurisdiction in all cases of felony, and of all offences not herein declared expressly to be cognizable before a justice of the peace, and concurrent jurisdiction with the justices, in the cases specified in the thirtieth and thirty-first sections of this article.

Slaves convicted of felonies not capital, how punished.

SEC. 34. When any slave shall be convicted of a felony, punishable by imprisonment in the penitentiary, the court, before whom such conviction shall be had, shall sentence the offender to receive, on his bare back, any number of stripes not exceeding thirty-nine. (*cc*)

Civil remedies against owner of a slave, &c. Sess. acts, 1836–7, p. 66.

SEC. 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, (*dd*) to recover any damages by him sustained, by the commission of such offence, not exceeding in amount the value of the slave. (*ee*)

Definition of the term "felony."

SEC. 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 imprisonment in the penitentiary, and no other. (*ff*)

Definition of the term "infamous crime."

SEC. 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 sen-

(*cc*) Fanny vs. The State, 6 Missouri Rep., 142.

(*dd*) See Reed vs. Circuit Court of Howard county, 6 Missouri Rep., 44.

(*ee*) Where the slave of a plaintiff was killed by the slave of defendant, it was held that the case was not embraced by the provisions of this section, it being an injury to the property not specified in the third article; Jennings vs. Kavanagh, 5 Missouri Rep., 28.

(*ff*) See Johnson vs. The State, 7 Missouri Rep., 183. Felonies and misdemeanors not to be joined; Hildebrand vs. The State, 5 Missouri Rep., 548; Nathan vs. The State, 8 Missouri Rep., 631.

Digitized by Google

tence, 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.

Definition of the term "misdemeanor."

SEC. 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 in a county jail, or both.

Definition of the terms "crime," "offence," and "criminal offence."

SEC. 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.

Construction of term "personal property."

SEC. 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.

What the term "real property" includes.

SEC. 41. The terms "real property," or "real estate," as used in this act, include every estate, interest, and right in lands, tenements, and hereditaments.

What the term "property" includes.

SEC. 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.

What the term "person" is construed to mean.

SEC. 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, a county, or any other municipal, public or private corporation which may lawfully own any property within this state, as well as individuals.

Persons with respect to whom intent to defraud may be charged.

SEC. 44. Where any intent to injure, defraud, or cheat, is required by law to be shown, 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 office thereof, or any county, city, town, or village, or any corporation, body politic, or private individual.

Approved March 27, 1845.

Digitized by Google

CHAPTER 48.

DEPOSITIONS.

AN ACT concerning depositions.

SEC. 1. Depositions may be obtained.
2. Witness residing out of the state, commission to issue.
3. Commission, how issued, and to whom directed.
4. Power and duty of the officer under the commission.
5. Witness residing in the state, no commission necessary.
6. Notice to be given.
7. To adverse non-resident party.
8. Must be served three days before the day of taking, and one day for every twenty-five miles in addition.
9. Special commission to issue on affidavit.
10. To whom directed.
11. Interrogatories to be annexed.
12. Command of commission.
13. Duty of officer.
14. Witnesses examined on oath.
15. Officer may compel attendance of witnesses.
16. Certificate of officer taking depositions.
17. Official character of officer if foreign country, how attested.
18. Official character of officer in U. S., how attested.
19. Exhibits to be enclosed in depositions.
20. When depositions may be read.
21. Residence of witness certified by officer, prima-facie evidence.
22. Objections to competency or relevency, how taken.

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

Depositions may be obtained.

SECTION 1. Any party to a suit pending in any court of record in this state, may obtain the deposition of any witness, to be used in such suit, conditionally.

Witness residing out of the state, commission to issue.

SEC. 2. When 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.

Commisson, how issued, to whom directed.

SEC. 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.

Power and duty of the officer under the commission.

SEC. 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.

Witness residing in the state, no commission necessary.

SEC. 5. When 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.

Digitized by Google

Notice to be given.

SEC. 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 reside in this state; and, if not, then on his attorney of record in the cause. (*a*)

To adverse non-resident party.

SEC. 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.

In what time to be served.

SEC. 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.

Special commission to issue on affidavit.

SEC. 9. When a 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 [the] application by affidavit, and shall have given to the adverse party reasonable notice of such application, the court may, upon such terms as it may think proper, award such commission.

To whom directed.

SEC. 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.

(*a*) Where a deposition was taken between the hours of eight and six, and the notice was to take it between the hours of ten and six, it cannot be read in evidence. Kean vs. Newell, 1 Missouri Rep., 754. A notice to take depositions on the 24th June, between the hours of 8 A. M., and 6 P. M., and on the 25th, 26th, 27th and 28th same month, and same hours, is insufficient. If the beginning had been confined to a day certain, and the intention of continuing from day to day, expressed, the notice would have been good. Benton vs. Craig, 2 Missouri Rep., 198. A notice to take depositions on the 22d of the month, will not authorize the taking of them, by adjournment from day to day, on the 26th, without having commenced the taking on the 22d. Fox vs. Carlise & Mason, 3 Missouri Rep., 197. Notice was given to take depositions on the 14th of July, to be continued, if necessary, from day to day, until completed; the depositions of two witnesses were taken, commenced on the 14th, and continued from day to day, until the 16th, when they were completed. Held, that as the depositions, from any thing appearing on the face, might have been taken in an hour, something must also appear to justify the delay, and that unless something did appear, they ought to be suppressed. What was done each day should appear on the record. Bracken vs. March, 4 Missouri Rep., 74. Depositions taken at the appointed time and place, and at a reasonable time of day, are not to be excluded, because the party notified to attend, did not arrive until the other party had finished taking the depositions. Waddingham vs. Gamble, 4 Missouri Rep., 466.

Digitized by Google

CHAP. 48.

Interrogatories to be annexed.

SEC. 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.

Command of commission.

SEC. 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.

Duty of officer.

SEC. 13. Such 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.

Witnesses examined on oath.

SEC. 14. 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.

Officer may compel attendance of witnesses.

SEC. 15. 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 issuing out of any court of record, in this or any other government, shall have power to issue subpœnas for witnesses to appear and testify, and to compel their attendance in the same manner, and under the like penalties, as any court of record of this state.

Certificate of officer taking depositions.

SEC. 16. 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, showing that the deposition or examination was subscribed and sworn to by the witnesses, and the day on which it was done.

Official character of officer in foreign country, how attested. Sess. acts, 1843, p. 60.

SEC. 17. 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, or the seal of a court of the government in which the depositions or examinations were taken.

Official character of officer in U. States, how attested.

SEC. 18. The official character of 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

Digitized by Google

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.

Exhibits to be enclosed in depositions.

SEC. 19. 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.

When depositions may be read.

SEC. 20. 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 they shall have been taken, as if the witness were present, and examined in open court, on the trial thereof, (b) *First*, If the witness reside, or is gone out of this 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; (c) *Sixth*, If he be a judge of the supreme or circuit court, and engaged in the discharge of his official duties at the time.

Statement of officer prima facie evidence, when.

SEC. 21. 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.

Objections to competency, or relevancy, how taken.

SEC. 22. 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 present.

Approved January 17, 1845.

(b) Depositions taken in a former suit between the same parties, may be read in evidence, unless there be other objections, than that having been taken in a former suit. Tindall vs. Johnson, 4 Missouri Rep., 113.

(c) Where no objections were made to the reading of depositions, until they were offered in evidence, and then they were objected to, on the ground that there was no proof that the witnesses were not within reach of the process of the court, the court very properly allowed that objection to be removed, by the introduction of other testimony. Lepper vs. Chilton, 7 Missouri Rep., 221.

Digitized by Google

CHAPTER 49.

COMMISSIONERS TO TAKE DEPOSITIONS IN OTHER STATES.

AN ACT providing for the appointment of commissioners to take depositions in other states.

SEC. 1. One or more commissioners to be appointed in each state. Their tenure of office. Powers and duties.
SEC. 2. Effect of their acts.
3. To take an oath, which shall be filed in the office of the secretary of state.

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

One or more commissioners to be appointed in each state. Tenure of office. Powers and duties.

SECTION 1. That the governor may appoint, in each of the United States, one or more commissioners, to continue in office during the pleasure of the governor for the time being; and every such commissioner [shall have power] to administer oaths, and to take depositions and affidavits to be used in this state, and, also, to take the acknowledgement of deeds, powers of attorney, or other instruments to be recorded in this state.

Effect of their acts.

SEC. 2. All oaths administered by the said commissioners, all affidavits and depositions taken by them, and all acknowledgements aforesaid, certified by them, shall be as effectual in law, to all intents and purposes, as if done and certified by any justice of the peace or other authorized officer within this state.

To take an oath.

SEC. 3. Before any commissioners, appointed as aforesaid, shall proceed to perform any of the duties of their office, they shall take and subscribe an oath, before any justice of the peace, or other officer authorized to administer oaths, in the state for which such commissioners may be appointed, that they will faithfully discharge all the duties of their office; which oath shall be filed in the office of the secretary of this [state,] within six months after the taking of the same.

Oath to be filed with the secretary of state.

New act.

This act shall take effect and be in force from and after its passage.

Approved March 25, 1845.

Digitized by Google

CHAPTER 50.

DESCENTS AND DISTRIBUTIONS.

AN ACT concerning descents and distributions.

SEC. 1. Real and personal estate to whom to descend.
2. Posthumous children to inherit.
3. Rule in case of failure of kindred capable of inheriting.
4. When some are of the half blood and some of the whole blood.
5. When they shall take per capita, when per stirpes.
SEC. 6. Advancements to be brought into hotch pot.
7. Alienage of ancestor no bar in making title by descent.
8. Bastards capable of inheriting from their mother.
9. Legitimated, when.
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:

SECTION 1. When any person having title to any real estate of inheritance, or personal estate undisposed of, or otherwise limited by marriage settlement, shall die 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 (*a*): *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 grandfather, grandmother, uncles and aunts, and their descendants, in equal parts; *Fourth*, If there be no children or their descendants, father, mother, brother, sister or their descendants, grandfather, grandmother, uncle, aunt nor their descendants, then to the great-grandfathers, great-grandmothers 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. Real and personal estate to whom to descend.—1835, p. 222.

SEC. 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 are in being, and capable in law, to take, as heirs, at the time of the intestate's death. Posthumous children to inherit.

SEC. 3. If there be no children or their descendants, father, mother, brother, nor sister, nor their descendants, nor any Rule in case of failure of kindred, &c.

(*a*) *Vide*, Pratte vs. Wright, 5 Missouri Rep., 192.

Digitized by Google

CHAP. 50.

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.

When some are of the whole and others of the half blood.

SEC. 4. When 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 only inherit half as much as those of the whole blood; but if all such collaterals be of the half blood, they shall have whole portions, only giving to the ascendants double portions.

When they shall take per capita and when per stirpes.

SEC. 5. When several lineal descendants, all of equal degree of consanguinity to the intestate, or his father, mother, brothers and sisters, or his grandfather, grandmother, 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 a right to partition, such issue shall take per stirpes, (that is, the share of the deceased parent.)

Advancements to be brought into hotch pot, when.

SEC. 6. Where 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 hotch pot with the estate descended.

Alienage of ancestor, no bar to title by descent.

SEC. 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.

Bastards may inherit.

SEC. 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.

Legitimated, when.

SEC. 9. If a man, having by a woman, a child, or children, and shall afterwards intermarry with her, and shall recognize such child or children to be his, they shall thereby be legitimated.

Issue of certain marriages, legitimate.

SEC. 10. The issue of all marriages deemed null in law, or dissolved by divorce, shall be legitimate. (*b*)

Approved February 13, 1845.

(*b*) *Vide*, the case of Lincecum vs. Lincecum, 3 Missouri Rep., 441, and note the difference in the language of the first section of the act concerning divorce and alimony, Rev. Code, 1825, 329, and the language of the first section of the act on the same subject, Rev. Code, 1833, 225, the substance of which is retained in this revision.

Digitized by Google

CHAPTER 51.

DETINUE.

AN ACT concerning the action of detinue.

SEC. 1. Capias in detinue, affidavit and bail.
2. Defendant committed unless he give bond; condition of bond.
3. Officer failing to return bond, or insufficient one, to be made co-defendant.
4. Remedy of plaintiff against bail, and officer against principal and bail.
5. Court may reduce the amount of bail, or accept common appearance.
6. Verdict omitting amount of damages, or value of property, inquiry awarded.
7. No verdict found for part of things claimed, will bar the title to such things.

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

Capias in detinue, affidavit and bail. 1835, p. 224.

SECTION 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 that 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.

Defendant committed unless he give bond.

Condition of bond.

SEC. 2. The officer charged with the execution of a capias in detinue, shall take the defendant and commit him to jail, unless the defendant enter into 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.

Officer to be made a co-defendant, when.

SEC. 3. If the officer returns the writ executed, and has not the defendant, according to the command thereof, or if he fail 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.

Remedy of plaintiff against bail, and officer against principal and bail.

SEC. 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 the principal, and the officer, when made a co-defendant, the same remedy against the principal and bail, as may exist by law in cases of

Digitized by Google

CHAP. 52.

bail in other civil cases, and the same proceedings shall be had thereon.

Court may reduce the amount of bail and accept defendant's appearance.

SEC. 5. The court, out of which any capias in detinue is issued, or any judge thereof in vacation, may reduce the sum for which the 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.

Inquiry awarded, when.

SEC. 6. If, in any action of detinue, the value of the property recovered, or the damages for the detention thereof be omitted in any verdict for the plaintiff, the court may, at any time, award an inquiry to ascertain the same.

When plaintiff's title barred by verdict.

SEC. 7. If, on an issue concerning several things in one count in detinue, no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred of his title to the things omitted.

New section.

Approved March 8, 1845.

CHAPTER 52.

DISTRIBUTION.

AN ACT for the distribution of the proceeds of the sales of the 500,000 acres of land, donated to this state by the congress of the United States.

SEC. 1. Proceeds of sales set apart to be distributed among the counties.
2. Duty of auditor and treasurer to ascertain the amount arising from such sales, and to apportion and divide the same in equal shares.
3. To enter the amount allotted, and give each county credit therefor.
4. To be applied by the counties to internal improvements. Proviso.
5. County court to make a draft on the auditor for the sum due. Duty of auditor.
6. Counties may unite their funds.
7. Auditor to notify clerk when amount allotted is in the treasury.

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

Proceeds of sales set apart to be distributed among the counties.

SECTION 1. That the proceeds which have arisen, or may arise, from the sales of the five hundred thousand acres of land, granted to this state, by an act of congress, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September the fourth, one thousand eight hundred and forty-one, be, and the same are hereby set apart, to be distributed among the several

Digitized by Google

New act.

counties of this state, which are, or may hereafter, at any time before the final distribution of said proceeds, be organized.

Duty of auditor and treasurer to apportion and divide the same in equal shares.

SEC. 2. It shall be the duty of the auditor of public accounts, together with the state treasurer, on the first Monday in April, in each year, to ascertain the amount of money which may then be in the treasury of the state, arising from said sales, and to apportion and divide the same, among the several counties of this state, which may then be in existence; giving to each county an equal share thereof; share and share alike.

Further duties.

SEC. 3. The auditor of public accounts and state treasurer, shall enter upon the books of their offices, respectively, the amount of money allotted to each county, as aforesaid; giving to each county credit for such amount.

The money to be applied to internal improvement.

Proviso.

SEC. 4. The several sums of money which shall be received by the several counties of this state, under the provisions of this act, shall be applied by the county courts of the several counties, to purposes of internal improvement: *Provided, however*, That in the event that the proceeds of said sales may hereafter be permitted by act of congress, to be applied to any purposes other than internal improvement, it shall be lawful for the county court of any county to apply the same to such purposes, as to such courts shall seem best, and not inconsistent with the provisions of the act of congress, in relation thereto.

County court to make draft on the auditor, &c., who shall draw his warrant.

SEC. 5. The county court of each of the counties aforesaid, shall make its draft upon the auditor of public accounts, for the sum due to its county; and the auditor shall, on receipt of such draft, draw his warrant in favor of the person named in the draft, on the treasurer of the state, who shall pay the same out of the fund, in the treasury, allotted to such county.

Counties may unite their funds.

SEC. 6. It shall, and may be lawful, for any two or more counties to unite their respective funds, and to apply the same to one common purpose.

Auditor to notify clerk, when amount allotted is in the treasury.

SEC. 7. It shall be the duty of the auditor of public accounts, immediately upon ascertaining the amount in the treasury, allotted to any county, under the provisions of the second section of this act, to notify the clerk of the county court of such county thereof, who shall report the same to the county court at its next term, after the receipt of such notice.

This act to take effect, and be in force, from and after its passage.

Approved March 27, 1845.

Digitized by Google

CHAPTER 53.

DIVORCE AND ALIMONY.

AN ACT concerning divorce and alimony.

SEC. 1. Causes of divorce from the bonds of matrimony.
2. Circuit court of chancery invested with jurisdiction in such cases.
3. Pleading and mode of procedure in defence.
4. Residence of one year within the state necessary, unless, &c.
5. When cause of divorce commences without the state, but continues within the same, jurisdiction maintained.
SEC. 6. Alimony and maintenance, how provided for.
7. Collusion between the parties, or adultery in both, a bar to divorce.
8. Guilty party forfeits matrimonial rights, and cannot marry again under five years.
9. Maintenance decreed in certain cases.
10. On a divorce decreed, property coming by the marriage reverts to the wife.

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

Causes of divorce.

SECTION 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 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 (*a*) of the other as shall render his or her condition intolerable, or when the husband shall be guilty of such conduct as to constitute him a vagrant, within the meaning of the first section of an act respecting vagrants, the innocent and injured party may obtain a divorce from the bonds of matrimony; but no such divorce shall affect the legitimacy of the children. (*b*).

Circuit court of chancery invested with jurisdiction in such cases.

SEC. 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 accom-

(*a*) Charges of infidelity, made by the husband, without any just cause, held to be "personal indignities," within the meaning of this clause. Lewis vs. Lewis, 5 Missouri Rep., 278.

(*b*) *Vide ante*, title Descents and Distributions, sec. 10, and Lincecum vs. Lincecum, 3 Missouri Rep., 441.

Digitized by Google

panied 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.

Pleading and mode of procedure in defence.

SEC. 3. That in all suits hereafter brought, or which are now pending for a divorce, from the bonds of matrimony, it shall, and may be lawful for the defendant in his or her defence thereto, to set forth and charge in his or her answer to the complainant's bill, any of the facts specified in the first section of this act, which, if proved, would entitle such defendant to a divorce from the bonds of matrimony, and said defendant may, in his [or her] said answer, pray the court for the causes stated in said answer, that he or she be divorced from the bonds of matrimony, entered into with said complainant, and said answer shall be sworn to as the original bill, and upon the hearing of the cause, if the court shall be satisfied that the defendant is the injured party, the court shall enter a decree, divorcing the said defendant from the said complainant, as prayed in the answer.

Person not entitled to divorce, when.

SEC. 4. No person shall be entitled to a divorce from the bonds of matrimony, who has not resided within the state one whole year next before the filing of 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.

Where cause of divorce commences without the state, &c.

SEC. 5. Where the cause of divorce has heretofore, or shall hereafter commence beyond the limits of this state, and has been, or shall be, continued or completed within the state, the courts shall have the same jurisdiction, as if the cause had commenced and been completed within this state.

Alimony and maintenance provided for.

SEC. 6. 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

Digitized by Google

CHAP. 53.

give the security required of him, or upon default of himself and his securities, 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 alteration, 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.

Collusion between the parties, or adultery by both, a bar to divorce.

SEC. 7. 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.

Guilty party forfeits all rights; cannot marry again under five years, &c.

SEC. 8. In all cases of divorce 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.

Maintenance decreed in certain cases.

SEC. 9. 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.

On a divorce decreed, pro-

SEC. 10. When the wife shall obtain a divorce from the bonds of matrimony, all property which came to the husband

Digitized by Google

by means of the marriage, and remaining undisposed of at the time of filing the bill, shall revert to the wife and children. CHAP. 54.

perty by the marriage reverts to the wife.

This act shall be in force from and after its passage.

Approved February 28, 1845.

CHAPTER 54.

DOWER.

AN ACT concerning dower.

SEC. 1. Dower in real estate.
2. Widow entitled to share in slaves and personal estate, absolutely, when. Subject to the payment of the husband's debts.
3. Dower, when the husband leaves no descendants, &c.
4. Dower, when the husband leaves none by his last wife.
5. Provisions for widow in two last sections, subject to payment of debts.
6. Election given to the widow, when.
7. How such election shall be made and evidenced.
8. Dower not barred by conveyance, judgment, &c.; laches, &c., without consent of the wife.
9. Divorced woman, when entitled to dower, when not.
10. Devise of real estate, when a bar to dower.
11. Not to be endowed, unless, by writing, &c. she shall not accept the provisions made by will.
12. Jointure, when a bar to dower.
13. Widow, at her election, may renounce jointure, when.
14. When estate by jointure shall cease.
15. By what acts of the wife dower is forfeited.
16. Widow to remain in mansion house until dower be assigned.
17. Jurisdiction of county court to make partition of slaves, &c.
18. Notice of application to be given, how.
19. Commissioners to make partition, how.
20. Court shall secure contingent rights, &c., in such assignment.
SEC. 21. In what cases the widow is entitled to her action for dower.
22. May file a petition in the circuit court. Proceedings thereon.
23. Several defendants, some not served with process, the demandant may proceed against those summoned. Who may be made a defendant.
24. Judgment by default, &c., proceedings thereon. Judgment that the widow be seized of dower, &c. Proceedings thereon.
25. Commissioners to ascertain dower, how.
26. County surveyor to make survey, &c., when. Commissioners to report. If approved, to be recorded; if not, proceedings.
27. On approval of report, court shall empannel a jury to assess damages.
28. If land not susceptible of division, proceedings.
29. Judgment of allowance in lieu of dower.
30. What exceptions of defendant shall not abate the suit.
31. Proceedings by heir, legatee, &c., to procure admeasurement of dower. Notice to be given, when and how.
32. Court shall appoint commissioners, when. No judgment for damages. Costs, how paid.
33. Dower obtained by collusion with guardian of minor, how avoided.
34. Action against widow to admeasure dower, when and to whom allowed.
35. Petition to be filed in circuit court; what it shall state. Summons to issue; how served. Proceedings.

Digitized by Google

CHAP. 54.

SEC. 36. Judgment in such action, how rendered.
37. Commissioners may be appointed, when.
38. How to proceed on the report of commissioners, &c.
39. Judgment obtained by collusion in such action brought by guardian, not to bind ward, &c.
40. Costs, how regulated.
41. Judgment for damages only, against the estate, when.
SEC. 42. Court shall award execution for annuity of widow, when.
43. Actions for dower not to abate.
44. Proceedings in case of the death of the dowess, pendente lite, &c.
45. Action against widow not to abate by death of the plaintiff.
46. Writs of error and appeals allowed.
47. Extent of recognizance of appellant. Proceedings on appeal, &c.

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

Dower in real estate.—1835, p. 227.

SECTION 1. Every widow (*a*) 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 twenty years or more, 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.

Widow entitled absolutely to share in the slaves, when. 1840-1, p. 71.

SEC. 2. When 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, or, at her option, to one-third part of the slaves of such husband, during her natural life, and one-third part of the other personal estate, absolutely, in either case subject to the payment of her husband's debts.

Subject to the payment of her husband's debts.

Dower when the husband leaves no descendants, &c.

SEC. 3. When the husband shall die without any child or other descendants 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*, To one-half of the real and personal estate belonging to the husband at the time of his death, absolutely.

Dower when husband leaves none by his last wife.

SEC. 4. When the husband shall die, leaving such child or descendants, 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

(*a*) The widows of alien residents, who die in this state, held entitled to dower. Stokes vs. O'Fallon, 2 Missouri Rep., 32.

Digitized by Google

husband, that came to him in right of the wife, by means of the marriage.

Subject to payment of debts.

SEC. 5. The provisions made for the widow, in the two last sections, shall be subject to the payment of the husband's debts.

Election given to the widow, when.

SEC. 6. 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. (*b*)

How such election shall be made and evidenced.

SEC. 7. Such election shall be made by 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, otherwise she shall be endowed under the provisions of the first section of this act.

Dower not barred by conveyance, judgments, laches, &c., without consent of the wife.

SEC. 8. No act, deed or conveyance, executed or performed by the husband, without the assent of the wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the estate 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.

Divorced woman, when entitled to dower, when not.

SEC. 9. 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.

Devise of real estate, when a bar to dower.

SEC. 10. 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 declared.

Not to be endowed unless by writing, &c., she shall not accept the provisions made by will.

SEC. 11. In such case, the wife 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 land, 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, not accept the provisions made for her by said will.

(*b*) The cases of Stokes vs. O'Fallon, 2 Missouri Rep., 32, Griffith vs. Walker, 3 *ib.*, 191, and Davis vs. Davis, 5 *ib.*, 183, are referred to as explanatory of the history and intent of the law of dower, as it now stands in this and the five preceding sections.

Digitized by Google

CHAP. 54.

Jointure, when a bar to dower.

SEC. 12. If any woman, prior to, and in contemplation of marriage, shall, on agreement or marriage contract with her intended husband, or other person, receive any 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 her claim of 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 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 lands, of which her husband was at any time seized.

Widow, at her election, may renounce jointure, when.

SEC. 13. 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 part only, the deficiency shall be made up of her husband's estate.

When estate by jointure shall cease.

SEC. 14. 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.

By what acts of the wife dower is forfeited.

SEC. 15. 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.

Widow to remain in mansion house till dower be assigned.

SEC. 16. 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. (c)

SEC. 17. The county court shall have full power to make partition of slaves among heirs or legatees, and to assign to

(c) In Stokes vs. McAlister, 2 Missouri Rep., 163, it was held that this right might be assigned to another, and that possession might be recovered by ejectment.

Digitized by Google

any widow her share in the slaves of her husband, according to the provisions of the sixth article of the act concerning executors and administrators, and for that purpose they shall appoint three commissioners to make such partition and assignment of dower in slaves, and make report to said court for confirmation or rejection.

Jurisdiction of county court to make partition of slaves, &c.—1836-7, p. 61.

SEC. 18. Ten days notice shall be given of every application for such partition and assignment, to the executor or administrator, and to all the heirs and legatees interested therein, or their guardians or agents, and if any of them be non-residents of this state, such notice shall be by eight weeks publication in some newspaper.

Notice of application to be given, how. 1836-7, p. 61.

SEC. 19. It shall be the duty of the commissioners to make partition as equal in kind as the value and number of the slaves will admit, and report the value of each lot to the county court, at the next term thereof, and if the court discovers that the lots are of unequal value, they shall cause them to be made equal, by adding to each lot of inferior value, sufficient money arising from the sale of other personal property, or from the hire of slaves, to make it equal in value to the others.

Commissioners to make partition, how.—1838-9, p. 90-1.

SEC. 20. In making such assignment, the court may take the necessary steps to secure the contingent rights of creditors, and the reversionary rights, and rights in remainder, of the heirs or legatees in such slaves.

Court to secure contingent rights, &c. in such assignment. 1836-7, p. 61.

SEC. 21. When any widow shall be entitled to dower in real estate, and she be deforced 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. (*d*)

In what cases the widow is entitled to her action for dower.

SEC. 22. 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 an interest in such lands, or being in

May file a petition in the circuit court. Proceedings thereon.

(*d*) The mode of proceeding, when the widow and children of an intestate desire partition and assignment of dower, will be found under the head "Partition."

Digitized by Google

possession thereof, or who shall deforce her of her dower therein, and 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 before the term at which he shall [be notified to] appear, and, when so published, shall be equivalent to the service of a summons.

Several defendants, some not served with process, demandant may proceed against those summoned.

SEC. 23. Where 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 publication 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 the purpose, and proceedings shall be had thereon, in all respects, as if he were originally a party duly summoned.

Person claiming title may be made a defendant.

Judgment by default, &c., proceedings thereon.

SEC. 24. If judgment be rendered by default, nil dicit non sum informatus, the court shall hear the proofs and allegations of the demandant, or empannel a jury for that purpose; and if it be found upon such proceedings, 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 that 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.

Judgment that the widow be seized of dower, &c., when rendered.

Proceedings thereon.

Commissioners to ascertain dower, how.

SEC. 25. The commissioners, or a majority of them, shall proceed to the land, or other real estate, and by actual admeasurement ascertain and set off the widow's dower therein, according to the judgment of the court.

Digitized by Google

County surveyor to make survey, &c., when.

SEC. 26. The county surveyor of the county, if thereto required by the commissioners, shall make such survey 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.

Commissioners to report.

If approved, to be recorded; if not, proceedings.

On approval of report, court shall empannel jury to assess damages, &c.

SEC. 27. When any report assigning dower shall be approved, the court shall empannel a jury to assess the damages, and shall render judgment for the damages assessed, if the same have not before been done, and award a writ of possession, according to the report of the commissioners, and execution for the damages.

If land not susceptible of division, proceedings.

SEC. 28. 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 inquire of the yearly value of the widow's dower therein, and shall assess the same accordingly.

Judgment of allowance in lieu of dower.

SEC. 29. The court shall thereupon render 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 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.

What exceptions of defendants shall not abate the writ.

SEC. 30. 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, before her writ was sued out, unless he can show that the dower so received, was in satisfaction of her dower in the lands, whereof she demands dower.

Proceedings by heir, legatee, &c. to procure admeasurement of dower.

SEC. 31. 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

Digitized by Google

CHAP. 54.

real estate, or the executors or administrators of the intestate, or any creditor of the widow, and after her marriage, any creditor of her husband or any other person, having any interest in such lands or such real estate, 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 by leaving a copy at her usual place of abode.

Notice to be given, when and how.

Court shall appoint commissioners, when.

SEC. 32. 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 dower shall be assigned.

No judgment for damages.

Costs, how paid.

Dower obtained by collusion with guardian of minor, how avoided.

SEC. 33. When 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.

Action against the widow to admeasure dower, when and to whom allowed.

SEC. 34. 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.

Petition to be filed in circuit court, what it shall state.

SEC. 35. 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 assign-

Digitized by Google

ed, 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 show 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 by law in like cases, and proceedings shall be had as in ordinary cases at law.

Clerk to issue a summons thereon, how served.

Proceedings.

SEC. 36. 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 rights, she shall have judgment to retain her dower and to 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.

Judgment in such action, how rendered.

SEC. 37. 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 hereinbefore provided in the assignment of dower.

Commissioners may be appointed, when.

SEC. 38. 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.

How to proceed on the report of commissioners, &c.

SEC. 39. When such action is brought by any guardian, his ward, when he becomes 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.

Judgment obtained by collusion in such action brought by guardian, not to bind ward, &c.

SEC. 40. The charge of the commissioners for their services, not exceeding one dollar per day each, shall be taxed as other costs, and when judgment shall be for the demandant, he or she shall have judgment to recover his or her costs;

Costs, how regulated.

Digitized by Google

CHAP. 54.

and when the judgment shall be for the defendant, he shall recover his costs.

Judgment for damages only against the estate, when.

SEC. 41. 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.

Court shall award execution for annuity of widow, when.

SEC. 42. When 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.

Actions for dower not to abate.

SEC. 43. 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.

Proceedings in case of the death of dowress, pendente lite, &c.

SEC. 44. If she die before action brought, her executors and administrators may maintain an action, in which 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 renewed against the executors and administrators, as in other cases; but any other person claiming title to the land, may be made a party, by his voluntarily appearing to such action, as a defendant.

Actions against widow not to abate by death of plaintiff.

SEC. 45. 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.

Writs of error and appeals allowed.

SEC. 46. 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,

Digitized by Google

but no appeal or writ of error shall operate as a supersedeas, unless the appellant or plaintiff in error, shall enter into recognizance as required by law.

Extent of recognizance of appellant.

SEC. 47. When 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.

Proceedings on appeal, &c.

Approved March 24, 1845.

CHAPTER 55.

EJECTMENT.

AN ACT regulating the action of ejectment.

SEC. 1. The action may be maintained when plaintiff is legally entitled to possession.
2. In what other cases this action may be maintained.
3. Tenants in common may join in the action.
4. To be prosecuted in the real names of the parties.
5. Who may be made a co-defendant.
6. What shall be averred in the declaration.
7. What defendant may plead; proceedings.
8. Plea of the general issue.
9. What such plea shall put in issue.
10. What plaintiff must show to entitle him to recover.
11. When actual ouster must be shown if plaintiff is a joint tenant or tenant in common.
12. New Madrid certificates and patents only prima facie evidence of title, &c.
13. And may be rebutted, and how.
14. If plaintiff prevail, he shall recover damages, rents, and profits.
15. Judgment shall be entered for costs and damages only, when.
16. Value of monthly rents and profits shall be found, when.
17. And judgment rendered accordingly.
SEC. 18. Judgment for possession, &c., writ to issue; proceedings.
19. Judgment for damages and costs only, how collected.
20. In cases of appeal, &c., defendant shall give bond.
21. On judgment of dispossession, compensation for improvements, &c., when and how made.
22. What facts complainant shall set forth in his bill to recover value of improvements.
23. An injunction may be granted.
24. Plaintiff at law may file a cross bill.
25. If the value of the improvements exceed the value of the land, decree of the court, &c.
26. Conveyance to be made to occupying claimants, when.
27. If the value of the land exceed the value of the improvements, what the court may decree.
28. Partition shall not be decreed, when.
29. No improvements, after notice, to be paid for.
30. Person other than proprietor of better title, paying for improvements, &c., his remedy.
31. Improvements made prior to January 23, 1816, not to be paid for.
32. Actions of trespass may be maintained.

Digitized by Google

CHAP. 55.

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

When the action may be maintained.

SECTION 1. The action of ejectment may be maintained in all cases when the plaintiff is legally entitled to the possession of the premises. (*a*)

In what other cases this action may be maintained.

SEC. 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. (*b*)

(*a*) Ejectment is the appropriate remedy to regain possession, by a widow, who is evicted, the action for damages given by the act concerning dower being cumulative. Stokes vs. M'Allister, 2 Missouri Rep., 132. An executor or administrator, as such, cannot maintain an action of ejectment, for lands, of which his testator or intestate died seized. Burdyne vs. Mackey's executor, 7 Missouri Rep., 374.

(*b*) A New Madrid certificate, and a copy of the survey of the land are sufficient to maintain ejectment. Rector vs. Welsh 1 Missouri Rep., 288. Confirmations by the recorder, under the first section of the act of 13th June, 1812, do not strengthen the title of lot owners, as, by that section, the legal title was transferred to them by congress. Vasseur vs. Benton, 1 Missouri Rep. 212. A deed from A and wife, to B, for the lands of the wife, is sufficient to enable B to maintain ejectment, although the deed is not so acknowledged as to pass the title of the wife. Bryan vs. Wear & Hickman, 1 Missouri Rep., 106? A New Madrid certificate to A B, or his legal representatives, is not void. Bryan vs. Wear & Hickman, *ibid.* The legal representatives of a person, are those claiming under him by purchase or descent. *Ibid.* In a contest between an unconfirmed Spanish grant and a grant by the United States, the latter must prevail. Mullanphy's administrator, vs. Redman, 4 Missouri Rep., 226. A certificate of the recorder of land titles, confirming a claim to a village lot in St. Charles, gives sufficient title to maintain an ejectment. Janis' administrator vs. Gurno, 4 Missouri Rep., 458. As to the right of St. Ange to make grants of land in 1769, see Wright's administrator vs. Thomas, 4 Missouri Rep., 577. The plaintiff in ejectment, offered no evidence in support of his title, and objected to evidence introduced by the defendant; whether the evidence was properly refused or not, held, he had no right to recover. Hill vs. Groom, 5 Missouri Rep., 58. As to the construction of the act of congress of the 17th February, 1815, for the relief of the inhabitants of New Madrid, see Wear & Hickman vs. Bryant, 5 Missouri Rep., 147. Hickman et. al., vs. Gaw, 1 Missouri Rep., 499; Stuart vs. Rector et. al., 5 Missouri Rep., 261. For the construction of the act of congress of the 13th June, 1812, confirming town and village lots, see Lawless vs. Newman, 5 Missouri Rep., 236; same case, 6 Missouri Rep. A patent under a junior certificate, held to be an inferior title to an elder certificate of entry; Morton vs. Blankenship & Rider, 4 Missouri Rep., 316. *Sed quære*, and see Bagnell et. al., vs. Broderick, 13 Peters, *contra*. The established rules and principles governing the action of ejectment, are not changed by the second section of the act concerning ejectments. Hunter vs. Hemphill, 6 Missouri Rep., 106. In the subdivision of sections of land sold by the United States, the corners and boundaries establish-

Digitized by Google

Tenants in common may join in the action.

SEC. 3. Two or more tenants in common may join in an action of ejectment, and jointly prosecute and sustain such action for the recovery of the estate by them owned in common.

To be prosecuted in the real names of the parties.

SEC. 4. 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.

Who may be made a co-defendant.

SEC. 5. The person from or through whom the defendant claims title to the premises, may, on motion, be made a co-defendant.

What shall be averred in the declaration.

SEC. 6. 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. (c)

What defendant shall plead; proceedings.

SEC. 7. 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.

Plea of general issue.

SEC. 8. The general issue shall be, that the defendant is not guilty of unlawfully withholding the premises from the plaintiff, as alleged against him.

What such plea shall put in issue.

SEC. 9. Such plea shall put in issue every matter required to be established by the plaintiff on the trial, to entitle him to

ed by the public surveyors, are alone to be regarded, although they may cause an unequal division. Campbell vs. Clark, 6 Missouri Rep., 219; same case, 8 Missouri Rep., 553. See further, as to the construction of the act of congress of the 13th June, 1812. Gumo vs. Janis' administrator, 6 Missouri Rep., 330; Bird vs. Montgomery, *ibid*, 510; Chouteau vs. Eckert, 7 Missouri Rep., 16; Heirs of Mackey vs. Dillon, *ibid*, 7. A concession or grant under the Spanish authorities, without a survey, will not support an action of ejectment; Ashley et. al., vs. Cramer, 7 Missouri Rep., 98. Neither will a recommendation for confirmation, made by the board of commissioners, appointed under the act of the 9th July, 1832. And a patent for lands, issued under the act of congress of 4th July, 1836, confirming the claims recommended by the said board, is null and void. *Ibid.* As to a conflict of title, between a New Madrid location and a Spanish grant, confirmed by the act of congress of the 4th July, 1836, see Barry vs. Gamble, 8 Missouri Rep., 88. A confirmation of a town or village lot, reported for confirmation by the recorder of land titles, and confirmed by the act of congress of the 29th April, 1816, is a better title than a claim by the St. Louis Public Schools, under the second section of the act of congress of the 13th June, 1812, and the subsequent acts. Hammond vs. St. Louis Public Schools, 8 Missouri Rep., 65.

(c) A declaration, alleging that the plaintiff is legally entitled to the premises, is bad, after verdict. Jameson vs. Smith et. al., 4 Missouri Rep., 202. In a declaration in ejectment, the description of the premises contended for, must be such as to enable the jury to identify them with the description contained in the deeds, upon which the plaintiff founds his claim; Newman vs. Lawless, 6 Missouri Rep., 280.

Digitized by Google

CHAP. 55.

recover, and the defendant may, thereunder, give in evidence any matter in bar of the action. (*d*)

What plaintiff must show to entitle him to recover.

SEC. 10. 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.

Actual ouster, if plaintiff is joint tenant or tenant in common.

SEC. 11. 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.

New Madrid certificates and titles, only prima facie evidence of title, &c. 1839, p. 40.

SEC. 12. When, in any action of ejectment, any lands shall be claimed by virtue of a location in lieu of other land injured by earthquakes, the certificate of new location, granted by the recorder of land titles, and the patent issued in consequence, shall be only prima facie evidence of title in the grantee therein named, subject to be rebutted as hereinafter prescribed.

And may be rebutted, and how. *Ibid.*

SEC. 13. It shall be lawful for the adverse party to rebut such evidence, by proof that the grantee, in such certificate or patent named, was not, at the time the same, or either of them, issued, the owner of the injured lands in lieu of which the said certificate or patent issued, and the title to the land

(*d*) In an action of ejectment by A vs. B, a patent certificate to A's legal representatives, without other evidence, is no proof of title in A. Mattingley vs. Hayden, 1 Missouri Rep., 439. The plaintiff in ejectment may enter a remittitur, when the finding is for too much, to avoid a new trial. McAllister vs. Mullanphy, 3 Missouri Rep., 38. A certificate of the right of pre-emption is prima facie evidence of title against a New Madrid certificate and survey. Rector vs. Welsh, 1 Missouri Rep., 331. The rule of the common law, that the defendant in an action of ejectment, may show an outstanding title in a third person to defeat the plaintiff, is not changed by our statute regulating the action of ejectment. Gurno vs. Jarvis' administrator, 6 Missouri Rep., 330.

A bill of particulars, in an action of ejectment, is filed, in which the plaintiff claims 300 arpents; he afterwards offers in evidence a deed for 400 arpents—held, that the deed is admissable in evidence; Brown vs. Cleveland, 5 Missouri Rep., 65. When a debtor's land is sold under execution, and an action of ejectment is afterwards brought against him to recover the land, he cannot set up an outstanding title in a third person; Laughlin vs. Stone, *ibid.* 43. A variance between the judgment and execution does not avoid a sheriff's deed; Montgomery vs. Farly & Robinson, *ibid*, 233. Under what circumstances the existence of a deed may be presumed; Newman vs. Studley, *ibid*, 291, McNair vs. Hunt, *ibid*, 300. A certified copy of a confirmation, made under the act of congress of 2d August, 1813, by the recorder of land titles, but which was not complete until confirmed by act of congress, is admissible evidence. This case is distinguishable from Ashley vs. Cramer, 7 Missouri Rep., 98, George vs. Murphy, 1 Missouri Rep., 777. An instrument of writing, executed by the sheriff, purporting to convey a defendant's land sold under execution, and which is not sealed, will not support an action of ejectment; Walker vs. Keife, 8 Missouri Rep., 301, Evans vs. Ashley, *ibid*, 177.

Digitized by Google

located by virtue of such certificate or patent, shall be determined according to the equitable rights of the parties to the land, as located by virtue thereof.

If plaintiff prevail, he shall recover damages, rents and profits.—*Ib.* sec. 4.

SEC. 14. If the plaintiff prevail in the action, he shall recover damages for all waste and injury, and 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*, When 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*, When 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*, When 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.

Judgment shall be entered for costs and damages, only, when.

SEC. 15. 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.

Value of monthly rents and profits shall be found, when.—*Ib*, sec. 5.

SEC. 16. If the plaintiff prevail in an action of ejectment, and it appears in evidence that the right of the plaintiff to the possession is unexpired, the jury shall find the monthly value of the rents and profits.

And judgment rendered accordingly. *Ib.*, sec. 6.

SEC. 17. In such case, the judgment shall be for the recovery of the premises, the damages assessed, and the accruing rents and profits at the date found by the jury, from the time of rendering the verdict until the possession of the premises is delivered to the plaintiff.

Judgment for possession, &c., writ to issue; damages, &c., how collected.

SEC. 18. When the judgment for the plaintiff is both for the recovery of the possession and of 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

Digitized by Google

collect the damages and costs, as in execution on judgments in personal actions.

Judgment for damages, &c. only, how collected.

SEC. 19. When the judgment for the plaintiff is only for damages and costs, execution may be had thereon, as on judgments in personal actions.

In cases of appeal, &c., defendant shall give bond. 1839, sec. 7.

SEC. 20. No appeal shall be allowed, nor supersedeas granted, on a writ of error in favor of the defendant in ejectment, unless the recognizance be in a sum, and with security sufficient, to secure the payment of all damages and accruing rents and profits, and with condition to stay waste, in addition to the conditions now required by law in such cases.

On judgment of dispossession, compensation for improvements, &c., when and how recovered.

SEC. 21. 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.

What facts complainant shall set forth in his bill to recover value of improvement.

SEC. 22. 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.

An injunction may be granted, &c.

SEC. 23. 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.

Plaintiff at law may file a cross bill.

SEC. 24. 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.

If the value of the improvements exceed the value of the land, decree of the court, &c.

SEC. 25. 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 in default of such

Digitized by Google

payment, the plaintiff shall take possession of the land, discharged from all claim of such occupying claimant.

Conveyance to be made to occupying claimant, when.

SEC. 26. 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 payment of the money, make to the occupying claimant a conveyance thereof, with general warranty.

If the value of the land exceed the value of the improvements, what the court may decree.

SEC. 27. 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 plaintiff 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, according to their respective rights in equity.

Partition shall not be decreed, when.

SEC. 28. No partition shall be decreed, if the plaintiff at law insists upon his right to retain the land.

No improvements after notice, to be paid for.

SEC. 29. 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.

Person other than proprietor of better title, paying for improvements, &c., his remedy.

SEC. 30. No occupying claimant shall recover compensation twice for his improvements, and in all cases where the occupying claimant shall be paid for his improvements by any person, other than the proprietor of the better title, such person shall be invested with the same rights, and have the same remedy for the recovery thereof, as is given by this act to such occupying claimant.

Improvements made prior to Jan. 23d, 1816, not to be paid for.

SEC. 31. No compensation shall be allowed, under this act, for improvements made prior to the twenty-third day of January, eighteen hundred and sixteen.

Actions of trespass may be maintained, when.

SEC. 32. An action of trespass may be maintained in all the cases enumerated in the second section of this act.

Approved March 15, 1845.

Digitized by Google

CHAPTER 56.

ELECTIONS.

AN ACT to regulate elections.

SEC. 1. General election, when held.
2. Governor and lieutenant governor to be elected, when.
3. Certificate to be transmitted to general assembly, by whom.
4. Senators, representatives, &c. when elected.
5. Election districts; judges of election, how appointed.
6. How to proceed when no place is designated, nor judges appointed.
7. In St. Louis county, townships may be divided to form districts.
8. Order of court to describe the districts, &c. Copy to be put up in each district, when.
9. How such elections shall be conducted, &c.
10. Poll books, how furnished; returns, how made.
11. Writs of special election by the governor, to specify the notice to be given.
12. Form of oath taken by the judges.
13. Two clerks to be appointed; their oath and duties. Proviso.
14. Clerks of county courts to furnish poll books.
15. Sheriffs to deliver poll books, &c.
16. Polls, when opened and closed.
17. Officer to cry the vote of each elector, except in Saint Louis county.
18. Polls may be kept open three days by order of county court.
19. Voting to be by ballot in Saint Louis county, and continue for one day only.
20. Judges to certify the number of votes; how and to whom transmitted.
21. Polls to be examined and cast up by clerk and two justices.
22. To be done publicly.
23. Duty of clerks in senatorial districts composed of two or more counties.
24. Clerk to whom return is made, to give a certificate of election.
25. Abstract of votes for governor, representatives, &c., to be transmitted by mail to the seat of government.
26. Secretary to despatch special messenger, when.
27. Penalty on clerk for failure to transmit returns.
SEC. 28. Secretary of state may delay longer than one mail, &c.
29. To despatch messenger within forty days.
30. Secretary to cast up votes for members to congress, and give certificates.
31. In case of a tie, governor to order a special election.
32. And may direct returns to be forwarded by messenger.
33. Secretary to lay before each house a list of the members, when.
34. To lay before the general assembly an abstract of the votes given for governor and lieutenant governor.
35. In case of a tie, the two houses to decide by joint vote.
36. Mileage allowed for messenger.
37. How votes shall be given.
38. Penalty on judge or clerk for failing to perform his duties.
39. Penalty for failure to carry returns.
40. Not to extend to cases of sickness, &c.
41. Judges may administer oath to voter, when.
42. Oath administered, when voter votes out of his township.
43. Names of rejected voters, and their votes, to be taken down.
44. Judges, clerks, and voters, free from arrest, except, &c.
45. Constable to attend election in his township.
46. Judges may punish for contempt.
47. Proceedings in case of a tie for certain offices.
48. Contested election of sheriff, how and before whom decided.
49. Either party may take depositions, court to determine how and when.
50. Contested election of clerk, how decided.
51. Of coroner, constable &c., how decided.
52. Of county court justice.
53. No election to be contested, unless notice be given.
54. What notice necessary in a contested election.
55. Notice to be in writing; what it must contain.
56. If party having the certificate, contests any votes, notice how and when given.

Digitized by Google

SEC. 57. Either party may take depositions, how.
58. Cases of contested elections to be determined in a summary way.
59. Costs how adjudged.
60. If the parties consent, court may award a new election; when to be held; notice to be given.
61. Candidates contesting election for senator or representative to give notice; how, when, and what it shall specify; justice to be named.
62. Contestee to select a justice to attend the taking of depositions. The two justices may select a third, unless, &c.
63. If the contestee fail to select, the contestor shall select another justice. Powers and duties of the justices.
64. If the contestee contests the legality of any votes, to give notice, when and how. The contestor in such case to select a justice, &c., failure to do so, contestee to select, &c.; proceedings.
65. If the justice fails to attend, the parties shall select another.
66. The taking of such depositions to be commenced, when.
67. Justice to certify testimony, to whom.
68. No testimony to be received unless it relates to the points specified in the notice &c.
69. Contested election for governor and lieutenant governor, how and where decided.
70. Contestor of election of governor and lieutenant governor, to present a petition, &c. What it shall set forth.
71. Joint committee to be appointed, when. Powers of the committee.
72. Notice of the time and place of taking depositions. Proceedings.
73. Privileges of cross-examination, &c.
74. The committee shall report. A day to be fixed for the decision, &c.
75. Fines, penalties, and forfeitures, how appropriated.

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

SECTION 1. On the first Monday in August, in the year eighteen hundred and forty-eight, there shall be an election held in each township in this state, for the election of governor and lieutenant governor. General election, when held.

SEC. 2. Every four years thereafter, there shall be an election held as aforesaid, for governor and lieutenant governor. Gov. and lieut. gov. to be elected, when.

SEC. 3. A certificate of which election shall be transmitted to the next succeeding general assembly, by the clerks of the county courts respectively. Certificate to be transmitted to the general assembly, by whom.

SEC. 4. On the first Monday in August, eighteen hundred and forty-six, and every two years thereafter, there shall be elections held, as aforesaid, for the election of representatives and senators in those districts, and justices of the county courts in those counties, where the term of those elected has expired, and for sheriffs and coroners. Senators, representatives, &c., when elected.

SEC. 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. Election districts; judges of election, how appointed.

SEC. 6. If the court fail to designate the house or appoint

Digitized by Google

CHAP. 56.

How to proceed, when no judges appointed, &c.

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.

In St. Louis county townships may be divided to form districts.

SEC. 7. The county court of the county of St. Louis, shall have power to divide any township in their county, into two or more election districts; to alter such district lines and erect new districts, from time to time, as the convenience of the inhabitants may require.

Order to describe the districts, &c.

SEC. 8. Every order made under the provisions of the preceding section, shall describe the several districts erected; the boundaries and number of each, and the clerk shall, within twenty days after making the order, make out one copy thereof for each district thereby erected or altered, and deliver the same to the sheriff of the county, who shall cause one such copy to be put up at a public place within each district, within six days after the same shall be delivered to him.

Copy to be put up in each district, when.

How such elections shall be conducted, &c.

SEC. 9. The place of holding elections shall be designated; judges and clerks of election appointed in such districts, and the elections therein conducted in all respects in the same manner, as is hereafter provided by law for the townships.

Poll books, how furnished; returns, how made out.

SEC. 10. Poll books for each district shall be made, and furnished to the judges of elections therein, in the same manner as is hereinafter provided in respect to poll books for each township, and the returns shall be made in each district to the office of the clerk of the county court, as in the case of a township forming one election district.

Writs of special election by governor.

SEC. 11. 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.

Form of oath taken by the judges. 1840-1, p. 74.

SEC. 12. The judges, before they enter on their duties shall take the following oath or affirmation, to be administered by one of their own body, or by any magistrate authorised to administer oaths: "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."

Two clerks to be appointed; their oath and duties.

SEC. 13. The judges shall appoint two clerks, who, before entering on the duties of their appointment, shall take an oath or affirmation, to be administered by one of the persons appointed or elected as judges of the election, that they will faithfully record the names of all the voters, and distinctly carry out in lines and columns, the name of the person for

Digitized by Google

whom each voter votes: *Provided, however*, That no clerk of an election shall be required to carry out in lines and columns the name of the person for whom each voter votes in the city and county of St. Louis. Proviso.

Clerks of county courts to furnish poll books.

SEC. 14. It shall be the duty of the clerks of the county courts, respectively, one month before each general election, or six days before a 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 into blanks, with the necessary certificates attached.

Sheriffs to deliver poll books, &c.

SEC. 15. The sheriff shall forthwith deliver to the judges of election, in their respective townships, the blank books aforesaid.

Polls when opened and closed.

SEC. 16. The judges of each election shall open the polls at nine o'clock in the morning, and continue them open until six o'clock in the evening.

Officer to cry the vote of each elector, except in St. Louis county.

SEC. 17. The officers attending the different elections, except in the city and county of St. Louis, shall cry, in an audible voice, the vote of each elector as given in; and all elections in the city and county of St. Louis shall be by ballot, and shall continue for one day, and no longer.

Polls may be kept open three days by order of county court.

SEC. 18. The county courts may, if they think proper, order that the polls in their respective counties, or in any township thereof, be kept open any number of days, not exceeding three, at any one election.

Voting to be by ballot in St. Louis county &c.

SEC. 19. All elections in the city and county of St. Louis shall be by ballot, and shall continue for one day, and no longer.

Judges to certify the number of votes; how, and to whom transmitted.

SEC. 20. 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, open to the inspection of all persons.

Polls to be cast up by clerk and two justices.

SEC. 21. The clerk of each county court in the state 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 up the votes given to each candidate, and give to those having the highest number of votes, a certificate of election.

SEC. 22. The clerks, in comparing the returns from the

Digitized by Google

CHAP. 56.

To be done publicly.

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.

Duty of clerks in senatorial districts, composed of two or more counties.

SEC. 23. In all senatorial districts, composed of two or more counties, the clerks of all the counties 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.

Clerk to whom return is made to give certificate of election.

SEC. 24. 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.

Abstract of votes for representatives, gov., &c. to be transmitted by mail to seat of government.

SEC. 25. 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, lieutenant governor, state senators and representatives.

Special messenger to be despatched, when.

SEC. 26. 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 abstract.

Penalty on clerk for failure to transmit returns.

SEC. 27. If such failure shall happen by neglect of the clerk, he shall forfeit to the state one hundred dollars, together with the expenses of such messenger, to be recovered by action of debt, before any court having jurisdiction thereof.

Secretary may delay longer than one mail after failure.

SEC. 28. The secretary of state may delay longer than one mail, after such failure, if the circumstances will justify it, taking care that the returns in all cases be obtained by the time that the returns from the most remote counties ought to be made.

To despatch a special messenger, within forty days.

SEC. 29. The secretary of state shall, in no instance, delay to despatch a messenger for such returns, more than forty days after such election.

Secretary to cast up votes for members to congress, and give certificates.

SEC. 30. Within sixty days after such general election, or sooner, if the returns shall all have been made, the secretary of state, in the presence of the governor, shall proceed to cast up the votes given in the counties in this state for members to congress, and shall give to the persons having the

Digitized by Google

highest number of votes, certificates of their election, under his hand, with the seal of state affixed thereto.

In case of a tie, governor to order a special election.

SEC. 31. 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.

And may direct returns to be forwarded by messenger.

SEC. 32. The governor may, in special elections, if he thinks proper, direct in his proclamation that the returns be forwarded by messenger.

Secretary to lay before each house a list of the members, when.

SEC. 33. 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.

To lay before the general assembly an abstract of the votes given for gov. and lieut. gov.

SEC. 34. 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.

In case of a tie, the two houses to decide by joint vote.

SEC. 35. 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 secretary of state, a certificate declaring what persons have been elected to said offices.

Mileage allowed for messengers.

SEC. 36. 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.

How votes shall be given.

SEC. 37. The votes given at all elections shall be given viva voce, or by ticket handed to the judges, and shall, in both cases, be cried in an audible voice by the officer attend-

Digitized by Google

CHAP. 56.

ing, and noted by the clerks in the presence and hearing of the voters.

Penalty on judge or clerk for failing to perform his duties.

SEC. 38. If any judge, or clerk, after he 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 an action of debt in the name of the county, or by indictment, and in either case the fine shall go into the county treasury.

Penalty for failure to carry returns.

SEC. 39. 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 and applied as in the case of a judge or clerk.

Not to extend to cases of sickness, &c.

SEC. 40. Nothing contained in the two preceding sections shall be construed to impose the said penalties on any person prevented by sickness, or unavoidable accidents, from performing the duties assigned them by this act.

Judges may administer oath to voter, when.

SEC. 41. When any person offers to vote, with whose qualifications neither of the judges is personally acquainted, either of the judges may administer an oath and examine him touching his qualifications as a voter.

Oath administered when voter votes out of his township.

SEC. 42 When 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.

Names of rejected voters and their votes to be taken down.

SEC. 43. 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 books as a rejected voter, and shall also take down the names of the persons for whom such person wishes to vote.

Judges, clerks and voters free from arrest, except, &c.

SEC. 44. 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.

Constable to attend election in his township.

SEC. 45. 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.

Judges may punish for contempt.

SEC. 46. 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 inflicted be paid.

SEC. 47. If there shall be a tie of the votes given for any two of the candidates, other than senator or representatives

Digitized by Google

to the general assembly, sheriff or coroner, the clerk or justices casting up the number of votes, or a majority of them, shall issue their order to the sheriff of the county, or sheriffs of the counties of that district, where the same may occur, directing him, or them, to issue his, or their, proclamation for holding an election agreeably to this act, and, in all cases of such special elections, the clerk and justices, or a majority of them, when they issue the order to the sheriff, shall, in such order, state the day on which such election shall be held, giving reasonable time for the same to be promulgated.

Proceedings in case of a tie for certain offices.

SEC. 48. 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 objections be made to the qualifications 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.

Contested election of sheriff, how and before whom decidred.

SEC. 49. 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 days, then, at the second term, in a summary way, determine the same according to evidence.

Either party may take depositions.

Court to determine how and when.

SEC. 50. If any election of clerk of any court of record be contested, such contest shall be heard and determined by such court.

Contested election of clerk. 1840-1, p. 72.

SEC. 51. If any election of any coroner, constable, assessor, justice of the peace, county surveyor, or other county officer be contested, such contest shall be heard and determined by the county court of the county in which the election is held, unless the decision of such contest be otherwise provided for by law.

Of coroner, constable, &c., how decided. *Ibid.*

SEC. 52. If any election of a county court justice be contested, such contest shall be heard and determined by the circuit court of the county in which the same is held.

Of county court justice. *Ibid.*

SEC. 53. No election of any county officer shall be contested, unless legal notice of such contest be given in writing to the opposite party, within twenty days after the votes shall be officially counted.

No election to be contested, unless notice be given.—*Ib.*

SEC. 54. In every case of a pending contested election, the

Digitized by Google

person holding the certificate of election may give bond, qualify, and take the office at the time specified by law, and exercise the duties thereof until the contest shall be decided; and if the contest be decided against him, the court deciding the same shall make an order for him to give up the office to the successful party in the contest, and deliver to him all books, records, papers, property and effects, pertaining to the office, and may enforce such order by attachment, or other proper legal process.

What notice necessary in a contested election.—*Ib.*

Notice to be in writing; what it must contain.—*Ib.*

SEC. 55. In every contested election, the party contesting shall give to the opposite party notice in writing, ten days before the term of the court at which such contest is to be tried, specifying the grounds upon which he intends to rely, the names of all voters objected to, with the objections: both parties shall be allowed process for witnesses.

If party having the certificate contests any votes, notice, how and when given. *Ib.*

SEC. 56. If the party having the certificate shall desire to contest any votes given to the contesting party, he shall give to him a notice in writing, six days before the term of the court at which such election shall be contested, specifying the names of such voters, with the objections to them.

Either party may take depositions, how.

SEC. 57. Either party may take depositions as in civil cases, to be read as evidence on the trial, as is authorised in civil cases; all such depositions shall be filed before the trial is commenced, and may be read in evidence, although the witnesses [reside] within sixty miles.

Cases of contested elections to be determined in a summary manner.—*Ib.*

SEC. 58. Every court authorised to determine contested elections, shall hear and determine the same in a summary manner, without any formal pleading; and the contest shall be determined at the first term of such court, that shall be held fifteen days after the official counting of the votes, unless the same shall be continued by consent, or for good cause shown.

Costs, how adjudged.—*Ib.*

SEC. 59. In all contested elections, costs may be adjudged against the unsuccessful party; and the payment thereof enforced, as in civil cases.

If the parties consent, court may award a new election; when held. *Ib.*

SEC. 60. In every case of contested election, if both parties consent thereto, the court authorised to try the same may award a new election to be held, at some specified day thereafter; and at least five days' notice of every such special election shall be given, in the township or county, in such manner as the court may direct.

SEC. 61. If any candidate of the proper county or district

Digitized by Google

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 a written notice thereof at the house where such person last resided, within forty days after the return of the election, to the clerk's office; the notice shall specify the names of the voters whose votes are contested, the ground upon which such votes are illegal, and the name of the justice of the peace who will attend to the taking of the depositions, and when and where he will attend to take the same.

Candidate contesting election for senator or representative to give notice, &c.

Justice to be named.

SEC. 62. It shall be the duty of the person whose election is contested, to select another justice of the peace to attend at the taking of the depositions, at the time and place specified in the preceding section, and when the two justices assemble at the time and place specified for taking depositions, they shall, unless it is otherwise agreed upon by the parties, select a third justice of the peace to assist in taking said depositions.

Contestee to select a justice to attend the taking of depositions.

The two justices may select a third, unless, &c.

SEC. 63. If the party, whose seat is contested, fail to select a justice of the peace, as provided for in the preceding section, the person contesting the same shall proceed to select another justice of the peace, without delay, and the two justices of the peace so selected by the contestor, shall, in such event, have full power and authority to take the depositions of all witnesses which may be brought before them to be examined.

If the contestee fail to select, &c., the contestor shall select another justice.

Powers and duties of the justices.

SEC. 64. The person whose seat is contested, if he intends to contest the legality of any votes given to the candidate who contests the same, shall, within twenty days after he is notified that his election will be contested, give to the adverse party a similar notice to that specified in the sixty-first section of this act, and the candidate to whom the notice is given shall proceed to select a justice of the peace in the same manner as is provided for in the sixty-second section; and, on his failing to do so, the party giving the notice shall, without delay, select another justice, and the two justices so selected by the party proclaimed duly elected, shall proceed to take the depositions of such witnesses as may be brought before them to be examined: *Provided, however*, That either party may, without notice, take rebutting testimony before the justices at the time and place specified for the taking of depositions.

If the contestee contests the legality of any votes, to give notice; when and how.

The contestor in such case to select a justice, &c.

Failure to do so, contestee to select.

Proceedings.

SEC. 65. If, from sickness, or other cause, the justices of the peace so selected by either party, should fail to attend at the time and place specified for taking depositions, said party

If the justice fails to attend, the parties to select another.

Digitized by Google

shall, without delay, select some other justice of the peace to supply such vacancy.

The taking of such depositions to be commenced, when. Subpœnas.

SEC. 66. The taking of such depositions shall be commenced within forty days from the day of election, and the said justices, or either of them, shall issue subpœnas to all persons required by either party, commanding such persons to appear and give testimony at the time and place therein mentioned.

Justice to certify testimony, to whom.

SEC. 67. 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.

No testimony to be received, unless it relates to the points specified in the notice, &c.

SEC. 68. No testimony shall be received by the justices, senate or house of representatives, on the part of the contestor or contestee, 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 said justices, and by them transmitted with the depositions; and no testimony, except that contained in the depositions taken before the justices, shall be received as evidence, either by the senate or house of representatives.

Contested elections for gov. and lieut. gov., how and where decided.

SEC. 69. 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.

Contestee of the election of gov. and lieut. gov. to present petition, what it shall set forth.

SEC. 70. 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 these points, and shall pray for leave to produce his proof, and a vote shall be taken in the house, by yeas and nays, whether the prayer shall be granted.

Joint committee to be appointed, when. Powers of committee.

SEC. 71. If the 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.

SEC. 72. Reasonable notice shall be allowed by the party

Digitized by Google

in whose favor the depositions shall be allowed, 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 certifying and taking the testimony, as is directed in the last preceding section. Notice of the time and place of taking depositions. Proceedings.

SEC. 73. The parties 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. Privilege of cross examination, &c.

SEC. 74. The committee shall report the facts to the house, and a day shall be fixed, by a joint resolution, for the meeting of the two houses to decide upon the same, in which decision the yeas and nays shall be taken by the clerks of the houses, and shall be entered upon the journals. The committee shall report: a day to be fixed for decision, &c.

SEC. 75. All fines, penalties and forfeitures, by this act imposed, and which are not hereinbefore otherwise appropriated, are appropriated to the use of the county. Fines, &c. how appropriated.

Approved March 28, 1845.

CHAPTER 57.

ELECTORS.

AN ACT to provide for choosing electors of president and vice president of the United States.

SEC. 1. Seven electoral districts established.
2. In case of new apportionment, governor to lay off districts.
3. Proclamation of such new districts, when and how made.
4. Elections, when held; done elector chosen from each district.
5. Person qualified to vote in one district, may vote at any precinct in the state.
6. Elections, how conducted.
7. Returns by judges of elections to clerks, by clerks to governor.
8. Votes arranged, and election determined by governor.
9. In case of a tie, election determined by general assembly.
10. Persons elected, to be notified, &c.
11. Contested elections, how determined.
12. List of persons chosen, to be delivered to electors.
13. Compensation for carrying returns and notices.
14. Electors, when to meet; their duty.
15. Electors, their compensation; how audited and allowed.
16. Vacancies, how supplied.

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

SECTION 1. The state shall be divided into seven districts, for the purpose of electing seven electors to elect a president Seven electoral districts established.

Digitized by Google

CHAP. 57.

and vice president of the United States, in the following manner, to wit: *First.* The first district shall be composed of the counties of St. Charles, Warren, Montgomery, Lincoln, Pike, Ralls, Marion, Lewis and Clark. *Second.* The second district shall be composed of the counties of Boone, Callaway, Audrain, Monroe, Shelby, Scotland, Adair, Macon, Randolph, Howard, Schuyler and Knox. *Third.* The third district shall be composed of the counties of Chariton, Linn, Grundy, Livingston, Carroll, Ray, Caldwell, Daviess, Clay, Clinton, Platte, Buchanan, Andrew, Holt, Sullivan, Putnam, Mercer, Harrison, Gentry, De Kalb, Nodaway and Atchison. *Fourth.* The fourth district shall be composed of the counties of Jackson, La Fayette, Saline, Cooper, Miller, Morgan, Pettis, Johnson, Henry, St. Clair, Van Buren and Bates. *Fifth.* The fifth district shall be composed of the counties of Benton, Polk, Barry, Greene, Taney, Pulaski, Newton, Dade, Crawford, Camden, Decatur, [Ozark,] Dallas, Wright, Jasper, Hickory, Cedar and Lawrence. *Sixth.* The sixth district shall be composed of the counties of New Madrid, Scott, Stoddard, Cape Girardeau, Wayne, Perry, Ste. Genevieve, St. Francois, Jefferson, Washington, Ripley, Shannon, Madison, Mississippi, Dunklin, Oregon, Reynolds and Texas. *Seventh.* The seventh district shall be composed of the counties of St. Louis, Franklin, Gasconade, Osage, Cole and Moniteau. And when any new county shall be made, it shall be attached to, and become a part of, the district out which the new county may have been taken.

1st district.

2d district.

3d district.

4th district.

5th district.

6th district.

7th district.

In case of new apportionment, governor to lay off districts. 1835, p. 244.

SEC. 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.

Proclamation of such new districts, when and how made.

SEC. 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.

SEC. 4. The qualified voters in each of said districts shall

Digitized by Google

meet at their respective places of holding elections, on Tuesday next after the first Monday of November, in the year one thousand eight hundred and forty-eight, and on Tuesday next after the first Monday of November, 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 to elect, as electors of president and vice president, one of whom shall be a resident of each district. Election when held; one elector to be chosen from each district.

SEC. 5. Any person qualified to vote in any electoral district, may vote at any precinct in the state. To vote at any precinct in the state.

SEC. 6. 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. Elections, how conducted.

SEC. 7. It shall be the duty of the judges of such elections in the different townships, to make returns 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. Returns of judges of elections to clerks, by clerks to governor.

SEC. 8. The governor, on 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 vote 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. Votes arranged and election determined by governor.

SEC. 9. 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. In case of a tie, election determined by general assembly, how.

SEC. 10. It shall be the duty of the governor, at the expense of the state, in all cases, immediately to notify the Persons elected to be notified, &c.

Digitized by Google

CHAP. 57.

persons chosen of their election, as soon as the same shall have been ascertained, agreeably to the provisions aforesaid.

Contested elections, how determined.

SEC. 11. 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.

List of persons chosen to be delivered to elect ors.

SEC. 12. 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.

Compensation for carrying returns and notices.

SEC. 13. 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.

Electors, when and where to meet; their duty.

SEC. 14. The electors shall meet at the seat of government, on the first Wednesday of 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.

Electors, their compensation, how audited and allowed.

SEC. 15. 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 authorise the auditor of public accounts to draw his warrant for the amount, which shall be paid out of the state treasury, as other demands.

Vacancies, how supplied.

SEC. 16. 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 10, 1845.

Digitized by Google

CHAPTER 58.

ESCHEATS.

AN ACT concerning escheats.

SEC. 1. When property, real or personal, escheats to the state.
2. Where there are no known heirs, &c., administrator to account, &c.
3. On settlement, balance to be certified, &c.
4. And paid into the state treasury, &c.
5. On production of the auditor's certificate, payment to be credited.
6. Proceedings, on failure to make payment.
7. Costs, how adjudged.
8. Attorney general and circuit attorney, when to enforce settlement.
9. Powers and duties of attorney general, &c., respecting estates.
10. Proceedings in escheats of real estate.
11. Scire facias; against whom it issues.
12. Service and publication, when and how made.
13. Persons interested, when and how to appear and plead.
14. Judgment for the state, when.
15. Issues made up and tried.
16. Judgment upon verdict, &c.
17. Costs, how adjusted, &c.
18. Form and effect of judgment for the state.
19. Writ of seizin.
20. Transcripts of record forwarded to auditor and recorder, &c.
21. Appeals and writs of error allowed.
22. Accounts kept by auditor.
23. Proceedings of legal representative to recover his claim.
24. Decree in such cases.
25. Proceedings of heir to recover land escheated. To petition.
26. Copy of petition to be served, on whom.
27. Limitations.
28. Legislature may sell lands escheated, &c.

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

When property, real or personal, shall escheat to the state.

SECTION 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 and vest in the state.

When there are no known heirs, the administrator to account, &c.

SEC. 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.

On settlement, balance to be certified, &c.

SEC. 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 the administrator, and grant duplicate certificates thereof, one of which shall be transmitted to the attorney general, or circuit attorney prosecuting for the district, and

Digitized by Google

CHAP. 58.

the other to the auditor of public accounts, who shall charge the administrator with the amount.

And paid into the state treasury, &c.

SEC. 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.

On production of the auditor's certificate, amount to be credited.

SEC. 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 be not made as aforesaid, the attorney general or circuit attorney for the district, shall move the court to enter a 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.

If the certificate is not produced, court to render judgment against administrator, &c.

SEC. 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 have received 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 proceedings, and issue execution therefor.

Costs, how adjudged.

SEC. 7. If the auditor's certificate be produced, such administrator, and his securities, may, nevertheless, be adjudged to pay the costs of the proceedings, at the discretion of the court, but shall in no case recover costs; and the like proceedings shall be had at each subsequent settlement.

Attorney general and circuit attorney when to enforce payment.

SEC. 8. When 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 settlement, 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

Digitized by Google

the estate, or other mal-administration, cause proper suits and proceedings to be instituted and prosecuted.

Powers and duties of the attorney general, &c., respecting estates.

SEC. 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 administrators' accounts, and cause process to be issued requiring all administrators, whose letters have been granted more than three years, before the taking effect of this act, to make settlement as hereinbefore required, and shall, in default of any such settlement, bring suits against the administrator in default, and his securities, without delay.

Proceedings in escheats of real estate.

SEC. 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 [death of 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.

Scire facias, against whom to issue.

SEC. 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 show cause why such estate should not be vested in the state, at the next term of such court.

Service and publication, when and how made.

SEC. 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 the county in which such proceeding is had.

SEC. 13. All persons, bodies politic and corporate, named in such information as terre-tenants, or claimants to the estate,

Digitized by Google

CHAP. 58.

Persons interested, when and how to appear and plead.

may appear and plead to such proceeding, and may traverse or deny the facts stated in the information, and the title of the state to the lands and tenements therein 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.

Judgment for the state, when, &c.

SEC. 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.

Issues made up and tried.

SEC. 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 facts, and a survey may be ordered and entered as in other actions, when the title or boundaries of land are drawn in question.

Judgment upon verdict, &c.

SEC. 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.

Costs, how adjusted and paid.

SEC. 17. If it 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, from the facts found, to be in him.

Form and effect of judgment for the state.

SEC. 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.

Writ of seizin.

SEC. 19. A writ shall be issued to the sheriff of the same county, commanding him to seize the real estate vested in the state.

Transcript of record, &c., to be forwarded to the auditor and recorded, &c.

SEC. 20. Upon the return of such writ of seizin, the attorney general, or circuit attorney, shall cause the record and process to be exemplified under the seal of the court, and deposit 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

Digitized by Google

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.

Appeals and writs of error allowed.

SEC. 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.

Accounts kept by auditor.

SEC. 22. The auditor shall keep just accounts of all money paid into the treasury, and of all lands vested in the state aforesaid.

Proceedings of legal representative to recover his claim.

SEC. 23. If any person appear within ten years after the death of the intestate, and claim any money paid into the treasury aforesaid as heir, or legal representative, he may file a petition in the circuit court, as a court of chancery, for the county where 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.

Decree in such cases.

SEC. 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.

Proceedings of heir to recover land escheated.

SEC. 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 be, setting forth the nature of his claim, and praying that the said estate may be relinquished to him.

To petition.

Copy of petition, to be served, on whom.

SEC. 26. A copy of this 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.

Proceedings thereon.

Limitation.

SEC. 27. All persons who fail to appear and file their petitions within the time limited, shall be forever barred, saving,

Digitized by Google

CHAP. 59.

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 petition at any time within five years after their respective disabilities have been removed.

Legislature may sell lands escheated, &c.

SEC. 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 January 8, 1845.

CHAPTER 59.

EVIDENCE.

AN ACT concerning evidence.

SEC. 1. Statutes printed by authority of this state, evidence.
2. Printed statute books of sister states, evidence.
3. Copies of acts, laws, &c., in printed statute books of sister states, &c., shall be evidence, when.
4. Books printed by authority, containing the acts of congress, shall be evidence, when.
5. Copies of such acts certified by the secretary of state, evidence.
6. Printed volumes containing the laws of sister states, prima facia evidence.
7. Public documents printed by authority of congress evidence.
8. Certified copies of confirmations, evidence.
9. Copies of New Madrid certificates.
10. Certified grants, &c., of the French and Spanish governments, evidence, how far.
11. Certified copies from Livre Terrein, evidence.
12. In what cases certified grants, &c., of the French and Spanish governments shall be received in evidence without further proof.
13. How far copies of the same shall be evidence.
SEC. 14. In case of the loss or destruction of the original, copies shall be evidence.
15. Certified copies of plats, surveys, &c., received as evidence.
16. Effect of acknowledgments respecting real estate, taken under any law afterwards repealed.
17. Deed acknowledged under former law shall be evidence, if recorded, &c., within one year from its date, &c.
18. Such deed may be read in evidence, &c., on proof of certain facts.
19. In case of the loss or destruction of such deed, a certified copy thereof shall be evidence.
20. Evidence may be introduced to reject such deed or copy.
21. Copies of proceedings before justices of the peace, evidence.
22. Copies of papers on file in the office of secretary of state, &c., shall be evidence.
23. Certified copies of justices docket, &c., shall be evidence, when.
24. Where justice is out of office, copies of proceedings, &c., to be evidence, when.

Digitized by Google

SEC. 25. Printed and certified copies of ordinances, &c., of city or incorporated town, evidence, when.
26. Register of religious society or congregation, to be evidence, when.
27. Copies of such register shall be evidence, when.
28. Recorder's book of marriages and certified copies thereof, evidence.
29. Certified copies of all bonds of officers, &c., shall be received in evidence.
30. Certified copies of contracts made with the state or county, &c., shall be evidence, when.
31. Copies of bonds of executors, administrators, &c., shall be evidence, when.
32. Court may require the production of the original bond or writing, when.
33. Translated copies of written evidence, verified by affidavit, shall be evidence, when.
34. Copies of papers, &c., in the treasurer's or auditor's office, evidence.

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

SECTION 1. The printed statute books of this state, printed under the authority of the state, shall be evidence of the private acts therein contained. Statutes printed by authority of this state, evidence, &c.

SEC. 2. The printed statute books of sister states, and the several territories of the United States, purporting to be printed by the authority of such states or territories, shall be evidence of the legislative acts of such states or territories. (a) Printed statute books of sister states, &c., evidence.

SEC. 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 to be there kept, certified under the hand and seal of office of the secretary of state, shall be admitted as evidence. Certified copies of acts, laws, &c. in printed statutes of sister states, &c., shall be evidence, when.

SEC. 4. The printed books containing the acts of the congress of the United States, purporting to be published by authority of said congress, or by authority of the United States, shall be evidence of the laws, public or private, general, local or special, therein contained. Books printed by authority, containing the acts of congress, shall be evidence. 1838-9, p. 41-2.

SEC. 5. Copies of any act, law or resolution, contained in any such book, now or hereafter deposited in the office of the secretary of state, certified under the hand and official seal of said secretary, shall be received in evidence. Copies of such acts, certified by secretary of state, evidence.—*Ib.*

SEC. 6. The printed volumes, purporting to contain the laws of a sister state or territory, shall be admitted as prima facie evidence of the statutes of such states and territories. (1) Printed volumes of laws of sister states, prima facie evidence.

SEC. 7. Public documents, purporting to be edited or

(a) Brite vs. White, 8 Missouri Rep., p. 421.
(1) See session acts, 1840, p. 75-6. Session acts, 1842-3, p. 63-4. Substitute for session acts, 1842-3, p. 63-4.

Digitized by Google

CHAP. 59.

Public documents printed by authority of congress, evidence.

printed by authority of congress, or either house thereof, shall be evidence to the same extent that authenticated copies of the same would be.

Certified copies of confirmations, evidence.

SEC. 8. 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. (*b*)

Copies of New Madrid certificates.

SEC. 9. 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 all other books and papers which, by law, are required to be deposited or kept at his office, duly certified by him, shall be received as evidence.

Certified grants, &c. of the French and Spanish governments, evidence, how far.—1838–9, p. 42.

SEC. 10. All grants and concessions of land, all warrants, orders, plats and certificates of survey, made and signed by the proper officer of the French or Spanish government, which shall have been filed in the office of the recorder of land titles, by virtue of any law of the United States, and all deeds, conveyances, and evidences of title made before, and signed by, such officer of the French or Spanish government, which shall have been filed and recorded, as aforesaid, being certified by such recorder to have been recorded in his office, shall be received in evidence without further proof.

Certified copies from Livre Terrien, evidence.—*Ib.*

SEC. 11. Copies of all petitions, grants, orders, and returns of survey, and other evidences of title, contained in any land book, commonly called Livre Terrien, and copies of all such other records of the French or Spanish government, and of such evidences of title mentioned in the preceding section, as are by law required to be deposited in the office of the recorder of land titles, duly certified by him, shall be received in evidence, with like effect, as the original.

In what cases certified grants, &c. of the French and Spanish governments, shall be received in evidence without further proof. *Ibid.*

SEC. 12. When any such conveyance, or other evidence of title, as mentioned in the tenth section, shall have belonged to the archives of the French or Spanish government, and deposited in the office of the recorder of any county, and therein recorded, it shall, being duly certified by such recorder, be received in evidence without further proof. (*c*)

(*b*) George vs. Murphy, 1 Missouri Rep., 558; Strother vs. Christy, 2 *ibid*, 119; Ashley vs. Cramer, 7 *ibid*, 98.

(*c*) McNair vs. Dodge, 7 Missouri Rep., 405; Roussin vs. Parks, 8 *ib.*, 528.

Digitized by Google

How far copies of the same shall be evidence—*Ibid.*

SEC. 13. A copy of any such conveyance or evidence of title, among the archives of the French or Spanish government, deposited in pursuance of law, in the office of the recorder of any county, and therein recorded, and a copy of any record of the French or Spanish government, so deposited in such office, being duly certified by him, shall be received in evidence, with like effect, as the original.

In case of the loss or destruction of the original, copies shall be evidence.—*Ib.*

SEC. 14. Whenever it shall appear that the original of any of the records, archives or other evidences, mentioned in either of the four preceding sections, after having been deposited and recorded in the office of the recorder of land titles, or of the recorder of any county, in pursuance of law, cannot be found therein, or has been lost or destroyed, or that neither the original, nor a duly certified copy thereof, can be obtained by the parties wishing to use it, a copy of the record of such original, duly certified by the officer having charge of such record, shall be received in evidence.

Certified copies of plats, surveys, &c., received as evidence.

SEC. 15. 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.

Effect of acknowledgments respecting real estate taken under any law, afterwards repealed.—1838–9. p. 42.

SEC. 16. Every instrument of writing, conveying or affecting real estate, and the certificate of the acknowledgment or proof thereof, made in pursuance of any law in force at the time of such acknowledgment or proof, but afterwards repealed, shall be evidence to the same extent, and with like effect, as if such law remained in full force.

Deed acknowledged under a former law, shall be evidence, if recorded, &c. within one year from its date, &c.—*Ib.*

SEC. 17. Any deed or conveyance, duly acknowledged or proved, and recorded according to any law in force at the time of taking such acknowledgement or proof, although not declared by such law to be evidence, shall be received in evidence, if it appear to have been duly recorded in the proper office, within one year from its date, and more than twenty years from the time it is offered in evidence.

Such deed may be read in evidence, &c. on proof of certain facts.

SEC. 18. Such deed or conveyance (*d*) of acknowledgment, proved and recorded, according to law, though not recorded within one year from the date, or twenty years before it is

(*d*) In Moss vs. Anderson, 7 Missouri Rep., 337–8, the term "conveyance," used in this and the succeeding section, was held to embrace such instruments as were understood to be conveyances at the date of the instrument offered; hence an instrument conveying land, executed prior to 1816, although not under seal, is within the provision.

Digitized by Google

CHAP. 59.

offered, may be read in evidence, upon proof of such facts and circumstances, as, together with the certificate of acknowledgment or proof, will satisfy the court that the person who executed the instrument is the person therein named as grantor, (e)

In case of the loss or destruction of such deed, a certified copy thereof shall be evidence.

SEC. 19. Whenever it shall appear that the original deed or conveyance, in either of the cases specified in the two preceding sections, has been lost or destroyed, or is not in the power of the party who wishes to use it, a certified copy of the record thereof, and of the certificate of acknowledgment or proof, shall be received in evidence, upon like proof as is required in case of the original, and with like effect.

Evidence may be introduced to reject such deed or copy. *Ibid.*

SEC. 20. Wherever any deed, conveyance, or other evidence of title, or a copy thereof, shall be offered in evidence, under the provisions of either of the preceding sections, and objected to, the party objecting may introduce evidence to show that the original is not what it purports to be, or that it was not executed by those in whose name it was executed, or that the copy offered is not a true copy of the original, and the court shall determine thereon, and admit or reject the instrument, according to the evidence.

Copies of proceedings before justices of the peace, evidence.

SEC. 21. Copies of proceedings before justices of the peace, certified by the justice, before whom the proceedings are had, shall be evidence of such proceedings.

Copies of papers on file in the office of secretary of state, &c., shall be evidence.

SEC. 22. Copies of all papers on file in the office of the secretary of state, treasurer, auditor of public accounts, and register of lands, or of any matter recorded in either of said offices, certified under the seal of the respective offices, shall be evidence in all courts of this state.

Certified copies of justices' docket, &c. shall be evidence, when.

SEC. 23. 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.

When justice is out of office, copies of proceedings to be evidence, when.

SEC. 24. Copies of proceedings had before a justice of the peace, where such justice is out of office, certified by the justice who is in possession of the docket and papers of such justice, shall be received in evidence in any court in this state. (f)

SEC. 25. Printed copies of the ordinances, resolutions,

(e) It is not necessary to call the subscribing witnesses to prove the identity of the grantor, or to account for their absence. Moss vs. Anderson, 7 Missouri Rep., 341.

(f) Palmer vs. Hunter, 8 Missouri Rep., 512.

Digitized by Google

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.

Printed and certified copies, &c. of ordinances, &c. of city or incorporated town, evidence, when.

SEC. 26. 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.

Register of religious society to be evidence, when.

SEC. 27. 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 in evidence.

Copies of such register shall be evidence, when.

SEC. 28. The book of marriages to be kept by the respective recorders, in pursuance of the provisions of the act entitled "An act regulating marriages," and copies thereof certified by the recorder, under his official seal, shall be evidence in all courts.

Recorder's book of marriages and certified copies thereof, evidence.

SEC. 29. 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.

Certified copies of all bonds of officers, &c. shall be received in evidence.

SEC. 30. 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 by 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.

Certified copies of contracts made with the state or county, &c. shall be evidence, when.

SEC. 31. 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

Digitized by Google

CHAP. 60.

Copies of bonds of executors, administrators, &c., shall be evidence, when.

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 is committed, shall be evidence to all intents and purposes, as the originals themselves.

Court may require the production of the original bond or writing, when.

SEC. 32. 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.

Translated copies of written evidence, &c., verified by affidavit, shall be evidence, when.

SEC. 33. Whenever any written evidence in a cause shall be in a language other than the English, a written translation thereof into the English language, made by a competent translator, and verified by his affidavit, may be read in evidence instead of the original, if such original be competent evidence.

Copies of papers, &c. in the treasurer's or auditor's office, evidence.

SEC. 34. Copies of all papers and documents lawfully deposited in the office, either of the treasurer or auditor of the state, when certified by such 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.

Approved March 6, 1845.

CHAPTER 60.

EVIDENCE.

AN ACT concerning evidence.

SEC. 1. Certain printed digests of the statutes of Maryland and Tennessee, declared evidence.

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

Certain printed digests of the statutes of Maryland and Tennessee, declared evidence.

SECTION 1. The printed books containing a digest of the statute laws of the state of Maryland, the title page of which is as follows: "The general public statutory laws and public local laws of the state of Maryland, from the year sixteen hundred and ninety-two, to eighteen hundred and thirty-nine,

Digitized by Google

inclusive, with annotations thereto and copious index, by Clement Dorsey, an associate judge of the first judicial district, in three volumes. Baltimore. Printed by John D. Toy, corner of Market and St. Paul streets, 1840;" and a compilation of the statutes of Tennessee, of a general and permanent nature, from the commencement of the government to the present time, with reference to judicial decisions in notes, to which is appended a new collection of forms, by R. L. Caruthers and A. O. P. Nicholson, shall be evidence in this state of the legislative acts of said states of Maryland and Tennessee, therein contained.

New act.

This act shall take effect, and be in force, from and after the passage thereof.

Approved March 24, 1845.

CHAPTER 61.

EXECUTIONS.

AN ACT to regulate executions.

SEC. 1. In whose favor executions may issue.
2. To issue against the goods, chattels and real estate.
3. Form of the execution against the estate of defendant.
4. Execution against heir, devisee, &c,
5. Executions, when returnable.
6. Garnishees to be summoned, if no property found.
7. No sheriff or collector shall be summoned as garnishee. County buildings not subject to execution.
8. Executions, where directed and executed.
9. Duties of clerk in issuing executions.
10. Property exempt from execution, owned by person other than the head of a family.
11. When owned by the head of a family.
12. Working animals exempt, shall be selected by defendant. Officer to apprise him of his right. To be appraised, by whom; if sold for more than $65, proceedings.
SEC. 13. If the head of family be a married man and abscond, his wife may claim the property exempt from execution, &c.
14. What property shall be liable to be seized and sold upon execution.
15. No execution to issue against executors and administrators, when.
16. Execution to be a lien on personal property only from delivery.
17. Sheriff, &c., to endorse on executions the time when received, &c.
18. Cashier of bank, or other corporation, shall, on request of officer, give information, &c., of rights, shares, &c., of defendant in execution.
19. Execution, how levied after such information.
20. Defendant in execution may elect what property shall be sold.
21. Proceedings, when property or shares in bank, or other corporation, is seized upon by virtue of execution. Jury to be summoned.

Digitized by Google

SEC. 22. Witnesses may be summoned, &c.
23. Costs, how adjudged in such cases.
24. When trial shall not proceed.
25. Notwithstanding verdict in favor of claimant, officer may sell on plaintiff's giving him an indemnity bond. Condition of bond.
26. Such bond to be returned with the examination. Claimant may prosecute, when.
27. Such bond shall bar claimant's right of action against the officer.
28. Real estate to be divided, when, and not more sold than necessary.
29. Defendant may elect what property to be first sold; proceedings.
30. No property to be sold until ten days notice of the time and place of sale be given.
31. Personal property levied on may be retained until day of sale, by giving bond. Condition thereof.
32. Property not delivered, levy to remain a lien, &c.
33. Condition of bond broken, officer to seize other property and sell it, how, &c.
34. If, on breach of the condition, execution is returned unsatisfied, plaintiff may move for judgment on the bond, when.
35. Motion to be heard and determined in a summary way.
36. No second delivery bond shall be taken.
37. Delivery bond to be returned with the execution. Failure, officer to stand as security.
38. Sale to be fifteen days before return, when.
39. The eight preceding sections shall apply to justices courts.
40. Sale of real estate, when and where made. Notice of sale, how given.
41. Sale, how conducted; within what hours.
42. Purchaser refusing to pay, property to be re-sold. Loss, if any, recovered by motion.
43. Court or justice to proceed in a summary manner.
44. Officer, how far liable under two preceding sections.
45. Officer not to purchase property, directly or indirectly, &c.
46. Personal property to be delivered to purchaser. Bill of sale thereof, given, if required.
SEC. 47. If real estate levied upon, be not sold at first term of court, &c., the execution to continue in force to the end of the second term.
48. Bill of sale of bank stock, &c., to be made; effect thereof.
49. Deed to be executed for real estate, what it shall recite, &c.
50. Such deed, how acknowledged.
51. Clerk to endorse certificate of acknowledgment in such deed, &c.
52. When the term of office of sheriff shall expire, &c., he shall deliver over writs of execution not executed, to his successor. Duty of new sheriff to execute the same. Duty of new sheriff to execute the same. Liability of former sheriff.
53. In case of his death, executor or administrator to deliver to his successor executions not executed.
54. Sheriff's deeds to be recorded. Copies to be evidence.
55. Term of service of officer expiring after levy, he shall execute writ, &c., and execute and acknowledge deed, &c.
56. Proceedings in case of death, resignation or removal from office, after levy, and before sale.
57. If after sale, how to proceed to obtain deed.
58. Officer refusing to levy, or to sell after levy, or make return, &c., or permit escape, liable for amount of execution.
59. Officer liable, on his bond for refusal or neglect to perform duty to party aggrieved.
60. Remedy of the plaintiff, in certain cases, against the officer.
61. Persons injured may proceed against principals or securities, jointly or severally.
62. Proceedings to set aside or quash execution. Shall petition judge of the court from which it issued.
63. If set aside or quashed, petitioner to enter into recognizance; conditions thereof; judge to order stay of execution, &c.
64. Judge to return the petition to the court out of which the execution issued, &c.
65. Leases for three years or more subject to execution; not from justices' courts.
66. Construction of term "real estate."
67. Of the word "levy."

Digitized by Google

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

In whose favor execution may issue.

SECTION 1. The party in whose favor any judgment, order or decree, is rendered by any court of record, may have an execution in conformity with the judgment, order or decree. (*a*)

To issue against the goods, chattels and real estate.

SEC. 2. Such execution shall be a fieri facias against the goods, chattels, and real estate of the party, against whom the judgment, order or decree, shall have been rendered.

Form of the execution against estate of defendant.

SEC. 3. Executions against the estate of the defendant, shall be in the form, or of the effect, following: "The state of Missouri 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. the sum of —— for debt, (or damages, as the case may be,) and also for the sum of ——, which to the said A. B. were adjudged for his damages, as well by reason of detaining the said debt, as for his costs in that suit expended. These are, therefore, to command you, that of the goods and chattels, and real estate, of the said C. D., you cause to be made the debt, damage and cost, (or damages and costs,) and that he have the same before the judge of said court, on the — day of ——, to satisfy the debt, damages and costs aforesaid, (or damages alone 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."

Execution against heir, or devisee, &c.

SEC. 4. When such execution shall be issued against any person, as heir or devisee, 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

(*a*) As to the adjudications of the supreme court on the subject of executions, see Brown vs. Sheriff of Cape Girardeau county, 1 Missouri Rep., 108; Ramsey, ex'r, vs. Waters et al, *ibid*, 287; Dowsman vs. Potter, *ibid*, 368; Scott vs. Whitehill and Finch, *ibid*, 494; Ravenscroft vs. Giboney, 2 Missouri Rep., 3; McNair et al vs. McLane, *ibid*, 48; Blair vs. Caldwell, 3 Missouri Rep., 249; Coonce vs. Munday, *ibid*, 264; Lindell vs. Wash, *ibid*, 358; Posey vs. Buckner, *ibid*, 413; Bartlett vs. Glasscock et al, 4 Missouri Rep., 62; Burk et al vs. Flurnoy, *ibid*, 116; Lindell vs. Benton et al, 6 Missouri Rep., 361; Hatfield vs. Wallace, 7 Missouri Rep., 112; Davis vs. Wood, *ibid*, 162; Harrison vs. Martin, *ibid*, 286; Hicks et al vs. Perry, *ibid*, 346; Sweringen vs. Administrator of Eberius, *ibid*, 421; Van Winkle et al vs. McKee et al, *ibid*, 435; Fisher vs. Gordon, 8 Missouri Rep., 386; King vs. Bailey, *ibid*, 332; Rector vs. Hart, *ibid*, 448.

Digitized by Google

debt, damages and costs, or sum of money in such execution specified.

Executions, when returnable.

SEC. 5. Executions issuing from any court of record, shall be made returnable at 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. (*b*)

Garnishees to be summoned if no property found.

SEC. 6. When a fieri 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 fieri 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 cases of garnishees, summoned in suits originating by attachments. (*c*)

Sheriff or collector not to be summoned as garnishee. 1836–7, p. 44.

SEC. 7. No sheriff, county collector, or collector of the revenue of any county, shall be summoned as garnishee under the provisions of the preceding section; nor shall any thing contained in an act entitled, "An act to enable counties to make contracts, and hold and convey real estate," be so construed as to subject any court-house, jail, clerk's office, or any other public building, or the lots of ground on which they may be situated, belonging to any county, to the execution of any creditor of such county.

County buildings not subject to execution.

Executions, where directed and executed.

SEC. 8. 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.

Duties of clerk in issuing executions.

SEC. 9. The clerk shall endorse upon every execution by him issued, the debt, and damages, and costs, to be recovered, before the delivery of such execution to be executed, and

(*b*) The sheriff, though bound to notice that the writ is tested by the proper officer, and authenticated as the law requires, and that it contains a command which the court, from which it emanates, is authorized to make, is not responsible for the validity of the judgment or the proceedings previous thereto; Brown vs. Henderson, 1 Missouri Rep., 134.

(*c*) The validity of a deed of assignment cannot be tried in a court of law, upon an issue made between a judgment creditor and the assignee, garnisheed on an execution under the provisions of this section; Van Winkle and Randall vs. McKee, et al, 7 Missouri Rep., 435.

Digitized by Google

shall keep in his office, a well bound book, and enter therein an abstract of all executions issued out of his office, showing 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 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.

Property exempt from execution.

SEC. 10. 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. (*d*)

When owned by the head of a family.

SEC. 11. The following property, when owned by the head of a family, shall be exempt from levy and sale, under any execution: *First*, Ten head of choice hogs, ten head of choice sheep, two cows and calves, one plough, one axe, one hoe, and one set of plough gears; *Second*, Working animals of the value of sixty-five dollars; *Third*, The spinning wheels and cards, one loom and apparatus, necessary for manufacturing cloth in a private family; *Fourth*, All the spun yarn, thread and cloth, manufactured for family use; *Fifth*, Any quantity of hemp, flax and wool, not exceeding twenty-five pounds each; *Sixth*, 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, agreeably to an inventory thereof, to be returned on oath, with the execution, by the officer whose duty it may be to levy the same; *Seventh*, The necessary tools and implements of trade of any mechanic, while carrying on his trade; (*e*) *Eighth*, All arms and military equipments required by law to be kept; *Ninth*, All such provisions as may be on hand [for] family use, not exceeding twenty-five dollars in value; *Tenth*, All lawyers, physicians and ministers of the gospel, shall have the privilege of selecting such books as shall be necessary to their profession, in the place of other property herein allowed, at their option; that doctors of medicine, in lieu of the property exempt from execution, may be

(*d*) If a mechanic conceives the design of absconding, and accordingly abandons his trade, his tools and implements become subject to execution. Davis vs. Wood, 7 Missouri Rep., 166.

(*e*) Harrison vs. Martin, 7 Missouri Rep., 286.

Digitized by Google

allowed to select their medicines: *Provided*, Nothing in this act shall be so construed as to exempt any property, whatever, from sale, for the payment of taxes now due, or hereafter to become due to this state, or any county thereof.

Working animals exempt shall be selected by defendant.

Officer to apprise him of his right.

To be appraised, by whom.

SEC. 12. The working animals mentioned in the second clause of the preceding section, shall be selected by the defendant, and the officer shall apprise him of his right to make such selection, and shall cause the animals so selected, to be appraised under oath, by three disinterested householders of the vicinage; and if the animals shall not be appraised to, and sold for more than sixty-five dollars, the defendant shall retain them; but if appraised to more, they shall be offered for sale, and if sold for more than sixty-five dollars, that sum shall be paid to the defendant in the execution, and the remainder to the plaintiff.

If sold for more than $65, proceedings.

If the head of a family, being married, absconds, &c., his wife may claim the property exempt from execution, &c.

SEC. 13. When the articles specified in the last preceding section shall belong to a married man, and he, at the time the execution is levied, or at any time before the sale under it, has absconded or absented himself from his place of abode, his wife may claim the said articles, and receive the same from the officer, and may, if the said articles are taken or withheld from her, in her own name sue for and recover the same, or the value thereof, and, in such suit shall not be required to give security for costs.

What property shall be liable to be seized and sold upon execution.

SEC. 14. 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 hereinbefore exempted; *Second*, All slaves, and the rights and shares in the stock of any bank, insurance company, turnpike company, or other corporation; *Third*, All 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 moneyed 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, or at any time thereafter; *Fifth*, All 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. (*f*)

(*f*) As to the validity of sales under execution, see Kean vs. Newell, 1 Missouri Rep., 254; S. C. 2. *Ibid*, 10.

Digitized by Google

No execution to issue against executors or admr's, &c., when. 1838–9, p. 42. 1826, Dec. 30, 2d territoral laws, and p. 104.

SEC. 15. No execution shall issue upon any judgment or decree rendered against the testator or intestate in his life time, or against his executors or administrators after his death, which judgment or decree constitutes a demand against the estate of any testator or intestate, within the meaning of an act, entitled "An act respecting executors and administrators;" but all such demands shall be classed and proceeded on in the county court, as required by said act.

Execution to be a lien on personal property only from delivery. 1838–9, p. 43, 44.

SEC. 16. No execution shall be a lien on any slaves, goods, chattels or other personal property, 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 expired, but from the time such writ shall be delivered to the officer of the proper county. (g)

Sheriffs, &c. to endorse on executions the time when received.

SEC. 17. The several sheriffs, and their deputies, shall, upon the receipt of a writ of execution, without fee for doing the same, endorse thereon the day of the month and year when they received the same; 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.

Cashier, &c. of bank or other corporation, shall, on request of officer, give information, &c. of rights, shares, &c. of defendant in execution.

SEC. 18. 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 incumbrance thereon.

Execution, how levied, after such information.

SEC. 19. The officer, upon obtaining such information, or in any other manner, may make a levy of such execution on such rights or shares, by leaving a true copy of such writ with the cashier, secretary, or chief clerk, and if there be no such officer, 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.

Defendant in execution may elect what property shall be sold.

SEC. 20. The person against whom any execution shall be issued, may elect what property, real or personal, shall be

(g) See McNair vs. O'Fallon, 8 Msssouri Rep., 188; Benton vs. Mullanphy's executor, 8 Missouri Rep., 650.

Digitized by Google

sold to satisfy the same; and if he gives 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, in his opinion, it is sufficient; if not, then upon such additional property as shall be sufficient.

Proceedings when property or shares in bank or other corporation is seized upon by virtue of execution. Jury to be summoned.

SEC. 21. 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.

Witnesses may be summoned, &c. Verdict of jury to be full indemnity to officer.

SEC. 22. 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 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. (*h*)

Costs, how adjudged in such cases.

SEC. 23. The sheriff and witnesses shall be allowed the like fees as for similar cases 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.

When trial shall not proceed.

SEC. 24. If, at any time before the jury return, the claimant withdraw his claim, the trial shall proceed no further, and the claimant shall pay the costs of such unfinished trial.

Notwithstanding verdict for claimant, officer may sell on plaintiff, giving him an indemnity bond.

SEC. 25. Notwithstanding the jury find the goods and chattels to be the property of the claimant, yet, the officer shall proceed to sell the same in satisfaction of the execution, if the plaintiff will tender to him a bond, payable to the officer, with good security, resident of the county, and conditioned to indemnify him against all damages and costs, which he may sustain in consequence of the seizure and sale of the property, on which the execution shall have been levied; and, moreover, to pay and satisfy to any person or persons claiming title to such

(*h*) Fisher vs. Gordon, 8 Missouri Rep., 386; Brown vs. Burus, *ib.*, 26. The sheriff may, if he choose, take a bond of indemnity from the plaintiff in the execution, and sell, and such bond is held valid; but the sheriff may refuse to sell.

Digitized by Google

property, all damages which such person or persons may sustain in consequence of such seizure and sale.

Such bond to be returned with the execution.

Claimant may prosecute, when.

SEC. 26. If such bond and security be given, it shall be returned by the officer, together with the execution, and filed in the office from which the execution issued, and the claimant may, in the name of the officer to whom the bond is payable, prosecute his or her suit upon the bond, and recover such damages as a jury may assess.

Such bond shall bar claimant's right of action against the officer.

SEC. 27. After the due execution of such bond, the claimant shall be barred of his right of action against the officer, unless the obligors in the bond shall have been insolvent at the time such bond was executed.

Real estate to be divided, when, and not more sold than necessary.

SEC. 28. 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. (*i*)

Defendant may elect what property to be first sold: proceedings.

SEC. 29. 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 moneys shall be made to satisfy the amount in the execution specified, and costs.

No property to be sold till ten days notice of time and place of sale be given. &c. 1838-9, p. 43.

SEC. 30. No goods and chattels, or other personal effects, seized and taken by virtue of any execution, shall be sold, until the officer having charge of the writ, shall have given ten days notice of the time and place of sale, and of the 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 when any slave is to be sold, also, by one like advertisement, put up at a public place in each adjoining township within the same county.

(*i*) When more property is sold by a sheriff, under execution, than is sufficient to satisfy the execution, and the property could have been sold in parcels, the court will set aside the sale on motion. Hicks & H. vs. Perry, 7 Missouri Rep., 346. See also Rector vs. Hartt, 8 Missouri Rep., 448, where it is held, that a violation of this injunction on the sheriff, will not make a sale void, though it may be good cause for setting it aside.

Digitized by Google

CHAP. 61.

Personal property levied on may be retained till day of sale, by giving bond.

SEC. 31. 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.

Condition thereof.

Property not delivered, levy to remain a lien, &c.

SEC. 32. 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.

Condition of bond broken, officer to seize other property and sell it, how, &c.

SEC. 33. 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.

If, on breach of the condition, execution is returned unsatisfied, plaintiff may move for judgment on the bond, when.

SEC. 34. 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 suit upon the bond.

Motion to be heard and determined in a summary way.

SEC. 35. 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, a 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.

No second delivery bond shall be taken, when.

SEC. 36. 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.

Delivery bond to be returned with the execution.

SEC. 37. 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

Digitized by Google

delivery of the property levied on, and may be proceeded against as such.

Sale to be 15 days before return, when.

SEC. 38. If there be sufficient time, the officer shall appoint the day of sale at least fifteen days before the return day of the execution.

The eight preceding sections shall apply to justices' courts.

SEC. 39. The eight preceding sections shall apply to justices' courts, so far as they are applicable under the general laws.

Sale of real estate, when and where made: notice of sale, how given.

SEC. 40. When real estate shall 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, or of the court of common pleas in St. Louis county, 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 handbills, 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.

Sale, how conducted; within what hours.

SEC. 41. 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 in the afternoon, publicly, by auction, for ready money, and the highest bidder shall be the purchaser.

Purchaser refusing to pay, property to be re-sold.

SEC. 42. If the 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.

Loss, if any, recovered by motion, &c.

Court or justice to proceed in a summary manner.

SEC. 43. 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.

Officer how far liable under two preceding sections.

SEC. 44. The two preceding sections shall not be construed to make the officer liable for any more than the amount bid by the second or subsequent purchaser, and the amount collected from the purchaser or purchasers refusing to pay.

Officer not to purchase property, &c.

SEC. 45. No officer, to whom any execution shall be directed, or any of his deputies, or any person for them, shall

Digitized by Google

CHAP. 61.

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.

Personal property to be delivered to purchasers. Bills of sale thereof given, if required.

SEC. 46. 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.

If real estate levied upon be not sold at first term of court, &c., the execution to continue in force to the end of second term.

SEC. 47. In all cases where an execution shall be issued and levied by the proper officer, upon real estate, and for any cause a sale of such real estate, without the fault of the officer, cannot be made at the first term of the circuit court of the county in which such sale is to be made, the execution shall continue in force until the end of the second term of the circuit court of the county to which such writ is directed, and the officer shall, in all such cases, proceed to advertise and sell the real estate according to law.

Bill of sale of bank stock, &c., to be made; effect thereof.

SEC. 48. 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, 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.

Deed to be executed for real estate; what it shall recite, &c.

SEC. 49. 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 the sale, which recital shall be received as evidence of the facts therein stated.

SEC. 50. Every officer executing any deed for lands, tene-

Digitized by Google

ments or hereditaments, sold under execution, shall acknowledge the same before the circuit court of the county in which the estate is situated, or before the court of common pleas of St. Louis county, when the estate is situated in that county; but if he die or leave the state, resign, or be removed from office, or otherwise disqualified from acting, before making such acknowledgment, such deed may be proved before such court as other deeds.

Such deeds, how acknowledged.

SEC. 51. 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.

Clerk to endorse certificate of acknowledgment on such deed, &c.

SEC. 52. Whenever the term of office for which any sheriff shall have been elected has expired, or he shall have resigned, or removed without the county, or be removed from office, it shall be his duty to deliver over all writs of execution, not executed, to such person as may have been elected, or appointed and qualified to discharge the duties of sheriff, and such new sheriff shall receive all such writs, and proceed to execute the same, in the same manner as if such writs had been originally directed to him; and for any failure or neglect to perform the duties therein imposed upon the former sheriff, such former sheriff and his securities shall be subject to the like penalties, proceedings and judgments, as if he still continued in office.

When the term of office of sheriff shall expire, &c., he shall deliver over writs of execution not executed to his successor.

Duty of new sheriff to execute them.

Former sheriff, &c. liable.

New section.

SEC. 53. When any sheriff shall die, it shall be the duty of his executors or administrators to deliver over to the person appointed, or elected and qualified, to succeed the deceased, all executions unexecuted, and for failure to do so, said executors or administrators, and the securities of the testator or intestate, shall be responsible.

In case of his death, his executors or administrators to deliver to his successor executions not executed.

SEC. 54. Every deed so executed and acknowledged, [as in sections forty-nine, fifty and fifty-one, specified,] 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.

Sheriff's deeds to be recorded.

Copies to be evidence.

SEC. 55. When any 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

Term of service of officer expiring after levy, he shall execute the writ, &c.

Digitized by Google

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.

To execute and acknowledge deed, &c.

Proceedings in case of death, resignation, or removal from office, after levy and before sale.

SEC. 56. When any officer shall die, or be removed from office, or [be] 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.

If after sale, how to proceed to obtain a deed.

SEC. 57. When any officer shall die, be removed from office or disqualified, or shall remove from this state, 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, disqualified, or absent from the state.

Officer refusing to levy, or to sell after levy, or make return, &c., or permit escape, liable for amount of execution.

SEC. 58. If any officer, to whom any execution shall be delivered, shall refuse or neglect to execute or levy the same, according to law, or shall take in execution any property, or any property be delivered to him by any person against whom an execution is issued, and he shall neglect or refuse to make sale of the property so taken or delivered, according to law, or shall make a false return of such 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; and if such officer shall not, on the return of such writ, or at the time the

Digitized by Google

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 exigency 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.

Officer liable on his bond for refusal or neglect to perform duty to party aggrieved.

SEC. 59. If any officer, to whom any execution shall be delivered, shall not return such writ, according to law and the command of the writ, such officer and his securities shall be liable to pay the damages sustained by such default, to be recovered by the party aggrieved by action upon the official bond of the officer, or by an action on the case against such officer.

Remedy of the plaintiff in certain cases against the officer.

SEC. 60. If any officer shall sell any property under any execution, whether he receive payment therefor or not, or shall make the money on any execution specified, or thereon endorsed and directed to be levied on 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 cent. per month, to be computed from the time when the same shall be demanded by the party entitled thereto, or his attorney or agent, after 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 and his securities, by motion, in 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, 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 he shall be subject to the like penalties and liabilities for any default therein, as on other executions.

SEC. 61. Persons injured by the neglect or misfeasance of

Digitized by Google

CHAP. 61.

Persons injured may proceed against principal or securities, &c.

any officer, may proceed against such principal, or any one or more of his securities, jointly or severally, in any proceeding authorized by law against such officer, for official neglect or injury.

Proceedings to set aside or quash execution.

Shall petition judge of the court from which it issued.

SEC. 62. 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.

If set aside or quashed, petitioner to enter into recognizance.

Its conditions.

SEC. 63. 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 render 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.

Judge to order stay of execution, &c.

Judge to return the petition to the court out of which the execution issued, &c.

SEC. 64. 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 clerk of such court shall enter the same upon his motion docket, and the court 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.

Leases for three years or more, subject to execution; not from justices' court.

SEC. 65. 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 and by virtue of an execution issued by a justice of the peace.

Construction of term "real estate."

SEC. 66. The term "real estate," as used in this act, shall be construed to include all estate and interest in lands, tenements and hereditaments.

Digitized by Google

Of the word "levy."

SEC. 67. 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.

Approved March 26, 1845.

CHAPTER 62.

FEES.

AN ACT to regulate fees.

SEC. 1. What fees officers are allowed to charge.
2. Fees of attorney general and circuit attorneys.
3. Fees of clerks of county courts for county business.
4. Fees of clerks of county courts in probate business, &c.
5. Fees of probate judge of St. Louis county.
6. Fees of clerk of the supreme court.
7. Fees of clerks of the circuit courts in civil proceedings.
8. Fees of clerks of courts possessing criminal jurisdiction.
9. No fee shall be charged unless allowed, &c.
10. Fees of clerks of circuit courts in chancery.
11. Sheriff's fees in civil cases.
12. Sheriff's fees in criminal cases.
13. No fees allowed in criminal cases, except what are enumerated.
14. Money collected by sheriff, how paid.
15. Coroner's fees.
16. Constable's fees.
17. Interpreter's fees.
18. Fees of county surveyors.
19. Recorder's fees.
20. Notary's fees.
21. Fees of the secretary of state.
22. Juror's fees.
23. Witnesses fees in civil cases.
24. Witnesses fees in criminal cases.
25. Duty of clerks on application of witnesses for allowance of fees.
26. Fees of justices of the peace.
27. When fees are allowed by the number of words, each figure calculated as one word, &c.
28. No fee allowed clerk for opening or adjourning order.
SEC. 29. This act to be construed strictly.
30. Officer to state on the writ, the time when served and how, or he will not be entitled to fees.
31. Officer to set up in his office a table of his fees. Penalty for failure.
32. Witnesses to claim their fees at each term as they attend. Sheriff, &c., to endorse on all process their services, &c. Clerks shall enter all fees as the services are rendered, and issue fee bills, &c.
33. Clerks to examine all accounts for fees, and may certify fee-bills, when. To be delivered to sheriff and collected by him. Justices and county surveyors may issue fee-bills, &c. Effect thereof.
34. If fee-bill not paid within twenty days, sheriff shall levy on property, &c. Proceedings against sheriff for failing to levy and collect fee-bills.
35. If fees are paid by a party before final judgment and he recover, how to be collected. Costs of unsuccessful party, how taxed and collected, &c.
36. Fees of each officer to be endorsed on execution. Clerks to keep fee books, &c.
37. Fee-bill not to issue after one year, until notice be given, when and how.
38. Proceedings, &c., against officers charging illegal fees. Amount of fees and penalty of $5.00, to be recovered in action of debt.
39. In such suits the fee books, &c., shall be evidence.
40. Fees of officers considered due when services are rendered.

Digitized by Google

CHAP. 62. *Be it enacted by the General Assembly of the State of Missouri, as follows:*

What fees officers are allowed to charge.

SECTION 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.

FEES OF ATTORNEY GENERAL AND CIRCUIT ATTORNEYS.

Fees of attorney general and circuit attorneys. 1838–9, sec. 3, p. 45.

SEC. 2. The attorney general and circuit attorneys, respectively, shall be allowed [fees] as follows, unless in cases where it is otherwise directed by law: For judgment obtained upon any proceeding of a criminal nature, otherwise than by indictment, four dollars; For a conviction upon indictment, when the punishment assessed by the court or jury shall be fine or imprisonment in the county jail, or both such fine and imprisonment, four dollars; For a conviction in any case, when the punishment assessed shall be confinement in the penitentiary, except cases of rape, arson, burglary, robbery, forgery and counterfeiting, eight dollars; For a conviction for homicide, other than capital, or for offences excepted in the last clause, ten dollars; For a conviction in a capital case, twenty dollars; For a conviction of a slave in capital cases, to be paid by the state, twenty dollars; For his services in all actions which it is, or shall be made, his duty, by law, to prosecute or defend, four dollars; No fee shall be allowed when an indictment, or any other proceeding of a criminal nature, shall be quashed, or held bad on demurrer, or judgment thereon arrested by reason of the insufficiency of the indictment or other proceeding.

FEES OF CLERKS OF COUNTY COURTS FOR COUNTY BUSINESS.

Fees of clerks of county courts for county business.

SEC. 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, ten cents; For entering, making out and issuing, the appointment of any commissioner for erecting or repairing any public bridge, twenty-five cents; For filing the bond of a contractor for erecting or repairing a bridge, five cents; For reading and filing every petition, and recording the order made thereon, (to be paid by the petitioners,) fifty-cents; For copying the petitions, orders, plats and surveys of roads, and all other records pertaining thereto, for every hundred words, (to be paid by the petitioners,) ten cents; For issuing each

Digitized by Google

certificate of the appointment of viewers of a road, twenty-five cents; For reading, filing and entering the complaint or application of persons objecting to a road, (to be paid by the complainants,) fifty cents; For entering and copying order appointing householders to inquire of damages in the case of roads, (to be paid by complainant,) fifty cents; For reading and filing a return of such inquisition, (to be paid by the complainant,) fifty cents; For entering every order appointing a justice of the peace to lay off roads into road districts, and copy [of] the same, thirty-five cents; For entering the appointment of overseers of roads, and issuing a notification thereof, twenty-five cents; For filing every constable's bond, (to be paid by the constable,) five cents; For entering every order concerning the erecting or repairing of any county building, twenty-five cents; For entering the appointment of persons to superintend the erecting or repairing any county building, and issuing a certificate thereof, thirty-five cents; For reading, filing and entering [each] report, plan, bond, and all other papers touching every county building, twenty-five cents; For entering every order for ascertaining and marking any county line, and issuing copy thereof, twenty-five cents; For entering every order, approving or disapproving any return of the survey of county lines, twenty-five cents; For recording return of survey of county lines, if approved, twenty-five cents; For entering every appointment of judges of election, and issuing certificates thereof, for each township, twenty-five cents; For entering every order fixing the places of holding elections in his county, ten cents; For entering every order for the support of any poor person, idiot, or lunatic, ten cents; For all services required by law to be performed by him, touching the incorporation of any town, (to be paid by the petitioners,) one dollar; For all services required to be performed by him in relation to laying out a township, or altering township lines, and certifying the same, fifty cents; For trying any weight or measure by the county standard, and sealing the same, (to be paid by the applicant,) twenty-five cents; For all services in taking, filing and safe-keeping, of a collector's bond for state taxes, (to be paid by the state,) one dollar; For like services in relation to a collector's bond for county taxes, (to be paid by the county,) one dollar; For making out state tax list, for every hundred words, (to be paid by the state,) five cents; For an addition

Digitized by Google

CHAP. 62.

Act Feb. 6th, 1837, p. 131, sec. 1.

Act Jan. 17th, 1839, p. 17.

to the state tax list, so as to make it serve the purpose of a county tax list, for every hundred words in said addition, ten cents; For copying and furnishing a list of lands for the assessor, five cents; for every hundred words and figures, five cents; For issuing each license under the seal of his office, (to be paid by the applicant,) fifty cents; For taking, filing and safe-keeping, any bond not herein otherwise provided, fifty cents; (Under the immediately preceding clause, no fee shall be taxed against the state or county.) For making any settlement of account with the county, twenty-five cents; For all services attending the licensing of a ferry, one dollar; For issuing each writ, and receiving, filing and docketing the return, fifty cents; For filing every paper not hereinbefore specified, five cents; For administering each oath, five cents; For swearing and entering a jury, fifty cents; For taking the verdict of a jury and entering the same of record, twenty-five cents; For entering every judgment, twenty-five cents; For copies of records and papers not hereinbefore provided, for every hundred words, five cents; For every rule or order not hereinbefore specified, and copy thereof, ten cents; (Under the immediately preceding clause, no fee shall be taxed against the state or county.) For a commission to take depositions, seventy-five cents; For entering an appeal, except appeals from the assessor's books, to the county court, ten cents; For every certificate and seal not hereinbefore provided for, fifty cents; (Under the immediately preceding clause, no fee shall be taxed against the state or county.) For every subpœna, fifty cents; For recording every paper not hereinbefore provided for, for every hundred words, ten cents; For taking every acknowledgment of a deed, or other writing, to include the certificate and seal, twenty-five cents.

FEES OF CLERKS OF COUNTY COURTS IN PROBATE BUSINESS, &c.

Fees of clerks of county courts in probate business, &c.

Act Feb. 4, 1837, p. 61-2.

SEC. 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 guardians, curators, idots, and lunatics, as follows: For granting letters of administration, or testamentary, recording the same, appointing witness, [appraisers,] administering oaths, and every thing relating thereto, one dollar; For an order appointing a guardian, or curator, ten cents; For taking and filing bond of guardian, or curator, twenty-five cents; For an order of sale of real estate, twenty-five

Digitized by Google

cents; For an order of publication, twenty-five cents; For every order relating to administrators, executors, or guardians, not herein otherwise provided for, ten cents; For filing any paper, five cents; For copying any order, or record, or paper, not herein provided for, for every hundred words, ten cents; For taking bond of heirs to refund, and filing same, twenty-five cents; For entering every verdict or judgment, ten cents; For taking new bond of an administrator, executor, guardian, or curator, and filing the same, twenty-five cents; For recording any instrument of writing, not otherwise provided for, for every hundred words, ten cents; For issuing a citation to an administrator, executor, guardian, or curator, twenty-five cents; For taking proof of any will or codicil, twenty-five cents; For every certificate and seal, twenty-five cents; For issuing every subpœna, twelve cents; For administering every oath, three cents; For keeping abstracts of demands, for each demand entered, one cent; For certifying without seal, the amount, date, and class of a demand when allowed, five cents; For drawing, taking, and filing each indenture of apprenticeship, when the court binds a minor, (to be paid by the master,) fifty cents; For entering every appearance, two cents; For entering a motion, five cents; For entering a rule five cents; For swearing and entering a jury, twenty-five cents; For a search for any thing, if above a year's standing, (but no fee for search to be allowed when a copy is to be taken,) five cents; For every issue joined, five cents; For entering a trial, with or without a jury, five cents; For a commission to take depositions, twenty-five cents; For an execution, fifty cents; For taking and entering a recognizance, twenty-five cents; For an attachment, fifty cents; For every continuance of a cause, five cents; For entering an appeal, twelve cents; For a venire to summon a jury, when one is specially ordered, and is actually issued, twelve cents; For each order distributing assets amongst heirs, twelve cents; For entering a settlement, whether annual or final, twenty-five cents.

FEES OF JUDGE OF PROBATE COURT OF ST. LOUIS COUNTY.

Fees of probate judge. Act Feb. 11th, 1841, p. 56, sec. 8.

SEC. 5. The judge of the probate court for the county of Saint Louis, shall receive such fees for his services, as are allowed by law, to the clerks of the county courts for like services, and to be paid in like manner.

Digitized by Google

FEES OF THE CLERK OF THE SUPREME COURT.

Fees of the clerk of the supreme court.

SEC. 6. The clerk of the supreme court shall be allowed fees for his services, as follows: For a writ of error, certiorari, habeas corpus, quo warranto, or mandamus, one dollar and fifty cents; For a supersedeas, fifty cents; For any other original writ, one dollar; For taking a bond or recognizance, on issuing a writ of error or supersedeas, one dollar; For filing a transcript, and docketing a cause, fifty cents; For filing assignment of errors or joinder, twenty cents; For recording the opinions of the court, if required so to do, for every ten words, one cent; For certified copies of the opinions of the court, for every hundred words, ten cents; For filing any paper in a case, ten cents; For certified copies of abstracts of briefs of counsel, for every hundred words, eight cents; For re-taxing any bill of costs, (to be paid by the clerk whose bill is re-taxed,) two dollars. For every other service to be performed by the said clerk, he shall be allowed the like fees as are allowed to the clerks of the circuit courts for similar cases.

FEES OF CLERKS OF THE CIRCUIT COURTS IN CIVIL PROCEEDINGS.

Fees of clerks of the circuit courts, &c. in civil proceedings. Act Jan. 21, 1841, p. 52, sec. 21.

SEC. 7. The clerks of the several circuit courts of this state, and of the court of common pleas of the county of St. Louis, shall receive in all civil proceedings, the following fees for their services: For filing any paper in a cause, five cents; For drawing, sealing, and entering every writ, original and judicial, and filing and docketing the same, one dollar; For entering an appearance, ten cents; For taking and entering a recognizance, twenty-five cents; For every other bond in a case, twenty-five cents; For entering an order discharging a recognizance, ten cents; For every issue joined, twenty-five cents; For entering every motion, rule or order, twenty-five cents; For every continuance of a cause, twenty-five cents; For every subpœna, fifty cents; For a copy of any rule or order, if demanded without seal, twenty-five cents; For a commission to take depositions, twenty-five cents; For a copy of the interrogatories thereto annexed, for every hundred words, ten cents; For entering a judgment of retraxit, discontinuance, or non-suit, fifty cents; For entering a judgment by confession, or any species of default, fifty cents; For entering a judgment upon any issue of law or fact, or report of referees, twenty-five cents; For swearing and entering each

Digitized by Google

jury, fifty cents; For all services in swearing and entering a special jury, and delivering a copy to each party, seventy-five cents; For taking a general verdict, and entering the same of record, twenty-five cents; For taking and entering a special verdict, for every hundred words, ten cents; For each search of the record, after twelve months standing, five cents; For a trial before the court without a jury, fifty cents; For entering a report of referrees, ten cents; For entering an appeal to the supreme court, twenty-five cents; For taking and entering a recognizance on an appeal, twenty-five cents; For writ of certiorari, fifty cents; For taking bond on certiorari, fifty cents; For writ of attachment against any other persons than a witness or juror, one dollar; For an attachment against a witness or juror, fifty cents; For administering every oath, five cents; For entering satisfaction of record, twenty-five cents; For copies of records and papers, for every ten words, one cent; For producing any record of the court of which he is clerk, in the same court, under any rule or order, twenty-five cents; For producing in another court, under a rule or order of such court, any record or paper of his court, the compensation and mileage allowed witnesses in civil proceedings, in addition to the fee of twenty-five cents, to be taxed as other costs; For every submission, twenty-five cents; For taking and entering of record every acknowledgment of a sheriff's deed, fifty cents; For acknowledgment of a deed in other cases, fifty cents; For a certificate and seal, fifty cents; For a scire facias on recognizances and judgments to revive a lien, one dollar; For a venire to summon a special jury, when actually ordered and issued, seventy-five cents.

Act Feb. 4, 1837, p. 62, sec. 3.

Act Feb. 27, 1843, p. 105, sec. 2.

FEES OF CLERKS OF COURTS HAVING CRIMINAL JURISDICTION.

Fees of clerks of courts possessing criminal jurisdiction.

SEC. 8. The clerks of the several courts of this state, possessing criminal jurisdiction, shall be entitled to the following fees for their services in criminal proceedings; and no fee, in such proceedings, shall be allowed by virtue of any other provision in this act contained: For every indictment returned by a grand jury, fifty cents; For a venire to summon a grand jury, or traverse jury, when one shall have been actually ordered and issued, seventy-five cents; For issuing and filing every writ of capias, one dollar; For every writ of attachment, one dollar; For taking and entering the recognizance, or recognizances, of all the witnesses in each cause for one

Digitized by Google

CHAP. 62.

term of the court, if there be more than one witness, fifty cents, and if there be but one, twenty-five cents; For taking and entering a recognizance of the prisoner, twenty-five cents; For entering surrender of prisoner by bail, twenty-five cents; For entering an order discharging a recognizance, ten cents; For every issue of fact joined, twenty-five cents; For every continuance of a cause, twenty-five cents; For every subpœna, fifty cents; For a rule to show cause, twenty-five cents; For a copy of the same, including certificate and seal, fifty cents; For a commission to take depositions, fifty cents; For a copy of the interrogatories thereto annexed, for every hundred words, ten cents; For entering judgment on a plea of guilty, fifty cents; For swearing and entering each grand jury, fifty cents; For all services in swearing and entering each petit jury, and delivering a copy to each party, seventy-five cents; For taking and entering each verdict of a jury, twenty-five cents; For entering judgment upon any issue of law or fact, twenty-five cents; For entering an appeal to the supreme court, twenty-five cents; For taking recognizance on an appeal, twenty-five cents; For copies of records and papers, for every ten words, one cent; For a scire facias on a recognizance, one dollar; For administering every oath, five cents; For each certificate and seal, authenticating a copy of a record, fifty cents; For drawing, sealing and issuing a fieri facias, against the estate of a party convicted, for fine or costs, or both, to be only issued upon an order of the court when satisfied that it would be effectual in whole or in part, one dollar; For copy of the bill of costs in each case, and certificate of the judge and circuit attorney, including certificate and seal, seventy-five cents.

No fee charged unless allowed. New prov.

SEC. 9. No fee shall be charged by any clerk, in any criminal case, against the state or county, unless it is expressly allowed in the foregoing section.

FEES OF CLERKS OF CIRCUIT COURTS IN CHANCERY.

Fees of clerks of circuit courts in chancery.

SEC. 10. The clerks of the circuit courts shall be allowed fees for their services in chancery, as follows, except as is hereinafter excepted: For filing a bill, petition, answer, plea, demurrer or replication in a case, twenty cents; For drawing, sealing, entering, issuing every writ, original, filing the same and docketing the return, one dollar; For entering every appearance, ten cents; For taking every bond in a

Digitized by Google

case, twenty-five cents; For every issue of fact directed by the court, twenty-five cents; For entering every motion or rule, twenty cents; For every continuance of a cause, twenty-five cents; For every subpœna, fifty cents; For every rule of reference to show cause, or to give security for costs, twenty-five cents; For a commission to take depositions, fifty cents; For copy of interrogatories, for every ten words, one cent; For swearing and entering each jury, fifty cents; For taking the verdict of a jury, and entering the same on record, twenty-five cents; For every trial of a cause by the court, fifty cents; For entering a final decree, one dollar and fifty cents; For entering an interlocutory decree, one dollar; For entering any order, not otherwise provided for, fifty cents; For entering the report of a commissioner, arbitrator or referee, fifty cents; For filing exceptions to a bill, or answer, ten cents; For filing any paper in a cause, five cents; For administering an oath or affirmation, five cents; For entering an appeal to the supreme court, fifty cents; For taking and entering recognizance on an appeal, fifty cents; For a writ of ne exeat, or injunction, one dollar and fifty cents; For every execution, seventy-five cents; For an attachment, other than against a witness or juror, one dollar; For an attachment against a witness or juror, fifty cents; For issuing a process of sequestration, one dollar; For copies of records and papers, for every ten words, one cent; For every certificate and seal, fifty cents. And for all other services, by the said clerks 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.

SHERIFFS FEES IN CIVIL CASES.

Sheriffs fees in civil cases.

SEC. 11. Sheriffs shall be allowed for their services in all cases, as follows: For serving every summons, or original writ, and returning the same, for each defendant, one dollar; For serving a writ of sciré facias, or attachment, for each defendant, one dollar; For taking and returning every bond required by law, fifty cents; For serving a writ of ne exeat, or injunction, for each defendant, one dollar; For serving a habere facias possessionem, or sequestration, one dollar and fifty cents; For levying every writ of execution, one dollar; and when served on real estate, the officer shall be bound to go on the land, or sufficiently near it, if necessary, in order to describe it properly; For making, executing, and delivering

Digitized by Google

CHAP. 62. a sheriff's deed, (to be paid for by the purchaser,) all tracts of land, purchased at the same sale, to be included in one deed, if the purchaser desire it, two dollars; For every return of non est, on a writ, original or judicial, fifty cents; For a return of nulla bona, fifty cents; For executing a writ of ad quod damnum, in any case, drawing the inquisition, and returning the same, one dollar and fifty cents; For executing and returning a special venire facias, one dollar and fifty cents; For summoning a jury in any case, fifty cents; For summoning each witness, fifty cents; For a return of non est on a subpœna, ten cents; For serving every notice or rule of court, notice to take depositions, or citation on an executor, administrator, guardian, or curator, fifty cents; For attending each court, per day, one dollar and fifty cents; For every action called at each term, ten cents; For calling each party, ten cents; For calling each jury, twenty-five cents; For calling each witness, five cents; 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 moneys, on execution, or process, where land or goods have been levied on, advertised and sold, three and one half per cent. on the first two hundred dollars, and two per cent. on all sums above that sum, and one half of such commission when the money is paid to the sheriff without a levy, or when the land or goods levied on 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 seat of government, five cents per mile.

SHERIFFS FEES IN CRIMINAL CASES.

Sheriffs fees in criminal cases.

SEC. 12. Sheriffs shall be allowed fees for their services in criminal cases, and all proceedings for contempt, or on attachment, as follows: For serving and returning each capias, for each defendant, one dollar; For serving a writ of attachment, for each person served, one dollar; For serving every writ of execution, one dollar; For every return of non est,

Digitized by Google

on a capias or attachment, fifty cents; For a return of nulla bona, fifty cents; For summoning a jury to ascertain the sanity or pregnancy of a convict, drawing the inquisition and returning the same, one dollar and fifty cents; For summoning a grand jury, four dollars; For summoning a petit jury, fifty cents; For executing a special venire facias, when one shall have been actually ordered and issued, two dollars; For summoning each witness, fifty cents; For every return of non est on a subpœna, ten cents; For serving any rule of court or notice, fifty cents; For calling each petit jury, twenty-five cents; For calling each witness, five cents; For taking recognizance, fifty cents; For committing any person to jail, seventy-five cents; For furnishing a prisoner with board, for each day, twenty-five cents; For every trial in a criminal case or confession, one dollar; For every trial in a capital case, three dollars; For executing every death warrant, to include all necessary expenditures in performing the same, fifteen dollars; For his services in taking convicts to the penitentiary, the sheriff shall receive one dollar and seventy-five cents per day for the time actually employed in traveling to the penitentiary, and each guard shall receive one dollar and fifty cents per day for the same time; and the sheriff and guards shall receive six cents per mile for the distance necessarily traveled, in going to and returning from the penitentiary. The distance shall be estimated by the most usually traveled road from the place of departure to the penitentiary, and there shall be at least thirty miles of the journey performed each day: one dollar per day shall be allowed for all the expenses of each convict whilst he is being carried to the penitentiary. Not more than one guard shall be employed for each convict, and the number of guards shall never exceed the number of convicts, and in no case shall the sheriff employ more than four guards for any number of convicts, except for good cause shown the court may direct a greater number than four. The sheriff, or other officer, who shall take any person charged with a criminal offence, from the county in which the offender is apprehended to that in which the offence is committed, or who may remove a prisoner from one county to another, for any cause authorized by law, or who shall have in his custody, or under his charge, any person undergoing an examination preparatory to his commitment more than one day, for transporting, safe-keeping and maintaining every

Act Feb. 27th, 1843, sec. 18.

Act Feb. 9th, 1839, sec. 2, p. 97–8.

Act Feb. 15th, 1841, sec. 2, p. 31.

Act Jan. 4th, 1843, p. 94–5.

Act Feb. 12th, 1839, p. 45, and act Feb. 9th, 1839, p. 97, sec. 1.

Digitized by Google

such person, shall be allowed by the court, having cognizance of the offence, one dollar per day for every day he may have such person under his charge, when the number of days shall exceed one, and five cents per mile for every mile necessarily traveled, in going to and returning from one county to another, and the guard employed, who shall, in no event, exceed the number allowed the sheriff in transporting convicts to the penitentiary, shall be allowed the same compensation as the officer, (fifty cents a day shall be allowed for board, and all other expenses of each prisoner.) No compensation shall be allowed under this section, for taking a prisoner from one place to another in the same county, and no court shall allow the expense of a guard, although it may have actually been incurred, unless, from the evidence of disinterested persons, it shall be satisfied that a guard was necessary. These costs shall be taxed as other costs in criminal proceedings. For boarding and lodging provided for any jury, a reasonable compensation may be allowed by the court, to be taxed as other costs.

Act Feb. 27th, 1843, sec. 19, p. 32.

No fees allowed in criminal cases, except what are enumerated.

SEC. 13. No sheriff, or ministerial officer in any criminal proceeding, shall be allowed any fee or fees for any other services, than those in the preceding section enumerated.

Money collected by sheriff, how paid.

SEC. 14. All moneys collected by the sheriff shall be paid to the plaintiff, or his order, or his attorney of record.

CORONERS FEES.

Coroners fees.

SEC. 15. Coroners shall be allowed fees for their services, as follows: For the view of a dead body, three dollars; For issuing a warrant summoning each jury of inquest, fifty cents; For swearing each jury, fifty cents; For each subpœna for witnesses, twenty-five cents; For taking each recognizance, twenty-five cents; For going from his residence to the place of viewing a dead body, and returning, each mile, five cents; 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 the same services.

CONSTABLES FEES.

Constables fees.

SEC. 16. Constables shall be allowed fees for their services, as follows: For serving a warrant in a criminal case, for each defendant, fifty cents; For serving a summons or notice in a civil case, twenty-five cents; For summoning and swearing

Digitized by Google

each jury to try the right of property, and taking the verdict, one dollar; For summoning each jury before a justice, seventy-five cents; For taking a criminal to jail, seventy-five cents; For serving each execution, twenty-five cents; For taking every bond required by law to be taken, twenty-five cents; For summoning each witness, twenty-five cents; For serving a writ of attachment, fifty cents; 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 cent.

INTERPRETERS FEES.

Interpreters fees.

SEC. 17. Interpreters and translators shall be allowed fees for their services, (in addition to the compensation and mileage allowed witnesses in civil cases,) as follows: For interpreting the testimony of each witness, twenty-five cents; For translating every ten words, two cents.

FEES OF COUNTY SURVEYORS.

Fees of county surveyors.

SEC. 18. County surveyors shall be allowed fees for their services, as follows: For every survey actually made, one dollar; 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, fifty cents; For calculating the quantity of each division made in a tract of land, town lots excepted, fifty cents; For making each plat, thirty-five cents; For recording a plat and certificate, thirty-five cents; For every copy of a plat and certificate, thirty-five cents; For traveling to the place of survey and returning, for every mile, five cents; For ascertaining and planting each corner, under the act to perpetuate testimony, one dollar; For recording each certificate, under the same act, seventy-five cents; For each day's attendance as a witness, under the same act, one dollar; For delivering depositions to the recorder, under the same act, twenty-five cents.

RECORDERS FEES.

Recorders fees. Act Feb. 6th, 1837, p. 108. sec. 2.

SEC. 19. Recorders shall be allowed fees for their services as follows: For recording every deed or other instrument, for every hundred words, ten cents; In addition to the above fee for recording deeds, there shall be allowed for recording every such instrument relating to real estate, a fee of five cents, as a compensation for making and preserving an

Digitized by Google

CHAP. 62.
Act Feb. 8, 1839. p. 17.

inverted index to every book containing deeds affecting real estate; For every certificate and seal, twenty-five cents; For recording a plat of a survey, if not more than six courses, thirty-five cents; for every course above six of the same, one cent; For copies of plats, if not more than six courses, thirty-five cents; For every course above six, one cent; For recording any marriage certificate, fifty cents.

NOTARIES FEES.

Notaries fees. Act Feb. 25, 1843, p. 92.

SEC. 20. Notaries shall be allowed fees for their services as follows: For noting a bill of exchange or note for protest, ten cents; For entering protest of same, twenty-five cents; For registering a protest, twenty-five cents; For noting, without protest, twenty-five cents; For notice to each endorser, or other party, ten cents; For travel, per mile, five cents; For taking acknowledgment of power of attorney, or other instrument, twenty-five cents; For a marine protest, or fire insurance protest, one dollar; For each certificate, ten cents; For affidavit to an account attested by seal, twenty-five cents; For affixing notarial seal, ten cents; For drawing a contract of a boatman, if required, fifty cents; For taking the acknowledgment of parties to such contract, fifty cents; For making an entry of a boatman not rendering himself on board agreeably to contract, ten cents; For affixing seal thereto, ten cents; For all copies of records and papers, for every hundred words, eight cents; For all other services concerning boatmen and their contracts, the same fees as are allowed to justices of the peace for similar services.

FEES OF THE SECRETARY OF STATE.

Fees of the secretary of state.

SEC. 21. 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, fifty cents; For every like certificate, to which the seal of his office shall be affixed, fifty cents; For all copies or [of] records and papers in his office, for every hundred words, ten cents; but no fees shall be allowed for any services in the business of the state. For copying the laws, for every hundred words, ten cents.

JURORS FEES.

Jurors fees.

SEC. 32. Jurors shall be allowed fees for their services, as follows: For each juror attending a view, inquest, or the execution of a writ of ad quod damnum, per day, fifty cents.

Digitized by Google

WITNESSES FEES IN CIVIL CASES.

Witnesses fees in civil cases.

SEC. 23. Witnesses shall be allowed fees for their services in civil cases, as follows: For attending any court of record, referee, arbitrator, commissioner, clerk or coroner, at any inquest, or inquiry of damages, within the county where the witness resides, each day, fifty cents; For like attendance out of the county where the witness resides, each day, one dollar; For traveling each mile in going to and returning from the place of trial, five cents; For attending before a justice of the peace, each day, fifty cents; For attending under the law to perpetuate testimony, the same fees as are allowed for attending a court of record in like cases; but witnesses attending in more than one cause on the same day, and at the same place, shall only be allowed fees in one case; and any witness who shall claim fees for attendance in two or more cases on the same day, and at the same place, shall not be allowed any fees for that day.

WITNESSES FEES IN CRIMINAL CASES.

Witnesses fees in criminal cases. Act Feb. 27th, 1843, p. 30.

SEC. 24. Witnesses in criminal cases shall receive fees, as follows: For each day's attendance on court, fifty cents; and five cents a mile for every mile necessarily traveled, in this state, in going to and returning from the place of trial.

Duty of clerks, on application of witnesses for allowance of fees. Act 27th Jan., 1841, p. 77.

SEC. 25. The clerk of each court of record shall, on the application of any witness to have his fees allowed, enter in his fee book, under the style of the case in which the witness was summoned or recognized, the name of the witness, the number of days he has attended, and the number of miles he had necessarily to travel in consequence of the summons or recognizance, and shall swear the witness to the truth of the facts contained in said entry.

FEES OF JUSTICES OF THE PEACE.

Fees of justices of the peace.

SEC. 26. Justices of the peace shall be allowed fees for their services, as follows: For administering every oath, five cents; For every subpœna, fifteen cents; For every summons, fifteen cents; For issuing every attachment, twenty-five cents; For entering judgment in every civil case, thirty-five cents; For issuing each execution, twenty-five cents; For making certified copies on appeals or certiorari, for each hundred words therein contained, ten cents; For granting and drawing a writ of habeas corpus, and deciding thereon,

Digitized by Google

CHAP. 62.

to each justice, one dollar and fifty cents; For issuing a venire for a jury in a civil case, twenty-five cents; For taking the acknowledgment of any deed or power of attorney, twenty-five cents; For solemnizing a marriage, two dollars; For signing and certifying depositions, if ready, twenty-five cents; For writing depositions, when required so to do, for every hundred words, ten cents; For issuing a summons on forcible entry and detainer, or detainer only, seventy-five cents; For a venire to summon a jury in such cases, twenty-five cents; For issuing a writ of restitution, or re-restitution, fifty cents; For taking and entering a verdict in forcible entry and detainer, or detainer, twenty-five cents; For appointing appraisers of an estray, or of money or goods found, twenty-five cents; For certified copies of the appraisement, twenty-five cents; For issuing an order to view a fence, twenty-five cents; For issuing a warrant to assess damages, twenty-five cents; For issuing each warrant in a criminal case, twenty-five cents; For viewing a dead body, the same fees as are allowed to coroners in like cases; For swearing a jury, twenty-five cents; For taking each recognizance, twenty-five cents.

When fees are allowed by the number of words, each figure calculated as one word, &c.

SEC. 27. In all cases where fees are allowed by this act, according to the number of words, each figure shall be calculated as one word, unless when it is otherwise directed by law, and fractions, however expressed, shall be calculated as one figure.

No fee allowed for opening or adjourning order.

SEC. 28. No clerk of any court of record in this state shall be allowed any fee for entering any order for opening or adjourning court.

This act to be construed strictly.

SEC. 29. This act, like penal laws, shall be construed strictly.

Officer to state on writ the time when served and how, or will not be entitled to fees.

SEC. 30. Each sheriff, coroner, and constable, in the return made by him of 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.

Officer to set up in his office a table of his fees.

SEC. 31. Each officer to whom fees are allowed by this law, shall cause to be set up, in some conspicuous place in his office, (if he have any) and there constantly kept, a fair table of his fees, hereinbefore prescribed, and shall forfeit to him who will sue for the same, two dollars for every day that

Digitized by Google

he may neglect to keep such table set up, to be recovered by action of debt.

Witnesses to claim their fees at each term as they attend.

SEC. 32. Witnesses shall claim their fees at each term as they attend, and not afterwards; and the sheriff and coroner are hereby required to endorse upon all process served by them their fees at full length, and shall hand to the clerk an account of their services as they are performed; and all clerks shall, in a book to be kept for that purpose, enter all fees as the services are rendered; and they shall have the same power to issue fee-bills, from the book aforesaid, for services rendered by any person in said court, before his official term of service, and in the same manner that any of his predecessors could have done, had they continued in office.

Sheriff, &c. to endorse on all process fees, &c.

Clerks shall enter all fees as the services are rendered, and issue fee-bills.

Clerks to examine all accounts for fees, and may certify fee-bills, when.

SEC. 33. The clerks of the courts in which the services were rendered, shall examine the accounts of all fees handed to them, or which shall be entered in their fee books; and if they are correct they shall, after the term of the court at which the services were performed, if required by a party entitled to fees, certify a fee-bill of his services, and deliver it to the sheriff of the proper county, to be by him collected from the party at whose instance the services were rendered. Justices of the peace may issue fee-bills for all services rendered in justices' courts; and county surveyors may issue fee-bills for all services rendered by them, as such surveyors, in their official character, 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.

To be delivered to sheriff and collected by him.

Justices and county surveyors may issue fee-bills.

Effect thereof.

If fee-bill not paid within 20 days, sheriff shall levy on property, &c.

SEC. 34. 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-bill 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, to the person entitled thereto, within three months after such fee-bill 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-bill so delivered to him, and issue execution therefor.

Proceedings against sheriff for failing to levy and collect fee-bills.

SEC. 35. If any party to a suit, or other proceeding, shall

Digitized by Google

CHAP. 62.

If fees are paid by a party before final judgment and he recover, how to be collected.

pay any of the fees allowed by this act, 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 levied and collected for the benefit of the person rendering the service, or the same may be collected on fee-bills, as aforesaid; and the costs incurred by the unsuccessful party, if they shall not have been previously paid, shall be taxed, endorsed and collected, in like manner as the costs of the prevailing party, for the benefit of those entitled thereto. Nothing herein contained shall be construed to authorize any clerk to tax, for the party prevailing, any costs which he may have been condemned to pay in the progress of the suit.

Costs of unsuccessful party, how levied and collected, &c.—Act Feb. 17th, 1843, p. 65.

Fees of such officer to be endorsed on execution.

Clerk to keep fee books, &c.

SEC. 36. The clerks shall endorse on every execution, the fees due to each officer, witness and other person, and shall deliver to any party or person, from whom such fees are due, on demand, a full and complete copy of the fees entered in his fee book, without any compensation therefor; and the said fee book shall be so kept as to show each item for which a charge is made, in words of full length, and, also, so as to show at whose instance any service is rendered, so that the amount of the plaintiff's and defendant's costs may each be known.

Fee-bill not to issue after one year, until notice be given, when and how.

SEC. 37. After one year from the termination of any suit in which services have been rendered, no fee-bill shall issue for such services, until the party claiming the same shall give five days notice, in writing, to the party charged, to appear before the court in which the fees accrued, and show cause against the issuing thereof; and if no sufficient cause to the contrary be shown, the court shall order the fee-bill to issue.

Proceedings against officers charging illegal fees.

Amount of fees.

Penalty of $5 to be recovered in action of debt.

SEC. 38. 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 act, shall pay to the party injured, or against whom the same shall have been charged, the amount of fees illegally charged, and five dollars for each item illegally received, demanded or charged, with costs, to be recovered by action of debt, if the same shall be sued for within one year from the time the act shall have

Digitized by Google

been committed. Nothing herein contained shall prevent the offender from being indicted and punished for the crime of extortion. CHAP. 63.

SEC. 39. Whenever any suit is instituted against any clerk or other officer, for having demanded, charged or received, illegal fees, the fee book and the entries therein shall be evidence on the trial, and the said book shall be carefully preserved in the office as a public book. In such suits, the fee book, &c. shall be evidence.

SEC. 40. All fees to clerks, sheriffs, witnesses and all others, shall be considered due when the services are rendered, unless when it is otherwise directed by law, and fee-bills may issue at any time after the fees are taxed. Fees of officers due when services are rendered.

Approved March 27, 1845.

CHAPTER 63.

FEES.

AN ACT allowing fees to clerks in certain cases.

SEC. 1. Clerks shall be allowed fees for certificates of unsold tax lands out of state treasury.

SEC. 2. Register to certify the amount of fees to the auditor, who shall draw his warrant, &c.

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

SECTION 1. The several clerks of this state, who have certified to the register of lands, unsold tax lands from their counties, shall be allowed out of the state treasury, five cents for every hundred words and figures on their lists, and fifty cents for their certificate and official seal. Clerks allowed fees for certificates of unsold tax lands.

SEC. 2. It shall be the duty of the register of lands, when requested by any clerk entitled to fees under this act, to certify the amount of fees to which such clerk shall be entitled, and the auditor of public accounts shall, upon the presentation of such certificate, draw his warrant on the state treasury in favor of such clerk, for the amount of fees certified. Register to certify the amount of fees to the auditor, who shall draw his warrant, &c.

This act shall take effect from and after its passage. New act.

Approved February 24, 1845.

Digitized by Google

CHAPTER 64.

FEES.

AN ACT to regulate fees in certain cases.

SEC. 1. Fees of clerks for granting naturalization papers.
SEC. 2. Acts inconsistent with this act repealed.

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

Fees of clerks for granting naturalization papers.

SECTION 1. That the clerks of courts in this state, authorized by law to grant naturalization papers, shall receive the following fees, and no more: For all charges and costs accruing at the time of obtaining a certificate of a declaration of intention to become a citizen, each case, fifty cents; For all costs and charges accruing at the time of receiving full admission to citizenship, including certificate of naturalization, in each case, seventy-five cents.

Acts inconsistent with this act repealed. New act.

SEC. 2. All acts, and parts of acts, inconsistent with this act, are hereby repealed.

This act shall take effect, and be in force, from and after its passage.

Approved January 20, 1845.

CHAPTER 65.

FERRIES.

AN ACT regulating ferries.

SEC. 1. Not to be kept without license.
2. Application for license, how made, and on what terms granted.
3. Tax not less than two, nor more than five hundred dollars.
4. License issued when collector's receipt produced.
5. Bond required; its condition, and where filed.
6. Rates of ferriage fixed by county court.
7. License may be granted by clerks in vacation.
8. Which shall continue until the end of the succeeding term.
9. Good boats and sufficient hands to be kept.
10. Penalty for neglect.
11. Ferriage to be paid or tendered.
12. List of rates to be put up.
SEC. 13. Penalty for failure.
14. Keeping ferry without license and receiving pay; penalty.
15. Liable also to action on the case for damages.
16. How penalties under this act may be recovered.
17. Suit on bond, when and how, and by whom instituted.
18. Limitation to prosecutions.
19. License may be revoked, &c.
20. License may be granted by the county court without tax in certain cases.
21. Such license not to be granted within one mile of any ferry paying license; rates fixed, &c.
22. Penalty on masters of steamboats for certain interference with the rights of ferry-men, &c.

Digitized by Google

CHAP. 65.

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

Not to be kept without license.

SECTION 1. No person shall keep a ferry, so as to demand and receive pay thereat, without a license.

Application for license, how made and on what terms granted.

SEC. 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 for the accommodation of the public, 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.

Tax not less than $2, nor more than $500.

SEC. 3. Such tax shall not be less than two dollars, nor more than five hundred dollars, paid to the use of the state.

License issued when collector's receipt produced.

SEC. 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.

Bond required: its condition, and where filed.

SEC. 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.

Rates of ferriage fixed by county court.

SEC. 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.

License may be granted by clerks in vacation.

SEC. 7. The clerk of the county court, in vacation, may grant ferry licenses, assess the tax, and fix the rates for the same, and exercise all the power of the court touching the same.

Which shall continue till the end of succeeding term.

SEC. 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.

Good boats and sufficient hands to be kept.

SEC. 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.

Penalty for neglect.

SEC. 10. Every ferry-man failing to give such due attention, shall, for every offence, forfeit five dollars, and for failure to keep such boat in good repair, shall forfeit thirty dollars

Digitized by Google

CHAP. 65.

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. (a)

Ferriage to be paid or tendered.

SEC. 11. No ferry-man shall be compelled to do any act as such, before payment or tender of his fee be made, according to the rates of ferriage.

List of rates required to be put up.

SEC. 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.

Penalty for failure.

SEC. 13. If any ferry-man fail to comply with the provisions of the preceding section, he shall, for every such offence, forfeit four dollars to the county.

Keeping ferry without license and receiving pay, penalty.

SEC. 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, or be imprisoned not less than ten, nor more than thirty days, or be punished by both such fine and imprisonment, to be recovered by indictment in the circuit court of the proper county. (b)

Liable to action on the case for damages.

SEC. 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.

Penalties, how recovered.

SEC. 16. All penalties imposed by this act may be recovered before any court having jurisdiction, in the name of the county.

Suit on bond, when, how and by whom instituted.

SEC. 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.

Limitation.

SEC. 18. Every offence, under this act, shall be prosecuted within one year.

License may be revoked, &c.

SEC. 19. If any ferry-man fail to perform his duties, the county court may, at any time, revoke his license.

License may be granted by county court without tax, when.

SEC. 20. If any county court believe that any ferry in the 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.

Court to fix rates, &c. License not to be granted, when.

SEC. 21. Such court shall take bond, and fix the rates, as in other ferries, and no ferry shall be licensed by any county

(a) See Pomeroy vs. Donaldson, 5 Missouri Rep., 36.
(b) Wheat vs. The State, 6 Missouri Rep, 455.

Digitized by Google

court, on the same side of the river, and in the same county, within one mile of any ferry, that shall then be already licensed.

Penalties on masters of steamboats for certain interference with the rights of ferry-men.

SEC. 22. If the master, or commander, of any steamboat shall land at the platform or known landing place of any public ferry, and 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 of such ferry, such master, or owner of such steamboat, 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.

This act to take effect, and be in force, from and after its passage.

Approved January 27, 1845.

CHAPTER 66.

FORCIBLE ENTRY AND DETAINER.

AN ACT concerning forcible entries and detainers.

ARTICLE I., Of proceedings before justices of the peace.
II. Of writs of certiorari and appeals to the circuit court.

ARTICLE I.

Of proceedings before justices of the peace.

SEC. 1. Possession of lands, &c., only to be taken when entry is given by law, and then in a peaceable manner.
2. What acts deemed a forcible entry and detainer.
3. What acts deemed an unlawful detainer.
4. To what estates preceding sections shall extend.
5. Such actions cognizable before one justice of the peace.
6. Upon complaint in writing, justice to issue a summons.
SEC. 7. Summons to be endorsed on, or annexed to complaint. Form of summons.
8. Summons to be executed, when and how.
9. Precept for summoning a jury.
10. Form of precept.
11. Jurors challenged, or not attending, others to be summoned.
12. Summons and precept to be returned on the day of trial, &c.
13. Complainant failing to attend, shall be non-suited.

Digitized by Google

CHAP. 66.

SEC. 14. If defendant fails to appear, justice may proceed ex parte.
15. Oath to be administered to jurors. Form of oath.
16. Proceedings on the trial. Proof of lawful possession, &c., sufficient.
17. On verdict for complainant, damages to be assessed for waste, &c., and the rents and profits.
18. Verdict to be in writing and signed by the foreman. Form of verdict for defendant.
19. Form of verdict for complainant.
20. No verdict to be set aside for informality, &c.
21. If verdict be for defendant, judgment for costs, &c., to be rendered.
22. If the verdict be for the complainant, judgment for restitution and costs to be rendered.
23. Execution to contain a clause of restitution. Form thereof.
24. What the justice shall enter in his docket.
SEC. 25. Justice has power to grant a new trial, if applied for on the day on which the verdict was rendered, &c.
26. Merits of the title not to be inquired into.
27. This act not to extend to persons who have been in quiet possession, &c., three whole years, &c.
28. Power of justice to issue subpœnas. May compel attendance of witnesses, &c.
29. Depositions may be taken, how.
30. In what cases depositions may be read.
31. When persons residing on public lands may maintain the action. Proviso.
32. Quantity and extent of recovery.
33. When there is no legal survey, how the tract shall be surveyed, &c.
34. Execution returned unsatisfied, transcript to be filed.
35. Such judgment to be a lien on the real estate from the time of filing, &c.

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

Possession of lands, &c., only to be taken when entry is given by law, &c. 1835, p. 377.

SECTION 1. No person shall enter upon or into any lands, tenements, or other possessions, and detain and hold the same, but when entry is given by law, and then only in a peaceable manner.

What acts deemed a forcible entry and detainer.

SEC. 2. If any person shall enter upon, or into, any lands, tenements, or other possessions, with force or strong hand, or with weapons, or breaking open the doors or windows, or other parts of a house, whether any person be in it or not, or by threatening to kill, maim, or beat the party in possession, 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, and detain and hold the same, in every such case the person so offending shall be deemed guilty of a forcible entry and detainer, within the meaning of this act. (a)

What acts deemed an unlawful detainer.

SEC. 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

(a) Moore vs. Agee, 7 Missouri Rep., 289.

Digitized by Google

him, or the person under whom he claims, or when any person wrongfully, and without force, by disseisin shall obtain, and continue in possession of, any lands, tenements, or other possessions, and after demand made in writing for the deliverance of the 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 deemed guilty of an unlawful detainer. (*b*)

What estates preceding sections shall extend to.

SEC. 4. The three preceding sections shall extend to, and comprehend terms for years, and all estates, whether freehold or less than freehold.

Such actions cognizable before any justice of the peace.

SEC. 5. Forcible entries and detainers, and forcible and unlawful detainers, shall be cognizable before any justice of the peace of the county in which they are committed. (*bb*)

Upon complaint in writing, justice to issue summons.

SEC. 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, or forcibly and unlawfully detained, and by whom, and when done; it shall be the duty of such justice to issue his summons, under his hand, directed to the sheriff, or any constable of the county, commanding him to summon the person, against whom the complaint shall have been made, to appear before such justice, at a day in such summons to be specified.

Summons to be endorsed on or annexed to complaint.

Form of summons.

SEC. 7. The summons shall be endorsed on, or annexed to, the complaint, and may be in the form following: "The state of Missouri, to the sheriff (or constable of —— township, as the case may be) of the county of ——, greeting: You are hereby commanded to summon E. F., of the county of ——, to appear before the undersigned, justice of the peace within and for said county, at ——, in the same county, on the —— day of ——, at the hour of —— of the clock in the forenoon of that day, then and there to answer and defend against the complaint of G. H., of forcible entry and detainer, (or of unlawful detainer, as the case may be) made by the said E.

(*b*) Blount & Baker, vs. Wiwright, 7 Missouri Rep., 50; Hatfield vs. Wallace, 7 Missouri Rep., 113; Hoffstetler vs. Blatner, 8 Missouri Rep., 270.

(*bb*) A. brought an action of "Forcible entry and detainer" against B., in the township of C. On the trial, the jury, being unable to agree, were discharged, and the cause, on motion of A., was removed to another township in the same county: Held, that there was no error in the removal of the case, as the jurisdiction of the justice was co-extensive with the county. Keim, vs. Dougherty, 8 Missouri Rep., 198.

Digitized by Google

CHAP. 66.

F., upon the lands of the said G. H., as by the complaint of the said G. H. hereto annexed, will more fully appear, and have you then and there this writ, with the return of your proceedings thereon. Given under my hand, this —— day of ——, 18—. "A. B., Justice of the Peace."

When and how summons to be served.

SEC. 8. Such summons shall be executed at least five days before the return day thereof, either, *First*, By reading the complaint and summons to the defendant; or, *Second*, By delivering him a copy of the complaint and summons; or, *Third*, 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. (1)

Precept for summoning a jury.

SEC. 9. The justice shall, at the same time, issue to the sheriff or constable a precept, commanding him to summon twelve good and lawful men, qualified to serve as jurors, to appear at the time and place appointed, for the trial of said complaint, to be a jury in the cause.

Form of precept.

SEC. 10 The precept shall be in the form, or to the effect following: "The state of Missouri, to the sheriff (or constable of —— township, as the case may be) of the county of ——, greeting: Whereas, complaint in writing is made to the undersigned, a justice of the peace within and for said county, of a certain forcible entry and detainer, (or unlawful detainer, as the case may be,) made by E. F., on the land of G. H., 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 —— of the clock, in the forenoon of that 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) aforesaid. Given under my hand, this —— day of ——, 18—. "A. B., Justice of the Peace."

Jurors challenged, or not attending, others to be summoned.

SEC. 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.

Summons and precept to be returned on the day of trial, &c.

SEC. 12. The officer shall return to the justice the summons and precept, on the day assigned for the trial of the cause, and shall certify on the back of the summons how he has

(1) A return that a copy was left at the "dwelling house" of the party, "with his wife," and the same read to her, is insufficient: the law will not presume that the dwelling house of a party is his usual place of abode, nor that his wife was above the age of fifteen years, Ser vs. Bobst, 8 Missouri Rep., 506.

Digitized by Google

executed the same, and on the back of the precept a list of the jury summoned in obedience thereto.

Complainant failing to attend, shall be non-suited.

SEC. 13. If the complainant fail to attend at the time appointed for hearing the complaint, in person, by agent or attorney, and prosecute his suit, he shall be non-suited and the defendant shall recover his costs:

If defendant fails to appear, justice may proceed ex parte.

SEC. 14. If the defendant does not appear at the time appointed for hearing the complaint, the justice may proceed ex parte, or adjourn the court at his discretion, but he shall not adjourn for a longer time than ten days, nor to any other place than that assigned in the summons for the hearing of the cause.

Oath to be administered to jurors.

SEC. 15. To each of the jurors who shall be returned to enquire of, and try the complaint, the justice shall administer the following oath or affirmation:

Form of the oath.

"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 G. H. alleged, and a true verdict give according to the evidence."

Proceedings on trial.

SEC. 16. 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 by proof; 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.

Proof of lawful possession, &c. sufficient.

On verdict for complainant, damages to be assessed for waste, &c., and the rents and profits.

SEC. 17. In all cases of a verdict for the complainant, damages shall be assessed, as well for waste and injury committed upon the premises, found to have been forcibly or unlawfully detained, as for the rents and profits, during such detainer, and the verdict shall also contain a finding of the monthly value of the rents and profits of said premises.

Verdict to be in writing, and signed by the foreman.

SEC. 18. The verdict of the jury shall be in writing, and signed by the foreman only, and, if for the defendant, shall be in the form following:

Form of verdict for defendant.

"We, the jury, find the defendant not guilty in the manner and form as charged in the complaint."

Form of verdict for complainant.

SEC. 19. If the verdict be for the complainant, it shall be in the following form:

"We, the jury, find the defendant guilty in manner and form as charged in the complaint; and do further find that the complainant has sustained damages by reason of the premises, to the value of —— dollars, and also,

Digitized by Google

that the value of the monthly rents and profits of the said [tenements,] is —— dollars.

No verdict to be set aside for informality, &c.

SEC. 20. No verdict shall be set aside for informality, but the justice shall, in the presence of the jury, correct the same in matters of form, changing no matter of substance.

If verdict for defendant, judgment for costs, &c. to be rendered.

SEC. 21. If the jury find the defendant not guilty, the justice shall record the verdict, and give judgment accordingly, and for costs, and shall issue execution therefor in the ordinary form against the goods and chattels of the complainant.

If the verdict be for complainant, judgment of restitution and for costs to be rendered.

SEC. 22. If the verdict be for the complainant, the justice shall record the same, and the judgment shall be, that the complainant have restitution of the premises found by the jury to have been forcibly or unlawfully detained, and recover of the defendant the sum of —— dollars, (double the sum assessed by the jury,) for his damages, and also at the rate of —— dollars, (double the sum found by the jury,) per month, for rents and profits from the — day of ——, 18—, (the day of rendering the verdict,) until restitution be made, together with costs.

Execution to contain clause of restitution.

SEC. 23. Executions against defendants shall contain a clause of restitution, and in other respects conform to the judgment, and may be in the following form: "The state of Missouri, to the sheriff (or constable of —— township, as the case may be,) of the county of ——, greeting: Whereas, G. H., on the — day of ——, 18—, obtained judgment before the undersigned, justice of the peace for the county of ——, against E. F., that the said G. H. have restitution of (here insert a description of the premises, as in the complaint, if the verdict be for the whole, or as in the verdict, if it be for a part,) and that he recover of the said E. F. the sum of —— dollars, for his damages, and also at the rate of —— dollars per month, for rents and profits, from the — day of ——, 18—, until restitution be made, together with costs: You are, therefore, commanded to take with you the power of the county, (c) if necessary, and to cause the said E. F. to be forthwith removed from the said premises, and the said G. H. to have peaceable possession thereof; and that of the goods and chattels of the said E. F. you cause to be levied the damages, rents and profits, aforesaid, with the sum of —— dollars

Form thereof.

(c) See the act authorizing officers to call to their assistance the power of the county.

Digitized by Google

for costs, and —— for this writ, and your fees hereon, and that you return this writ, with your doings thereon, to the undersigned, within twenty days from the date hereof. Given under my hand this — day of ——, 18—.

"A. B., Justice of the Peace."

What justice shall enter in his docket.

SEC. 24. The justice shall enter on his docket the names of the jurors, their verdict, and his judgment thereon.

Justice has power to grant a new trial, if applied for on the day in which the verdict is rendered, &c.

SEC. 25. 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 shown therefor; but not more than one new trial shall be granted to the same party.

Merits of the title not to be enquired into.

SEC. 26. The merits of the title shall in no wise be inquired into, on any complaint which shall be exhibited by virtue of this act. (*d*)

Not to extend to persons who have been in quiet possession, &c. three whole years, &c.

SEC. 27. This act shall not extend to any person who has had the uninterrupted occupation, or been in quiet possession, of any lands or tenements for the space of three whole years together, immediately preceding the filing of the complaint, or who has continued three whole years in the peaceable possession, after the time for which the premises were demised or let to him, or those under whom he claims, shall have expired.

Power of justice to issue subpœnas.

SEC. 28. 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.

May compel attendance of witnesses, &c.

Depositions may be taken, how.

SEC. 29. Depositions may be taken to be read on the trial of any such cause, in the same manner as in courts of record, (*e*) 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.

In what cases depositions may be read.

SEC. 30. Every such deposition, taken and returned according to law, may be read, if competent and relevant, as evidence in the cause: *First*, If it appear to the satisfaction of the justice that the witness resides out of the county in which the trial is to be had; *Second*, If the witness be dead; *Third*,

(*d*) Evidence concerning the right of property in the land in controversy, is inadmissible; Stone vs. Malot, 7 Missouri Rep., 158.
(*e*) See the act concerning depositions.

Digitized by Google

If by reason of age, sickness or bodily infirmity, he is unable to attend the trial; *Fourth*, If he be gone out of the country without the collusion, privity or consent, of the party offering his testimony.

When persons residing on public land may maintain the action.

SEC. 31. 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 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 land.

Proviso.

Quantity and extent of recovery.

SEC. 32. 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 lawful possession shall, against the wrong doer, be considered as entitled to such quantity, extent and limits of lands, 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. (*ee*)

When there is no legal survey, how the tract shall be surveyed, &c.

SEC. 33. 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 survey or line, or any conditional line agreed upon by the adjoining proprietors or possessors.

Execution unsatisfied, transcript to be filed.

SEC. 34. 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.

Such judgment to be a lien upon the real estate from the time of filing, &c.

SEC. 35. Such judgment, from the time of filing the transcript, shall have the same lien on the lands and tenements of the party as a 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 on judgments of a court of record.

(*ee*) *Vide*, Sloane vs. Moore, 7 Missouri Rep., 170.

Digitized by Google

ARTICLE II.

Of writs of certiorari and appeals to the circuit court.

SEC. 1. Proceedings may be moved to the circuit court by certiorari.
2. When certiorari shall be allowed.
3. Requisites of the affidavit, when made by complainant.
4. Complainant to enter into recognizance, condition thereof.
5. Requisites of affidavit, when made by defendant.
6. Recognizance to be entered into by the defendant; condition thereof.
7. Recognizance to be under hand and seal of principal and security.
8. When the justice shall stay proceedings, and certify the same to the circuit court.
9. Justice to proceed to final judgment, when.
10. Appeal allowed, and when.
11. Must be applied for, and affidavit and recognizance filed within ten days after judgment.
12. When the appeal shall be returnable.
13. Affidavit to be made, and what the same shall state.
14. If complainant be appellant, condition of recognizance, &c.
15. If defendant be appellant, condition of recognizance, &c.
16. Recognizance to be under the hand and seal of the principal and securities; form thereof.
17. If complainant be appellant, form of condition.
18. If defendant be appellant, form of condition.
19. When execution may be issued, not to be levied till ten days expire, except, &c.
SEC. 20. In what cases it may be levied before the time expires for taking an appeal.
21. When appeal is perfected, execution to be stayed, &c.
22. And justice shall certify transcript.
23. Appellant shall cause transcript to be filed, when.
24. Failing to file it, judgment shall be affirmed, unless, &c.
25. Duty of clerk of the circuit court.
26. When cause shall be set for trial.
27. Cause shall not be dismissed for informality, &c.
28. Court may order a new recognizance, when.
29. If appellant has filed insufficient affidavit, &c., and fails to perfect them, &c., his suit shall be dismissed.
30. And judgment rendered accordingly.
31. Dismissal shall be certified to the justice, &c.
32. Judgment by default, what it shall express, &c.
33. Circuit court to hear and determine anew causes removed by certiorari or appeal.
34. Circuit court may compel justices to allow appeals, and to perfect returns.
35. No appeal allowed to supreme court, or supersedeas awarded unless condition of recognizance be in substance what is prescribed by this act.
36. Supreme and circuit courts may issue writs of restitution, &c.
37. Duties of officer having charge of such writs.

SECTION 1. The proceedings under this act may be removed into the circuit court of the county, by certiorari, to be issued by the clerks, and served on the justice at any time before the day of the trial. (*f*) Proceedings may be removed by certiorari. 1838–9, p. 45.

SEC. 2. No certiorari shall be issued, unless application be made therefor before the day of trial, nor unless the applicant file with the clerk a copy of the complaint, and also, an affidavit and recognizance. When certiorari shall be allowed.—*Ib.*

SEC. 3. If the application be on behalf of the complain-

(*f*) The proceedings may be removed to the circuit court, by certiorari, at any time before the day appointed by the justice for the hearing of the cause, whether that day be the one named in the summons, or a day to which the trial is adjourned. Kincaid & Forbes vs. Mitchell, 6 Missouri Rep., 223.

Digitized by Google

CHAP. 66.

ant, the affidavit shall be made by himself, or some credible person for him, and shall state that the affiant verily believes that the complainant is justly entitled to recover the possession of the premises described in the complaint.

Requisites of the affidavit when made by the plaintiff. *Ib.*

Complainant to enter into recognizance.

SEC. 4. In such case, the complainant, or some responsible person for him, as principal, with one or more sureties, to be approved by the clerk, shall enter into a recognizance to the defendant, in a sum sufficient to secure the payment of all costs, conditioned that the complainant shall prosecute his suit with effect, and without delay, pay all costs that may be adjudged against him, and otherwise abide the judgment of the circuit court.

Condition thereof.

Requisites of affidavit, when made by defendant.

SEC. 5. If the application be on behalf of the defendant, the affidavit shall be made by himself, or some credible person for him, and shall state that the affiant verily believes that the complainant is not entitled to recover possession of the premises described in the complaint.

Recognizance to be entered into by defendant.

SEC. 6. In such case, the defendant, or some responsible person for him, as principal, with one or more sureties, to be approved by the clerk, shall enter into a recognizance to the complainant, in a sum sufficient to secure the payment of all rents and profits, damages and costs, conditioned that the defendant will not commit, or suffer any waste or damage to be committed on the premises sued for, and that he will pay all rents and profits, damages and costs, that may be adjudged against him, and otherwise abide the judgment of the circuit court.

Condition thereof.

Recognizance to be under hand and seal of principal and security.

SEC. 7. Every recognizance to be entered into on application for a certiorari, shall be under the hand and seal of the principal and his surety, and the clerk shall endorse thereon his approval of the same.

When the justice shall stay proceedings and certify the same to the circuit court. 1838–9, p. 46.

SEC. 8. When a certiorari shall be served on the justice before the day of the trial, and not otherwise, he shall stay all further proceedings, and certify to the circuit court of the county, a complete transcript of his docket, and all proceedings had before him, together with the original papers filed in the cause, and file the same in the office of the clerk of the circuit court, within ten days after the service of the certiorari.

Justice to proceed to final judgment, when.

SEC. 9. In all cases which shall not be removed before the day of the trial, the justice shall proceed to final judgment as is provided by law.

Appeal allowed, when.

SEC. 10. Any party aggrieved by the judgment of a justice of the peace, in any case of forcible entry and detainer, or

Digitized by Google

unlawful detainer, (except a judgment of non-suit,) may appeal therefrom to the circuit court.

Must be applied for and affidavit and recognizance filed within ten days after judgment.

SEC. 11. No appeal shall be allowed in any case, unless the same be applied for, and an affidavit and recognizance filed with the justice within ten days after the rendition of the judgment and before the return day of the appeal, although such return day be within ten days after the rendition of the judgment.

When the appeal shall be returnable.

SEC. 12. When the judgment of the justice is rendered during the vacation of the circuit court, the appeal shall be returnable to the first day of the next term thereof; but if the judgment be rendered during the term of such court, the appeal shall be returnable within six days after the rendition of the judgment.

Affidavit to be made and what the same shall state.

SEC. 13. The affidavit shall be made by the appellant, or some credible person for him, and shall state that the affiant verily believes that the appellant is aggrieved by the judgment of the justice, and that he does not take the appeal for vexation or delay, but that justice may be done.

If complainant be appellant, condition of recognizance, &c.

SEC. 14. If the complainant be the appellant, he, or some responsible person for him, as principal, with one or more sureties, to be approved by the justice, shall enter into a recognizance to the defendant, in a sum sufficient to secure the payment of all costs, conditioned that the appellant shall prosecute his appeal with effect and without delay, pay all costs that may be adjudged against him, and otherwise abide the judgment of the circuit court.

If defendant be appellant, condition of recognizance, &c.

SEC. 15. If the defendant be the appellant, he, or some responsible person for him, with one or more sureties, to be approved by the justice, shall enter into a recognizance to the complainant, in a sum sufficient to secure the payment of all damages, rents and profits, and costs that are, or may be, adjudged against him, conditioned that the appellant shall prosecute his appeal with effect and without [delay,] that he will not commit, or suffer to be committed, any waste or damage on the premises whereof restitution is adjudged, and that he will pay all damages, rents and profits, and costs that may be adjudged against him, and otherwise abide the final judgment in the cause.

Recognizance to be under the hand and seal, &c.

SEC. 16. Such recognizance shall be under the hand and seal of the principal and surety, and attested by the justice, and may be in the following form: "We, C. D., as principal,

Digitized by Google

CHAP. 66.

Form thereof.

and E. F., surety, acknowledge ourselves indebted to G. H., (the complainant or defendant, as the case may be,) in the sum of —— dollars, upon this condition, that whereas, H. I. has appealed from the judgment of J. K., a justice of the peace, in an action of forcible entry and detainer, (or unlawful detainer, as the case may be,) between G. H., complainant, and H. I., defendant." (Here insert one or the other of the following conditions, as the case may require.)

If complainant be appellant, form of condition.

SEC. 17. If the appeal be taken by the complainant, the condition may be as follows: "Now, if the said ——, (the complainant,) shall prosecute his appeal with effect and without delay, pay all costs that may be adjudged against him, and otherwise abide the judgment of the circuit court in said cause, this recognizance shall be void. Given under our hands and seals, this — day of ——, 18—.

"C. D. (SEAL.)
"E. F. (SEAL.)"

"Attest: J. K., Justice of the Peace."

If defendant be appellant, form of condition.

SEC. 18. If the appeal be taken by the defendant, the condition of the recognizance may be as follows: "Now, if the said ——, (the defendant,) shall prosecute his appeal with effect and without delay, neither commit, or suffer to be committed, any waste or damage on the premises, whereof restitution is adjudged, and pay all rents and profits, damages and costs, that may be adjudged against him, and otherwise abide the judgment of the circuit court in said cause, then this recognizance to be void. Given under our hands and seals, this — day of ——, 18—.

"C. D. (SEAL.)
"E. F. (SEAL.)"

"Attest: J. K., Justice of the Peace."

When execution may be issued; not to be levied till ten days expire, except, &c.

SEC. 19. The justice rendering judgment in any such cause, may issue execution at any time after judgment; but such execution shall not be levied until after the expiration of the time allowed for the taking an appeal, except as in the next succeeding section is provided.

In what cases it may be levied before time expires for taking an appeal

SEC. 20. If it shall appear to the officer having charge of the execution, that the defendant therein is about to remove, conceal, or dispose of his property, so as to hinder or delay the levy, the rents and profits, damages and costs, may be levied before the expiration of the time allowed for taking an appeal.

Digitized by Google

When appeal is perfected, execution to be stayed, &c.

SEC. 21. When an appeal is perfected, the justice shall note the same on his docket, and thereupon all further proceedings on the judgment shall be stayed, and the execution, if any, shall be returned, upon notice of the appeal being served on the officer having charge thereof.

And justice shall certify transcript.

SEC. 22. The justice shall, immediately after an appeal is perfected in any such cause before him, make out and certify a transcript of his docket, and all the proceedings in the cause.

Appellant shall cause transcript to be filed, when.

SEC. 23. The appellant shall cause to be filed in the office of the clerk of the circuit court of the county, such certified transcript of the record and proceedings before the justice, together with the original affidavit, recognizance, and other original papers in the cause, on or before the return day of the appeal. (g)

Failing to file it, judgment shall be affirmed, unless, &c.

SEC. 24. If the appellant fail to file such transcript and other papers, on or before the return day of the appeal, the appellee may produce such transcript, and papers, and the court shall affirm the judgment, unless the appellant shall show good cause for his default. (g)

Duty of clerk of the circuit court.

SEC. 25. The clerk shall file in his office all such transcripts and papers in causes removed into the circuit court, by certiorari or appeal, and docket such causes for trial.

When cause shall be set for trial.

SEC. 26. If such transcript and papers be filed in vacation, the cause shall be set for trial on some day during the next term, if in term time, then on some day during the same term, unless, for good cause shown, the court shall otherwise direct.

Cause shall not be dismissed for informality, &c., if appellant will rectify the same.

SEC. 27. No cause removed into the circuit court by certiorari, or appeal, shall be dismissed for any informality, insufficiency or imperfection, in the affidavit or recognizance, if a sufficient affidavit or recognizance be filed within such time as shall not delay the other party.

Court may order new recognizance, when.

SEC. 28. The circuit court may in any case, where it shall appear that the amount or security in a recognizance is insufficient, or for any other substantial defect, order a new recognizance to be filed within such time as shall not delay the trial.

SEC. 29. In all cases where the complainant shall have remo-

(g) These two sections contain the substance of the 27th section of the act of January 28, 1839; and the supreme court says that it is the duty of the appellant himself to file the transcript of the justices' proceedings on or before the return day of the appeal, and his failure to do so gives the appellee the right to produce the transcript, and have the judgment of the justice affirmed. Keim vs. Dougherty, 8 Missouri Rep., 498; and where the judgment is thus affirmed, a writ of restitution may be issued from the circuit court.—*Ibid.*

Digitized by Google

CHAP. 66.

ved the cause, by certiorari, or appeal, and shall not have filed a sufficient affidavit or recognizance, and shall fail to perfect the same, according to the order of the court, or shall have failed to file any affidavit or recognizance within the time required by law, or shall not prosecute his suit or appeal, the same shall be dismissed.

If appellant has filed insufficient affidavit, &c. and fails to perfect them, &c. his suit shall be dismissed.

And judgment rendered accordingly.

SEC. 30. In case of such default, by a defendant suing a certiorari, judgment may be rendered against him by default, or in case of appeal, if he be appellant, the judgment of the justice may be affirmed, or the appeal dismissed.

Shall be certified to the justice, &c.

SEC. 31. When an appeal shall be dismissed, such dismissal shall be certified to the justice, who shall thereupon issue execution without delay.

Judgment by default, what it shall express, &c.

SEC. 32. In case of a judgment, by default, a jury, or the court (if no jury be required,) shall assess the monthly value of the premises, and the damages, and judgment shall be rendered on the verdict accordingly.

Circuit court to hear and determine anew, causes removed by certiorari or appeal.

SEC. 33. When a cause shall be removed into the circuit court, by certiorari or appeal, such court shall proceed to hear, try, and determine the same anew, as if it had originated in such court, without regarding any error, defect or informality, in the proceedings of the justice.

Circuit court may compel justices to allow appeals and to perfect returns.

SEC. 34. The circuit court may compel any justice to allow an appeal, when improperly refused, to make returns on appeal or certiorari, and to perfect such returns when imperfect, in the same manner, and by the like process and proceedings, as in cases of appeals in civil actions.

No appeal allowed to supreme court or supersedeas awarded, unless condition of recognizance be in substance, &c.

SEC. 35. No appeal to the supreme court shall operate as a stay of execution, nor shall any supersedeas be awarded to the party in possession, unless the condition of the recognizance contain the substance of the condition prescribed by this act, in cases of appeals by a defendant, and the penalty and security be sufficient to secure the performance thereof.

Supreme and circuit courts may issue writs of restitution, &c.

SEC. 36. The supreme and circuit courts, respectively, shall have power to issue writs of restitution, or re-restitution, or executions with clauses to that effect, as occasion may require, to enforce their judgments, in all cases arising under this act.

Duties of officer having charge of such writs.

SEC. 37. The officer having charge of a writ of restitution or re-restitution, or execution with a clause to that effect, shall have power to expel and remove from the premises, mentioned, the defendant therein named, his servants, and others

Digitized by Google

under his control, and all other persons who shall have entered thereon, after the commencement of the suit, otherwise than by process of law, and to deliver to the plaintiff possession thereof.

Approved March 27, 1845.

CHAPTER 67.

FRAUDULENT CONVEYANCES.

AN AN concerning fraudulent conveyances.

SEC. 1. Deed of gift, &c., void as to creditors and purchasers, when.
2. Conveyance of land, &c., with intent to delay, hinder or defraud creditors, utterly void.
3. Qualification of preceding section as to subsequent purchasers.
4. Gift of goods, chattels, &c., not for consideration deemed valuable, void as to creditors and purchasers, when.
5. Loans after five years possession, &c., declared void as to creditors and purchasers, unless the loan, reservation, &c., was declared by will, or deed in writing, &c.
6. Conveyance 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 subsequent bona fide purchasers.
8. Mortgage or deed of trust to personal property, not valid unless delivered and the deed recorded.
9. Preceding section not to defeat contracts of bottomry, respondentia, &c.
10. Every sale of goods and chattels declared to be void without a change of possession, &c.

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

SECTION 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.

Deed of gift, &c. void as to creditors and purchasers, when.

SEC. 2. Every conveyance or assignment in writing, or otherwise, of any estate or interest in lands, or in goods and chattels, or in 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 of their lawful actions, damages, forfeitures, debts or demands, (or to defraud or deceive those who shall purchase the same lands, tenements, or hereditaments, or any rent,

Conveyance of land, &c. with intent to delay, hinder, or defraud creditors, void.

Digitized by Google

profit, or commodity issuing of them,) shall be from henceforth deemed and taken, as against said creditors and purchasers, prior and subsequent, to be clearly and utterly void. (*a*)

Qualification of preceding section as to subsequent purchasers.

SEC. 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 the payment of the purchase money unless it shall appear that the grantee in such conveyance, or person to be benefitted by such charge, was party or privy to the fraud intended.

Gifts of goods, chattels, slaves, &c. not for consideration deemed valuable, void as to creditors and purchasers, when.

SEC. 4. Every gift of goods, chattels and slaves, and all other conveyances of the same, not for a 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 the county in which the donor or grantor resides; if he does not reside in this state, then in the county in which the property is,) in such manner as conveyances of lands are, by law, directed to be acknowledged, or proven and recorded. (*b*)

(*a*) It will be seen that a slight alteration has been made in the conclusion of this section, the object of which is to embrace, beyond all question, purchasers as well as creditors, within its provisions. Upon a comparison of the section as it stands in the present code, with the similar section of the code of 1825, and with the provisions of the statutes of the 13th and 27th of Elizabeth, concerning fraudulent conveyances, from which our statutes are borrowed, the propriety of the alteration becomes apparent. A debtor may prefer one creditor to another, and may transfer his property to one, and leave the other wholly unpaid. Sibley vs. Hood, 3 Missouri Rep., 290; Bell vs. Thompson, 3 Missouri Rep., 84. A general assignment, to a trustee, without a schedule of the property conveyed, or of the creditors provided for, will be good and effectual. Deaver vs. Savage et. al., 3 Missouri Rep., 252. If A purchase of B, for a valuable consideration, to secure himself, his purchase will be good, although he knew at the time that B was greatly indebted and in insolvent circumstances. Sibley vs. Hood, 3 Missouri Rep., 290. To impeach a voluntary conveyance, as fraudulent, it must be shown that the grantor was largely indebted at the time the conveyance was made. Baker vs. Welch, 4 Missouri Rep., 484. A deed of assignment by a debtor, giving a preference to some creditors, and directing the balance to be distributed rateably among the remaining creditors, provided they will execute a release, is fraudulent and void. Swearingen vs. Slicer, 5 Missouri Rep., 241; Brown vs. Knox, Boggs & Knox, 6 Missouri Rep., 302; Drake vs. Rogers et al., 6 Missouri Rep., 317; Crow & Tevis vs. Ruby, 5 Missouri Rep., 484. The validity of a deed of assignment cannot be questioned by those creditors, who voluntarily become parties, although it may be void as to other creditors. Burrows & Jennings vs. Alter, 7 Missouri Rep., 424. The assent of creditors to a deed of assignment, will, in general, be presumed. Duvall et alvs. Raisin et al., 7 Missouri Rep., 449. Endorsers are viewed as creditors, and an assignment for their security is valid, though no payment has been made by them. *Ibid.* The want of a schedule does not invalidate a deed of assignment. *Ibid.* One impeaching a conveyance on the ground of fraud, must show his right to do so. Wright vs. Crockett, 7 Missouri Rep., 125.

(*b*) This section has been so changed as to designate in what county the deeds shall be recorded. Deeds for lands must be recorded in the county in which they

Digitized by Google

Loans, after five years possession, &c., declared void as to creditors and purchasers, unless the loan, reservation, &c., was declared by will, or deed in writing, &c.

SEC. 5. When 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 when 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 person 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 was declared, by will or deed in writing, proved or acknowledged, and recorded as required by the preceding section. (*c*)

Conveyance not valid until delivered for record, and not then if made with intent to defraud, &c.

SEC. 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.

Not to extend to bona fide conveyances, or subsequent bona fide purchasers.

SEC. 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 it 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.

SEC. 8. No mortgage or deed of trust of personal property hereafter made, shall be valid against any other person than

are situate. If a donor of chattels resides in one county, and the chattels are in another, in what county must the deeds be recorded? The alteration made removes all doubt about this matter. If the vendor or mortgagor remains in possession of chattels, after sale or mortgage, it is not fraud per se, but is a circumstance to be left to the jury, who, from all the evidence, will determine whether the transaction be fraudulent or not; Shepherd vs. Trigg, 7 Missouri Rep., 151; Ross vs. Crutsinger, *ibid*, 245, overruling the cases of Rochblave vs. Potter, 1 Missouri Rep., 561; Foster et al. vs, Wallace, 2 Missouri Rep., 231; Sibley vs. Hood, 3 Missouri Rep., 290; King vs. Bailey, 6 Missouri Rep., 576. A purchaser from a person not a party to a conveyance, but having only the possession of the property in right of another, and not deriving title under the conveyance, is not embraced within this section; Allison vs. Bowles, 8 Missouri Rep., 346.

(*c*) A loan, under this section, though void, after five years possession, against the creditors and purchasers of the person remaining in possession, is, nevertheless, valid between the parties thereto; Smoot vs. Wathen, administrator, &c., 8 Missouri Rep., 522.

Digitized by Google

CHAP. 68.

Mortgage or deed of trust to personal property, not valid unless delivered or deed recorded. Rev. C. of Mass., p. 473.

the parties thereto, unless possession of the mortgaged or trust property be delivered to, and retained by, the mortgagee or trustee, or cestui que trust, or unless the mortgage, or deed of trust be acknowledged or proved, and recorded in the county in which the mortgagor or grantor resides, in such manner as conveyances of lands are by law directed to be acknowledged, or proved and recorded.

Preceding section not to be construed to defeat contracts of bottomry, &c. *Ibid.*

SEC. 9. Nothing contained in the preceding section shall avoid or defeat any contract of bottomry, respondentia, nor any transfer or assignment or hypothecation of any boat, vessel, ship or goods, at sea or abroad, if the mortgagee, trustee, or cestui que trust, shall take possession of such boat, vessel, ship or goods, as soon as may be after the arrival thereof within this state. (*d*)

Every sale of goods and chattels declared to be void, without a change of possession, &c. Rev. C. of New York.

SEC. 10. Every sale made by a vendor of goods and chattels in his possession or under his control, unless the same be accompanied by delivery in a reasonable time, (regard being had to the situation of the property,) and be followed by an actual and continued change of the possession of the things sold, shall be presumed to be fraudulent and void, as against the creditors of the vendor or subsequent purchasers in good faith, and shall be conclusive evidence of fraud, unless it shall be made to appear to the jury, on the part of the persons claiming under such sale, that the same was made in good faith, and without any intent to defraud creditors or subsequent purchasers.

Approved March 4, 1845.

(*d*) 2 Kent, in note, p. 526, and see the same book, p. 530, in note.

Digitized by Google

CHAPTER 68.

FRAUDS AND PERJURIES.

AN ACT to prevent frauds and perjuries.

SEC. 1. Leases not in writing, to operate as estates at will only.
2. Assignment and surrender of leases, &c., to be in writing.
3. Declarations and creations of trusts and grants, and assignments thereof, to be by will or writing, &c.
4. Force and effect of resulting trusts.
5. What agreements, &c., must be in writing.
6. Contracts for the sale of goods, when not valid, unless part be delivered or earnest given.
7. No action shall be brought to charge any person for representations of the credit, &c., of another, unless reduced to writing.

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

Leases not in writing, to operate as estates at will only. R. C. 1835, 284, sec. 8.

SECTION 1. That all leases, estates, interests of freehold, or terms of years, or any uncertain interest of, in, to, or out of any messuages, lands, tenements or hereditaments, made or created by livery and seizin only, or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents lawfully authorized 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. (a)

Assignment and surrender of leases, &c. to be in writing. *Ib.*, sec. 9.

SEC. 2. No leases, estates, interests, either of freehold or of terms of years, or any uncertain interest of, in, to, or out of any messuages, lands, tenements or hereditaments, 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 authorized by writing, or by operation of law.

Declarations or creations of trusts and grants, and assignments thereof, to be by will or writing, &c. *Ib.*, sec. 10.

SEC. 3. 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.

Force and effect of resulting trusts. *Ib.*, sec. 11.

SEC. 4. 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 con-

(a) The origin of this act is the statute of frauds of 29, Chas. 2. 4 Kent, p. 115.

Digitized by Google

CHAP. 68.

fidence shall be of like force, as the same would have been if the act had not been made. (*b*)

What agreements, &c. must be in writing. 1835, p. 117.

SEC. 5. No action shall be brought to charge any executor or administrator upon any special promise to answer for any debt or damages out of his own estate, or to charge any person upon any special promise to answer for the debt, default or miscarriage of another person, or to charge any person upon any agreement made in consideration of marriage, or 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 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. (*c*)

(*b*) A person who takes a conveyance of land, with a notice of the title of another, will be held a trustee for the benefit of the other, and will not be permitted to avail himself of the statute of frauds, on the ground that the agreement under which he took the conveyance was not in writing. Truesdell vs. Callaway, 6 Missouri Rep., 605. If one enters lands of the United States with the money of another in his own name, and procures a patent for the same from the general government, a court of equity will decree the title to him to whom the money belonged. Stephenson vs. Smith, 7 Missouri Rep., 610.

(*c*) A plea of the statute of frauds should expressly aver that the contract concerning the land was not in writing, and should contain an answer to all the other facts not expressly denied by it. Bean et al. vs. Valle et al., 2 Missouri Rep., 126. When B endorses a receiver's receipt "transferred," and signs the same, and delivers it to K, with verbal instructions to deliver the same to a third person upon the payment of a certain sum of money, it is not necessary for K to do any act in writing. The payment of the money, and delivery of the certificate constitute a valid agreement. *Ibid.* Payment of the purchase money is not such a part performance of a contract for the sale of lands, as to take it out of the statute of frauds; nor is a mere taking possession of the land, without the consent of the vendor, and without a declaration of the intention with which possession was given such part performance. *Ibid.* Under the statute of frauds, it is not necessary that the consideration of the agreement should be in writing. *Ibid.* A. contracted to hire a negro to B for one year; the contract was not reduced to writing. The negro was delivered at the time agreed upon, and the year's services were performed. The contract was held not to be within the statute of frauds. Blanton vs. Knox 3 Missouri Rep., 242. A specific performance of a contract will not be decreed, where the vendee had knowledge of a valuable mine upon it, and concealed the fact from the vendor. Bean et al. vs. Valle et al., 2 Missouri Rep., 126. An improvement on the public lands may be sold without writing, and is not affected by the statute of frauds. Clark vs. Shultze, 4 Missouri Rep., 235. An agreement between A and B, that A should serve B five years, in consideration of certain acts to be done by B, is within the statute of frauds, and must be in writing, in order to support an action. Pitcher vs. Wilson, 5 Missouri Rep., 46. Where a contract for the sale of lands is in writing, yet, if a resort to parol evidence is necessary, in order to ascertain the land intended to be sold, the agreement is within the statute of frauds. King, administrator, vs. Wood, 7 Missouri Rep., 389. A parol promise that, if plaintiff would give B time on a judgment obtained against him, defendant would see the judgment paid, is an undertaking to pay the debt of another, and within the statute of frauds. Musick vs. Musick, 7 Missouri Rep., 495. A person making a verbal contract for the sale of lands, may, or may not, insist on the statute of frauds: If he will confess the agreement, and not insist on the statute, its performance will be enforced against him. McGowen vs. West, 7 Missouri Rep., 569.

Digitized by Google

Contracts for the sale of goods, &c., when not valid, unless part be delivered, or earnest given.—*Ib.*

SEC. 6. No contract for the sale of goods, wares and merchandise, for the price of thirty dollars, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or unless 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.

No action shall be brought to charge any person for representations of credit, &c. of another, unless reduced to writing.

SEC. 7. No action shall be brought to charge any person upon, or by reason of, any representation or assurance made concerning the character, conduct, credit, ability, trade or dealings of any other person, unless such representation or assurance be made in writing, and subscribed by the party to be charged thereby, or by some person thereunto by him lawfully authorized, (*d*)

Approved March 15, 1845.

CHAPTER 69.

FREEDOM.

AN ACT to enable persons held in slavery to sue for their freedom.

SEC. 1. Persons held in slavery permitted to sue for their freedom.
2. If the petition contains sufficient matter to authorize suit, what orders the court shall make.
3. Orders to be endorsed on petition, &c.
4. In case of restraint, &c., or severe treatment, court or judge to cause the petitioner to be brought up by warrant.
5. Warrant for that purpose to be directed to sheriff; what it shall contain.
6. How and where to be executed.
7. Petitioner brought before court or judge, person in whose possession he was found to enter into recognizance; condition thereof.
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. How, and what defendant may plead.
12. Plaintiff required to prove his freedom, when.
13. Judgment of liberation, &c.
14. Plaintiff shall not recover damages.
15. Appeal or writ of error allowed.
16. Sheriff to collect proceeds of hire of petitioner, and loan them out at interest. To take bond and security, &c.

A sheriff's sale is within the statute of frauds. Evans vs. Wilder, 7 Missouri Rep., 359; Evans vs. Ashley, 8 Missouri Rep., 177. It is not necessary that the consideration of the agreement should be in writing; it may be proved by parol. Halsa vs. Halsa, 8 Missouri Rep., 303.

(*d*) This section is borrowed from the English code, where it was first enacted in the 9th year of George the 4th. It has been adopted in the late revised statutes of Massachusetts, and chancellor Kent, speaking of it, says: "It wonderfully relieves the courts, the profession and the country, from the evils of fluctuating and contradictory decisions." Kent's Com., 2 vol., 489, in note.

Digitized by Google

CHAP. 69. *Be it enacted by the General Assembly of the State of Missouri, as follows:*

Persons held in slavery permitted to sue. 1835, p. 284.

SECTION 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.

If petition contains sufficient matter to authorize suit, what orders the judge or court shall make.

SEC. 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*, That the petitioner be allowed to sue, on giving security, satisfactorily, to the clerk, for all costs that may be adjudged against him or her; *Second*, An order that such 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.

To be endorsed on petition, &c.

SEC. 3. Both orders shall be endorsed on the petition, and a copy of them endorsed upon the writ and served therewith, and in the same manner.

In case of restraint, &c. or severe treatment, court or judge to cause the petitioner to be brought up by warrant.

SEC. 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 the reasonable liberty of attending his counsel and 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.

Warrant for that purpose to be directed to sheriff; what it shall contain.

SEC. 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 therein specified.

How and where to be executed.

SEC. 6. The warrant may be executed, by the officer to whom it is directed, in any county in the state.

Petitioner brought before court or judge, person in whose possession he was

SEC. 7. When the petitioner is brought before the court, or judge, the person in whose possession he is found, or his agent, shall enter into a recognizance to the state of Missouri, with sufficient securities, conditioned that the petitioner shall,

Digitized by Google

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.

Found to enter into recognizance. Condition thereof.

SEC. 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.

Failing to enter into recognizance, petitioner to be hired out. Bond to be taken; condition thereof.

SEC. 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.

Form of the action to be commenced.

SEC. 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 committing the grievances, was, and still is, a free person, and that the defendant held, and still holds, him in slavery.

The declaration and what averments it shall contain.

SEC. 11. The defendant may plead as in other like cases, or he may plead the general issue and give any special matter in evidence.

How and what defendant may plead.

SEC. 12. If the plaintiff be a negro or mulatto, he is required to prove his right to freedom.

Plaintiff required to prove his freedom, when.

SEC. 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.

Judgment of liberation, &c.

SEC. 14. In actions prosecuted under this act, the plaintiff shall not recover any damages.

Plaintiff shall not recover damages.

SEC. 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.

Appeal or writ of error allowed, &c.

Digitized by Google

CHAP. 70.

Sheriff to collect proceeds of hire of petitioner, and loan them out at interest. To take bond and security, &c.

New provision.

SEC. 16. If the sheriff hire out a person suing for his freedom, as provided in the eighth section of this act, he shall collect the proceeds of such hire, and, from time to time, loan out the same, at an interest not less than six, nor more than ten per centum per annum, and take from the loanee a bond or note, with security, for the payment of the principal sum, and interest; and, when the suit is ended, such sheriff shall deliver such bond or note to the person entitled to the same.

Approved February 13, 1845.

CHAPTER 70.

FUGITIVES FROM OTHER STATES.

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 it is directed.
4. Officer may confine person in jail, when. Keeper to receive him, &c.
5. Expenses to be paid out of the state treasury.
6. Person charged on oath of another, fleeing from another state for crime, warrant to issue.
7. On examination, the party charged may be committed to jail, or bailed.
8. Proceedings on examination. Copy of examination to be sent to governor.
9. Duty of governor.
10. Offender to be delivered up on demand.
11. If at large, on bail, sheriff authorised to take him.
12. Circuit court may discharge or detain accused, when.
13. Not to be kept in prison, &c., beyond the end of second term after arrest.
14. Recognizance, if forfeited, shall enure to the state.
15. Bond and security for costs to be taken from the prosecutor.
SEC. 16. Costs may be collected by fee-bills. Duty of sheriff, &c.
17. If not paid, execution to issue, when.
18. Clerk may sue on bond for the recovery of costs and charges.
19. Warrant to arrest fugitives from service from other states, when to issue. Command of warrant.
20. What proof shall entitle a person to such warrant.
21. Such warrant, how executed.
22. Court or magistrate how to proceed when such fugitive is brought before them.
23. Person charged may be discharged, when.
24. If a runaway slave, he shall be committed to jail, &c.
25. If person charged is discharged, remedy against claimant.
26. Proceedings, if it appear that claimant is entitled to the services of the fugitive. Certificate to be granted; form thereof.
27. Authority of claimant under the certificate.
28. No person to remove fugitive from this state, unless by the provisions of this act.
29. Penalty for violating preceding section.
30. Fees and expenses, how paid in proceedings against fugitives from service, &c.

Digitized by Google

CHAP. 70.

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

SECTION 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, (*a*) it shall be the duty of the executive of this state to issue his warrant, under the seal of the state, (*b*) directed to any sheriff, coroner, or other person whom he may think fit to entrust with the execution of such warrant.

Upon demand regularly made, governor to issue his warrant.

To whom directed. 1835, p. 286.

SEC. 2. The warrant shall authorize 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 shall command all sheriffs, coroners, constables and other officers, to whom the warrant may be shown, to aid and assist in the execution thereof.

What shall be set forth in the warrant.

SEC. 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.

Where and how warrant to be executed.

Power and duty of officer, &c.

SEC. 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.

Officer may confine prisoner in jail, when.

Keeper to receive him, &c.

SEC. 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.

Expenses to be paid out of the state treasury.

SEC. 6. Whenever any person within this state shall be charged, on the oath or affirmation of any credible 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

Person charged, on the oath of another, of fleeing from another state for crime, warrant to issue.

(*a*) *Vide*, Act of congress, February 12, 1793.
(*b*) *Vide*, Vallad vs. Sheriff of St. Louis county, 2 Missouri Rep., 24.

Digitized by Google

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.

On examination, the party charged may be committed to jail, or bailed.

SEC. 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.

Proceedings on examination.

SEC. 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.

Copy of examination, &c. to be sent to the governor.

Duty of governor.

SEC. 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.

Offender to be delivered up on demand.

SEC. 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.

If, at large on bail, sheriff authorized to take him.

SEC. 11. If the accused shall be at large, on bail or otherwise, it shall be lawful for the sheriff to arrest him forthwith, anywhere within the state, and to surrender him agreeably to the command of the warrant.

Circuit court may discharge or detain accused, when.

SEC. 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 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.

SEC. 13. In no case shall the party be kept in prison, or

Digitized by Google

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. Not to be kept in prison, &c.

SEC. 14. When any such recognizance shall be forfeited, it shall enure to the benefit of the state. Recognizance shall enure to the state.

SEC. 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 expenses which may accrue by occasion of the arrest and detention of the party charged, which bond shall be certified and returned with the examination to the office of the clerk of the circuit court. Security for costs to be taken from the prosecutor.

SEC. 16. Upon the determination of the proceedings in that 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 fees as for serving notices. Costs may be collected by fee-bills; duty of sheriff, &c.

SEC. 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-bills were served. If not paid, execution to issue, when.

SEC. 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. Clerk may sue on bond for recovery of costs and charges.

SEC. 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 authorised 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. Warrant to arrest fugitive from service from other states, when to issue. Command of warrant.

SEC. 20. The proof to entitle any person to such warrant shall be by affidavit, setting forth, particularly, the ground of such claim to the services of such fugitive, the time of the escape, and where he then is. What proof shall entitle person to such warrant.

SEC. 21. The officer to whom such warrant shall be directed

Digitized by Google

CHAP. 70.

Such warrant how executed.

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.

Court or magistrate how to proceed when such fugitive is brought before them.

SEC. 22. The court or magistrate shall proceed to hear the allegations and proofs of the parties, and shall, if required, allow a reasonable time to either party to procure further necessary proof, and in such case may 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.

Person charged may be discharged, when.

SEC. 23. If, upon the hearing of the parties and witnesses, the court or magistrate 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.

If a runaway slave, he shall be committed to jail, &c.

SEC. 24. If it appear that the person so arrested and brought before the 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 is provided in cases of runaway slaves.

If person charged is discharged, remedy against claimant.

SEC. 25. When any person is 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.

Proceedings if it appear that claimant is entitled to the services of the fugitive.

Certificate to be granted.

Form thereof.

SEC. 26. If it shall appear that the claimant is entitled to the services 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.

Authority of claimant, &c.

SEC. 27. Such certificate shall authorize the claimant, or his agent therein named, to remove such fugitive without any

Digitized by Google

unnecessary delay, through and out of the state, to the place of residence of the claimant.

No person to remove fugitive, unless authorized.

SEC. 28. No person shall take or remove any such fugitive from this state, or do any act towards such removal, unless authorized so to do pursuant to the provisions of this act.

Penalty for violating preceding section.

SEC. 29. Every person violating the provisions of the last preceding section, shall forfeit and pay five hundred dollars to the aggrieved party.

Fees and expenses, how paid in proceedings against fugitives from service, &c.

SEC. 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 issue, 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 February 22, 1845.

CHAPTER 71.

GAMING.

AN ACT to restrain gaming.

SEC. 1. Money or property lost at gaming, may be recovered, &c.
2. How the plaintiff shall declare in an action for the recovery.
3. Heirs, &c. may have the remedy.
4. Judgments, conveyances, bonds, &c., founded on gaming consideration, declared to be void.
5. Assignments of such bonds, &c., shall not affect the defence.
6. If minor or apprentice lose money in a grocery or dram-shop, parent, master, &c., may recover the same.
SEC. 7. Defence, how pleaded, &c.
8. In suits before justices, defendant may be called on to answer, &c.
9. Answer not evidence on indictment.
10. Betting on elections, declared gaming.
11. Stake-holder liable to the party who placed the money in his hands. Delivery to winner, no defence.
12. Action to be commenced within three months.

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

Money or property lost at gaming, may be recovered, &c.

SECTION 1. Any person who shall lose any money or property, at any game (*a*) or gambling device, may recover the

(*a*) This act is principally taken from the digest of 1835. Horse racing is a game within the meaning of this act. Shropshire vs. Glascock & Garner, 4 Missouri Rep., 536,; Boynton vs. Curle, 4 *ibid*, 599. Betting on the presidential election is not. Stapleton vs. Benson, 8 Missouri Rep., 13; Tompkins, J., dissenting.

Digitized by Google

same by action of debt, if money; if property, by action of trover, replevin, or detinue.

How the plaintiff shall declare in an action for the recovery.

SEC. 2. In such action, it shall be sufficient for the plaintiff to declare generally, as in action of debt, for money had and received by the defendant to the plaintiff's use, or as in actions of detinue or trover, upon a supposed finding, and the detaining or converting the property of the plaintiff to the use of the defendant, whereby an action hath accrued to the plaintiff, according to the form of this act, without setting forth the special matter.

Heirs, &c. may have the remedy.

SEC. 3. 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.

Judgments, conveyances, bonds, &c. founded on gaming consideration, declared void, &c.

SEC. 4. 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, and may be set aside and vacated, by any court of equity, upon bill filed for that purpose, by the person so granting, giving, entering into, or executing the same, or by his executors or administrators, or by any creditor, heir, devisee, purchaser, or other person interested therein. (*b*)

Assignments of such bonds, &c. shall not affect the defence.

SEC. 5. The assignment of any bond, bill, note, judgment, conveyance, or other security, shall not affect the defence of the person executing the same.

If minor or apprentice lose money in a grocery or dram shop, parent, &c. may recover the same.

SEC. 6. If any minor or apprentice shall lose any money or property in any grocery or dram shop, by betting at cards, or any other gambling device, or by any bet, wager, or hazard, whatever, the parent or guardian of such minor, or the master of such apprentice, may sue for and recover from the keeper of such grocery or dram shop, such money or property, or the full value thereof, so lost by such minor or apprentice.

Defence, how pleaded, &c.

SEC. 7. Any matter of defence, under this act, may be specially pleaded or given in evidence, under the general issue.

In suits before justices, defendant may be called to answer, &c.

SEC. 8. In all suits under this act, before a justice of the peace, the plaintiff may call in 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.

Answer not evidence on indictment.

SEC. 9. Such answer shall not be admitted as evidence against such person, in any proceeding by indictment.

(*b*) *Vide*, Waddle vs. Loper, 1 Missouri Rep., 635; Collins vs. Lee & Parker, 2 *ibid*, 16; Wilkerson vs. Whitney, 7 Missouri Rep., 295.

Digitized by Google

Betting on elections, gaming.

SEC. 10. Bets and wagers on any election authorised by the constitution and laws of this state, are gaming, within the meaning of this act.

Stakeholder liable to the party who placed money in his hands.

SEC. 11. Every stakeholder who shall knowingly receive any money or property, staked upon any betting declared gaming by the provisions of this act, shall be liable to the party who placed such money or property in his hands, both before and after the termination of such bet; and the delivery of the money or property to the winner, shall be no defence to any action brought by the losing party for the recovery thereof: *Provided*, That no stakeholder shall be liable afterwards, unless a demand has been made of such stakeholder of the money or property in his possession, previous to the expiration of the time agreed upon by the parties for the determination of the bet or wager.

Delivery to winner no defence.

New section.

Action to be commenced within three months.

SEC. 12. Any action for money or property, brought under this act, shall be commenced within three months from the time the right of action accrued, and not afterwards.

Approved March 19, 1845.

CHAPTER 72.

GROCERIES AND DRAM-SHOPS.

AN ACT to regulate groceries and dram-shops.

SEC. 1. Liquors not to be sold without license.
2. A grocer defined.
3. Not to sell intoxicating liquors in less quantities than a quart.
4. A dram-shop keeper defined.
5. No grocer or dram-shop keeper to keep a grocery or dram-shop at more than one place at the same time, &c.
6. A grocery and dram-shop may be kept by same person, when.
7. Not to sell liquor to slaves without written permission from master, &c.
8. Debts for liquor sold on credit, not recoverable.
9. Applications for license to be made in writing to county court. Statement, &c. Court to grant license. Proviso.
10. Tax on licenses to keep groceries and dram-shops, to be determined by the county court.
SEC. 11. Applicant for license as grocer or dram-shop keeper shall deliver a statement to court or clerk, verified by affidavit, of amount of stock, &c. Ad valorem tax.
12. Clerk to deliver statement of licenses to the collector, and charge him therewith.
13. Duty of collector.
14. No license to issue until collector's receipt is produced.
15. Clerk may grant licenses in vacation. To continue till next term, &c.
16. On renewal of such license, no additional ad valorem shall be imposed.
17. Clerk to report to county court the number of licenses granted by him in vacation.
18. No slave permitted to sell intoxicating liquors.
19. Penalty for violating this act.

Digitized by Google

CHAP. 72.

SEC. 20. Liquors may be sold at the place where made, but not to be drank about the premises.
21. Penalty for violating preceding section.
22. Judge to give this act in charge to grand jury.
23. Every civil officer to give information of the violation of this act. To arrest persons guilty of violation thereof; to take them before a justice, &c.
24. Attorney general, &c., to take care that the penalties under this act be strictly and promptly enforced, &c.
SEC. 25. Proceedings against slaves for selling liquor. Punishment therefor.
26. Incorporated towns and cities may impose a tax on groceries and dram-shops; extent thereof.
27. This act not to affect the right of merchants to sell liquors.
28. Construction of the term, "intoxicating liquor."
29. This act remedial, and to be liberally construed.
30. Not to apply to St. Louis county, if conflicting with the act of February 15, 1843.

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

Liquors not to be sold without license.

SECTION 1. No person shall, directly or indirectly, sell intoxicating liquors, without taking out a license as a grocer or dram-shop keeper.

A grocer defined.

SEC. 2. A grocer is a person permitted by law, being licensed according to the provisions of this act, to sell goods, wares and merchandize, (all kinds of dry goods excepted,) and intoxicating liquors in any quantity not less than a quart.

Not to sell intoxicating liquors in less quantities than a quart, &c.

SEC. 3. No grocer shall, directly or indirectly, sell intoxicating liquors, in any quantity less than a quart, nor shall he permit any intoxicating liquors, sold by him, to be drank at his grocery, nor at any place under his control. (*a*)

A dram-shop keeper defined.

SEC. 4. A dram-shop keeper is a person permitted by law, being licensed according to the provisions of this act, to sell intoxicating liquors in any quantity less than a quart.

No grocer, &c. to keep a grocery, &c., at more than one place at the same time, &c.

SEC. 5. No grocer or dram-shop keeper shall keep a grocery or dram-shop at more than one place at the same time, nor shall the license of a grocer or dram-shop keeper be assignable or transferable.

A grocery and dram-shop may be kept by same person, when.

SEC. 6. A grocer may be a dram-shop keeper, and a dram-shop keeper may be a grocer, at the same time, and carry on the business of both at the same place, but a license for each purpose must be first obtained.

Not to sell liquor to slaves, without written permission from master, &c.

SEC. 7. No grocer or dram-shop keeper shall, directly or indirectly, sell any intoxicating liquor or drink of any kind to any slave, without permission, in writing, from the master, owner, or overseer of such slave. (*b*)

SEC. 8. If any dram-shop keeper shall sell any intoxicating

(*a*) *Vide*, The State vs. Auberry, 7 Missouri Rep., 304.
(*b*) *Vide*, Frasier vs. The State, 6 Missouri Rep., 195.

Digitized by Google

liquors on credit, such sales and all debts contracted therefor, shall be void and not recoverable by law.

Debts for liquor, &c., not recoverable.

SEC. 9. Application for a license as grocer or dram-shop keeper shall be made, in writing, to the county court, and shall state where the grocery or dram-shop is to be kept, and if the court shall be of opinion that the applicant is a person of good character, the court may license such applicant as a grocer or dram-shop keeper for six months: *Provided*, No free negro or mulatto is to be granted a license as a dram-shop keeper, nor shall any free negro or mulatto be permitted to sell any intoxicating liquors, either in his own name, or in the name of any other person.

Applications for license to be made in writing to county court.

Proviso.

SEC. 10. Upon every license to a grocer, there shall be levied a tax of not less than ten, nor more than fifty dollars, for state purposes, for every period of six months, and upon every license to a dram-shop keeper, there shall be levied a tax of not less than fifteen, nor more than fifty dollars, for state purposes, for every period of six months, the amount of tax, in every instance, to be determined by the court or clerk granting the license.

Tax on licenses to keep groceries and dram-shops, to be determined by the county court.

SEC. 11. Every applicant for a license as a grocer or dram-shop keeper, shall deliver to the court or clerk a statement, in writing, verified by affidavit, of the full amount of all goods, wares and merchandize, and groceries, not the growth or manufacture of this state, received at his store, stand, shop or warehouse, within six months next preceding the date of such statement, on which amount there shall be levied and collected, for state purposes, an ad valorem tax of the same amount as that paid by merchants upon merchandize. (c)

Applicant for license as grocer or dram-shop keeper, shall deliver statement to court or clerk, verified by affidavit, of am't of stock, &c.

Ad valorem tax.

SEC. 12. The clerk shall deliver to the collector of the county, without delay, a statement of the licenses granted at each term of the court, the amount of tax levied upon each license, for state and county purposes, including the ad valorem tax, and charge the collector with the amount contained in every such statement.

Clerk to deliver statement of licenses to collector and charge him therewith.

SEC. 13. The collector shall, without delay, collect from such persons the amount specified in such statement, and give him a receipt for the same.

Duty of collector.

SEC. 14. The clerk shall not deliver to any person a license as a grocer or dram-shop keeper, until such person shall pro-

No license to issue until, &c.

(c) *Vide*, the act to license and tax merchants.

Digitized by Google

duce the receipt of the collector, showing that all the taxes levied on the same have been paid.

Clerk may grant licenses in vacation. To continue till next term, &c.

SEC. 15. The clerk of the county court may, in the vacation of the court, grant licenses to grocers and dram-shop keepers, until the next term of the court, upon such person paying the amount levied for state and county purposes, in proportion to the time such license shall continue, together with the ad valorem tax, in the same manner as if such license had been granted by the court.

On renewal of such license, no additional ad valorem shall be imposed.

SEC. 16. Any person licensed by the clerk, as a grocer or dram-shop keeper, who applies to the county court to have such license renewed, shall not be charged with an ad valorem tax on those articles on which the tax was paid at the time of granting such license by the clerk.

Clerk to report to county court the number of licenses granted by him in vacation.

SEC. 17. The clerk of the county court shall make out a statement of all such licenses granted by him in vacation, and the amount paid the collector on each for state and county purposes, and report the same to the court at the next term after the same were granted.

No slave to sell intoxicating liquors.

SEC. 18. No master or owner of a slave shall suffer or permit such slave, directly or indirectly, to sell intoxicating liquors.

Penalty for violating this act.

SEC. 19. Any person convicted of a violation of the preceding provisions of this act, shall be fined in a sum not less than twenty, nor more than one hundred dollars.

Liquors may be sold at place where made, but not drank there.

SEC. 20. Intoxicating liquors may be sold in any quantity not less than a quart, at the place where made; but the maker or seller shall not suffer or permit the same to be drank at the place of sale, nor at any place under the control of either, or both.

Penalty for violating preceding section.

SEC. 21. A person convicted of a violation of the preceding section, shall be fined in a sum not greater than twenty dollars.

Judge to give this act in charge, &c.

SEC. 22. The judge of the circuit court shall give this act in special charge to the grand jury, at each term of the court.

Every civil officer to give information of the violation of this act.

SEC. 23. Every civil officer, and every officer of incorporated cities and towns, having knowledge of the violation of any of the preceding provisions of this act, shall give information thereof to the grand jury, or if no grand jury for the county in which the offence is committed be in session, to arrest any person or persons guilty of such violation, and take such person or persons before a justice of the peace for the

Digitized by Google

county in which such offence is committed; and upon complaint made by such civil officer, on oath in writing, it shall be the duty of such justice of the peace to proceed with the person or persons accused, in like manner as in other criminal cases, and the names of the witnesses by whom such violation can be proved.

Attorney general, &c., to take care that the penalties under this act are strictly and promptly enforced, &c.

SEC. 24. The attorney general and circuit attorneys shall take special care that proper proceedings are promptly taken, and proper process issued to collect all fines and costs from persons convicted under this act, and shall institute and prosecute proceedings against the sheriff or other officer who may fail to exercise due diligence in the collection and payment of such fines and costs.

Proceedings against slaves for selling liquors.

Punishment therefor.

SEC. 25. If any slave shall, directly or indirectly, sell any intoxicating liquor, such slave may be prosecuted therefor, in a summary manner, before a justice of the peace, and upon conviction thereof, shall receive not more than thirty-nine lashes, and his master or owner shall pay the costs.

Incorporated towns and cities may impose a tax on groceries and dram-shops.

SEC. 26. The proper authorities of incorporated towns or cities, may impose a tax on licenses to grocers and dram-shop keepers within their limits, not exceeding the amount levied for state purposes.

This act not to affect the right of merchants to sell liquors, &c.

SEC. 27. This act shall not be construed to affect the right of a merchant to sell intoxicating liquor, according to the seventeenth section of the act to license and tax merchants, (*d*) nor any person who shall sell spirituous liquors in quantities not less than a quart, at the distance of one mile from any town or village, and not to be drank at the place of sale.

Construction of the term "intoxicating liquor."

SEC. 28. The term "intoxicating liquor," as used in this act, shall be construed to mean wine and spirituous liquors, and any composition of which wine or spirituous liquor is a part.

This act remedial and to be liberally construed.

SEC. 29. This act shall be considered a remedial act, and shall be liberally construed.

SEC. 30. This act shall not apply to Saint Louis county, so

(*d*) From the word "nor" to the end of this section, inclusive, in the enrolled bill, and copy thereof, forms a part of the 26th section. This is an important error. Section 26, in the original bill, terminated with the word "purposes," and the clause forming a part of the 27th section, in this publication, from the word "nor" to the end of the section, inclusive, was reported as an amendment by the revising committee, and was attached to the 26th section, but evidently designed to come in at the end of the 27th section. If published as a part of section 26, it would make nonsense; the latter part of the section would have no connection with the former. The commissioner came to the conclusion, in examining the original bill, that the amendment was attached to the wrong section through mistake.

Digitized by Google

CHAP. 73.

Not to apply to St. Louis county, if conflicting with the act of Feb. 15th, 1843.

far as its provisions conflict with the act entitled "An act to regulate the licenses of groceries in the city and county of Saint Louis," approved February fifteenth, eighteen hundred and forty-three, but the said last mentioned act is hereby declared to be, and continue in force, any thing in this act to the contrary notwithstanding. (e)

Approved March 25, 1845.

(e) This act is a digest of the act contained in the revised code of 1835, page 291, and the sess. acts of 1840-1, pages 81, 2, 3, 4.

CHAPTER 73.

GUARDIANS AND CURATORS.

AN ACT concerning guardians, curators, and minors.

SEC. 1. Who shall be natural guardian of children, &c.
2. When court shall appoint a guardian. Minors over fourteen years to choose their own guardians.
3. Officers having knowledge of a minor without a guardian, shall report to the court; the court shall appoint a guardian.
4. Court to notify minor over the age of fourteen to appear and choose a guardian, when.
5. Court shall approve the choice of such guardian, when, &c.
6. When a minor is entitled to an estate not derived from parent, and parent is incompetent, or mismanaging it, court shall appoint a curator, when, &c.
7. Court may appoint a curator of the estate, different from the guardian, &c., when. Guardians and curators to prosecute and defend suits, &c.
8. Minors, on attaining the age of fourteen, may choose another guardian, &c.
9. If guardian, &c., so chosen or appointed, reside in a different county, &c., court may order removal of proceedings.
10. Court to order transcript of all proceedings to be delivered to last appointed guardian or curator, when. Jurisdiction of court, &c., in such case.
11. What appointment of guardian shall specify.
SEC. 12. Powers of guardian.
13. Married woman shall not be guardian or curator; marriage shall operate as a revocation of her appointment.
14. Non-resident not to be guardian or curator; removal from the state a revocation.
15. No clerk or justice of county court shall be guardian, &c.
16. Minor shall not be committed to guardianship of person of different religion from his parents.
17. Guardians and curators to be twenty-one years of age; shall give bond; condition thereof.
18. Duty of guardians and curators to make an inventory, &c.
19. Estate to be appraised.
20. What estate shall not be appraised.
21. Proceedings in case of embezzling minor's property.
22. Court to order the proper education of minors; may make appropriations, &c.
23. Money of minors to be loaned out, how; if it cannot be loaned, guardian and curator responsible for the principal, &c.; interest, when payable, &c.
24. Guardians and curators to make annual settlements; how made and conducted; on failure, liable to be attached, &c.
25. Receipts, &c., given by guardians and curators, valid.

Digitized by Google

SEC. 26. Minors without sufficient estate, &c., to be bound apprentices, &c.
27. When wards die, leaving an estate, duty of county court.
28. Curators of wards living out of this state to make settlement with the guardians of said wards.
29. Minors shall acknowledge satisfaction of record, when; court may enter discharge, when.
SEC. 30. Duration of office of guardian and curator. To continue until ward is of age.
31. Guardian, &c., may resign, or be removed.
32. Testamentary guardian may be appointed.
33. Failing to accept of the guardianship, &c., court may appoint a guardian.
34. Compensation of guardians and curators.

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

Who shall be natural guardian of children, &c. 1835, p. 293.

SECTION 1. In all cases, not otherwise provided for 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.

When court shall appoint guardian. Minors over the age of 14 years, to choose their own guardians.

SEC. 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, subject to the approval of the court.

Officers having knowledge of a minor without a guardian, shall report to the court. Sess. acts, 1838–9, p. 57.

SEC. 3. Whenever any judge of a county court, justice of the peace, sheriff or constable, shall have knowledge that there is, within his county, any minor without any legal or natural guardian, he shall communicate the fact, with the name and usual residence of the minor, by a report in writing, to the county court, and the court shall thereupon proceed to appoint a guardian, as directed in the preceding section.

Court to notify minor over the age of 14 to appear and choose a guardian, when.

SEC. 4. Whenever it shall appear to the county court, that a minor, over the age of fourteen, 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.

SEC. 5. If such minor appears and makes choice of a guardian, and the court is satisfied that the person chosen is

Digitized by Google

CHAP. 73.

Court shall approve the choice of such guardian, when. Sess. acts, 1838–9, p. 58.

suitable and competent, the appointment shall be made accordingly; but if the choice shall not be approved by the court, they shall appoint some competent and suitable person to be guardian, in the same manner as if the minor was under the age of fourteen years.

When minor is entitled to an estate not derived from parent, and parent is incompetent or mismanages it, court shall appoint a curator, &c.

SEC. 6. 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 mismanaging or wasting the same, the court may issue a notice to such parent to appear before them, at a stated time, to show cause why a curator should not be appointed or chosen; and if, on due notice, no sufficient cause be shown, 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, and subject to the same restrictions, as above provided for the choice or appointment of guardians for minors over that age.

Court may appoint a curator of the estate, different from the guardian, &c., when.

SEC. 7. 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 appointment for minors under fourteen years of age, and to allow those over that age to make such separate choice, subject to the approval of the court, as heretofore directed; 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.

Guardians and curators to prosecute and defend suits, &c.

Minors on attaining the age of 14, may choose another guardian, &c.

SEC. 8. 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 court is satisfied that the person chosen is suitable and competent, the appointment shall be made accordingly.

If guardian, &c., so chosen or appointed, reside in different county, &c., court may order removal of proceedings.

SEC. 9. If the guardian or curator, so chosen or appointed, 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.

Digitized by Google

Court to order transcript of all proceedings to be delivered to last appointed guardian or curator, when.

SEC. 10. 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, of 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.

Jurisdiction of court, &c.

What appointment of guardian shall specify.—1838–9, p. 58.

SEC. 11. Every appointment of a guardian shall specify whether it be of the person of his ward, or of his person and estate.

Powers of a guardian.—*Ib.*

SEC. 12. The guardian of the person, whether natural or legal, shall be entitled to the charge, custody and control of the person of his ward, and the care of his education, support and maintenance; the curator shall have the care and management of the estate of the minor, subject to the superintending control of the court; and the guardian of the person and estate of the minor shall have all the powers, and perform all the duties both of a guardian of the person and a curator.

Married woman shall not be guardian or curator; marriage shall operate as a revocation of her appointment.—*Ib.*

SEC. 13. No married woman shall be a guardian or curator of the estate of a minor; and if any woman, after her appointment; marry, the marriage shall operate as a revocation of her appointment; but a married woman may be guardian of the person of a minor, and marriage, after appointment, shall not operate as a revocation thereof.

Non-resident not to be guardian or curator. Removal from this state a revocation. *Ib.*

SEC. 14. No person, other than a resident of this state, shall be appointed a guardian or curator; and if after his appointment, any guardian or curator remove from this state, his appointment shall be revoked, and proceedings had as in other cases of revocation.

No clerk or justice of county court, shall be guardian, &c. 1842–3, p. 26.

SEC. 15. No clerk or justice of a county court shall be appointed a guardian in the county where he resides, during his continuance in office, (*a*) nor shall any justice of a county court be taken as security for any guardian or curator.

Minor shall not be committed to guardianship of

SEC. 16. A minor shall not be committed to the guardianship of a person of religious persuasion different from that of

(*a*) Corrected from engrossed bill.

Digitized by Google

CHA[illegible]3.

person[illegible] parents, or of the surviving parent of the minor, if another fere[illegible] suitable person can be procured, unless the minor, being of from [illegible] proper age, should so choose.
rents.

Guardians and curators to be appointed, [illegible] give bond.

SEC. 17. All guardians and curators appointed by the courts, or chosen by the minors, under the sanction of the courts, shall be twenty-one years of age, and shall, respectively, before entering on the duties of their office, give bond with security, to be approved by the court, before which they shall be appointed, 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 for the same causes, in the same manner, and with like effect, as is authorized by law in the case of administrators, and in default thereof, or for other good cause, to remove them, and appoint or admit the choice of others in their stead. (b).

Condition thereof. Sess. acts, 1840–1, p. 85.

Duty of guardians and curators, to make an inventory, &c. Sess. acts, 1838–9, p. 58.

SEC. 18. It shall be the duty of every curator of an estate, and of every guardian of the person and estate of a minor, to make a true inventory of all the real estate, and of all the goods, chattels, rights and credits of the ward, that shall come to his possession or knowledge, and to return the same to the proper county court at the first term after any such estate shall come to his possession or knowledge.

Estate to be appraised. *Ib.*

SEC. 19. Upon taking any inventory required by the preceding section, the personal estate and effects comprised therein, (except as in the next section is provided,) shall be appraised in like manner as is required in respect to the inventory of the personal estate of a deceased testator or intestate.

What estate shall not be appraised. *Ib.*

SEC. 20. When any personal estate shall have been received from an executor or administrator, and shall have been appraised, it shall not be necessary for the guardian or curator to cause the same to be appraised again, but he shall state in his inventory of such estate, the appraised value as it appears on the inventory of the executor or administrator, and be held to account accordingly.

Proceedings in case of embezzling minor's property. *Ib.*

SEC. 21. Upon complaint made, on oath to any county court having jurisdiction, by any guardian, curator or ward, or by any creditor or other person interested in expectancy, reversion or otherwise, against any person within the county suspected of

(b) Devoe, guardian, vs. Pitman, 3 Missouri Rep., 130.

Digitized by Google

having concealed, embezzled, or conveyed away any of the money, goods or effects of the ward, the court may cite and examine such suspected person, and proceed, as to such charge, in the same manner as is provided by law respecting persons suspected of concealing or embezzling the effects of a testator or intestate.

Court to order the proper education of minors; may make appropriations, &c.

SEC. 22. 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 court 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.

Money of minors to be loaned out; if it cannot be loaned, guardian and curator responsible for the principal, &c.

SEC. 23. Guardians and curators shall put the money of minors entrusted to their care to interest upon mortgage, or other sufficient security, for all sums under five hundred dollars, to be approved by the court, or they may, with leave of the court, and the assent of the securities, retain the money in their 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. Guardians and curators shall loan the money of minors at the highest rate of interest that can be obtained, not exceeding ten per cent. per annum, and shall account for all interest received, which shall be charged in their annual settlements.

Interest when payable, &c.

Guardians and curators to make annual settlements.

How made and conducted.

SEC. 24. Guardians and curators shall make annual settlements of their accounts with the county court in which their proceedings shall be, beginning at the first term after the end of a year from their appointment or admission, 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

Digitized by Google

education of minors, shall make a statement, on oath, of the application of all moneys 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 and (c) statements on oath, as are herein required, shall be liable to be attached, and imprisoned until they make such settlements and statements, the court first making a rule on them, respectively, to show cause why they should not be so proceeded against.

On failure, liable to be attached, &c.

Receipts, &c., given by guardians and curators, valid.

SEC. 25. 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.

Minors without sufficient estate, &c., to be bound apprentices, &c.

SEC. 26. 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 is provided by the law respecting apprentices; and no indentures of apprenticeship shall be affected 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.

Where wards die, leaving an estate, duty of county court. Sess. acts, 1840–1, p. 85.

SEC. 27. Whenever a minor, having a guardian, dies possessed of property, real or personal, no letters of administration shall be granted on such estate; but the county court shall proceed to distribute the personal estate among those interested, by ordering the same to be paid over by the guardian to the distributees.

Curators of wards living out of this state, to make settlement with the guardians of said wards. 1842–3, p. 69.

SEC. 28. Whenever it shall be made to appear to the county court that any minor is not a resident of this state, and has a guardian in another state or territory, the court may authorize or compel the curator of such minor to deliver over to such guardian all the property, of which he may have the custody, belonging to such minor, and make a full and perfect settlement of his curatorship with such guardian, and the receipt

(c) Corrected by engrossed bill.

Digitized by Google

of such guardian shall fully discharge such curator, and his securities, from all liability on account of the property so delivered to such guardian.

Minors shall acknowledge satisfaction of record, when.

SEC. 29. Minors, having received all money and other estate due from their guardians or curators, on the expiration of the guardianship or curatorship, 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.

Court may enter discharge, when.

Duration of office of guardian and curator. Sess. acts, 1838–9, p. 58.

SEC. 30. Every guardian or curator shall continue in office, unless sooner discharged according to law, until the ward, if a male, shall arrive at the age of twenty-one years, and if a female, until her marriage, or arrival at the age of twenty-one years, whichever shall first happen.

May resign or be removed. *Ib.*

SEC. 31. Any guardian or curator may resign his trust, or be removed from office, for like causes, in like manner, and with like effect, as in the case of an executor or administrator.

Testamentary guardian may be appointed.

SEC. 32. 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 declines to serve longer, and notify the court thereof.

Failing to accept, &c., court may appoint a guardian.

SEC. 33. 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.

Compensation of guardians and curators.

SEC. 34. The county courts shall allow guardians and curators such compensation as they may deem fit and reasonable.

Approved March 3, 1845.

Digitized by Google

CHAPTER 74.

GUARDIANS AND CURATORS.

AN ACT to authorize guardians of minors, idiots and lunatics, to receive, and remove from this state, any property to which said wards may be entitled.

SEC. 1. Where guardian and ward are both non-residents, and the ward has property in this state, such guardian, on producing satisfactory proof, &c., may demand, or sue for and remove the same.

SEC. 2. On evidence produced of his appointment, bond, &c., the court may authorize the delivery of his ward's property, to such non-resident guardian. Resident guardian to be discharged. Proviso.

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

Where guardian and ward are both non-residents, and ward has property in this state, such guardian, on proof, &c., may demand, or sue for and remove the same.

SECTION 1. That in all cases where any guardian and his ward may both be non-residents of this state, and such ward may be entitled to property of any description in this state, such guardian, on producing satisfactory proof to the county court of the proper county, by certificates, according to the acts of congress in such cases, that he has given bond and security in the state in which he and his ward reside, in double the amount of the value of the property, as guardian, and it is found that a removal of the property will not conflict with the terms or limitations attending the right by which the ward owns the same, then any guardian may demand, or sue for, and remove any such property to the place of residence of himself and ward.

On evidence produced of his appointment, bond, &c., the county court may authorize the delivery of his ward's property, to such non-resident guardian, &c. Resident guardian to be discharged.

Proviso.

SEC. 2. That when such non-resident guardian shall produce an exemplification from under the seal of the office, (if there be a seal,) of the proper court, in the state of his residence, containing all the entries *or* [on] record in relation to his appointment, giving bond, &c., and authenticated as required by act of congress, as aforesaid, the county court of the proper county in this state, may cause suitable orders to be made, discharging any resident guardian, executor or administrator, and authorizing the delivering and passing over of such property, and, also, requiring receipts to be passed and filed, if deemed advisable: *Provided*, The benefits of this act shall not be extended to the citizens of any state, in which a similar act does not exist, or may not hereafter be passed: *And, provided, also*, In all cases thirty days notice shall be given [to] the resident guardian, executor or administrator, of the intended application for the order of removal, and the court may reject the application, and refuse such order when-

Digitized by Google

ever it is satisfied it is for the interest of the ward that such removal shall not take place.

This act to take effect from and after its passage. New act.

Approved December 23, 1844.

CHAPTER 75.

HABEAS CORPUS.

AN ACT regulating proceedings on writs of habeas corpus.

ARTICLE I. Of proceedings to obtain the writ, and the form thereof.
II. Of the service and return of the writ, and matters incident thereto.
III. Of the hearing and other proceedings on the return.
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 shall be made.
3. What facts must be stated in the petition.
4. Must be verified by oath.
5. If confined on process, a copy thereof must accompany the petition, or facts shown in excuse.
6. Writs to be granted without delay in cases where the party can be relieved by the act.
7. When courts of record, or judge of the supreme or circuit court, shall issue writ without petition.
8. Writ to be issued in the name of the state, to whom directed. What it shall contain.
SEC. 9. Writ issued by a court, to be under the seal of the court, &c. Issued by a judge, &c., to be signed by him.
10. Name of the person claiming custody of prisoner, and name of prisoner, to be designated on the writ, and how.
11. Shall be endorsed, "By the habeas corpus act."
12. Writ, though defective in form, to be obeyed; person served, deemed the person to whom directed.
13. Courts, or magistrates, may require that the costs of bringing up prisoner and remanding him back, be paid by the petitioner. Amount to be specified and endorsed on the writ.

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

SECTION 1. Every person committed, detained, confined, or restrained of his liberty, within this state, for any criminal, Who may prosecute a writ of habeas corpus.

Digitized by Google

1835, p. 296.

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 hereinafter provided, to inquire into the cause of such confinement or restraint.

How, and to whom application for such writ shall be made.

SEC. 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 the judge of the supreme or circuit court, or any justice of the county court.

What facts must be stated in the petition.

SEC. 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.

Must be verified by oath.

SEC. 4. The facts stated in the petition must be verified by the oath of the applicant, or some other competent person.

If confined on process, a copy thereof to accompany the petition, or facts shown in excuse.

SEC. 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 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.

Writ to be granted without delay, in cases where the party can be relieved by the act.

SEC. 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.

When courts of record or judge of the supreme or circuit court, shall issue writ without petition.

SEC. 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.

Digitized by Google

Writ to be issued in the name of the state, to whom directed, what it shall contain.

SEC. 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.

Writ issued by a court, to be under the seal of the court, &c.

SEC. 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.

Name of the person having the custody of prisoner and name of prisoner, to be designated on the writ, and how.

SEC. 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 his name or if his name be uncertain or unknown, he may be described in any other way, so as to designate the person intended.

Shall be endorsed "by the habeas corpus act."

SEC. 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."

Writ, though defective in form, to be obeyed; person served, deemed the person, &c.

SEC. 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.

Courts or magistrates may require that the costs of bringing up prisoner and remanding him back, be paid by the petitioner. Amount to be specified, &c.

SEC. 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.

Digitized by Google

ARTICLE II.

Of the service and return of the writ, and matters incident thereto.

SEC. 1. Writ, how served.
2. If person on whom it is to be served conceal himself, &c., how served.
3. To be served, by whom.
4. Service not deemed complete until charges are paid or tendered.
5. Duty of officer or person upon whom such writ is served, to obey and return the same.
6. When, and in what time return to be made.
7. What facts to be stated in the return of the officer, or the person upon whom such writ is served.
8. Return to be signed; in what case to be verified by oath.
9. Body of the person for whose benefit the writ was awarded, to be brought before the court or magistrate, when, &c.
10. Officer or person on whom writ is served, refusing to obey and make return, without sufficient excuse, &c., attachment to issue; to whom directed; command thereof.
11. Person so brought, to be confined in jail until he comply with the writ, &c.
12. If the delinquent be a sheriff, the attachment may be directed to the coroner; how he shall proceed.
13. Precept may also be issued to bring the person for whose benefit the habeas corpus was allowed before the court.
14. In execution of the attachment or precept, the sheriff may call to his aid the power of the county.
15. Duty of person on whom the writ is served, to bring with the writ all the examination and proceedings in his hands, when the person in his custody stands charged with a criminal offence.
16. How to proceed if no such examination accompanied the commitment, &c.
17. If no examination has been filed by the clerk, &c., committing magistrate to appear at the return of the writ; failing, attachment to issue.

Writ, how served.

SECTION 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.

If person on whom it is to be served conceal himself, &c., how served.

SEC. 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.

To be served by whom.

SEC. 3. Writs of habeas corpus can only be served by a free white male person, above the age of twenty-one years.

Service not deemed complete till charges are paid, or tendered.

SEC. 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 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.

Digitized by Google

Duty of officer or person upon whom such writ is served, to obey and return the same.

SEC. 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.

When and in what time return to be made.

SEC. 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.

What facts to be stated in the return of the officer or person upon whom such writ is served.

SEC. 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 has, or has not the party in his custody, or under his power or restraint; *Second*, If he has 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.

Return to be signed; in what case to be verified on oath.

SEC. 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.

Body of the person for whose benefit the writ was awarded, to be brought before the court or magistrate, when, &c.

SEC. 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 sickness of such person, as hereinafter provided.

Digitized by Google

CHAP. 75.

Officer or person on whom writ is served, refusing to obey and make return, without sufficient excuse, &c., attachment to issue; to whom directed. Command thereof.

SEC. 10. If the officer, or person upon whom the 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 shown, 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.

Person so brought, to be confined in jail until he comply with the writ, &c.

SEC. 11. On such person 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.

If the delinquent be a sheriff, attachment may be directed to the coroner, how he shall proceed.

SEC. 12. If the delinquent be a sheriff, the attachment may be directed to any coroner, 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.

Precept may also be issued to bring the person for whose benefit the habeas corpus was allowed.

SEC. 13. 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.

In execution of attachment or precept, the sheriff may call to his aid the power of the county.

SEC. 14. In the execution of such writs 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.

Duty of person on whom writ is served to bring with the writ all the examination and proceedings, &c.

SEC. 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 informa-

Digitized by Google

tion in his hands, possession, custody or charge, relating to the commitment.

How to proceed if no such examination accompanied the commitment, &c.

SEC. 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.

If no examination has been filed with the clerk, &c., committing magistrate to appear at the return of the writ; failing, attachment to issue.

SEC. 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 writ, a day set for hearing of the cause, &c.
2. Facts set forth in the return may be denied on oath, &c.
3. Return and allegations may be amended.
4. Cause to be tried in a summary way, and the prisoner disposed of as the case may require.
5. If no legal cause be shown for detention, prisoner to be discharged.
6. When and in what cases the court or magistrate may 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 judicial offices.
10. Limitation of the power of courts under this act.
11. Examination and information on criminal charge to be read in evidence before the court, &c.
12. Imprisoned on indictment cannot be discharged under this act, but may be bailed.
13. If imprisoned for criminal offence, and there is sufficient cause for commitment, not to be discharged, but may be bailed, or re-committed.
14. If offence is clearly set forth in the warrant of commitment, what evidence shall be received.
15. Order of discharge to be made in writing; when prisoner is discharged, certificate to be given him.
16. Prisoner held to answer for a bailable offence, court 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. When prisoner is let to bail or remanded, examination, documents, &c., to be returned, &c.
20. Custody of prisoner between return and judgment thereon.

Digitized by Google

CHAP. 75.

SEC. 21. When prisoner need not be brought up on writ.
22. How to proceed in the cases mentioned in the preceding section.
SEC. 23. Writ or order for a discharge, how to be enforced.
24. Officer not liable for obeying writ or order of discharge. What he may plead in defence.

On return of writ, a day set for hearing of the cause, &c.

SECTION 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.

Facts set forth in the return may be denied on oath, &c.

SEC. 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 show either that his detention or imprisonment is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath.

Return and allegations may be amended.

SEC. 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.

Cause to be tried in a summary way, and the prisoner disposed of as the case may require.

SEC. 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 the 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.

If no legal cause be shown for detention, prisoner to be discharged.

SEC. 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.

When, and in what cases the court or magistrate shall remand the party.

SEC. 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; or, *Fourth*, That the time during which such party may be legally detained has not expired.

Digitized by Google

Who shall not be discharged under the provisions of this act.

SEC. 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.

No slave shall be discharged, nor right of freedom had under this act.

SEC. 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.

In what cases prisoner to be discharged when in custody on process from court or judicial officer.

SEC. 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 proceedings before him, such prisoner can only be discharged in 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 authorized 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.

Limitation of the power of courts under this act.

SEC. 10. But no court under this act shall in any other matter have power to enquire 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 hereinbefore provided. (a)

(a) Stoner vs. The State, 4 Missouri Rep. 613.

Digitized by Google

CHAP. 75.

Examination and information on criminal charge to be read in evidence before the court, &c.

SEC. 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.

Imprisoned on indictment, cannot be discharged under this act, but may be bailed.

SEC. 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.

If imprisoned for criminal offence, and there is sufficient cause for commitment, not to be discharged, but may be bailed, or recommitted.

SEC. 13. When 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. (*b*)

If offence is clearly set forth in the warrant of commitment, what evidence shall be received.

SEC. 14. When 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 commitment was found, and, thereupon, the court or magistrate shall proceed to bail, discharge or remand the prisoner, as the circumstances of the case may require, and in 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.

Proceedings.

Order of discharge to be made in writing; when prisoner is discharged, certificate to be given him.

SEC. 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.

SEC. 16. If the prisoner be held to answer for a bailable

(*b*) Snowden et al. vs. The State, 8 Missouri Rep., 483.

Digitized by Google

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, designate 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.

Prisoner held to answer for bailable offence; court how to proceed.

SEC. 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 securities, in the sum directed, conditioned for the appearance of the prisoner at the court designated in such order.

When recognizance with sufficient security shall be taken and by whom.

SEC. 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.

Proceedings when prisoner is not discharged or bailed.

SEC. 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 redelivered 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.

When prisoner is let to bail or remanded, examination, documents, &c., to be returned, &c.

SEC. 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 proceedings are had, or place him in such care or custody as his age or other circumstances may require.

Custody of prisoner between return and judgment thereon.

SEC. 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 the fact in his return, verifying the same by his oath, and such court or

When prisoner need not be brought up on writ.

Digitized by Google

CHAP. 75.

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.

How to proceed in cases mentioned in the preceding section.

SEC. 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 case 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.

Writ or order for a discharge how to be enforced.

SEC. 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 hereinbefore provided in cases of failure to make return to a writ of habeas corpus, and with like effect in all respects.

Officers not liable for obeying writ, or order of discharge.

SEC. 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 may issue to bring prisoner before court or magistrate. To whom directed. Command of warrant.
2. When warrant shall contain an order for arrest of party who has prisoner in custody.
3. Warrant, how executed; what return person detaining such prisoner shall make.
4. Person having such prisoner in custody, shall be brought before court, as for a criminal offence; how proceeded against.
5. Party discharged, when not to be re-imprisoned; when he may be.
SEC. 6. Prisoner may be removed out of the county in which he is confined, when.
7. Proceedings, if a prisoner obtain 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 a writ of habeas corpus.
10. Penalty for re-committing, except as herein allowed.
11. Penalty for refusing a copy of process to prisoner.
12. Penalty for refusing to obey writ and make return thereto.

Digitized by Google

SEC. 13. Any person concealing prisoner, &c., to avoid writ, or after writ allowed, deemed guilty of a misdemeanor. Penalty.
14. Penalty for arresting person, who has once been discharged for the same cause.
15. Penalty on persons aiding in violating two last sections.
SEC. 16. Persons convicted of a misdemeanor under this act, how punished.
17. How penalties may be sued for and recovered under this act.
18. Pleadings in defence, &c.
19. Recoveries under this act, no bar to civil action for damages.
20. Construction of this act as to all cases of habeas corpus.

When and under what circumstances warrant may issue to bring prisoner before court or magistrate.

SECTION 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 bring him forthwith before such court or magistrate, to be dealt with according to law.

To whom directed.

Command of warrant.

When warrant shall contain an order for arrest of party who has prisoner in custody.

SEC. 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 in the taking or detaining such prisoner, the warrant shall also contain an order for the arrest of such [person] for such offence.

Warrant, how executed; what return person detaining such prisoner shall make.

SEC. 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.

Person having such prisoner in custody, shall be brought before court, &c.

SEC. 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.

Party discharged, when not to be reimprisoned; when he may be.

SEC. 5. No person who has been discharged by the order of any court or magistrate, upon a writ of 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

Digitized by Google

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 hereinbefore 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*, When 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.

Prisoner may be removed out of the county in which he is confined, when.

SEC. 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.

Proceedings if a prisoner obtains a second writ of habeas corpus.

SEC. 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.

If remanded for a criminal offence, shall not be discharged on a second writ.

SEC. 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.

Penalty for refusing or unreasonably delaying to issue a writ of habeas corpus.

SEC. 9. If any court or magistrate, authorized, 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 when 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 magis-

Digitized by Google

trate, shall forfeit to the party aggrieved, a sum not exceeding one thousand dollars.

Penalty for recommitting except as herein allowed.

SEC. 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 re-commit, 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.

Penalty for refusing copy of process to prisoner.

SEC. 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.

Penalty for refusing to obey writ and make return thereto.

SEC. 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.

Penalty for concealing prisoner, &c., to avoid writ.

SEC. 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.

Penalty for arresting person, who has once been discharged, for the same cause.

SEC. 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.

SEC. 15. Every person who shall knowingly aid or assist in

Digitized by Google

Penalty for violating two last sections.

the violation of either of the two last preceding sections, shall be deemed guilty of a misdemeanor.

Persons convicted of a misdemeanor under this act, how punished.

SEC. 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.

How penalties may be sued for and recovered under this act.

SEC. 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.

Pleadings in defence, &c.

SEC. 18. The defendants in any such action may plead the general issue, and give the special matter in evidence.

Recoveries under this act, no bar to civil action for damages.

SEC. 19. The recoveries of any of the penalties under the provisions of this act, shall be no bar to a civil action for damages.

Construction of this act as to all cases of habeas corpus.

SEC. 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 4, 1845.

CHAPTER 76.

HORSES.

AN ACT respecting seed horses.

SEC. 1. Seed horse, unaltered male mule, or jackass, not suffered to run at large. Penalty on owner.
2. Such horse, &c., may be taken up and castrated, when, &c.
3. Castration to be performed in the usual manner.
4. If they cannot be taken up, may be killed, notice being first given.

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

Seed horse, mule or jackass not suffered to run at large. Penalty on owner.

SECTION 1. If any seed horse, or any unaltered male mule, or jackass, over the age of two years, be found running at large, the owner shall be fined for the first offence three dollars, and for every subsequent offence not exceeding ten

Digitized by Google

dollars, to be recovered by action of debt, before a justice of the peace, in the name of any person who will prosecute for the same, one half to his own use, and the other half to the use of the county.

Such horse, &c., may be taken up and castrated; when, &c.

SEC. 2. Any person may take up any such horse, mule or jackass, found running at large, and, if not claimed within five days, may castrate him, for which he shall receive three dollars from the owner, by action of debt before a justice of the peace.

Castration to be performed in the usual manner.

SEC. 3. Such castration shall be performed in the usual manner, so that the life of the animal be endangered as little as possible.

If they cannot be taken up, may be killed, notice being first given.

SEC. 4. If any such horse, mule or jackass, be running at large and cannot be taken up, he may be killed, if notice be first put up at the court house door, 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 13, 1845.

CHAPTER 77.

IMPEACHMENTS.

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 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, 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.

Digitized by Google

CHAP. 77. *Be it enacted by the General Assembly of the State of Missouri, as follows:*

Articles to be preferred and managers elected by the house of representatives.

SECTION 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.

Officers impeached suspended from office, &c.

SEC. 2. If any officer shall be impeached, he is hereby suspended from exercising his office after he shall be notified thereof, until his acquittal.

Appointments pro tem. to be made in certain cases.

SEC. 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.

Impeachment presented to the senate, proceedings thereon.

SEC. 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.

Summons, how executed.

SEC. 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.

If the governor be impeached, presiding judge of the supreme court to be notified.

SEC. 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 the said court next eldest in commission shall be notified and preside at the trial aforesaid.

Answer, replication, &c., to be filed, &c.

SEC. 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

Digitized by Google

when issue shall be joined on any such impeachment, the court shall appoint a time for the trial thereof.

Process for witnesses and commission to take depositions, to be issued by whom.

SEC. 8. The president of the senate, on the application of the respondent, or any of his counsel, or either of the managers, shall issue subpœnas 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.

Depositions, how taken.

SEC. 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.

Senate to proceed, exparte, when.

SEC. 10. If the accused shall not appear after being notified, or, after appearing, shall fail to answer, the senate may proceed ex parte.

President and members of the senate to be sworn.

SEC. 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] (a) or affirmation.

Trial, how conducted; power of the court, &c.

SEC. 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 towards such court.

Accused to be heard by himself and counsel; votes to be given viva voce, &c.; concurrence of two-thirds required to convict.

SEC. 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.

Conviction, no bar to indictment for same offence.

SEC. 14. The party convicted or acquitted, shall, notwithstanding such conviction or acquittal, be subject to indict-

(a) Corrected by engrossed bill.

Digitized by Google

CHAP. 78.

ment, trial, judgment and punishment, for any indictable offence according to the law of the land.

Transcript of proceedings to be made out and deposited in the office of secretary of state.

SEC. 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.

Form and attestation of writs, &c.

SEC. 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 sergeant-at-arms or any special messenger appointed by the senate.

Approved March 7, 1845.

CHAPTER 78.

IMPRISONMENT FOR DEBT ABOLISHED.

AN ACT to abolish imprisonment for debt.

SEC. 1. Imprisonment for debt abolished. SEC. 2. Acts inconsistent with this act repealed.

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

Imprisonment for debt abolished.

SECTION 1. That no person shall, after the passage of this act, be arrested, held to bail, or imprisoned on any mesne process or execution, founded upon any contract or debt whatsoever.

Acts inconsistent with this act repealed.

SEC. 2. That all acts or parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed. (*a*)

This act to take effect and be in force from and after its passage.

Approved March 27, 1845.

(*a*) This act repeals the act of 1835, Rev. Code, p. 327, entitled "An act for the relief of insolvent debtors," as far as *all actions, founded on contract*, are concerned, whether the process be mesne or final; that act is only in force in actions for *torts, penal actions*, and in *state cases punished by fine*. As it will be so limited in its operations, the commissioner has concluded to omit its publication.

Digitized by Google

CHAPTER 79.

INCLOSURES.

AN ACT regulating inclosures.

SEC. 1. All fields and inclosures shall be inclosed with a fence, sufficiently close, composed of posts and rails, &c.
2. What shall be deemed a sufficient inclosure in law. Fence to be five feet high, when.
3. Sufficiency, by whom determined.
4. Owner of animals trespassing, liable for damages for the first and subsequent trespasses; in what amount.
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:

SECTION 1. All fields and inclosures shall be inclosed with a fence sufficiently close, composed of posts and rails, posts and palings, posts and plank, [or] palisades, rails alone, laid up in the manner commonly called a worm fence, or of turf with ditches on each side.

All fields, &c., shall be inclosed, and how. 1835, p. 311.

SEC. 2. All such fences composed of posts and rails, posts and palings, posts and plank, [or] palisades, shall be at least four feet and a half high, those composed of turf shall be at least four feet high, and trenches on either side at least three feet wide at the top and three feet deep, and what is commonly called a worm fence shall be at least five feet high to the top of the rider, or, if not ridered, shall be five feet to the top rail, and the corners shall be locked with strong rails, poles or stakes.

What shall be deemed a sufficient inclosure in law.

SEC. 3. In all cases the sufficiency of the worm shall be determined by the persons who may be summoned to view said fence.

Sufficiency by whom determined.

SEC. 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 owner of such animal 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 animals aforesaid breaking into such inclosure, the party injured may kill the beasts so trespassing, without being answerable for the same.

Owner of animals trespassing, liable for damages, for the first and subsequent trespasses, in what amount.

Digitized by Google

CHAP. 80.

On complaint made to justice of the peace, view to be had.

SEC. 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.

Persons injuring or killing animals, if fence insufficient, to pay double damages.

SEC. 6. If any person damnified for want of such sufficient fence, shall hurt, wound, lame, kill or destroy, or cause the same to be done by shooting, worrying with dogs, or otherwise, any of the animals in this act mentioned, such person shall satisfy the owner of such animals in double damages with costs.

Approved February 10, 1845.

CHAPTER 80.

INDIANS.

AN ACT to restrain intercourse with the Indians.

SEC. 1. No person to reside as a trader in Indian hunting camp, &c.
2. Permits to Indians to come or remain in this state prohibited.
3. To sell, exchange, or give liquor to Indians, prohibited.
4. Traffic with Indians prohibited, unless in certain cases.
5. Not to receive certain articles from Indians, &c.
6. Penalty for violating first section of this act.
7. Penalty for violating second, third, fourth and fifth sections.
8. Person giving permit or furnishing Indians with liquor, liable for all damages occasioned thereby.
9. All contracts made in violation of this act, declared void. Indian may recover property sold, &c.
10. Indians found hunting, &c., without permit, how punished.
11. Duty of governor under this act.
12. Duty of officers to give information of a violation of this act.
13. Judges to give this act in charge to grand jury.
14. General, or field officer, may order Indians to be removed, when.
15. Militia to be placed under commissioned officer. His powers and duties.

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

No person to reside as a trader in Indian camp, &c. 1835, p. 312.

SECTION 1. No person shall reside, or attempt to reside, as a trader in any hunting camp of any Indian tribe, not permanently settled within this state.

SEC. 2. No person shall give to any Indian a permit to

Digitized by Google

come or remain within this state, nor a permit, or other instrument of writing, with intent to induce any Indian to come or remain within this state, except the proper agent under the authority of the United States.

Permits to Indians to come or stay in this state, prohibited. 1838-9, p. 66.

SEC. 3. No person shall sell, exchange or give, to any Indian, any spirituous or vinous liquor, under any circumstances whatever, unless directed by a physician for medical purposes.

Selling, exchanging, or giving liquor to Indians, prohibited. 1835, sec. 3.

SEC. 4. No person shall sell, exchange or give, to any Indian, any horse, mule, gun, blanket, or any other article or commodity whatever, unless such Indian shall be traveling through the state, and leave a written permit from the proper agent, or under the direction of such agent in proper person.

Traffic with Indians prohibited, unless in certain cases.—1838-9, p. 66.

SEC. 5. No person shall receive from any Indian, by way of purchase, gift, exchange or barter, any horse, mule, gun, blanket, fur, peltry, or any other article or commodity whatever.

Not to receive certain articles from Indians, &c. *Ib.*, sec. 1.

SEC. 6. Any person convicted of a violation of the first section of this act, shall forfeit the merchandise found in his possession and offered for sale to the Indian, and shall be fined not less than one hundred dollars, or be imprisoned in the county jail not less than thirty days.

Penalty on person for violating first section of this act.—1835, sec. 1.

SEC. 7. Any person convicted of a violation of the second, third, fourth or fifth sections of this act, shall be fined not less than one hundred dollars, or be imprisoned in the county jail not less than thirty days.

Penalty for violating 2d, 3d, 4th and 5th sections.

SEC. 8. If any Indian, who shall have received a permit to come or remain within this state, in violation of this act, or who may have been furnished with spirituous or vinous liquor by any person, in violation of this act, shall, whilst thus unlawfully within this state, or in a state of intoxication, commit any injury or damage to the person or property of any inhabitant of this state, the person giving such unlawful permit, or who shall have unlawfully furnished such Indian with spirituous or vinous liquor, shall be liable for all injury and damage thus done, to be recovered by suit in any court of competent jurisdiction.

Person giving permit, or furnishing Indians with liquor, shall be liable for all damage occasioned thereby. 1838-9. sec. 4.

SEC. 9. All contracts made in violation of this act shall be void, and any Indian may recover, from any person, any peltry or other property sold or exchanged by him, in violation of this act, or the full value thereof; or the proper agent of the tribe to which such Indian belongs may sue for and recover

All contracts made in violation of this act, void.

Indian may recover property sold, &c. 1839, sec. 8.

Digitized by Google

CHAP. 81.

such property, or the full value thereof, in his own name to the use of such Indian.

Indians found hunting, &c., without permit, how punished. *Ib.*, sec. 5.

SEC. 10. If any Indian shall be found hunting or roaming within the limits of this state, without a written permit from the proper agent, such Indian shall, on conviction, be fined ten dollars, or imprisoned in the county jail ten days.

Duty of governor, under this act. *Ib.*, sec. 7.

SEC. 11. It shall be the duty of the governor to transmit a copy of this act to the agents of all the Indian tribes on the borders of this state, with a request to such agents not to grant a permit to any Indian to come into this state for the purpose of hunting, or without necessary business, or who is not of a peaceful character.

Duty of officers to give information of a violation of this act.

SEC. 12. It shall be the duty of all the civil and military officers of this state to give immediate information of every violation of this law that may come to their knowledge.

Judges to give this act in charge to grand jury.

SEC. 13. The judges of the circuit courts shall give this act in special charge to the grand jury, in every county on the frontier of this state, at each term of the court.

General or field officer, may order Indians to be removed, when. 1835, sec. 5.

SEC. 14. Whenever any general or field-officer of the militia, shall receive satisfactory information that any Indians are hunting or roaming within the limits of such officer's command, he may order out a sufficient portion of his command to remove such Indians out of the white settlement.

And militia to be placed under commissioned officer; his powers and duties. *Ib.*, sec. 6.

SEC. 15. When any portion of the militia shall be so ordered into the service, it shall be placed under the command of some competent commissioned officer, who shall have power, and it shall be his duty, to remove such Indians according to the order, without delay.

Approved February 27, 1845.

CHAPTER 81.

INJUNCTIONS.

AN ACT regulating injunctions.

SEC. 1. Circuit courts or any judge in vacation, may grant injunctions.
2. When county court or any two justices in vacation may grant injunctions.
3. What proof necessary under the second subdivision of preceding section.
4. Injunctions, where returnable.
5. To stay proceedings at law, where to be had. Subpœna, where directed.
6. Notice of application to be given, to whom.
7. How served when adverse party is a non-resident.
8. What the notice shall contain. Service, how proved.

Digitized by Google

SEC. 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, where filed; when it may be entered into before clerk, &c.
13. Damages to be awarded upon dissolution.
14. Decree, &c., how enforced.
15. Notice of application not required in certain cases.
16. Application over-ruled, certificate to be granted, &c.
17. To disobey injunction after service, how punished; proceedings thereon.
18. After answer filed, motion for dissolution always in order. Proceedings.
19. Continuance of motion granted on affidavit.
20. Testimony on such motion to be by deposition; may be read on final hearing.

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

SECTION 1. The circuit courts, or any judge thereof in vacation, may grant injunctions. (a) Who may grant injunctions.

SEC. 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 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. When county court or any two justices in vacation, may grant injunctions.

SEC. 3. Whenever an application for an injunction in any of the cases mentioned in the second subdivision of the last preceding 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 circuit court in session, nor any judge thereof within such county, and if such proof is not produced, the application shall be denied. What proof necessary under the second subdivision of the preceding section.

SEC. 4. Injunctions shall be returnable to the circuit court of the proper county. Injunctions, where returnable.

SEC. 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 subpœna may be directed in the first instance into any county where the defendant resides. To stay proceedings at law, where to be had. Subpœna where directed.

SEC. 6. Before an injunction shall be granted to stay any proceedings 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. Notice of application to be given; to whom.

SEC. 7. If he does not reside in the state, and has no known

(a) The writ of injunction is not an *original remedial* writ within the meaning of the 3d sec., 5th art. of the constitution; consequently, the legislature cannot confer on the supreme court, or any judge thereof, the power of issuing it. Lane & McCabe vs. Charless, 5 Missouri Rep., 285.

Digitized by Google

CHAP. 81.

How served when party is a non-resident.

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.

What the notice shall contain. Service how proved.

SEC. 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.

Extent of injunctions to stay proceedings at law.

SEC. 9. No injunction shall be granted to stay any judgment or proceeding at law, except so much of the recovery or cause of action, as the complainant shall show himself equitably entitled to be relieved against, and so much as will cover costs.

To operate as a release of errors.

SEC. 10. Every such injunction shall operate as a release of all errors in the proceedings at law, that are prayed to be enjoined. (*b*)

Bond to be given; condition of the bond.

SEC. 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 thereon, and pay all sums of money, damages and costs, that shall be adjudged against him, if the injunction shall be dissolved.

Bond where filed; when it may be entered into before clerk, &c.

SEC. 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.

Damages to be awarded upon dissolution.

SEC. 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.

Decrees, &c., how enforced.

SEC. 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. (*c*)

SEC. 15. Where an injunction to stay proceedings at law is

(*b*) Chouteau vs. Douchouquette, 1 Missouri Rep., 715.
(*c*) Tanner vs. Irwin and Cottle, 1 Missouri Rep., 65.

Digitized by Google

prayed in the same court where the proceedings were had, no notice of the application shall be necessary unless prescribed by rules of court.

Notice of application not required in certain cases.

SEC. 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.

Application overruled, certificate to be granted, &c.

SEC. 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.

To disobey injunction after service, how punished; proceedings thereon.

SEC. 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.

After answer filed, motion for dissolution always in order. Proceedings.

SEC. 19. If, after a motion for a 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, by using due diligence, since the coming in of the answer, the court may continue the motion until the next term.

Continuance of motion granted on affidavit.

SEC. 20. The testimony to be heard on such motion, aside from the bill and answer, shall be taken as in other cases in chancery proceedings, except the affidavits which may have been filed with the bill or answer, which may be read on such motion as heretofore, and the depositions taken to support or dissolve an injunction, may be read in the final hearing of the cause in which they have been taken.

Testimony on such motion to be by deposition.

May be read on final hearing.

Approved March 13, 1845.

Digitized by Google

CHAPTER 82.

INJUNCTIONS.

AN ACT to regulate injunctions in certain cases.

SEC. 1. Where real estate has been sold, &c., and all the purchase money has not been paid, in what cases a party is entitled to an injunction.
2. What court may grant injunctions under this act; when not to be granted.
3. Circuit court, as a court of chancery, to hear, &c., and make final decree, how.
4. Amount to be enjoined, damages, &c.
5. Not to extend to certain cases.
6. Shall extend to cases where the grantor executed bond for title.

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

In what cases a party is entitled to an injunction; when real estate, &c., has been sold, &c., and all of the purchase money is not paid.

SECTION 1. That in all cases where there shall be a sale and transfer of any lands or real estate, or a sale or transfer of any interest to any lands or real estate, and any part, or the whole of the purchase money thereof, shall not be paid at the time of such transfer and sale, the purchaser of any such lands or real estate, shall be entitled to an injunction against all persons interested therein, in any of the following cases: *First*, Where the grantor has covenanted a title to the lands or real estate sold in fee simple, and the same has failed, or was wholly defective at the time of such sale; *Second*, Where the grantor has a title as covenanted to a part only of the lands or real estate sold; *Third*, Where there is a failure of title to the whole or any part of the lands or real estate sold by such grantor, and continues to be defective at the time of making the application for said injunction.

What court may grant injunctions under this act; when not to be granted.

SEC. 2. Any court, now authorized by law to grant injunctions, shall have power to grant injunctions under this act; but no such injunction shall be granted in any case, nor shall any relief be extended in any case where the purchaser has notice of the defect of title complained of by him, before the purchase thereof.

Circuit court as a court of chancery, to hear, &c., and make final decree, how.

SEC. 3. In all cases arising under the provisions of this act, it shall be the duty of the circuit court, sitting as a court of chancery, to hear all facts relative to such case, and to make a final decree therein, according to such failure, as may be shown to exist in the title to said lands or real estate sold.

Amount to be enjoined, damages, &c.

SEC. 4. The amount to be enjoined by such court, shall be in proportion to the amount of failure of such title in the grantor, with reasonable damages to the purchaser, if any shall be sustained by such failure of title.

Digitized by Google

SEC. 5. This act shall not extend to any case where the grantor does not covenant a title in fee simple to the lands or real estate sold. Not to extend to certain cases.

SEC. 6. This act shall extend to cases where the grantor has executed bond for title to the lands or real estate sold, in the same manner as though such grantor had executed a deed for the same. Shall extend to cases where the grantor executed bond for title, &c.

This act shall take effect, and be in force, from and after its passage. New act.

Approved March 27, 1845.

CHAPTER 83.

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. License 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 the 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.
SEC. 14. What facts shall be recited in the license issued by the clerk; how authenticated.
15. If license expire in vacation, may be extended by the clerk till the next term of the 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.
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 United States army, or to sell spirituous liquors, &c., without written permission.
24. Violating two preceding sections, deemed guilty of keeping a disorderly house.

Digitized by Google

CHAP. 83.

SEC. 25. Convicted of keeping a disorderly house, or of permitting unlawful gaming, penalty, &c.
26. Violation 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 and drink, &c.
29. Not to prevent any person from keeping private entertainment on the road.
SEC. 30. List of tavern licenses to be furnished to the attorney general, &c., at each term of the court.
31. Duty of civil officers to give information of violations of this act.
32. Attorney general and circuit attorney to prosecute for violations of this act.
33. This act not to apply to person dealing as a grocer.

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

Wines or spirituous liquors not to be sold without a tavern license.

SECTION 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. (*a*)

No person to keep a tavern without a license.

SEC. 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 outhouse, shed, booth, stall, shelter, boat, yard, plantation, lot, or other premises, occupied by him or her, or under his or her control.

Penalty for violating the two preceding sections.

SEC. 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.

County court authorized to grant licenses, &c.

SEC. 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.

Application to be in writing, what it shall state.

SEC. 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.

SEC. 6. Upon every application for a tavern license, it shall

(*a*) See sess. acts of 1840–1, p. 82, sec. 2. *Ibid*, p. 84, sec. 20.

Digitized by Google

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. Duty of each justice of the county court on application for license.

SEC. 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. Rates of tax on licenses.

SEC. 8. The sums to be paid shall be ascertained and fixed by the court granting 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. To be fixed by the court.

SEC. 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. No license to be granted, unless, &c.

SEC. 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. What the order granting license shall specify.

SEC. 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. Collector to give applicant receipt, and clerk to issue license, when.

SEC. 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 in 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. Bond to be taken; condition of the bond.

SEC. 13. If the applicant is to be licensed to keep an inn and tavern, the bond shall contain the further condition, that

Digitized by Google

CHAP. 83.

The bond shall contain a further condition, when.

the applicant shall constantly find and provide in the inn and tavern to be kept by him, good and wholesome diet and lodging for travelers 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.

What facts shall be recited in the license, &c.

SEC. 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.

License may be extended, when.

SEC. 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.

How to proceed to extend license under preceding section.

SEC. 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.

Fees of clerks for the issue and extension of license.

SEC. 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.

Effect and extent of licenses under this act.

SEC. 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.

Inn keepers shall keep good entertainment, bedding, &c.

SEC. 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 travelers and other guests, and stabling, with good proven-

Digitized by Google

der of hay and grain, or pasturage and grain for horses, as the season shall require.

Penalty for failure.

SEC. 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.

Penalty for failing to keep an inn or tavern according to the intent of this act.

SEC. 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 travelers 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 liquor 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.

Penalty for harboring apprentice, minor, &c.

SEC. 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, or the master or mistress of such apprentice, servant or slave.

Penalty for harboring United States soldiers, &c.

SEC. 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 offend-

Digitized by Google

ing 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.

Violating two preceding sections, effect of.

SEC. 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.

Penalty for keeping disorderly house, &c.

SEC. 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.

Violation of this act, deemed a breach of the bond.

SEC. 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.

Fines, penalties, &c., under this act, how appropriated.

SEC. 27. All fines, penalties and forfeitures, which may be recovered for the violation of any of the provisions of this act, unless hereinbefore otherwise expressly appropriated, shall be paid into the treasury of the county in which the conviction is had.

Construction of this act in selling meat and drink, &c.

SEC. 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.

Not to prevent any person from keeping private entertainment on road, &c.

SEC. 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 travelers 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.

SEC. 30. It shall be the duty of each clerk of a county

Digitized by Google

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. Clerk to furnish attorney general, &c., a list of tavern licenses, &c.

SEC. 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. Duty of civil officers under this act.

SEC. 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. Attorney general, &c., to prosecute, &c.

SEC. 33. This act shall not apply to any person dealing as a grocer, having a license so to deal. This act not to apply to grocers.

Approved March 18, 1835.

CHAPTER 84.

INQUESTS.

AN ACT concerning inquests.

SEC. 1. In case of death by violence or casualty, coroner to issue his warrant for summoning a jury,
2. Duty of the constable to whom the warrant is directed, &c.
3. Penalty on constable for failing to execute or return.
4. Penalty on jurors for failing to attend, without reasonable excuse; how sued for, &c.
5. Coroner to administer an oath to the jurors; form of the oath.
6. When the jury is sworn, charge to be given them by the coroner.
7. Jury to remain together, &c.
8. Coroner authorized to issue subpœnas for witnesses.
9. Shall administer oath; form of the oath.
10. Evidence shall be reduced to writing; shall take recognizance, when, &c.
11. Jury to deliver their verdict to the coroner in writing.
12. Duty of coroner, if death by felony; proceeding to apprehend the felon.
13. When a justice of the peace, &c., may perform the duties of coroner.
14. Constable unable to execute duties, warrant may be directed to householder, &c.; his duties.
15. Coroner, or officer holding inquest, shall present to county court a statement of costs and expenses. Court shall audit and allow the same. How paid, &c.

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

SECTION 1. Every coroner, so soon as he shall be notified of the dead body of any person supposed to have come to his

Digitized by Google

CHAP. 84.

In cases of death by violence or casualty, coroner to issue his warrant for summoning a jury. 1835, p. 320.

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 inquire, upon a view of the body of the person there lying dead, how and by whom he came to his death.

Duty of the constable to whom the warrant is directed, &c.

SEC. 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.

Penalty of constable for failing to execute or return.

SEC. 3. Every constable failing to execute such warrant, or to return the same, shall forfeit and pay the sum of eight dollars.

Penalty on jurors for failing to attend without reasonable excuse; how sued for, &c.

SEC. 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 within 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.

Coroner to administer an oath to the jurors; form of the oath.

SEC. 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 inquire, 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."

When the jury are sworn, charge to be given them by the coroner.

SEC. 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 by 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.

Digitized by Google

Jury to remain together, &c.

SEC. 7. When the jury are sworn, they shall remain together, and proclamation shall be made for any persons who can give evidence, to draw near and they shall be heard.

Coroner authorized to issue subpœnas for witnesses.

SEC. 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.

Shall administer oath. Form of the oath.

SEC. 9. He shall administer to them an oath or affirmation, in form as follows: "You do swear (or affirm) that the evidence you shall give to the inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth."

Evidence shall be reduced to writing; shall take recognizance, when, &c.

SEC. 10. The evidence of such witnesses 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 may commit to the common jail of the county, any witness refusing to enter into such bond, and he shall return to the same court, the inquisition, written evidence, and recognizance by him taken.

Jury to deliver their verdict to the coroner in writing.

SEC. 11. The jury, having viewed the body, heard the evidence, and made all the inquiry in their power, shall draw up and deliver to the coroner, their verdict upon the death under consideration, in writing, under their hand, and the same shall be signed by the coroner.

Duty of the coroner, if death by felony; proceedings to apprehend the felon.

SEC. 12. 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 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.

When a justice of the peace, &c., may perform the duties of coroner.

SEC. 13. If the coroner is unable 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.

Constable unable to execute duties, proceeding.

SEC. 14. 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

Digitized by Google

CHAP. 85.

county, who shall perform the duties of constable, be subject to the same penalties, and entitled to the same fees.

Coroner or officer holding inquest, shall present to county court a statement of costs and expenses.

SEC. 15. The coroner, or other officer holding an inquest, as provided for by this act, shall present to the county court, a certified statement of all the costs and expenses of said inquest, including his own fees, the fees of jurors, witnesses, constables, and others entitled to fees, for which the county is liable; and the county court shall audit and allow the same, and order a warrant to be drawn upon the county treasury, in favor of the coroner, or other officer holding said inquest, for the whole amount of said costs; and the coroner, or other officer shall, as soon as he receives the amount from the county treasury, pay to each person, upon demand, the amount to which he is entitled.

Court shall audit and allow the same.

How paid, &c.

This act shall take effect from its passage.

Approved February 13, 1845.

CHAPTER 85.

INSANE PERSONS.

AN ACT relative to insane persons.

SEC. 1. On information, in writing, that any person is of unsound mind, court to cause the facts to be enquired into by a jury.
2. In vacation, such information shall be given to presiding justice.
3. Person alleged to be of unsound mind, may be brought before the court.
4. Duty of certain officers relative to insane persons in their county; to make application, &c.; proceedings.
5. On verdict of jury, court shall appoint guardian to such insane person.
6. If person found to be insane, costs, how paid.
7. If person alleged to be insane, be discharged, costs, how paid.
8. Inquisition may be set aside, &c.
9. Guardian of insane person to enter into bond. Condition thereof.
10. Court may require guardian to give a new bond, &c.
11. Bond, where deposited. Certified copy to be evidence.
SEC. 12. Guardian to cause notice of appointment to be published, when and how.
13. To take charge of insane person, and provide for his support, &c.
14. To take into his possession, the estate, real and personal, of such person.
15. Shall make out and file an inventory of the real and personal estate, when, &c.
16. Shall file an additional inventory, when.
17. Inventories, how made and attested.
18. Duties of guardian in prosecuting and defending actions, collecting debts, &c.
19. County court may order restraint, support and safe-keeping of insane person, and support and maintenance of his family, &c.
20. When personal estate not sufficient to pay debts &c., guardian may petition court to mortgage, lease, or sell real estate, &c.

Digitized by Google

SEC. 21. What facts the petition shall contain.
22. On examination, court may order the mortgage, sale, or lease, &c., of the real estate.
23. Time and terms of sale to be directed by the court, &c.
24. Notice of sale shall be given. What it shall contain. How and where published.
25. Lands to be sold at public auction, &c. Report to be made by guardian.
26. Report shall be verified by affidavit; what it shall state, &c.
27. If report be approved, deed to be executed, &c.
28. If disapproved, court may set aside the sale, &c. Order of sale may be renewed.
29. No deed to be executed until court approve agreement, &c.
30. Conveyance made by order of court, under this act, shall be valid.
31. Guardian to render account, and make settlement once a year.
32. Contract of ward not binding, without consent of guardian, &c. Money, &c., disposed of by ward, may be recovered by guardian.
33. Insane person shall not be held to bail, or taken in execution.
34. In suits against insane persons, process to be served on guardian, &c.
SEC. 35. When the guardian may apply to the county court for an appropriation to support his ward.
36. What facts shall be contained in a petition for that purpose.
37. When court may make an appropriation to support such person.
38. Allowance not to be made for more than one year, &c.
39. Allegations on oath, that insane person has been restored, court may cause enquiry to be made.
40. If restored to his right mind, person to be discharged.
41. In case of death of insane person, guardianship to cease, &c. Guardian to settle his accounts.
42. Courts shall have power to remove guardian.
43. When removed, he shall settle his accounts, &c.
44. County court has power to control guardians, enforce settlements, orders, &c.
45. When insane person may be confined; duty of court and guardian.
46. If not confined, and no person has charge of him, duty of judge of court of record, or two justices of the peace.
47. Expenses attending such confinement, how paid.
48. Appropriations made out of the county treasury, how and out of whom recovered.

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

SECTION 1. If information, in writing, be given to the county court, that any person in their county is an idiot, lunatic, or person of unsound mind, and incapable of managing his affairs, and praying that an inquiry thereinto be had, the court, if satisfied that there is good cause for the exercise of its jurisdiction, shall cause the facts to be inquired into by a jury.

On information, &c., court to cause the facts to be enquired into by jury. 1835, p. 322.

SEC. 2. Such information may also be given, in the vacation of said court, to the presiding justice thereof, in which event he shall call a special term of the court for the purpose of holding an inquiry, whether the person mentioned in such information be of unsound mind or not.

In vacation, such information shall be given to presiding justice. 1842-3, p. 72.

SEC. 3. In proceedings under this act, the county court may, in its discretion, cause the person alleged to be of unsound mind to be brought before the court.

Person may be brought before the court.—*Ib.*

SEC. 4. Whenever any justice of the county court, justice

Digitized by Google

Duty of certain officers relative to insane persons in their county.

of the peace, sheriff, coroner or constable, shall discover any person, resident of 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 case of information by unofficial persons.

On verdict of jury, court shall appoint a guardian.

SEC. 5. If it be found by the jury that the subject of the inquiry is of unsound mind, and incapable of managing his or her affairs, the court shall appoint a guardian of the person and estate of such insane person.

If person found insane, costs how paid.

SEC. 6. When any person shall be found to be insane, according to the preceding provisions, the costs of the proceedings shall be paid out of his estate, or, if that be insufficient, by the county.

If person alleged to be insane, be discharged, costs, how paid.

SEC. 7. 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.

Inquisition may be set aside, &c.

SEC. 8. The court may, if just cause appear at any time during the term at which an inquisition is had, set the same aside and cause a new jury to be impanneled to inquire into the facts, but when two juries concur in any case, the verdict shall not be set aside.

Guardian of insane person to enter into bond.

Condition thereof.

SEC. 9. Every guardian of a person of unsound mind, before entering upon the duties assigned him, shall 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.

Court may require guardian to give a new bond, &c.

SEC. 10. 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.

Digitized by Google

Bond, where deposited. Copy to be evidence.

SEC. 11. 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.

Notice of appointment to be published, when and how.

SEC. 12. It shall be the duty of every such guardian, within thirty days after his appointment, to cause a notice thereof to be published, at such time and in such manner, as the county court shall order.

To take charge of insane person, and provide for his support, &c.

SEC. 13. Every such guardian shall take charge of the person committed to his charge, and provide for his support and maintenance as hereinafter directed.

To take into his possession goods, effects, &c., of the estate.

SEC. 14. It shall be his duty to collect and take into his possession the goods, chattels, moneys and effects, books and other evidences of debt, and all writings touching the estate, real and personal, of the person under his guardianship.

Shall make out and file an inventory of real and personal estate, when, &c.

SEC. 15. 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.

Shall file an additional inventory, when.

SEC. 16. 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.

Inventories, how made and attested.

SEC. 17. All such inventories shall be made in the presence of, and attested by, two credible witnesses of the neighborhood, and shall be verified by oath or affirmation of the guardian.

Duties of guardian in prosecuting and defending actions, collecting, debts, &c.

SEC. 18. It shall be the duty of every such guardian to prosecute and defend all actions instituted in behalf of, or against his ward, to collect all debts due or becoming due to his ward, and give acquittances and discharges therefor, and to adjust, settle and pay, all demands due or becoming due from his ward, so far as his estate and effects will extend, as hereinafter provided.

County court may order restraint, support, and safe keeping of insane person:

SEC. 19. Every county court, by whom any insane person is committed to guardianship, may make an order for the restraint, support and safe-keeping of such person, for the management of his estate, for the support and maintenance of

Digitized by Google

CHAP. 85.

his family and education of his children, out of the proceeds of such estate, to set apart and reserve for the payment of debts, and to let, sell or mortgage, any part of such estate, real or personal, when necessary for any of the purposes above specified.

And support and maintenance of his family, &c.

When personal estate not sufficient to pay debts, &c., guardian may petition court to mortgage, lease or sell real estate, &c.

SEC. 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 deficiency.

What facts the petition shall contain.

SEC. 21. The petition shall set forth the particulars of 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, showing the application of the funds which may have come to his hands.

On examination court may order the mortgage, sale or leasing, &c. of the real estate.

SEC. 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 property has been applied as far as the circumstances of the case rendered proper, the court shall make an order directing the mortgage, lease, or sale of the whole or such part of the estate as may be necessary or proper.

Time and terms of sale to be directed by the court, &c.

SEC. 23. The court making such order shall direct the time and terms of sale, or, if a mortgage or lease be ordered, the terms of such mortgage or lease, and the manner in which the proceeds shall be secured, and the income or produce thereof be appropriated.

Notice of sale shall be given; what it shall contain; how and where published.

SEC. 24. When a sale of real estate shall be ordered, the guardian shall cause notice of the time, place and terms of sale, together with a description of the property to be sold, to be published four weeks successively in some newspaper 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.

Lands to be sold at public auction, &c. Report to be made.

SEC. 25. Such guardian shall, at the time and place appointed for the sale, sell such lands at public auction, to the highest bidder, and make report of his proceedings to the court at the term next succeeding the sale.

Digitized by Google

Report of guardian shall be verified by affidavit, what it shall state, &c.

SEC. 26. The report shall be verified by the affidavit of the guardian, which affidavit shall also state that such guardian did not, directly or indirectly, become the purchaser of the property sold, and that he was in no wise interested in the purchase thereof.

If the report be approved, deed to be executed, &c.

SEC. 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.

If disapproved, court may set aside the sale, &c.; order of sale may be renewed.

SEC. 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.

No deed to be executed till court approve agreement, &c.

SEC. 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.

Conveyance made by order of court under this act, shall be valid.

SEC. 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.

Guardian to render account and make settlement once a year.

SEC. 31. Every guardian of an insane person, 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.

Contract of ward not binding without consent of guardian. Money, &c., disposed of may be recovered.

SEC. 32. No contract of any person found to be of unsound mind, as hereinbefore 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.

Insane person shall not be held to bail or taken in execution.

SEC. 33. No such insane person shall be held to bail, nor shall his body be taken in execution on any civil or penal action.

Suits against insane persons, process to be served on guardian, &c.

SEC. 34. In all actions commenced against such insane person, the process shall be served on his guardian, and on judgment 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

Digitized by Google

guardian, unless he shall have rendered himself liable thereto, by false pleading or otherwise.

When the guardian may apply to the county court for an appropriation to support his ward.

SEC. 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.

What facts shall be contained in a petition for that purpose.

SEC. 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 it shall be verified by the affidavit of the petitioner.

When court may make an appropriation to support such person.

SEC. 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 to them shall appear reasonable, and cause a warrant to be issued accordingly.

Allowance not to be made for more than one year, &c.

SEC. 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 moneys and effects which shall have come to his hands for the support of his ward, out of the county treasury or otherwise.

Allegations on oath that insane person has been restored, court may cause enquiry to be made.

SEC. 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.

If restored to his right mind, person to be discharged.

SEC. 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.

In case of death of insane person, guardianship to cease, &c.

SEC. 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 representatives.

SEC. 42. The several county courts shall have power to

Digitized by Google

remove such guardians, at any time, for neglect of duty, misconduct, or mismanagement, or disobedience to any lawful order, and appoint others. Courts shall have power to remove guardian.

SEC. 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. When removed, he shall settle his accounts, &c.

SEC. 44. The county court 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. County court has power to control guardians, enforce settlements, orders, &c.

SEC. 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 sitting 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. When insane person may be confined, duty of court and guardian.

SEC. 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. If not confined and no person has charge of him, duty of judge of court of record, or two justices of the peace.

SEC. 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. Expenses attending such confinement, how paid.

SEC. 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 person, if there be any of sufficient ability to pay the same. Appropriations made out of the county treasury, how and from whom recovered.

Approved February 13, 1845.

Digitized by Google

CHAPTER 86.

INSPECTION OF TOBACCO.

AN ACT to regulate the inspection of tobacco.

SEC. 1. County courts may authorize the erection of warehouses for inspection, &c.
2. Dimensions to be prescribed by county court, &c.
3. Court to appoint two inspectors for each warehouse, except, &c.
4. Qualification of inspectors. Tenure of office.
5. Vacancies, how filled.
6. Inspectors to give bond. Condition thereof.
7. Owner to pay inspectors fifty cents for each hogshead inspected.
8. Shipper or exporter to pay seventy-five cents for each hogshead inspected, and fifty cents cooperage.
9. Inspectors to attend warehouse, and deliver tobacco for shipment or exportation.
10. Failing to attend, shall forfeit $50 for every failure.
11. Duty of person who erects a warehouse under authority of the county court.
12. State inspection established in the city of St. Louis.
13. Board of inspectors to be appointed.
14. To consist of three members; two to be appointed by the governor, and one by the county court of St. Louis county. Qualifications. Tenure of office. Vacancies, how filled.
15. Shall take an oath and enter into bond. Condition thereof.
16. Bond may be given jointly or severally. Where to be filed. How sued on.
17. Form of the oath of inspectors.
18. Oath, where filed. Violation thereof, deemed perjury.
19. Inspectors shall keep an office, where. Shall attend daily from the first of March until the first of October, in each year, &c.
20. Shall keep a book; what entries shall be made therein.
21. Duty of inspectors when application is made for inspection.
22. Shall uncase and break every hogshead which they inspect; shall weigh and mark the same; how marked.
SEC. 23. What tobacco shall be marked as "passed;" what as "refused."
24. Inspectors to issue a certificate for each hogshead inspected; form thereof.
25. Every hogshead uncased shall be restored to its former condition, and reprized. Surplus to be returned, when.
26. What tobacco shall not be passed or received for inspection. When the owner shall reprize the same.
27. Fees for inspection, storage and cooperage in the city of St. Louis.
28. Governor to appoint a warehouse keeper, &c. Tenure of his office. Shall take an oath. Not to be an inspector.
29. Shall give bond; condition thereof. Where to be filed. May be sued on, how.
30. Duties of the state warehouse keeper.
31. Shall receive payment for storage and cooperage of tobacco, &c., and pay quarterly into the treasury, money received for storage. Amount to be certified by inspectors to auditor and treasurer. Their duties.
32. Keeper to employ labor at his own expense. What he may receive for storage at said warehouse. Proviso: Not to let such articles interfere with the storage of tobacco. If he does, inspectors to report, &c.; may be removed.
33. Compensation of keeper.
34. To store at night tobacco inspected during the day. Forfeiture and liability for failure.
35. Authority of board of inspectors to examine, &c.
36. Fees accruing in the city of St. Louis for storage, &c., to be received by the proprietor, when.
37. Inspectors may act as the agents for the owner in the sale of tobacco.
38. Inspectors not to furnish hands at private warehouse.
39. Keeper of the state warehouse may offer premium for the best hogshead of tobacco, &c.

Digitized by Google

SEC. 40. Inspectors may discharge the duty of keeper, if no keeper be appointed, or a vacancy occurs.
41. With consent of inspectors, the keeper may reduce storage and cooperage fees.
42. Keeper to make report on the first day of October in each year.
SEC. 43. To take duplicate receipts for money paid into state treasury.
44. Penalty on persons, other than the board of inspectors within the city or county of St. Louis, for inspecting tobacco.
45. County inspectors to conform to this act.
46. All other acts regulating inspection repealed.

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

County courts may authorize the erection of warehouses for inspection, &c.

SECTION 1. The county courts of the several counties shall have power to authorize the erection of warehouses for the reception and inspection of tobacco, at such points within their respective counties as to them shall seem most convenient.

Dimensions to be prescribed by the court, &c.

SEC. 2. The dimensions of every such warehouse shall be prescribed by the court authorizing its erection, and shall be kept in repair so long as the same shall continue to be a public warehouse.

Court to appoint two inspectors for each warehouse, except, &c.

SEC. 3. When any warehouse shall have been erected in compliance with the order and direction of a county court, such court, except in the county of St. Louis, shall appoint two inspectors of tobacco for every warehouse so erected.

Qualifications of inspectors.

SEC. 4. All persons appointed inspectors shall be discreet persons, well acquainted with the growth and management of tobacco, who shall hold their offices for one year.

Term of office.

Vacancies, how filled.

SEC. 5. Vacancies in the office of inspector, by death, resignation or otherwise, shall be filled by appointment by the county court.

Inspectors to give bond.

Condition thereof.

SEC. 6. Each inspector shall, before he enters upon the duties of his office, enter into bond to the county with sufficient securities, in a sum not less than one thousand dollars, conditioned for the faithful performance of his duties according to law, which bond shall be recorded in the office of the clerk of the county court, and a certified copy thereof shall be evidence.

Owner to pay inspectors 50 cents for each hogshead inspected.

SEC. 7. The owner shall pay fifty cents to each inspector, for every hogshead of tobacco inspected by the inspectors appointed according to the provisions of the fourth section of this act.

Fees to be paid by shipper, or exporter.

SEC. 8. The shipper or exporter shall pay the sum of seventy-five cents for every hogshead of tobacco inspected at any warehouse erected by the authority of the county court,

Digitized by Google

when the same shall be demanded for shipment or exportation, and fifty cents for cooperage.

Inspectors to attend warehouse and deliver tobacco for shipment or exportation.

SEC. 9. Inspectors shall attend at their respective warehouses, whenever called on (Sundays excepted) by any shipper or owner of tobacco, to deliver for shipment or exportation any tobacco which may be therein.

Failing to attend shall forfeit $50 for every failure, &c.

SEC. 10. An inspector failing to attend, when so requested, shall forfeit, to the party aggrieved, fifty dollars for every such failure, or such aggrieved party may recover all the damages he may have sustained by such failure, by action on the bond of such inspector, or by action on the case.

Duty of person who erects a warehouse under authority of the county court.

SEC. 11. Every person who erects a warehouse under the authority of the county court, shall keep a strong and sufficient prize within the same, and provide a comfortable room in, or adjacent to the warehouse, for the use of the inspectors, and shall also keep at the warehouse a set of scales or patent balances, and lawful weights to weigh twenty-five hundred pounds.

State inspection established in the city of St. Louis.

SEC. 12. There is established at the state warehouse in the city of St. Louis* a tobacco inspection, and all tobacco stored therein shall be inspected and branded, as hereinafter directed.

Board of inspectors to be appointed.

SEC. 13. A board of inspectors of tobacco shall be appointed, who shall have the sole power of inspecting tobacco in the city of St. Louis.

To consist of three members; two to be appointed by the governor, and one by the county court of St. Louis county. Qualifications. Term of office. Vacancies how filled.

SEC. 14. The board shall consist of three members, two of whom shall be appointed by the governor, and the other shall be appointed by the county court of the county of St. Louis; they shall all be persons well acquainted with the growth and management of tobacco, and shall hold their offices for two years; and in case of any vacancy, it shall be filled by the governor, or by the court, as the original appointment may have been made.

Shall take an oath and enter into bond.

SEC. 15. The members of the board of inspectors shall, before entering upon the duties of their office, take and subscribe an oath, and shall enter into bond to the state, with five or more sufficient securities, to be approved by the governor,

Condition thereof.

in the sum of ten thousand dollars, conditioned that they will faithfully demean themselves in office, and that they will pay over all money that may come to their hands, as inspectors, to the proper owner thereof, and, if belonging to the state, to the treasurer thereof.

* Session acts, 1842-3, p. 143.

Digitized by Google

SEC. 16. The bond may be given by the said inspectors jointly, or one or more may give bond with the penalty and condition before prescribed, and the bond or bonds shall be filed in the office of the secretary of state, and may be sued upon, in the name of the state, by any person injured, to his use, and a certified copy thereof shall be evidence.

Bond may be given jointly or severally.

Where to be filed.

How sued on.

SEC. 17. The oath of each of the inspectors shall be in the form following: "I, A. B., do solemnly swear or affirm, (as the case may be,) that I will carefully and diligently inspect and examine, all tobacco which I may be called to inspect, and that, not by myself, but in the presence of the inspector acting with me, and that I will not receive or pass any tobacco, that is not, in my judgment, sound, in good condition, clear of trash, and merchantable, nor receive, pass, or stamp any tobacco hogshead, contrary to the true intent and meaning of the act to regulate the inspection of tobacco, now in force, nor refuse any tobacco that, in my judgment, is sound, in good condition, clear of trash, and merchantable, and that I will not change, alter, or give out any tobacco as a sample, other than such as shall have been taken from the hogshead, for which the receipt to be taken was given, and that I will not, directly nor indirectly, be engaged in the manfacture, shipping, or exportation of tobacco, nor will I deal in any manner in the article, during the time I shall continue in office, except as expressly permitted by the before mentioned act, but that I will in all things, well and faithfully discharge, and perform my duty in the office of inspector, according to the best of my skill and judgment, and according to the directions of the law, without fear, favor or affection, malice or partiality, so help me God."

Form of the oath of inspectors.

SEC. 18. Such oath shall be filed in the office of the secretary of state, and a violation thereof shall be deemed perjury, and shall subject the party, upon conviction, to the penalties of perjury.

Oath, where filed.

Violation thereof deemed perjury.

SEC. 19. The board of inspectors shall keep an office in the city of St. Louis, and shall attend there during the business hours of every day, (Sundays excepted,) from the first day of March until the first day of October, in each year, and at least two days in every week in the year thereafter, except when employed in the business of inspection at some tobacco warehouse.

Inspectors shall keep an office, where.

Shall attend daily from the first of March till the first of October in each year, &c.

SEC. 20. The board shall keep a book, in which shall be

Digitized by Google

CHAP. 86.

Shall keep a book, what entries shall be made therein, &c.

entered the marks and owners names of all tobacco which the board may be required to inspect, and they shall inspect and examine the same in due time, as it shall be entered in such book, unless otherwise agreed, without favor or partiality.

Duty of inspectors when application is made for inspection.

SEC. 21. Whenever application shall be made to the board to inspect any tobacco, and the owner is entitled to have the same inspected, according to the order in which the same has been entered in the inspectors' book, at least two of the board shall attend at the warehouse at which the tobacco is stored, and proceed to inspect the same, and if the two who make the inspection shall disagree, they shall require the attendance of the other inspector, who shall inspect and examine the tobacco, and decide between them.

Shall uncase and break every hogshead which they inspect.

Shall weigh and mark the same.

How marked.

SEC. 22. The inspectors shall uncase and break every hogshead of tobacco, which they shall inspect, and each hogshead shall be by them weighed in the scales or balances, and with the weights kept in the warehouse, as required by this act, and shall be by them marked with the word "Passed" or "Refused," the tare of the hogshead, and the nett quantity of tobacco therein contained, and also with the words "Missouri tobacco, State inspection."

What tobacco shall be marked as "passed."

SEC. 23. All tobacco which is found, upon inspection, to be sound, free from trash and worthless leaves, and in good condition, shall be marked by the inspectors, "Passed," and all that is found to be unsound, in bad condition, or which shall contain trash or worthless leaves, shall be marked "Refused," and the terms or classifications, "Passed" and "Refused," shall alone be used.

What as "refused."

Inspectors to issue a certificate for each hogshead inspected.

Form thereof.

SEC. 24. The inspectors shall issue a certificate to the owner for each hogshead of tobacco by them inspected, which shall, as near as possible, be in the form following: "At the —— warehouse, in the city of St. Louis, in the state of Missouri, this — day of ——, 18—, inspected for ——, one hogshead of leaf (or stemmed, as the case may be,) tobacco, quality, number, marks and weight, as follows: 'Passed,' (or 'Refused,' as the case may be,) —— number, —— marks, —— gross, —— tare, —— nett. Witness our hands, the day and year aforesaid." "A. B., } Inspectors." "C. D., }

Every hogshead uncased, shall be restored to its

SEC. 25. Every hogshead of tobacco uncased for the purpose of inspection, after being inspected, shall be restored to the condition the same was in previous to its being uncased,

Digitized by Google

and all tobacco taken from the hogshead shall be re-prized into the same, and if the original quantity cannot be replaced, the inspectors shall return the surplus to the owner thereof, or his agent, on demand, reasonable allowance being made for waste in handling.

former condition and re-prized.

Surplus to be returned, when.

SEC. 26. Tobacco prized in hogsheads exceeding fifty-six inches in the length of the stave, and forty inches at the head, and having less than six hoops within the crow, making reasonable allowance for prizing, not exceeding two inches above the guage in the prizing head, shall not be passed or received, but the owner thereof shall be obliged to re-prize the same in hogsheads of the proper dimensions, at his own charge, before the same shall be inspected.

What tobacco shall not be passed or received for inspection.

When the owner shall reprize the same.

SEC. 27. For every hogshead of tobacco inspected in the city of St. Louis, the owner shall pay the board of inspectors seventy-five cents, whether the same be passed or refused; and for every hogshead of tobacco, the owner or shipper shall pay, when he demands the same, seventy-five cents as a compensation for storage for the first three months or less, and twenty-five cents for each month the hogshead may have remained in the warehouse beyond that time, and seventy-five cents for coopering each hogshead.

Fees for inspection, storage, and cooperage in the city of St. Louis.

SEC. 28. There shall be appointed by the governor, immediately after the passage of this act, a warehouse-keeper, who shall have the charge, care and custody, of the state warehouse, and who shall hold his office for two years, and shall, before he enters upon the duties of his office, take an oath that he will faithfully discharge all the duties of keeper of the state tobacco warehouse, and that he will faithfully account for, and pay over, all moneys which may come to his hands, to the proper owners thereof, or, if the same belongs to the state, then to the treasurer of the state; but such keeper shall not be one of the inspectors.

Governor to appoint a warehouse keeper, &c.

Term of office.

Shall take an oath.

Not to be an inspector.

SEC. 29. The keeper of the state warehouse shall, also, before he enters upon the duties of his office, give bond, with sufficient security, to be approved by the governor, in the sum of ten thousand dollars, conditioned for the faithful discharge of his duties as keeper of the state warehouse, and for the payment of all moneys which may come to his hands to the proper owner thereof, or to the treasurer of the state, if the same belongs to the state, which bond shall be filed in the office of secretary of state, and may be sued on, in the

Shall give bond.

Condition thereof.

Where to be filed.

Digitized by Google

CHAP. 86.

name of the state, for the use of any person injured by any breach of the condition.

May be sued on, how.

Duties of the state warehouse keeper.

SEC. 30. It shall be the duty of such keeper to attend at the state warehouse at all business hours of every day (Sundays excepted); he shall have the care and custody of the warehouse, and all property belonging to the state in the warehouse, and shall preserve the same from all injury or waste; he shall keep a book in which shall be entered the marks and owners' names of all tobacco which shall be stored in said warehouse, the time when the same was stored and when the same was taken away, the amount of storage, the amount of cooperage, and whether the same, if inspected, was passed or refused; if the same be sold in the warehouse, the price thereof and the purchaser's name, the terms of sale, and, if the price be paid, to whom paid. And in said book the said keeper shall also enter the names of all owners of other property stored in said warehouse, and the quantity thereof, the time during which it was so stored, and the amount of storage, and the time when it was paid.

Shall receive money paid for the storage and cooperage of tobacco, &c., and pay quarterly into the treasury, money received for storage.

SEC. 31. The said keeper shall receive all money payable at said warehouse, for the storage and cooperage of all tobacco stored at the state warehouse, and all storage on all other articles stored at said warehouse, and shall, every three months, pay into the state treasury all money which he may have received on account of the storage of hogsheads of tobacco; and the amount so to be paid into the state treasury, by such keeper, shall be certified by the board of inspectors to the auditor of public accounts and to the treasurer, and, for that purpose, they shall examine the books of said keeper, and all other evidence, and ascertain and adjust the amount so to be paid, and certify the same accordingly.

Amount to be certified by inspectors to auditor and treasurer. Their duties.

Keeper to employ labor at his own expense.

What he may receive for storage at said warehouse.

SEC. 32. The keeper shall employ at his own expense, and without any charge to the state, all such labor as may be necessary to conduct the business of the inspection, storage and cooperage, at said warehouse, and may receive for storage at said warehouse, all such articles of merchandize as may not be of a combustible nature, and keep the same on storage at such prices as he may think proper: *Provided*, That the storage of merchandize, other than hogsheads of tobacco, shall not be permitted to interfere with the storage of tobacco at said warehouse; and if said keeper shall permit such storage to interfere with the storage of tobacco, the fact of his

Proviso.

Not to let such articles interfere with the storage of tobacco.

Digitized by Google

so doing shall be reported by said board of inspectors, or a majority of them, to the governor, and the governor shall, thereupon, immediately remove said keeper from office, and appoint another in his stead.

If he does, inspectors to report, &c. May be removed.

SEC. 33. The said keeper shall receive, as a full compensation for all services rendered, all cooperage fees received at said warehouse, and all storage fees on articles other than hogsheads of tobacco: *Provided*, That if the amount so received by said keeper, after paying the expense of the warehouse and the labor thereat, shall exceed the sum of twelve hundred dollars per annum, the overplus shall be paid into the state treasury.

Compensation of keeper.

SEC. 34. The said keeper shall store away and secure at night, all tobacco inspected during the day, and for failure, shall forfeit to the party injured, ten dollars, and shall, moreover, be liable to the owners of such tobacco, in an action on the case, for all damages sustained in consequence of such negligence.

To store at night tobacco inspected during the day. Forfeiture and liability for failure.

SEC. 35. The board of inspectors shall have the authority to examine, at all times, the state warehouse, and all the books and papers belonging thereto, and it shall be their duty to report to the governor, any negligence, default, or want of economy of the keeper of the warehouse, and it shall be lawful for the governor, at any time, upon such report, to remove the said keeper from office.

Authority of board of inspectors to examine.

SEC. 36. The storage and cooperage fees accruing at any warehouse in the city of St. Louis, established according to law, other than the state warehouse, shall be received by the proprietor of such warehouse.

Fees in St. Louis for storage, &c., to be received by the proprietor, when.

SEC. 37. Nothing in this act shall prevent inspectors from acting as the agent for the owner of any tobacco, in the sale of the same, and receiving a reasonable compensation therefor.

Inspectors may act as the agents for the owner, &c.

SEC. 38. Nothing in this act shall be so construed as to require the inspectors to furnish hands to strip or break tobacco at any private warehouse.

Inspectors not to furnish hands at private warehouse.

SEC. 39. Said keeper of the state warehouse may, if he deem it expedient, offer a premium for the best hogshead of tobacco which shall be brought to the state warehouse during each season, not exceeding one hundred dollars, one half of which shall be paid by said keeper out of his own funds, and the other half out of the storage fees coming to said warehouse.

Keeper of the state warehouse may offer premium for the best hogshead of tobacco, &c.

SEC. 40. If no keeper shall be appointed when the board

Digitized by Google

Inspectors may discharge the duty of keeper, if no keeper be appointed, or a vacancy occurs.

of inspectors are ready to proceed to business, then said board, or any one of them, shall discharge the duties of keeper until a keeper shall be appointed and qualified, and in the event of a vacancy in the office of keeper, then said board, or any one of them, shall discharge the duties of keeper until a successor is duly appointed and qualified.

With consent of inspectors, the keeper may reduce storage and cooperage fees.

SEC. 41. The keeper of said state warehouse may, with the consent of a majority of the board of inspectors, reduce the storage and cooperage fees, or either, at the said state warehouse, so as to correspond with the fees demanded at any warehouse in the city of St. Louis, established under the authority of the county court.

Keeper to make report on first day of October in each year.

SEC. 42. Said keeper shall, on the first day of October in each year, make a report, under oath, to the governor, of the number of tobacco hogsheads received at the state warehouse during the preceding year, and the amount of fees paid thereon, distinguishing the inspection, cooperage and storage fees, the one from the other.

Keeper to take duplicate receipts for money paid into state treasury.

SEC. 43. When any money shall be paid into the state treasury by said keeper, he shall take duplicate receipts therefor, one of which shall be delivered to the auditor, who shall charge the treasurer with the amount thereof.

Penalty on persons other than the board of inspectors, within the city or county of St. Louis, for inspecting tobacco.

SEC. 44. If any person, other than the members of the board of inspectors, shall inspect any hogshead of tobacco within the city or county of St. Louis, or if any person occupying any store or warehouse within the city or county of St. Louis, shall suffer or permit any person, other than a member of the board of inspectors, to inspect any hogshead of tobacco upon the premises occupied by him, such person inspecting the tobacco, and such person suffering and permitting such illegal inspection, shall each be fined the sum of one hundred dollars for every hogshead of tobacco so inspected, to the use of the state, to be recovered by indictment.

County inspectors to conform to this act.

SEC. 45. The inspectors at warehouses erected under authority of any county court, shall conform to the mode of proceeding directed by this act, so far as the same is applicable.

All other acts regulating inspection repealed.

SEC. 46. That all acts, and parts of acts, establishing or regulating inspections of tobacco, heretofore passed, be and the same are hereby repealed.

This act to take effect from and after its passage.

Approved March 27, 1845.

Digitized by Google

CHAPTER 87.

INSURANCE AGENCIES.

AN ACT to license and regulate agencies of foreign insurance companies.

SEC. 1. Agents of foreign insurance companies, before entering on their duties, &c., shall deposit with the clerk of the county court a copy of the charter of such company, and the power of attorney, &c., under which they act, &c.
2. Statements to be furnished annually to the county clerk, of the condition, capital stock, &c., of foreign insurance company.
3. Agents of such company to furnish clerk of county court a resolution of the board of directors, authorizing any citizen, &c., to sue for claims against such company, and authorizing the service of process on the agent or agents, &c.
4. Agents to obtain a license from county court before commencing business.
5. Tax on licenses of $100 for state purposes in St. Louis county. How taxed for county purposes.
6. Penalty of $500 for transacting business without a license, or not complying with the provisions of this act. Duty of collector to prosecute, &c.
SEC. 7. The third and fifth sections of this act to apply only to agencies in the county of St. Louis. Agents, in addition to tax levied on license, to pay $50 semi-yearly, &c., to be in lieu of all taxes, &c., under the city charter.
8. Penalty of $200 for failing to comply with requisitions of last section. How recovered.
9. Agents not located in St. Louis, to make report to the collector of the expiration of their licenses, the net amount received for premiums on insurance, &c. To be under oath. To pay a tax of one per cent., on the net amount of said premiums. Proviso.
10. Penalty of $200 on agents not in St. Louis, for failing to comply with the provisions of the 1st, 2d, 4th and 9th sections of this act, or who shall make a false report. Duty of collectors. Fines, &c., how recovered.
11. Who deemed agents of insurance companies. Proviso.
12. All laws and acts heretofore passed, repealed.

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

SECTION 1. That every person or persons who shall undertake to act in this state, as an agent or agents for, or in behalf of any insurance company, not incorporated by an act of the legislature of this state, shall, before entering upon the duties of his or their agency, or, in case he or they have already entered upon said duties, then, on or before the first day of July, eighteen hundred and forty-five, deposit with the clerk of the county court, in the county in which he or they propose to do business, or are already doing business, a copy of the charter, and also a copy of the power of attorney or commission, held by him or them, as agent or agents of such company aforesaid, which papers shall be subject to the inspection of any person desiring the same.

Agents of foreign insurance companies before entering on their duties, &c., shall deposite with the clerk of the county court a copy of the charter, power of attorney, &c.

Subject to inspection.

SEC. 2. The agent or agents of any such company aforesaid,

Digitized by Google

CHAP. 87.

Statements to be furnished annually to the county clerk of the condition, capital stock, &c., of foreign insurance company.—1842-3, p. 7, sec. 1.

shall, also, before entering upon the business of said agency, or, in case he or they have already entered upon said business, then, on or before the first day of July, eighteen hundred and forty-five, be required to furnish to the clerk of the county court, as aforesaid, a statement, subscribed and sworn to by the president and secretary of the company, for which he or they propose to act, or are already acting, which statement shall set forth the amount of the capital stock of said company, what proportion is actually paid in, and how the balance, (if any,) is secured; how that portion which is paid in, is invested, and giving the actual cash value of said capital stock, as near as possible, allowing sixty days to convert the same into ready money; and said agent or agents shall further be required to furnish, on or before the first day of February, in each year succeeding, a similar statement of the condition of said company on the first day of January preceding; which shall be subscribed and sworn to, as aforesaid; and all of which statements shall be subject to the examination or inspection of any person desiring the same.

Agents of such company to furnish clerk of county court a resolution of the board of directors, authorizing any citizen, &c., to sue for claims against such company, and authorizing the service of process on the agent or agents, &c.

SEC. 3. The agent or agents of any such company aforesaid, shall also be required, before commencing business, or, in case he or they have already commenced business, then, on or before the first day of July, eighteen hundred and forty-five, to furnish to the clerk of the county court, to be placed on the records of said court, a resolution of the board of directors of the company for which he or they may propose to act, or are already acting, duly authenticated, authorizing any citizen or person residing in the state of Missouri, or elsewhere, having a claim against any such company aforesaid, growing out of a contract of insurance, made with the agent or agents of any such company aforesaid, doing business in this state, to sue for the same in any court in said state having competent jurisdiction; and further authorizing service of process on said agent or agents to be sufficiently binding on said company to abide the issue of said suit, and that such service shall authorize judgments in the same manner that judgments are taken against private individuals; and it is hereby enacted, that the service of process on the said agent or agents, in any action commenced against such company, shall be deemed a service upon the company, and shall authorize the same proceedings as in case of other actions at law; the process shall be served and returned in the same

Digitized by Google

manner, as if the action were against the agent or agents personally.

Agents to obtain a license from county court before commencing business.

SEC. 4. The agent or agents of any such company aforesaid, shall, before commencing business, obtain a license from the clerk of the county court in which county they propose to act, who is hereby authorized and required to issue the same on application of said agent or agents, and said license shall be for the term of six months.

Tax on licenses of $100 for state purposes in St. Louis county.

SEC. 5. There shall be levied and collected on each license obtained by an agent or agents of any such company aforesaid, whose agency may be located in the county of St. Louis, the sum of one hundred dollars for state purposes, to be paid at the time of obtaining such license, and which may be taxed for county purposes in the same manner as other licenses are taxed.

How taxed for county purposes.

Penalty of $500 for transacting business without a license, or not complying with the provisions of this act.

SEC. 6. Any person or persons who shall, as agent or agents for any such company aforesaid, located in the county of St. Louis, transact, or cause to be [transacted,] *contracted*, the business of insuring property without having first obtained the license aforesaid, or who shall in any wise neglect or refuse to comply with any of the foregoing provisions of this act, shall forfeit and pay the sum of five hundred dollars; and

Duty of collector to prosecute for forfeitures, &c.

it shall be the duty of the collector of said county to collect the tax imposed by this act, and to prosecute for the recovery of any forfeitures incurred by virtue of this act, and any and

Fines, &c., to be recovered in the name of the state.

all fines, penalties and forfeitures, thus incurred, shall, and may, be recovered in the name of the state, to the use of the state and county, in equal proportions, by plaint, bill or information, before any court of competent jurisdiction.

The third and fifth sections of this act to apply only to agencies in St. Louis county.

SEC. 7. The provisions of the third and fifth sections of this act are hereby declared to apply only to the agencies of any such companies, aforesaid, that may be established in the county of St. Louis; and, in addition to the tax therein imposed, the agent or agents of any such company aforesaid,

Agents, in addition to tax levied on license, to pay $50 semi-yearly, &c., to be in lieu of all taxes, &c., under the city charter.

shall be, and hereby are, required to pay to the collector, or any one of the collectors, of the revenue of the city of St. Louis, for the use of the same, the sum of fifty dollars, semi-yearly in advance, commencing with the passage of this act, and which sum shall be considered in full for, and in the room of, any and all licenses and taxes which said city, by its charter, may, or may not, possess the power to impose on said agencies for doing business in the same.

Digitized by Google

CHAP. 87.

Penalty of $200 for failing to comply with requisitions of last section.

How recovered.

SEC. 8. Any person or persons who shall, as agent or agents for any such company aforesaid, neglect or refuse to comply with the requisitions contained in the last preceding section of this act, shall forfeit and pay the sum of two hundred dollars, which shall, and may, be recovered in the name of the city of St. Louis, to the use of the same, by suit, instituted by the city attorney, in any court having jurisdiction of the same.

Agents not located in St. Louis, to make report to the collector of the expiration of their licenses, the net amount received for premiums on insurances, &c.

To be under oath.

To pay a tax of one per cent. on the net amount of said premiums.

Proviso.

SEC. 9. It shall be the duty of every person, or persons, acting as agent or agents of any such company aforesaid, whose agency may not be located in the county of St. Louis, to make a true and accurate report, at the expiration of his or their license, to the collector of the county in which such agency may be located, of the net amount (after deducting all return premiums,) received by him or them for premiums on insurances, effected, or caused to be effected, by him or them, during the continuance of such license, which report shall be made under oath, and the said agent or agents shall be required to pay to the collector of said county, for state purposes, one per cent. on the net amount of said premiums, and which tax of one per cent. shall be considered in full satisfaction for the license granted said agent or agents, under section fourth of this act: *Provided, however*, That the amount accruing to the state, under the provisions of this section, may be taxed for county purposes, in the same proportion that licenses for other kinds of business are taxed in said county.

Penalty of $200 on agents not in St. Louis, for failing to comply with the provisions of the 1st, 2d, 4th and 9th sections of this act, or who shall make a false report.

Duty of collectors.

Fines, &c., how recovered.

SEC. 10. Any person or persons who shall, as agent or agents for any such company aforesaid, not located in the county of St. Louis, neglect or refuse to comply with any of the provisions contained in the first, second, fourth and ninth sections of this act, or who shall make a false or fraudulent report of his or their business, as required by the last preceding section, shall forfeit and pay the sum of two hundred dollars; and it shall be the duty of the several collectors in their respective counties, to collect the tax imposed in the last preceding section of this act, and to prosecute for the recovery of any forfeitures incurred by virtue of this act, and all fines, penalties, and forfeitures thus incurred, shall, and may be recovered in the name of the state, to the use of the state and county, in equal proportion, by plaint, bill, or information, before any court of competent jurisdiction.

Digitized by Google

Who deemed agents of insurance companies.

SEC. 11. Any person or persons, or firm, in this state, who shall receive or receipt for any moneys on account of, or for any contract of insurance, made by him or them, for any such insurance company aforesaid; or, who shall receive or receipt for money from other persons, to be transmitted to any such company aforesaid, for a policy or policies of insurance, although such policy or policies may not be signed by him or them, as agent or agents of such company; or, who shall in any wise, directly or indirectly, make, or cause to be made, any contract or contracts of insurance, for, or on account of, any such insurance company aforesaid, shall be deemed, to all intents and purposes, an agent or agents of such company, and shall be subject and liable to all the provisions, regulations, and penalties of this act: *Provided, however*, That nothing in this act shall be so construed, as to prevent any person or firm from procuring insurance on his or their property, nor any insurance company or agency doing business in this state, from procuring a re-insurance on risks taken by them, when deemed necessary, in any insurance company not located in, or chartered by, the legislature of this state.

Proviso.

All laws and acts heretofore passed, repealed.

SEC. 12. All laws and acts, or parts of laws and acts, relating in any wise to foreign insurance companies or agencies, heretofore passed by the legislature of this state, be, and the same hereby are repealed.

This act to take effect, and be in force, from and after its passage.

Approved March 27, 1845.

CHAPTER 88.

INTEREST.

AN ACT regulating the interest of money.

SEC. 1. When no rate of interest is agreed upon, six per cent. allowed as legal interest.
2. Parties may agree, in writing, for interest, not exceeding ten per cent. per annum.
3. Interest on judgments and decrees, how regulated.
4. Persons prohibited from taking more than legal interest.
5. Defendant may show, under plea of the general issue, or non est factum, that illegal interest has been agreed for. Judgment, how rendered.
6. Interest, by agreement, may become part of the principal and bear interest.
7. Not to compound more than once a year.

Digitized by Google

CHAP. 88. *Be it enacted by the General Assembly of the State of Missouri, as follows:*

When no rate of interest is agreed upon, six per cent. allowed as legal interest. Rev. C., 1835.

SECTION 1. Creditors shall be allowed to receive interest at the rate of six per cent. per annum, when no other rate of interest is agreed upon, for all moneys after they become due by any instrument of the debtor in writing, for money lent or money due on settlement of accounts, from the day of liquidating the same and ascertaining the balance, for money recovered for the use of another and retained without the owner's knowledge of the receipt, for money due and withheld by an unreasonable and vexatious delay of payment, or settlement of accounts, and for all other money due, or to become due, for the forbearance of payment whereof an express promise to pay interest has been made. (*a*)

Parties may agree in writing for ten per cent.

SEC. 2. The parties may agree, in writing, for the payment of interest, not exceeding ten per cent. per annum, on money due or to become due upon any contract.

Interest on judgments and decrees, how regulated.

SEC. 3. Interest shall be allowed on all money due by judgment at law, or decree in equity, from the day of rendering them until satisfaction be made by payment, accord 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 contract; and all other judgments and decrees for money shall bear six per centum per annum, until satisfaction made as aforesaid.

Persons prohibited from taking more than legal interest.

SEC. 4. No person shall, directly or indirectly, take, for the use or loan of money, or other commodity, above the rates of interest specified in the three preceding sections, for the forbearance or use of one hundred dollars, or the value thereof, for one year, and so after those rates for a greater or less sum, or for a longer or shorter time, or according to those rates or proportions for the loan of any money or other commodity.

Defendant may show under plea of general issue or non est factum, that illegal interest has been agreed for.

SEC. 5. That if any action or suit shall hereafter be commenced upon any bond, note, mortgage, specialty, agreement, contract, promise or assurance whatever, which shall be made within this state, the defendant may, under the general issue, or if it be an action on a specialty, then under the plea of

(*a*) When a bond or note has been lost or mislaid, the obligor cannot be relieved from the payment of interest for the time it was so lost, unless he made a tender of the money; Rector vs. Mark, 1 Missouri Rep., 206. When money is paid for another, he who pays it is entitled to interest from the time of payment; Chamberlain vs. Smith, administrator, 1 Missouri Rep., 515. A county warrant will bear interest after presentment at the treasury and refusal of payment by the treasurer; Robbins vs. Lincoln County Court, 3 Missouri Rep., 42.

Digitized by Google

non est factum, show that a higher or greater rate of interest than ten per cent. per annum was therein, or thereby, agreed for, or received, or taken, and if the plea of the defendant to any such suit shall be sustained by the verdict of a jury or the finding of the court, the court shall render judgment on such verdict or finding, for the real sum of money or price of the commodity actually lent, advanced or sold, and interest on the same, at the rate of ten per cent. per annum, upon which judgment the court shall cause an order to be made, setting apart the whole interest for the use of the county in which such suit may be brought, for the use of common schools, and the same, when collected, shall be paid over accordingly, and go to and form a part of the common school fund of said county; and the defendant may recover his costs.

Judgment how rendered.

SEC. 6. The parties may, in any contract in writing, whereby any debt is secured to be paid, agree that, if the interest on such debt is not punctually paid, it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

Interest may by agreement become a part of the principal, when.

SEC. 7. The preceding section shall not be so construed as to allow any creditor, by agreement, to compound the interest due him, on any contract, oftener than once in a year.

Not to compound more than once a year.

Approved March 24, 1845.

CHAPTER 89.

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.

SEC. 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. Prisoner detained for fine or 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.

Digitized by Google

CHAP. 89.

SEC. 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.
* * * * * *
17. Keepers of jails to receive prisoners committed under authority of the 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.
SEC. 23. Expenses of said guard 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 a 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.
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:

Jail to be kept in good repair, &c. Rev. C., 1835.

SECTION 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.*

Sheriff to have custody, &c., of jail; may appoint a jailor; liable for his acts.

SEC. 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 the prisoners in such jail, and may appoint a jailor under him, for whose conduct he shall be responsible.

To receive persons committed to jail.

SEC. 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.

Refusal deemed a misdemeanor, how punished.

Debtors and criminals to be confined in different rooms.

SEC. 4. It shall not be lawful for any sheriff or jailor to confine or keep debtors and criminals together in the same room, but they shall be confined and kept separate and apart from each other, in distinct rooms, when practicable.

* Session acts, 1840-1, p. 31, sec. 2; *ib.* 302-3; 1843, p. 32, sec. 27.

Digitized by Google

Female prisoners to be kept apart, &c.

SEC. 5. Female prisoners shall, in like manner, be confined and kept in apartments separate and apart from male prisoners.

Expenses of commitment and support in prison, &c., to be paid by convict.

SEC. 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.

Prisoners detained for fine and costs, may be discharged, how.

SEC. 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.

Before discharge, shall take the oath of an insolvent debtor; proceedings.

SEC. 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.

Poor prisoners in criminal cases, how provided for. 1842-3, p. 29.

SEC. 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.

Expenses of criminal prisoners, how paid.

SEC. 10. The expenses of imprisonment of any criminal prisoner, such as accrue 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.

Prisoners to have certain liberties, except, &c.

SEC. 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,

Digitized by Google

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.

Grand juries to examine jails and make report.

SEC. 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.

Circuit court to inquire and see that prisoners are humanely treated.

SEC. 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.

* * * * * * * * * *

Keepers of jails to retain prisoners received under authority of United States.

SEC. 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 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 law of the United States.

Liability of jailors on failure of duty in case of United State prisoners.

SEC. 18. The keeper of every jail aforesaid, shall be subject to the same pains and penalties for any neglect or failure of duty therein, 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.

United States to pay for use of jail, jailors fees, &c.

SEC. 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 jailor 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.

Duty of sheriff and court when jail is out of repair.

SEC. 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

Digitized by Google

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.

Deputy to be appointed by sheriff, and removable at pleasure.

SEC. 21. Such deputy shall be appointed by the sheriffs, and shall be under their sole direction, and be removable by them at pleasure.

Guard may be employed to guard prisoners, when.

SEC. 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 courts, 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.

Expenses, how audited and paid.

SEC. 23. The expenses of said guard to be audited and paid as other county expenses.

Prisoner may be committed to jail of some other county, when.

SEC. 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.

When so committed, notice to be given to judge.

SEC. 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 com-

Removed for trial by habeas corpus.

Digitized by Google

mitted, 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.

Sheriff or jailor to obey writ of habeas corpus.

SEC. 26. It shall be the duty of the 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.

Failing to obey writ, how punished.

SEC. 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 aggrieved, 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 aggrieved, his executors or administrators, in an action on the case, founded upon this statute.

May also be removed from office.

SEC. 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.

Fees of sheriff in such cases.

SEC. 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.

Expenses how paid.

SEC. 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 commenced.

SEC. 31. The sheriff may be imprisoned in the jail of his own

Digitized by Google

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. Sheriff may be imprisoned in the jail of his own county.

Approved February 26th, 1835.

CHAPTER 90.

JUDGMENTS AND DECREES.

AN ACT regulating judgments and decrees.

SEC. 1. Lien of judgments and decrees in the supreme court; extent of.
2. In any court of record, extent of.
3. Lien of judgment or decree to extend to real estate acquired after rendition. To commence on the day of rendition, and continue three years, &c.
4. Execution may issue without scire facias, when.
5. Effect of sale of land under junior judgment, &c.
6. Proceeds, how applied.
7. Scire facias to revive, may issue within ten years; not after.
8. Scire facias before, and judgment after expiration of lien, effect of.
9. Scire facias, how served.
10. If defendant cannot be found, order of publication to be made.
11. Order, how and where published.
12. On service, or publication, &c., judgment or decree to be revived.
13. If one or more plaintiffs die, judgment survives, when to the executor or administrator, and when to the heir. In whose name revived, &c.
14. If several defendants, and some die, judgment, &c., concerning real estate survives and against whom. How revived. If concerning personalty, against whom it survives, &c. How revived.
15. If defendant die after levy of execution on real estate, sheriff shall not execute, but return it, &c.
16. Judgment or decree may be revived against the administrator de bonis non, when.
17. Acknowledgment of satisfaction to be entered, when.
18. By whom to be entered.
19. If made in court, to be entered of record. If in vacation, on the minutes, &c.
20. If made by agent, his authority to be filed.
21. Effect of acknowledgment.
22. If party receiving satisfaction refuse to acknowledge, proceedings.
23. Court may order satisfaction to be entered, when.
24. Costs, how recovered.
25. Clerks to leave a space in record for entering satisfaction.
26. What entries shall be made by clerk, in satisfaction of judgment or decree.
27. Clerks to keep dockets of judgments and decrees.
28. Entries they shall make therein.
29. What such docket shall contain.
30. Transcripts of judgments and decrees of supreme court to be entered thereon.
31. Clerk to forfeit $100, if he fail to comply with the preceding sections, &c.
32. Copy of decree of conveyance of real estate to be recorded, where and when. Effect of failure.
33. Not to be recorded, when.
34. Construction of the term, "real estate."

Digitized by Google

CHAP. 90.

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

Lien of judgments and decrees in the supreme court; extent of. 1835, p. 339.

SECTION 1. Judgments and decrees obtained in the supreme court, shall, upon the filing of a transcript thereof in the clerk's office of the circuit court of any county, 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.

In any court of record, extent of.

SEC. 2. Judgments and decrees rendered by any court of record, 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.

Lien of judgment or decree to extend to real estate acquired after rendition.

SEC. 3. The lien of a judgment or decree shall extend as well to the real estate, acquired after the rendition thereof, as to that which was owned, when the judgment or decree was rendered. Liens shall commence on the day of the rendition of the judgment, and shall continue for three years, subject to be revived as hereinafter provided; but when two or more judgments or decrees are rendered at the same term, as between the parties entitled to such judgments or decrees, the lien shall commence on the last day of the term at which they are rendered.

To commence on the day of rendition and continue three years, &c.

Execution may issue without scire facias, when.

SEC. 4. Execution may issue at any time during the existence of the said lien, without a scire facias to revive the judgment (*a*)

Effect of sale of land under junior judgment, &c.

SEC. 5. The sale of lands under a junior judgment or decree, shall pass the title of the defendant, subject to the lien of all prior judgments and decrees then in force.

Proceeds how applied.

SEC. 6. The money arising from such sale shall be applied to the payment of the judgment or decree under which it may have been made.

Scire facias to revive, may issue within ten years; not after.

SEC. 7. The plaintiff, or his legal representative, may, at any time within ten years, sue out a scire facias to revive a judgment and lien, but after the expiration of ten years from the rendition of the judgment, no scire facias shall issue.

Scire facias before, and judgment after expiration of lien, effect of.

SEC. 8. If a scire facias is issued to revive a judgment and lien, before the expiration of the lien, and a judgment of revival is afterward rendered, although it may be after the expiration of the lien, yet, the said lien shall prevail over all intermediate incumbrances.

SEC. 9. The scire facias shall be served on the defendant,

(*a*) *Vide*, Dowsman vs. Potter, 1 Missouri Rep., 518.

Digitized by Google

or his legal representatives, terre-tenants, or other persons occupying the land, and be directed to, and executed in any county in this state. Scire facias, how served.

SEC. 10. 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 show cause, at the next term of such court, why such judgment or decree should not be revived, and the lien continued. If defendant cannot be found, order of publication to be made.

SEC. 11. 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. Order, how and where published.

SEC. 12. If, upon service of the scire facias, or publication as aforesaid, the defendant or any of his creditors, do not appear and show 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. On service or publication, &c., judgment or decree to be revived.

SEC. 13. 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 concerning the personalty, shall survive to the executors or administrators of such deceased party; and, if concerning real estate, to his, or their heirs or devisees; and 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. If one or more plaintiffs die. judgment survives, when to the executors or administrators, and when to the heirs, &c. In whose name revived, &c.

SEC. 14. When 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 concerning real estate, shall survive against his, or their heirs or devisees, and execution may issue against any surviving defendant or defendants; or such judgment or decree may be revived by the heirs or devisees of any, or all such deceased defendants, by scire facias, and execution may be sued out against the surviving defendant or defendants, and the heirs or devisees of such deceased defendants, or such of them as are made parties jointly; (*b*) but if such judgment or decree concern If several defendants and some die, judgment, &c., concerning real estate survives, and against whom. How revived.

(*b*) *Vide*, Armstrong vs. Prewit, 5 Missouri Rep., 476. As to lien of judgments, *vide*, Friar vs. Ray, 5 Missouri Rep., 510. The judgment of a county court

Digitized by Google

If concerning personalty, against whom it survives, &c

the personalty, execution shall be sued out only against the surviving defendant or defendants, and if the lien of the judgment or decree has not expired, it shall be exhibited in the county court for allowance, as other demands against the deceased defendant or defendants estate; but if the lien has expired, the judgment or decree shall be revived against the executors or administrators of the deceased defendant or defendants, and then shall be proceeded with as hereinbefore directed.

How revived.

If defendant die after levy of execution on real estate, sheriff shall not execute, but return it, &c.

SEC. 15. If any defendant shall die, after his real estate shall have been seized on execution, the service thereof shall not be completed, but the sheriff shall return the execution, together with the fact of the defendant's death, which shall be a sufficient indemnity to him for his failure to proceed.

Judgment, &c. may be revived by, or against administrator de bonis non, when.

SEC. 16. 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 served by or against the administrator de bonis non, in the manner aforesaid.

Acknowledgment of satisfaction to be entered, when.

SEC. 17. 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.

By whom entered.

SEC. 18. 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.

If made in court, to be entered of record.

When on the minutes, &c.

SEC. 19. If the acknowledgment is made in court, it shall be entered of record; but 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.

If made by agent, his authority to be filed.

SEC. 20. When made by an agent, his authority shall be filed in the office of the clerk of the court where the acknowledgment is made.

Effect of acknowledgment.

SEC. 21. The acknowledgment so made shall forever discharge and release the judgment or decree.

Refusal to acknowlege, satisfaction; proceedings.

SEC. 22. If a person receiving satisfaction of a judgment or decree, shall refuse, within a reasonable time after request

on a demand against a deceased person's estate, is binding and conclusive until reversed; McKinney, administrator, vs. Davis, 6 Missouri Rep., 501. A memorandum at the foot of a judgment is no part of it; Fugate vs. Glascock, 7 Missouri Rep., 577. As to priority of lien between a judgment and conveyance, *vide*, Jones vs. Luck, 7 Missouri Rep., 551.

Digitized by Google

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.

Court may order it to be entered, when.

SEC. 23. The court may, thereupon, order the satisfaction to be entered by the clerk, with the like effect as if acknowledged as aforesaid.

Costs how recovered.

SEC. 24. The costs attending such acknowledgment shall be recovered of the party refusing, by fee-bill, as in other cases.

Clerks to leave a space in record for entering satisfaction.

SEC. 25. 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 vacation of such judgment or decree.

Entries to be made by clerks on satisfaction of judgment or decree.

SEC. 26. 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 vacated, 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.

Clerks to keep dockets of judgments and decrees.

SEC. 27. The clerks of courts of record shall keep in their respective offices a well bound book, for entering therein an alphabetical docket of all judgments and decrees.

Entries they shall make therein.

SEC. 28. 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; and if the judgment or decree be against several persons, it shall be docketed in the name of each person against whom it was recovered, in the alphabetical order of their names respectively.

What such docket shall contain.

SEC. 29. Such docket shall contain, in columns ruled for that purpose: *First*, The names of the parties; *Second*, The date; *Third*, The nature of the judgment or decree; *Fourth*, The amount of the debt, damages and costs; *Fifth*, The book and page in which it is entered; *Sixth*, A column for entering a note of the satisfaction, or other disposition thereof.

Transcripts of judgments, &c. of supreme court to be entered therein.

SEC. 30. Transcripts of the judgments or decrees of the supreme court shall, so soon as they are filed in the office of the clerk of the circuit court, be entered in the said docket.

SEC. 31. Any clerk failing to comply with the provisions of any of the five preceding sections, or who shall fail to

Digitized by Google

CHAP. 91.

Clerk to forfeit $100 if he fail to comply with the preceding sections, &c.

enter in said docket, within the time required, the judgments of justices' courts, transcripts of which have been filed in his office, shall forfeit and pay to the party who is, or may be, injured thereby, the sum of one hundred dollars, to be recovered by action of debt.

Copy of decree of conveyance of real estate to be recorded, where and when.

SEC. 32. In all cases where any court of record shall decree a conveyance of real estate, or that any real estate pass, the party in whose favor the decree is rendered 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 eight months after such decree is entered;

Effect of failure.

and if such decree be not so recorded, it shall not be valid, except between the parties thereto, and such as have actual notice thereof.

Not to be recorded, when.

SEC. 33. Nothing contained in the preceding section shall be so construed as to require a party to record a decree, when a conveyance has been executed in pursuance thereof, and acknowledged or proved, and deposited for record in the proper office within the time therein limited.

Construction of the term "real estate."

SEC. 34. The term "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 15, 1845.

CHAPTER 91.

JURORS.

AN ACT concerning grand and petit jurors.

SEC. 1. Courts may order jurors to be summoned.
2. Qualifications of grand jurors.
3. Grand jurors to be summoned six days before the term; how and by whom.
4. In case of non-attendance of grand juror, &c., another may be sworn.
5. Grand juror may be indicted by the jury of which he is a member; proceedings.
6. Qualifications of petit jurors.
7. Grand or petit juror may be challenged or discharged, when.
8. Exception, not after the jury are sworn.
SEC. 9. Persons exempt from serving.
10. Grand jurors exempt from serving on petit jury during same term.
11. Service of juries to be equalized; certain persons to be avoided.
12. Who shall not be sworn as jurors.
13. In civil cases, either party may challenge three jurors.
14. Court may order special jury of 18 in civil cases.
15. If the panel is exhausted, the court to order others to be summoned.
16. Penalty for non-attendance.

Digitized by Google

SEC. 17. Compensation of grand jurors. Discretionary with the county court.
18. Clerk to keep an account of service of grand jurors, &c., on application. To be verified by the affidavit of the juror.
SEC. 19. On demand, clerk to give juror scrip for the amount, &c.
20. Fees of clerks in such cases.
21. Forfeiture of $100 on any officer for receiving reward, &c., for excusing a person from serving on a jury.

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

SECTION 1. All courts, before whom jurors are required, may order the sheriff or other officer to summon a sufficient number of jurors. Courts may order jurors to be summoned. 1835, p. 342.

SEC. 2. Every grand juror shall be a citizen of the state, resident in the county, over twenty-one years of age; shall be a householder or freeholder, and otherwise qualified. Qualifications of grand jurors.

SEC. 3. Every grand juror shall be summoned by the sheriff, or other officer, either personally, or by a writing left at the dwelling house of said juror, six days at least before the first day of the court. Grand jurors to be summoned six days before the term; how and by whom.

SEC. 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. Non-attendance of grand juror, &c., another may be sworn.

SEC. 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 made against a grand juror, the foreman shall inform the prosecuting attorney of the same, and if, on examination, there are grounds for proceding against said juror, he shall inform the court thereof, and the court shall discharge the juror, and cause another to be sworn, if necessary. Grand juror may be indicted by the jury of which he is a member; proceedings.

SEC. 6. Every petit juror shall be a free white male citizen of the state, resident in the county, above the age of twenty-one years, and not otherwise disqualified. Qualification of petit jurors.

SEC. 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. Grand or petit juror may be challenged and discharged, when.

SEC. 8. No exception to a juror, on account of his citizenship, non-residence, state or age, or other legal disability, shall be allowed after the jury are sworn. Exception, not after the jury are sworn.

SEC. 9. No person exercising the functions of a clergyman, practitioner of physic, attorney at law, clerk or other officer of the court, ferry keepers, overseer of roads, coroner, constable, or judge of a court of record, or any person over the age of sixty-five years, shall be compelled to serve on a jury. Persons exempt from serving.

Digitized by Google

CHAP. 91.

Grand jurors not to serve on petit jury.

SEC. 10. Grand jurors shall not be compelled to serve on a petit jury during the same term.

Service on juries to be equalized. Certain persons to be avoided.

SEC. 11. 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, habitual idlers and vagabonds, and those who are under the undue influence of either party.

Who shall not be sworn as jurors.

SEC. 12. 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, or who is of kin to either party to any such cause, within the fourth degree of consanguinity or affinity, shall be sworn as a juror in the same cause.

In civil cases either party may challenge three jurors.

SEC. 13. In civil trials either party is entitled to challenge, peremptorily, three jurors.

Court may order special jury of 18 in civil causes. Duty of sheriff in such cases.

SEC. 14. All courts before whom juries are required, have the power to order a special jury of eighteen, for the trial of any civil cause, and, when ordered, the sheriff shall summon them according to the order of the court, and make out and deliver to each party, or his attorney, a panel of the jury so summoned.

If the panel is exhausted, the court to order others to be summoned.

SEC. 15. If such panel be exhausted by challenge or otherwise, before the jury is sworn, the court shall order the sheriff to summon a sufficient number of other jurors to complete the jury.

Penalty for non-attendance.

SEC. 16. A person summoned as a grand or petit juror, and failing to attend, shall be fined not exceeding ten dollars, unless a satisfactory excuse be offered.

Compensation of grand jurors. Sess. acts, 1838-9, p. 76.

SEC. 17. Each grand juror shall receive one dollar for every day he may actually serve as such, and five cents for every mile he may necessarily travel in going from his place of residence to the court-house, and returning to the same, in the discretion of the county court, to be paid out of the county treasury.

Discretionary with county court.

Clerk to keep an account of service of grand jurors, &c., on application. To be verified by the oath of the juror. 1840-1, p. 98.

SEC. 18. The clerk of the circuit court shall keep a book, in which he shall enter, upon the application of each grand juror, the number of days such grand juror shall have served as such, and the number of miles necessarily traveled in obedience to the summons, to serve on the grand jury, and such entry shall be verified by the oath of such juror.

SEC. 19. Upon the demand of such grand juror, the clerk

Digitized by Google

shall give him a scrip, verified by his official signature, showing the amount which such juror is entitled to receive out of the county treasury. Clerk to give juror a scrip for the amount, &c.

SEC. 20. The clerk shall receive one dollar and fifty cents for his services at each term of the court, in complying with the provisions of the next preceding sections. Fees of clerks in such cases.

SEC. 21. 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, 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 action of debt, in any court having cognizance thereof. Forfeiture of $100 on any officer for receiving reward, &c., for excusing a person from serving on jury.

Approved March 27, 1845.

CHAPTER 92.

JUSTICES OF THE PEACE.

AN ACT to provide for the election of justices of the peace, and to prescribe their powers and duties.

SEC. 1. Each township, except Saint Louis, entitled to four justices.
2. St. Louis township entitled to two justices for each ward, &c.
3. To keep their offices in the ward or district for which they were elected
4. Extent of their powers and duties.
5. Offices vacated by removing out of ward or district.
6. Who shall not be a justice of the peace.
7. Justices in office, to act till the expiration of their commissions.
8. County court to supply vacancies by appointment, when.
9. Qualifications of a justice of the peace.
10. How commissioned; tenure of office.
11. Elections for, how conducted.
12. In case of a tie, county court to decide.
13. Certificate of election shall be given by county court.
14. What the clerk shall endorse thereon.
SEC. 15. Justice to take an oath within twenty days.
16. Shall cause the certificate, and the oath thereon, to be recorded in the office of the clerk of the county court within thirty days after its receipt.
17. Clerk to certify to the governor the acceptance of commission, when.
18. Justice to discharge his duties on division of township, as though it had not been divided.
19. Power and jurisdiction of justices of the peace. To keep the peace. To arrest peace breakers. To arrest persons who attempt to break the peace, &c.
20. May commit them to prison.
21. Recognizance to be certified to the circuit court.
22. No justice to act till his commission be recorded.
23. Penalty for violating preceding section.
24. In what cases a justice may punish for contempt.
25. Such contempts punishable by fine and imprisonment, extent of.

Digitized by Google

CHAP. 92.

SEC. 26. No person to be punished till an opportunity be given him to be heard in his defence.
27. Record and judgment on conviction for contempt.
28. What the warrant of commitment shall set forth.
29. Power of justices to issue subpœnas.
30. May be removed from office for bribery, perjury, &c.
31. Resignation of, to be in writing.
32. When a justice resigns, or removes out of the township, shall deliver to the clerk all his dockets, records, &c.
33. The clerk shall give a receipt therefor.

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

Each township, except St. Louis, entitled to four justices. Rev. C., 1835.

SECTION 1. Each municipal township, (except the township of St. Louis in the county of St. Louis,) is entitled to four justices of the peace, to be elected and commissioned in the manner hereinafter provided.

St. Louis township entitled to two justices for each ward, &c. Sess. acts, 1838–9.

SEC. 2. The township of St. Louis, in the county of St. Louis, is entitled to two justices of the peace for each ward in the city of St. Louis, and two for that portion of the township not included within the city, to be elected, commissioned and qualified as other justices, except as hereinafter provided.

To keep their offices in the ward or district for which they were elected.—*Ib.*

SEC. 3. The justices for the township of St. Louis shall keep their offices, and hold their courts within the ward or district, for which they were respectively elected, which shall be designated in their commission.

Extent of their powers and duties.—*Ib.*

SEC. 4. Justices elected for the township of St. Louis shall exercise the powers, and perform the duties throughout their townships, prescribed by law in relation to other justices of the peace.

Office vacated by removing out of ward or district.—*Ib.*

SEC. 5. Whenever a justice of the peace of the last mentioned township shall remove his office, or place of holding his courts, out of the ward or district for which he shall be elected or appointed, his office shall be vacated, and he shall thereupon proceed as provided by law in case of removal from the township.

Who shall not be a justice of the peace.

SEC. 6. No clerk of the circuit or county court, or the deputy of either, shall hold or exercise the office of justice of the peace.

Justices in office to act till the expiration of their commissions.

SEC. 7. Each justice of the peace now in office, shall continue to act as such until the expiration of his commission, and until his successor is elected and qualified.

County court to supply vacancies by appointment, when.

SEC. 8. When a vacancy occurs in the office of justice of the peace, the county court of the county in which such vacancy occurs, may supply the same by the appointment of some person competent and qualified, who shall hold his office until

Digitized by Google

the next general election of county officers, and until his successor is elected, commissioned and qualified.

Qualifications of a justice of the peace.

SEC. 9. 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.

How commissioned; tenure of office.

SEC. 10. 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.

Elections for, how conducted.

SEC. 11. 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.

In case of a tie, county court to decide.

SEC. 12. 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.

Certificate of election to be given by county court, when.

SEC. 13. 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, 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.

What the clerk shall endorse thereon.

SEC. 14. 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.

Justice to take an oath within twenty days.

SEC. 15. 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.

Shall cause certificate and oath thereon to be recorded in the office of the clerk of the county court within thirty days after its receipt.

SEC. 16. 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 to do so, it shall be deemed a refusal thereof.

SEC. 17. The clerk of the county court, when he records

Digitized by Google

CHAP. 92.

Clerk to certify to governor the acceptance of the commission, &c.

the certificate of election of any justice of the peace, in the manner prescribed in this act, shall certify to the governor the acceptance of such commission.

Justice to discharge his duties on division of township, &c.

SEC. 18. 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 expires, as if the township had not been divided.

Power and jurisdiction of justices of the peace.

SEC. 19. 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.

To keep the peace.

To arrest peace breakers.

To arrest persons who attempt to break the peace, &c.

May commit them to prison.

SEC. 20. If such persons refuse to give security, they shall be committed to prison until they find the same.

Recognizance to be certified to the circuit court.

SEC. 21. Every recognizance so taken, for the keeping the peace or for good behavior, shall be certified to the next circuit court of the county.

No justice to act till his commission be recorded.

SEC. 22. No person, commissioned as a 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.

Penalty for violating preceding section.

SEC. 23. Any person who shall act in violation of the preceding section, shall, upon conviction thereof, by indictment, be fined not exceeding one hundred dollars.

In what cases a justice may punish as for contempt.

SEC. 24. 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, or insolent behavior towards such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which shall tend to interrupt such proceedings, 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 by any person, in the presence of the justice, to the execution of any lawful order or process made or issued by him.

Digitized by Google

Such contempts punishable by fine and imprisonment; extent of.

SEC. 25. Punishment 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 such fine.

No person to be punished till an opportunity be given to be heard in defence.

SEC. 26. 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.

Record and judgment on conviction for contempt.

SEC. 27. Upon the conviction of any person for a contempt, the justice shall make up a record of the proceedings thereon, stating therein the particular circumstances of the offence, and the judgment rendered therein.

What the warrant of commitment shall set forth.

SEC. 28. The warrant of commitment for a contempt, shall set forth the particular circumstances of the offence, or it shall be void.

Power of justices to issue subpœnas.

SEC. 29. Justices of the peace have power to issue subpœnas for witnesses in all cases cognizable before the circuit court or county court, and in all cases cognizable before justices of the peace, and in all matters submitted to referees and arbitrators, and in all cases where it may be necessary for the taking of depositions.

May be removed from office.

SEC. 30. Every justice of the peace who shall be convicted of bribery, perjury, or other infamous crime, or convicted of any wilful misdemeanor in office, by indictment, shall be removed from office.

Resignations of, to be in writing.

SEC. 31. All resignations of justices of the peace shall be in writing, and addressed to the county court, or to the clerk thereof, in vacation.

When a justice resigns, or removes out of the township, he shall deliver to the clerk all his dockets, records, &c.

SEC. 32. Whenever a justice of the peace shall resign, move out of the township, or be otherwise disqualified, he shall immediately thereafter deliver to the clerk of the county court, 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.

The clerk shall give a receipt therefor.

SEC. 33. 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.

Approved March 13, 1845.

Digitized by Google

CHAPTER 93.

JUSTICES COURTS.

AN ACT to establish justices' courts, and to regulate proceedings therein.

ARTICLE I. Of the jurisdiction of justices courts.
II. Of the commencement of suits, and the service and return of process.
III. Of the appearance and pleadings of the parties, of adjournments, and of consolidating actions.
IV. Of witnesses and depositions.
V. Of judgments of non-suit and by default, and of trials, and of the revival of suits.
VI. Of judgments and filing transcripts thereof, and of the stay of executions.
VII. Of executions and proceedings thereon.
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.
2. Enumeration of actions over which justice has jurisdiction.
3. Enumeration of actions where justice and circuit court have concurrent jurisdiction.
4. Certain actions withdrawn from justices jurisdiction.
5. Justice shall have jurisdiction throughout the county.
6. At what place suit is to be brought; instances given.
7. At what place suit is to be brought by attachment.
8. When several defendants, where suit is to be brought.
9. When no justice in the township, where suit may be brought.

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

Justices of the peace authorized to hold courts. 1835, p. 347.

SECTION 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.

Actions and proceedings over which justice has jurisdiction.

SEC. 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 dol-

Digitized by Google

lars; (*a*) *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; (*b*) 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.

Concurrent jurisdiction with the circuit court in civil cases.

SEC. 3. Justices of the peace and the circuit courts, shall have concurrent jurisdiction over the following cases: *First*, In all actions of debt, covenant and assumpsit, and all other actions founded on contract, when the debt or balance due, or damages claimed, exclusive of interest, shall exceed fifty dollars and not exceed ninety dollars; *Second*, In all actions on bonds and notes for the payment of any sum of money, exceeding fifty dollars, exclusive of interest, and not exceeding one hundred and fifty dollars; *Third*, In all actions of trespass (*c*) and trespass on the case, for injuries to persons or to personal or real property, wherein the damages claimed shall exceed twenty dollars, and not exceed fifty dollars. (*d*)

Not to have jurisdiction in certain cases.

SEC. 4. 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; but if a suit is pending in any justice's court, against any testator or intestate, at the time of his or her death, and which by law survives, the death of the defendant shall be suggested, and the justice shall immediately make an entry thereof on his docket, and shall cease all further proceedings in the case, and certify and return to the county court of his county, or, if in St. Louis county, to the probate court thereof, a transcript of all the entries made in

(*a*) *Vide*, Floyd vs. Wiley, 1 Missouri Rep., 305; Buckner vs. Armour, *ib.*, 534. Justices of the peace have no jurisdiction in actions on notes exceeding $90, to be paid in property; Martin vs. Chauvin, 7 Missouri Rep., 277; Wimer vs. Brotherton, *ib.*, 264.

(*b*) *Vide*, O'Bryan vs. The Union Fire Company, 7 Missouri Rep., 38.

(*c*) An action of trespass will lie before a justice of the peace for trespass committed on lands; but the plaintiff in such action can recover single damages only; Papin vs. Ruelle, 2 Missouri Rep., 26; Morris vs. Lenox & Martin, 8 *ib.*, 252.

(*d*) A justice of the peace has jurisdiction of an action against an officer for an escape, if the sum demanded does not exceed fifty dollars; Lockhart vs. Hays, 1 Missouri Rep., 193.

Digitized by Google

his docket, in the cause, together with all the papers relating to the suit and filed therein, in the same manner and within the same time as upon an appeal; and, upon the filing of the proceedings and papers in the office of the clerk, the court shall become possessed of the cause, and shall proceed as in cases of other demands against an estate, ten days previous notice thereof having been given to the executor or administrator, or such notice having been waived by him.

Jurisdiction co-extensive with the county.

SEC. 5. Every justice of the peace shall have jurisdiction co-extensive with the county for which he shall be elected or appointed.

Before whom, and when actions shall be brought; instances enumerated.

SEC. 6. 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 defendants, or one of them, resides; or, *Second*, Wherein the plaintiff resides, and the defendants, or one of them, may be found; but if the defendant in any action is a non-resident of the state, 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.

Where suit is to be brought by attachment.

SEC. 7. Every action instituted by attachment shall be brought before some justice of the township wherein the property of the defendant may be found.

When several defendants, where suit is to be brought.

SEC. 8. 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.

Where suit shall be brought when there is no justice in the township.

SEC. 9. 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, such suit may be brought before some justice of any adjoining township in the same county.

Digitized by Google

Of the commencement of suits, and the service and return of process.

SEC. 1. Justice to appoint a law day every two months.
2. Justice shall keep a docket; what he shall enter therein. The issue of process; the appearance of parties, &c.
3. What facts to be entered on the docket.
4. By what kind of process suit may be commenced; voluntary appearance may be made.
5. When plaintiff is non-resident or unable to pay costs, may be ruled to give security by a day therein named.
6. Poor persons, unable to pay costs, to sue without giving security.
7. Suits on instruments of writing, the same to be filed.
8. But if such instrument be lost, affidavit thereof made.
9. Set-off on such lost instrument, party required to prove loss.
10. Suits on account, bill of items to be filed.
11. Process to run in the name of "The State of Missouri."
SEC. 12. Process directed to the constable, &c., returnable in not less than six, nor more than seventy-four days.
13. Form of summons.
14. Joint action against several defendants in different townships, how directed and served.
15. Provision as to failure of judgment against the defendant residing in township where suit is commenced.
16. Service of summons, when and how executed.
17. For want of officer to execute writ, justice may appoint another.
18. Demand may be given to the constable for collection; his liability.
19. After commencement, if defendant pay demand and costs, suit to be dismissed.
20. What return the constable shall make.
21. Liability of constable for failing to make return, or for making a false return.

SECTION 1. Every justice of the peace shall appoint a day, every two months, 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. Justice to appoint a law day every two months. Act Jan. 14, 1843, p. 57.

SEC. 2. Every justice of the peace shall keep a docket, (*e*) 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 with or 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 the set-off is 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 jury or by the justice; *Seventh*, The verdict of a jury, and when rendered; *Eighth*, The judgment rendered by the justice, and the time of rendering the same; *Ninth*, The time of issuing Shall keep a docket. What he shall enter therein.

(*e*) The docket of a justice of the peace is evidence of nothing except what the law requires to be written down; Perry vs. Block et al., 1 Missouri Rep., 342; Brown vs. Pearson, 8 *ibid*, 159

Digitized by Google

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.

Items in preceding section enumerated, &c., shall be entered in the docket, how.

SEC. 3. The several facts in the preceding 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.

Other proceedings may be entered.

Suits may be instituted by voluntary appearance or process.

SEC. 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 or an attachment against the property of the defendant.

If plaintiff is non-resident, or unable to pay costs, may be ruled to give security by a day therein named. Act Feb. 16, 1841, sec. 6.

SEC. 5. That if the plaintiff is a non-resident of the county, or shall become a non-resident after the commencement of a suit, or, if from any cause, the justice shall be satisfied that he is unable to pay the costs, the justice shall rule the plaintiff on or before the day in the rule named, to give security for the payment of costs in such suit, and if the plaintiff fail, on or before the day in such rule named, to file the obligation of a responsible person of the county, whereby he shall bind himself to pay all costs that have or may accrue in such action, the justice of the peace, on motion, shall dismiss the suit, unless such security is given before the motion is determined.

Poor persons unable to pay costs, may sue without giving security.—*Ib.*

SEC. 6. If the justice shall, before the commencement of any suit, be satisfied that the plaintiff is a poor person, and unable to pay the costs and expenses of the suit, the justice may, in his discretion, permit him or her to prosecute his or her action as a poor person, from whom no security for costs shall be required.

Suits founded on instruments of writing, same to be filed.

SEC. 7. 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. (*f*)

If such instrument be lost, affidavit thereof to be made and filed.

SEC. 8. 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,

(*f*) *Vide*, Sublette & Vasques vs. Noland, 5 Missouri Rep., 516.

Digitized by Google

stating such loss or destruction, and setting forth the substance of such instrument.

Suit or set-off on such lost instrument, party required to prove loss.

SEC. 9. 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.

In suits founded on account, bill of items to be filed.

SEC. 10. 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. (*g*)

Process shall run in the name of "the state of Missouri."

SEC. 11. All process issued by justices of the peace, shall run in the name of "The state of Missouri," (*h*) be dated on the day it issued, and shall be signed by the justice granting the same.

Process shall be a summons, directed to the constable, returnable in not less than six nor more than seventy-four days.

SEC. 12. In all cases not otherwise specially provided for, the process 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 seventy-four days from the date thereof, to answer the complaint of the plaintiff.

Form of the summons.

SEC. 13. 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." (*i*)

Joint actions against several defendants, in

SEC. 14. If any plaintiff has a just cause of action against several persons, residing in different townships in the same

(*g*) *Vide*, Brown vs. Fricke, 1 Missouri Rep., 312; Casey vs. Clark, 2 Missouri Rep., 12; Odle vs. Clark, *ib.*, 13; Neill et al. vs. Dillon, 3 *ib.*, 43; Harryman vs. Robertson, *ib.*, 316.

(*h*) *Vide*, Davis vs. Wood, 7 Missouri Rep., 162, in which the cases of Charless vs. Marney, 1 *ib.*, 537, Fowler vs. Watson, 4 *ib.*, 27, Little vs. Little, 5 *ib.*, 227, are overruled.

(*i*) *Vide*, Charless vs. Marney, 1 Missouri Rep., 537; Barnett et al. vs. Lynch, 3 *ibid*, 261.

Digitized by Google

CHAP. 93.

different townships, how directed and served.

county, and desires to bring a joint action against them, the summons may be directed to the constable of the township in which the suit is commenced, and shall be served by such constable in any township in the county in which any of the defendants reside.

Plaintiff shall be non-suited, when.

SEC. 15. If, in any such action, the plaintiff fails to obtain judgment against that defendant who resides in the township in which the suit is commenced, he shall be non-suited as to the other defendants.

Service of summons when and how executed.

SEC. 16. 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 when 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 said summons at the usual place of abode of the defendant, with some white person of the family above the age of fifteen years; but in all cases where the defendant shall refuse to hear such writ 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.

For want of officer to execute a writ, justice may empower another.

SEC. 17. 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.

Form of endorsement on process.

"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.

Demand may be given to the constable for collection; his liability.

SEC. 18. If any person has a bond, note or account, on which he wishes suit brought, he may place the same in the hands of the constable of the proper township, who shall give a receipt therefor, and who shall, without delay, cause suit to be commenced thereon, unless otherwise directed by the legal owner of said note or his agent, and such direction shall be specified in the constable's receipt; and if the constable receive the money on such bond, note or account, before suit

Digitized by Google

is brought, and fail to pay it over on demand, or fail to bring suit, whereby any loss is sustained, he and his securities shall be liable therefor on his official bond; nothing herein contained shall prevent a plaintiff himself from filing his bond, note or account, with the justice when he commences a suit.

After commencement, if defendant pay demand and costs, suit to be dismissed.

SEC. 19. 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.

What return the constable shall make.

SEC. 20. 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.

Liability of constable for failure to execute process or make return, or for making a false return.

SEC. 21. If any constable fail to execute any process, other than an execution, 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, of adjournments, and of consolidating actions.

SEC. 1. Suits to be conducted by plaintiff or agent.
2. Suits by minors, next friend to be appointed.
3. If suit begun by infant it shall not be dismissed if next friend become responsible.
4. Suits to be conducted by defendant or agent.
5. After service of process on infant, guardian to be appointed, how, &c.
6. Consent of next friend to be filed—but he is not liable for costs.
7. Authority of agent may be written or verbal; justice may require proof of such authority.
8. Justice to wait three hours for parties before going into trial.
9. Where some defendants are served in time and some not, how justice may proceed, or continue to bring in all defendants.
10. Without consent of parties, no further delay to bring in part of defendants allowed after second term.
11. If plaintiff shall not otherwise direct, justice to continue such cases to next term.
12. Brief statement of case on appearance of parties.
13. Set-off allowed, when; exceptions.
14. Notice of set-off must be given, when.
15. If set-off be founded on lost instrument, affidavit required.
16. How judgment to be given in cases of set-off.
17. How judgment to be entered in cases of set-off against executor or administrator.
18. When title comes in question, justice shall cease all further proceedings and certify transcript to circuit court.
19. In the circuit court, in such cases, what must be proved, &c.
20. Justice may, without application, continue cause.
21. Justice, on application and good cause shown, may grant continuance until next law day. Proviso.

Digitized by Google

CHAP. 93.

SEC. 22. No such continuance allowed unless on oath or affidavit that the party cannot safely proceed, &c.
23. Such continuance shall be for a reasonable time.
24. On failure of justice to hold court or try cause, no discontinuance of same, &c.
25. No suit to abate on account of vacancy of office of justice; how proceeded in, &c.
26. All demands to be included in same suit unless they would exceed justice's jurisdiction.
SEC. 27. If all demands would exceed jurisdiction, then part only may be joined.
28. Justice may consolidate suits between the same parties.
29. No such consolidation to be made when it would exceed the jurisdiction of justice.
30. After consolidation, all unnecessary costs to be paid by plaintiff, or abide the event of the suit.
31. On consolidation, plaintiff to recover costs only for one suit.

Suits to be conducted by plaintiff, or agent.

SECTION 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.

Suits by minors', next friend to be appointed.

SEC. 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.

Suit commenced by infant shall not be dismissed, if next friend become responsible.

SEC. 3. If a suit is commenced by an infant without a next friend, the same shall not be dismissed if any suitable person will file his written consent, with the justice, to become next friend and responsible for the costs of suit, when the exception is taken.

Suits to be defended by defendant or agent.

SEC. 4. Every defendant in a suit, except persons under twenty-one years of age, may appear and defend the same in person, or by agent.

After service of process on infant, guardian to be appointed, how, &c.

SEC. 5. After the service and return of process against the 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.

Consent of next friend to be filed; but he is not liable for costs.

SEC. 6. 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.

SEC. 7. A party authorized to appear by agent, may appoint any person to act as such agent, and the authority of the agent

Digitized by Google

may be either written or verbal, and shall, in all cases where the justice requires proof, be proved, either by the agent himself or other competent testimony, unless admitted by the opposite party. Authority of agent may be written or verbal.

SEC. 8. 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. Justice to wait three hours for parties before going into trial.

SEC. 9. When there are several defandants in a writ, and some of them are served with process in time, and others are not served, or not served in time, the plaintiff may direct the justice either to 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 trial day, and take new process against those that are not served. When some defendants are served in time and some not, how justice may proceed, or continue to bring in all the defendants.

SEC. 10. 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. Without consent of parties no further delay to bring in part of defendants, &c.

SEC. 11. If neither the plaintiff nor any person for him, shall be present to direct, nor shall have directed the course to be pursued, where only some are served, the justice shall continue the cause, and issue new process for those not served, when it may be necessary. If the plaintiff shall not otherwise direct, justice to continue such cases to next term.

SEC. 12. 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. Brief verbal statement of case to be made on appearance of the parties.

SEC. 13. 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 justices' court; *Second*, Where it is founded on 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. Set-off allowed, when. Exceptions.

SEC. 14. To entitle a defendant to set-off any demand, he must give notice thereof in court, either verbal or written, Notice of set-off must be given, when.

Digitized by Google

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.

Set-off to be filed, when.

If set-off be founded on lost instrument, affidavit required.

SEC. 15. 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 suit in a justice's court, on a lost or destroyed instrument of writing.

How judgment to be given in cases of set-off.

SEC. 16. 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; or 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 therefor.

How judgment to be entered in cases of set-off against executor or administrator.

SEC. 17. Whenever a set-off is established, in a suit brought by executors or administrators, exceeding the amount of the plaintiff's demand, the judgment shall be against them in their representative character, and shall be evidence of a debt established, but no execution shall issue thereon.

When title comes in question, justice shall cease further proceedings and certify transcript to circuit court.

SEC. 18. 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 verified by his own oath, or the oath of some credible person, 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 county in which the justice holds his 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 therein, in the same manner and within the same time as upon an appeal.

Circuit court, how to proceed therein.

What the plaintiff required to prove in such cases.

SEC. 19. Upon filing 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.

Digitized by Google

Justice may without application, continue a cause.

SEC. 20. A justice of the peace, without the application or consent of either party, may, if it be necessary, adjourn a cause, to his next law day.

Justice, on application and good cause shown, may grant a continuance.

SEC. 21. A justice of the peace, on application of either party, and for good cause shown, may adjourn a cause until his next law day: *Provided*, That a justice may continue a cause for a longer time, whenever he may be satisfied that a longer time is necessary to enable the parties to obtain testimony; or may adjourn for any other period, with the consent of both parties.

No continuance allowed, unless on oath or affidavit that the party cannot safely proceed, &c.

SEC. 22. 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.

Such continuance to be for a reasonable time.

SEC. 23. Every such adjournment shall be for such reasonable time, as will enable [the party] to procure such testimony or witness, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

No suit to be discontinued, &c., by reason of the justice failing to hold court, &c.

SEC. 24. No suit shall be deemed discontinued or abated, by reason of the failure of a justice to hold a court at the appointed day, nor by reason of any adjournment, 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.

Suit pending not to abate by reason of a vacancy in the office of justice.

SEC. 25. If a suit is pending in a justices' court, and the office of the justice before whom it is pending, becomes vacant from any cause whatever, the suit shall not abate, but the plaintiff at his election, may either let it remain until a successor to the justice is appointed, who shall hear and determine the same; or he may commence suit before some other justice of the township, and to enable him to do so in cases where it is necessary, he shall have leave to withdraw the instrument on which the first suit was brought, from the custody of any person or officer in whose hands it may be, such person or officer making a memorandum of the fact in the late justice's docket, under the title of the cause in which the instrument was filed.

Proceedings in such cases.

Digitized by Google

CHAP. 93.

All demands to be included in same suit, unless they would exceed justice's jurisdiction. Act Feb. 6, 1843, p. 75.

SEC. 26. If a plaintiff file with a justice at one time, several demands or causes of action, all of which may be joined in one suit, or has one cause of action against several defendants, and desires suit brought against them all, unless the plaintiff otherwise expressly directs, the justice shall join the several causes of action, or the several defendants in one writ, unless by such joinder, the jurisdiction of the justice shall be exceeded.

If all demands exceed jurisdiction, then part only may be joined.—*Ib.*

SEC. 27. If the jurisdiction of the justice will be exceeded by joining all the demands in one writ, then, only so many writs shall be issued, as will be necessary to prevent an excess of jurisdiction.

Justice may consolidate suits between the same parties.

SEC. 28. Whenever several suits shall be pending before a justice of the peace, by the same plaintiff, against the same defendant, for causes of action which may be joined; or, whenever several suits shall be pending before the same justice of the peace, against several defendants for the same cause of action, the justice before whom the same may be prosecuted, shall, upon motion of the defendant, order such suits to be consolidated, if it appear that the causes of action are such as may be joined in the same suit, that the questions which will arise in both actions are substantially the same, or that no defence is intended, or that the defence will be substantially alike in both cases. (*k*)

No such consolidation shall be made, when it would exceed the jurisdiction of the justice.

SEC. 29. No such order shall be made when its effect will be to increase the debtor's damages, in controversy, to an amount exceeding the jurisdiction of the court; but, if more actions than necessary are pending, they may be reduced, by consolidation, to such number only as is necessary to recover the demand of the plaintiff.

After consolidation, all unnecessary costs shall be paid by plaintiff.

SEC. 30. When any order for consolidation is made by the justice, the costs which have accrued in the actions unnecessarily brought prior to such order, shall be paid by the plaintiff, or abide the event of the suit, as the justice, from the circumstances, shall determine to be equitable and just.

On consolidation, plaintiff to recover costs only for one suit.

SEC. 31. When any plaintiff shall bring, before the same justice of the peace, several suits against the same defendant, for causes of action that may be joined according to the principles in the foregoing section, and when any plaintiff shall

(*k*) *Vide*, Martin vs. Chauvin, 7 Missouri Rep., 277; Moss vs. Brown, *ib.*, 305; Sykes vs. Planter's House, *ib.*, 477.

Digitized by Google

bring, before the same justice, several suits against several defendants for the same cause of action, the plaintiff shall recover only the costs of one action, and the costs of the other actions shall be adjudged against him.

ARTICLE IV.

Of witnesses and depositions.

SEC. 1. Subpœna of justice for witnesses, valid.
2. By whom and how subpœna served.
3. Attachment may issue against witnesses.
4. By whom and in what manner attachments executed.
5. Penalty on witness for non-attendance without good excuse.
6. Witness, after being fined, may, within thirty days, show cause and have the same remitted.
SEC. 7. Witness, when liable to private action for non-attendance.
8. Either party may take depositions.
9. Notice of the time and place of taking depositions to be given.
10. In what manner such notice to be served.
11. In what manner depositions to be taken and certified.
12. Under what circumstances depositions to be read.
13. What shall be evidence of place of residence.

SECTION 1. 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. Subpœna of justice valid to compel attendance of witnesses.

SEC. 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. By whom and how a subpœna to be served.

SEC. 3. Whenever it shall appear to the satisfaction of the justice, 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. Attachment may issue against witnesses, when.

SEC. 4. Every such attachment may be directed to any constable of the county in which the witness resides, and shall be executed in the same manner as a warrant in a criminal case, and the fees of the officers, for issuing and serving the same, shall be paid by the person against whom the same shall have been issued, unless he show 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. By whom and in what manner attachment may be executed.

Digitized by Google

Penalty on witness for non-attendance, without sufficient excuse. Fine not exceeding ten dollars.

SEC. 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 shown 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, 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.

Witness, after being fined, may, within 30 days, show cause and have the same remitted.

SEC. 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 show cause against the imposition thereof; and upon the hearing of such cause, if deemed sufficient, the justice may remit or mitigate such fine.

Witness, when liable to private action for non-attendance.

SEC. 7. Every person subpœnaed as aforesaid, and neglecting to appear, shall if his fees have been tendered to him, 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-attendance.

Either party in civil suits may take depositions.

SEC. 8. Either party in any civil suit depending before any court of record, arbitrators, or referees, or 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 the law commissioner of St. Louis county at the election of such party, or by any judge or justice of the peace of the state or county, wherein such witness may be.

Notice of the time and place of taking depositions to be given.

SEC. 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 service to the place of taking.

In what manner such notice to be served.

SEC. 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 agent resides out of the county, and has no agent in the suit therein, known to the justice or judge before whom the suit is pending, the service

Digitized by Google

of the notice may be by filing a copy thereof with such justice or judge.

In what manner depositions to be taken and certified.

SEC. 11. The depositions shall be taken and certified according to the statute regulating the taking of depositions, and shall be sealed up and returned so sealed, to the justice or judge 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.

Under what circumstances depositions to be read.

SEC. 12. The justice or judge 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 [or judge,] 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 or judge 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.

What shall be evidence of the residence of the witness.

SEC. 13. The deposition itself, or the certificate of the officer taking the same, accompanying the deposition, shall be received as evidence of the place of residence of the witness.

ARTICLE V.

Of judgments of non-suit, and by default, and of trials, and of the revival of suits.

SEC. 1. On death of plaintiff, suit not to abate, &c.
2. If executor or administrator fail to revive suit, citation to issue.
3. If executor or administrator fail to become party, non-suit entered.
4. In case of death of one of several plaintiffs, suit not to abate.
5. Proceedings to revive in case of the death of either party after final judgment.
6. Citation under preceding section, how and by whom served.
7. Manner in which justice shall proceed, when defendant fails to appear after three hours from time set for trial.
8. In case plaintiff fail to appear in three hours after time set for trial, non-suit entered.
SEC. 9. Power to set aside non-suit; proceedings thereon.
10. If non-suit set aside, notice to opposite party, &c.
11. If office of justice becomes vacant, or the party against whom judgment was entered die, how to proceed.
12. Suit to be tried at first term, unless continued for good cause.
13. On appearance, trial shall commence; equitable defence allowed.
14. Consideration of a bond or note may be impeached.
15. Such defence may be made against assignee of such instrument.
16. Either party may demand a jury.
17. Jury to consist of six, but parties may agree to a smaller number.

Digitized by Google

SEC. 18. Summons for jury to be issued to the constable.
19. Manner in which summons to be executed.
20. If constable do not obtain full jury, new summons to issue, &c.
21. The oath taken by the jurors.
22. When jury sworn, they shall hear the evidence.
23. Incompetency of evidence decided by justice; form of oath to witness.
24. Either party may be called on to testify, &c.
25. Either party may be subpœnaed as a witness; and on appeals in circuit court, bill of discovery may be filed, &c.
26. Any instrument offered in suit or set-off, is evidence, unless denied on oath.
27. The preceding section not to extend to executors or adm'rs.
28. Verdict to be delivered publicly.
29. When jury cannot agree, to be discharged, and a new trial granted.
30. Penalty for failing to appear as a juror.

On death of plaintiff, suit not to abate, &c.

SECTION 1. That no suit pending in a justice's court, which by law survives to the executor or administrator, shall abate by the death of the plaintiff, but the cause of action shall survive, and the executor or administrator of the plaintiff may prosecute the suit unto final judgment and execution; and every executor or administrator is hereby authorized to become a party to such suit.

Executor or administrator to prosecute to final judgment.

If executor or administrator fail to revive suit, citation to issue.

SEC. 2. That if the executor or administrator of the deceased plaintiff shall neglect or refuse to apply to the justice before whom the suit is pending, at the term of his court next succeeding the death of the plaintiff, the justice shall at the same term enter on his docket, the fact of the plaintiff's death, and issue a citation or notice, returnable to the next term thereafter, whereby the said executor or administrator shall be cited to appear at the return of the said citation, and cause himself to be made a party to said suit, instead of his testator or intestate.

If executor or administrator fail to become a party after service of citation, non-suit to be entered.

SEC. 3. That if such executor or administrator, shall neglect or refuse, after having been duly served with such citation, to become a party to said suit, the justice shall, thereupon, render judgment of non-suit against the said executor or administrator, as such, for costs of suit.

In case of death of one of several plaintiffs, suit not to abate.

SEC. 4. That if in any suit there be two or more plaintiffs or defendants, and one or more of such plaintiffs or defendants shall die before judgment, such suit shall not thereby abate, but the cause of action shall survive to the surviving plaintiff or plaintiffs and against the surviving defendant or defendants, and such death being suggested on the docket of the justice, the suit shall proceed in the same manner as if such death had not happened.

SEC. 5. That if a plaintiff die after a final judgment in his favor, or if from any cause it becomes necessary to revive a

Digitized by Google

judgment, a citation shall be issued by the justice who rendered judgment, or his successor, directed to the defendant, requiring him to show cause why the judgment should not be revived, or execution be issued thereon, and upon the return of such citation served, if no such cause be shown, the judgment shall be revived in the name of the executor or administrator, or execution may be awarded; if a defendant die after a final judgment against him, a transcript of such judgment shall be exhibited to the county court to be proceeded on as other judgments against the estate of a deceased person.

Proceedings to revive, in case of the death of either party after final judgment.

SEC. 6. Every citation issued under the preceeding sections, shall be directed to the party to be served therewith, and placed in the hands of the constable of the township in which the suit is pending, which shall be executed by him in any part of his county, and the manner of the service shall be like that of a summons, for which he shall receive similar fees.

Citation under preceding section, how and by whom served.

SEC. 7. When a defendant, who has been duly served with process, or 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 with costs 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; *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 shows the plaintiff entitled to, together with costs; and 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

Manner in which justice shall proceed, when defendant fails to appear after three hours from the time set for trial.

Digitized by Google

on 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.

In case plaintiff fail to appear in three hours after time set for trial, non-suit to be entered.

SEC. 8. 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.

Power to set aside non-suit; proceedings thereon.

SEC. 9. Every justice of the peace shall have power, on the application of the party aggrieved, or his agent, and for good cause shown, to set aside the judgment of non-suit, and by default, above directed, 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.

If non-suit set aside, notice to be made out and served on opposite party.

SEC. 10. 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.

If office of justice becomes vacant, or the party against whom judgment was entered, die, how to proceed.

SEC. 11. If the office of the justice who tried the cause become vacant from any cause, or if the party against whom the judgment of non-suit, or by default, is entered, die within the time allowed to make an application to set aside the same, the application may be made within [ten] days after the papers belonging to said office shall be delivered to some other justice of the township, or after the executor or administrator is qualified, and if an execution has issued, the same may be revoked by such justice, or by any court or officer authorized to grant injunctions, in the same manner as executions may be revoked by a justice of the peace.

Suit to be tried at first term, unless, &c.

SEC. 12. Every suit shall be determined on the return of the process duly served, unless the cause be adjourned.

SEC. 13. When both parties appear before the justice in

Digitized by Google

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 if the defendant has a defence which cannot be set up at law, but is only available in a court of chancery, such defence shall be given in evidence on the trial in the justice's court, without the formality of any of the proceedings in equity, and judgment shall thereupon be rendered, conformable to the principles and usages of such courts in like cases.

On appearance, trial shall commence; equitable defence allowed.

SEC. 14. In any action pending in a justice's court, or in the circuit court on an appeal therefrom, the foundation of which is a bond or note, the obligor or maker of such bond or note may impeach its consideration, and show a partial or total failure thereof, and reduce or prevent the plaintiff's recovery accordingly; nor shall such defence be precluded by reason of the existence of any contract, verbal or otherwise, made with the obligee or payee, which would give a right of action in the obligor or maker, in the event of a partial or total failure of the consideration of the bond or note. (*l*)

Consideration of a bond or note may be impeached.

SEC. 15. Such defence may be made against any assignee of a bond or note, but nothing herein contained shall affect or impair the rights of any holder of a bill of exchange, or negotiable promissory note.

Such defence may be made against assignee of such instrument.

SEC. 16. Before the justice shall commence an investigation of the merits of the cause, by an examination of the 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.

Either party may demand a jury.

SEC. 17. 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.

Jury shall consist of six, but parties may agree to a smaller number.

SEC. 18. 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 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 said 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.

Summons for jury to be issued to the constable.

(*l*) *Vide*, Buford, administrator, vs. Byrd, 8 Missouri Rep., 240; Jones vs. Shaver, 6 *ibid*, 642; Thornton vs. Smith and Crowther, 7 *ibid*, 86.

Digitized by Google

Manner in which summons shall be executed.

SEC. 19. The constable shall execute such jury summons fairly and impartially, and shall not summon 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.

If constable do not obtain full jury, new summons to issue, &c.

SEC. 20. 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 preceeding section, the justice shall issue a new jury summons.

Oath to be administered to the jurors.

SEC. 21. To each juror, the justice shall administer an oath well and truly to try the matter in difference between ——, plantiff, and ——, defendant, and unless discharged by the justice, a true verdict to give according to the evidence.

When jury are sworn they shall hear the evidence, &c.

SEC. 22. After the jury are sworn, they shall sit together and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence.

Incompetency of evidence, decided by justice.

Form of oath to witness.

SEC. 23. 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 ——, plaintiff, and ——, defendant, shall be the truth, the whole truth, and nothing but the truth.

Either party may be called on to testify.

SEC. 24. In trials before justices of the peace, either party may call on his adversary to testify as a witness in the cause, and if either, being so called on, refuse, the other shall be permitted to testify as a witness in such cause. (*m*)

Either party may be subpœnaed as a witness, and on appeals in the circuit court, bill of discovery may be filed.

SEC. 25. Either party in any suit 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, the justice may allow the other party to be sworn and examined as a witness in all cases and with like effect as if the party summoned had been personally present and had refused to testify; and if in any case either party to the

(*m*) *Vide*, Musick vs. Musick, 7 Missouri Rep., 495; Levy vs. Hawley, 8 Missouri Rep., 510.

Digitized by Google

suit is a non-resident of the state and an appeal shall be taken to the circuit court, the circuit court may permit a bill of discovery to be filed in the cause in the same manner as if the cause had commenced in the circuit court; and if a party testifies under the provisions of this or the preceding section after being called on to do so by his adversary, no other testimony shall be heard in the case on behalf of the party so calling on his adversary.

If any suit or set-off be founded on any instrument of writing, such instrument shall be received in evidence, unless denied on oath.

SEC. 26. 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 charged to have executed the same, before the jury is sworn or the trial submitted to the justice, 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 authorized to administer oaths.

The preceding section not to extend to executors or administrators.

SEC. 27. 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.

Verdict to be delivered publicly.

SEC. 28. When the jurors have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it on his docket.

When jury cannot agree, to be discharged and new trial granted.

SEC. 29. 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 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, shall be by the justice.

Penalty for failing to appear as a juror.

SEC. 30. 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 same fine, to be recovered with costs, in the same manner, and applied to the same use, as hereinbefore provided in respect to a person summoned as a witness and not appearing.

Digitized by Google

ARTICLE VI.

Of judgments, and filing transcripts thereof, and of the stay of executions.

SEC. 1. Justice may enter judgment by confession, when the amount does not exceed his jurisdiction.
2. Confession to be taken only on certain conditions.
3. In what instances one judgment set-off against another.
4. Proceedings in such cases of set-off.
5. Duty of justice in such cases.
6. When justice is a material witness, proceeding to be given to nearest justice.
7. In what additional cases non-suit to be entered.
8. When suit goes against plaintiff he must pay costs.
9. When suit goes in favor of plaintiff, defendant pays the costs.
10. In cases of non-suit, withdrawal, confession or verdict, judgment to be given forthwith thereon, and within three days in other cases.
SEC. 11. The party recovering a sum exceeding the justice's jurisdiction, may release the excess.
12. Execution may be stayed by consent.
13. Form of the recognizance.
14. Execution to issue at the expiration of stay, if not paid by principal; proceedings, return, &c.
15. Bail entitled to judgment, and ten per cent. interest, for what he pays.
16. If stay is agreed to after execution issued, the same to be called in.
17. Transcript given by justice when required; may be filed in circuit court; duty of clerk.
18. Such transcript a lien on land of defendant; execution not to issue until return of nulla bona by constable.

Justice may enter judgment by confession, when.

SECTION 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.

Confession to be taken only on certain conditions.

SEC. 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: nothing herein contained shall be construed to extend to confessions of judgment in actions commenced by process.

In what instances one judgment may be set-off against another.

SEC. 3. If there be mutual justices' judgments between the same parties, upon which the time for appealing has elapsed, 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 set-off is proposed, may be.

Proceedings in such cases of set-off.

SEC. 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 shall be a certificate of the justice rendering the judgment, that there is no appeal or existing execution

Digitized by Google

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 proceedings 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.

Duty of justice in such cases.

SEC. 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 transcipt 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.

When justice is a material witness, proceeding to be given to nearest justice.

SEC. 6. If, upon the appearance of the parties, on the return of process in any case, 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, said justice shall immediately hand over to the nearest justice in his township, the original papers in the cause, and a transcript of his docket containing the entries made in the same, and such justice, to whom any papers shall be transmitted, shall proceed in such case as if the same had been originally instituted before him.

In what additional cases judgment of nonsuit to be entered.

SEC. 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; but no judgment of non-suit shall be rendered after the cause is submitted for trial except by the consent of the plaintiff.

When plaintiff fails in his suit, judgment for costs to be entered for defendant.

SEC. 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.

Plaintiff shall have judgment for costs, when.

SEC. 9. Judgment for the plaintiff with costs, shall be rendered whenever a trial or hearing has been had and any sum

Digitized by Google

shall be found by the verdict of a jury or decision of the justice in favor of the plaintiff.

In cases of non-suit, withdrawal, confession or verdict, judgment to be given forthwith thereon, and in other cases within 3 days.

SEC. 10. In cases where a plaintiff shall be non-suited or withdraw his action, and where judgment shall be confessed or where a verdict shall be rendered, 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.

The party recovering a sum exceeding the justice's jurisdiction, may release the excess.

SEC. 11. If any sum be found in favor of a party, either by the verdict of a jury, or upon hearing of a 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.

Execution may be stayed by consent. 1841, p. 102, secs. 1, 2, 3.

SEC. 12. The execution upon a judgment rendered by a justice of the peace may be stayed for any length of time agreed upon by the parties to the judgment.

Form of the recognizance. *Ibid.*

SEC. 13. As a condition for such stay, the plaintiff may require that some responsible person, to be approved by him, enter into a recognizance, to be signed by him, in this 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, the time agreed as the length of the stay from the time it was rendered, this recognizance shall be void." The recognizance shall be in a sum sufficient to secure the judgment and costs.

Execution shall issue at the expiration of stay, if not paid by principal. Proceedings, return, &c. *Ibid.*

SEC. 14. If, at the expiration of such stay, the judgment be not paid, the execution shall issue against the 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.

Bail entitled to judgment, and ten per cent. interest for what he pays. *Ibid.*

SEC. 15. After the return of such execution, the bail shall be entitled, upon motion, to a judgment before a justice of the peace, for the amount collected from him in satisfaction of such execution, with interest thereon, at ten per cent. per

Digitized by Google

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.

If stay is agreed to after execution issued, the same to be called in.

SEC. 16. 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.

Transcript given by justice when required; it may be filed in circuit court; duty of clerk.

SEC. 17. Every justice, on the demand of any person in whose favor he shall have rendered judgment, 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 also record the same in a book to be kept for that purpose, and forthwith enter such judgment in the docket of the circuit court judgments and decrees, and shall note therein the time of the filing of such transcript. (*n*)

Judgment a lien on the land of defendant, from time of filing the transcript.

SEC. 18. Every such judgment from the time of filing the transcript, 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, may be revived by scire facias and carried into execution in the same manner and with the like effect, as the judgment of said circuit court; and executions issued thereon may be directed to and executed in any county in this state; but no execution shall be sued out of the circuit court on said transcript if the defendant be a resident of the county, until an execution shall have been issued by the justice, directed to the constable of the township in which the defendant resides and returned that the defendant had no goods or chattels whereof to levy the same.

Execution not to issue until return of nulla bona by constable.

(*n*) *Vide*, Perryman et al. vs. The State to use of Relfe, administrator, 8 Missouri Rep., 208; Brown vs. Pearson, *ib.*, 159.

Digitized by Google

ARTICLE VII.

Of executions and proceedings thereon.

SEC. 1. Execution issuable on all judgments of justice.
2. Justice having legal possession of another's docket, may issue execution thereon.
3. To whom execution directed; when returnable.
4. Form of execution.
5. Statements of justice and constable on the exeeution.
6. How the execution is to be directed when the defendant resides out of township, or has property out of the same.
7. If execution not satisfied, it may be renewed by endorsements thereon, &c.
8. After levy, constable to advertise and sell.
9. In what manner sale is to be conducted.
10. No constable permitted to purchase.
11. Under what circumstances garnishees to be summoned.
12. When property is claimed by another, a jury to be summoned to try the right of property.
13. Jurors and witnesses sworn by constable; jury, judges of law and fact.
14. If jury find against claimant, officer justified in selling goods; who pays costs.
15. Trial to cease if claim withdrawn.
16. Notwithstanding verdict for claimant, property to be sold if officer be indemnified by bond of plaintiff.
17. Suit may be brought on bond by claimant.
18. After execution of bond, claimant barred of right of action against officer.
19. Penalty on jurors for not attending trial of right of property.
20. When the property is not the defendant's in execution, the injured purchaser may sue such defendant.
21. Constable shall receive all moneys due on execution or judgments; liability of constable concerning same.
22. Payments not to be made to justice.
23. Enumeration of instances when constable is liable; summons against him and securities.
24. What summons shall contain.
25. In case only part are served, how to proceed.
26. If defendants make default, how justice to proceed.
27. In what additional instances constable liable.
28. Party may proceed as above directed, or bring suit on bond.
29. The use of capias abolished.

Execution issuable on all judgments of justice. Act Jan. 11, 1839, p. 78.

SECTION 1. Upon every judgment rendered by a justice, execution shall be issued by such justice, in the manner hereinafter prescribed, so soon as judgment is rendered, unless the justice is expressly directed by the party entitled thereto, or his agent, not to do so.

Justice having legal possession of another's docket, may issue execution thereon.

SEC. 2. When any judgment shall have been rendered by any justice of the peace, and the same shall not be satisfied during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering judgment, the justice to whom the docket shall be delivered shall issue execution upon such unsatisfied judgment, in the same manner and with like effect, as if he himself had rendered the judgment.

To whom directed; when returnable. 1841, p. 101.

SEC. 3. 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

Digitized by Google

issued, and if it be for a sum not exceeding ninety dollars, exclusive of interest and costs, it shall be returnable in sixty days from its date, and in all other cases in ninety days, and it shall be against the goods and chattels of the person against whom the same is issued.

Form of execution.

SEC. 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: You are further commanded to return this writ, to the undersigned justice, within —— days from the date. Given under my hand, this —— day of ——, 18—. "A. B., Justice."

Statements of justice and constable on execution. Act Feb. 6, 1843, p. 64.

SEC. 5. 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, and the execution, from the time of delivery to constable, shall be a lien on the slaves, goods, chattels, and shares in stocks of the defendant, found within the limits within which the constable, or other officer, can execute the process.

How the execution is to be directed when defendant resides out of township, or has property out of the same.

SEC. 6. In all cases where the defendant resides out of the township where the judgment was rendered, or where he has goods and chattels out of the same, but in another township in the same county, or where there are several defendants residing in different townships in the same county, the justice shall, at the option of the plaintiff, direct the execution to the constable of the township in which the judgment was rendered, who shall execute the same in any part of his county; or he may direct it to the constable of the township in which the defendants or any of them reside, or in which their goods and chattels may be found.

If execution is not satisfied, it may be renewed by endorsement thereon.

SEC. 7. 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, or the justice to whom his docket is transferred, by an endorsement thereon to that effect signed by him, and dated when the same shall be made; if any part

Digitized by Google

CHAP. 93.

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 the same space of time, between its date and first return and no longer; and an entry of such renewal shall be made in the docket of the justice.

After levy, constable to advertise and sell.

SEC. 8. The constable after taking goods and chattels into his custody, by virtue of an execution, shall without delay give public notice of the time and place, when and where they will be exposed to sale, by setting up three advertisements; one at the office of the justice issuing the execution, and one at each of two other of the most public places in the township; but in case the execution issued from another township, then the advertisements to be set up, one at each of three of the most public places in the township where the property is found; such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

In what manner sale is to be conducted.

SEC. 9. At the time and place so appointed, if the goods and chattels be present for inspection of 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: *Provided*, That at such sale there shall be more than two persons present competent to bid.

No constable permitted to purchase.

SEC. 10. No constable or other officer shall directly or indirectly purchase any goods or chattels at any sale made by him upon execution; and every such purchase shall be absolutely void.

Garnishees may be summoned, when.

SEC. 11. If there be not sufficient goods and chattels whereon to levy an execution 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 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.

When property is claimed by another, a jury to be summoned.

SEC. 12. 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

Digitized by Google

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.

moned to try the right of property.

SEC. 13. The constable shall administer an oath to each of the jurors, well and truly to try the right of property between the claimant and the defendant in the execution, to the goods and chattels in controversy, and report their decision to the constable: the constable may administer the oath to the witnesses proposed to be examined; (o) the jury shall be judges of the law and fact.

Jurors and witnesses to be sworn by constable; jury to be judges of law and fact.

SEC. 14. 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 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.

If jury find against claimant, officer justified in selling the goods; who pays costs.

SEC. 15. If, at any time before the jury retire, the claimant withdraw his claim, the trial shall proceed no further, and the claimant shall pay the costs of such unfinished trial. (o)

Trial to cease if claim be withdrawn.

SEC. 16. Notwithstanding the jury find the goods and chattels to be the property of the claimant, yet the officer shall proceed to sell the same in satisfaction of the execution, if the plaintiff will tender to him a bond payable to the officer, with good security, and conditioned to indemnify him against all damages and costs which he may sustain in consequence of the seizure and sale of the property on which the execution shall have been levied; and, moreover, to pay and satisfy to any person or persons claiming title to such property, all damages which such person or persons may sustain in consequence of such seizure and sale.

Notwithstanding verdict for claimant, property to be sold, if officer be indemnified by bond of plaintiff.

SEC. 17. If such bond and security be given, it shall be returned to the justice, with the execution, and the claimant may, in the name of the officer to whom the bond is payable, prosecute his or her suit upon the bond, and recover such damages as the jury may assess.

Suit may be brought on bond by claimant.

SEC. 18. The claimant shall have a copy of the bond, and, when necessary, may require the justice to produce the orig-

Claimant barred of right of action against officer, when.

(o) See Brown vs. Burrus, 8 Missouri Rep., 26.

Digitized by Google

CHAP. 93.

inal in any court of record, and after the due execution of such bond, he shall be barred of his right of action against the officer, unless the obligors in the bond shall become insolvent.

Penalty on jurors for not attending trial of right of property.

SEC. 19. If persons summoned as jurors upon such inquests for the trial of the right of property, 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 the same, as soon as collected, to the treasurer of the county, for the use of such county.

When the property is not the defendant's in execution, the injured person may sue such defendant.

SEC. 20. Where any property shall be sold on any execution, or order of sale, by any officer lawfully authorized to make such sale, and the sale be legally and bona fide made, and such property so sold, be not the proper goods and chattels of the person against whom, or whose property, the execution or order of sale may have issued, by reason of which, the purchaser at such sale may have been deprived of the same property, or may have been compelled to pay damages in lieu thereof, to the real owner, then, in every such case it shall be lawful for such purchaser, his executors or administrators, to sue such person against whom such execution or order of sale may have so issued, or the person legally representing him, in an action on the case, in any court of law in the state having jurisdiction thereof, and recover such sum as he may have paid for such property, with interest thereon from the time of such payment: *Provided*, That such property be present at such sale, and actually delivered to such person.

Constable shall receive all moneys due on execution or judgment; liability of constable concerning the same.

SEC. 21. 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 therewith. The person entitled to the money paid, shall have the like remedies against the constable and his

Digitized by Google

securities for the recovery thereof, as if such money had been collected by the constable on execution.

Payments not to be made to justice.

SEC. 22. 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.

Enumeration of instances when constable is liable; summons against him and his securities. Act Jan. 4, 1841, p. 31-2, sec. 5.

SEC. 23. In the following cases the justice shall, upon the demand of the party injured, or his agent, issue a summons against any constable and his securities, jointly or severally, to whom any execution has been delivered, or who has received any money upon any judgment of such justice, whether with or without execution, or who has received any money on any bond, note or account, placed in his hands for collection, and for which he has given his receipt: *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 have the receipts of such persons therefor; *Fourth*, If he fail to pay over, upon demand of the person entitled thereto, or his agent, any money by him received in payment of any judgment, or upon any bond, note or account, placed in his hands for collection, and for which he shall have given his receipt.

What such summons shall contain.

SEC. 24. Such summons shall require the party or parties 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 show cause why execution shall [not] issue against him or them for the amount due upon the execution, or received or collected by the constable according to the nature of the case. 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 summons. (*p*)

In case only part are served, how to proceed.

SEC. 25. If the summons is served on only a portion of those against whom it is issued, the justice shall, at the option of the plaintiff or his agent, either proceed against those served, and discontinue the proceedings against those not served, or he may continue the cause and issue another summons against the parties not served, which shall in all respects conform to the first summons, and at the return of the second

(*p*) *Vide*, Hart vs. Robinett, 5 Missouri Rep., 11.

Digitized by Google

summons, whether executed or not, he shall proceed and determine the cause.

If defendants make default, how justice to proceed.

SEC. 26. If the party or parties fail to appear, or appearing fail to show good cause to the contrary, the justice shall render judgment against him or them for the amount due by the execution, or for the amount received or collected by the constable with or 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, or collected on a bond, note or account, was demanded by such party or his agent; upon such judgment an appeal may be had, as in other cases and with like effect.

In what additional instances constable is liable.

SEC. 27. For the failure of a constable to make return of an execution according to the command thereof, for making a false return thereof, or for failing to have any fees by him collected on execution, before the justice on the return day thereof, ready to be paid over to the officer or person entitled thereto, the constable and his sureties shall be liable to the same proceedings, and subject to the same penalties, as are prescribed in the preceding section: the said proceedings shall be instituted by the officer or person entitled to fees, and when commenced by a justice to whom fees are due, shall be before some other justice of the township.

Party may proceed as above directed, or bring suit on bond.

SEC. 28. The party injured may proceed against the constable and his sureties in the manner above directed, or may institute a suit against them on the official bond, and, in such suit, shall be entitled to the like recovery as upon a summons against the constable and his securities; and suits on such bond may be brought before a justice of the peace, where the amount claimed does not exceed ninety dollars.

Capias abolished.

SEC. 29. No warrant or capias execution shall issue by authority of any of the provisions of this act.

Digitized by Google

ARTICLE VIII.

Of appeals, and proceedings thereon in the circuit court.

SEC. 1. Appeals allowed to circuit court from justice's judgment.
2. No appeal from judgment of default or non-suit, unless within ten days after motion to set aside.
3. No appeal allowed, unless certain requisites observed.
4. Form of recognizance.
5. Oath required, before appeal allowed, that the same is not for vexation or delay.
6. Affidavit to be filed with the justice.
7. No appeal shall be dismissed for want of affidavit, if one be filed when objection made.
8. Duty of justice when appeal is allowed.
9. When office of justice becomes vacant, how appeal is to be obtained.
10. When application is made in time, but appeal not allowed, court may compel it to be done by rule and attachment.
11. If abated in circuit court, appeal may be revived and new parties added as in other cases.
12. When justice shall file his transcript in circuit court.
13. On return of justice being filed, court shall be possessed of the cause; to try the same de novo.
14. When return of justice is defective, court may, by attachment, compel him to amend the same.
15. Circuit court may, by attachment, compel proceedings and papers to be sent up.
16. Appearance of defendant in justice's court, to cure all defects in the writ.
17. Appeal shall not be dismissed because there is no recognizance, but it may be entered into before motion to dismiss is determined.
18. The same cause of action that was tried before the justice, and no other, shall, on appeal, be tried in the circuit court.
19. No set-off shall be pleaded in circuit court that was not before justice, in cases wherein the summons shall be personally served.
20. All appeals allowed ten days before court, to stand for trial at such term.
21. If appeal not allowed on day judgment is given, notice must be given.
22. If no notice be given, the appellee may have a continuance.
23. If judgment of justice be affirmed, it shall be entered against the principal and his securities.
24. If principal shall not pay, the securities must.
25. If security pay any, he shall be entitled to judgment for the amount, with ten per cent. interest against principal.

SECTION 1. **Any person aggrieved by any judgment rendered by a justice of the peace, except a judgment by confession, may, in person or by his agent, make his appeal therefrom to the circuit court of the same county where the judgment was rendered.** (*q*)

Any party aggrieved by justice's judgment, may appeal to the circuit court.

SEC. 2. **But no appeal shall be taken from a judgment by default, or of non-suit, unless, within ten days after the render-**

No appeal from judgment by default or of non-suit, unless, &c.

(*q*) As to the decisions of the supreme court on the subject of appeals from justices' courts, *vide*, Nichols vs. St. Louis Circuit Court, 1 Missouri Rep., 254; Strange and Priest vs. Ellis, *ibid*, 291; Perry vs. Black et al., *ibid*, 342; Buckner vs. Armour, *ibid*, 379; James, to use of Stewart, vs. Robinson, *ibid*, 425; Sargent vs. Sharp et al., *ibid*, 429; Hempstead vs. Darby, 2 *ibid*, 23; Pearce vs. Myers, 3 *ibid*, 23; Barnes vs. Holland, *ibid*, 24; Hayton vs. Hope, *ibid*. 39; Newberry vs. Melton, *ibid*, 88; Thompson vs. Curtis, 2 *ibid*, 169; Rutherford vs. Wim, 3 *ibid*, 12; Myers vs. Woolfolk, 3 *ibid*, 246; Barnett et al. vs. Lynch, *ibid*, 261; Price vs. Halsed, *ibid*, 323; Davis vs. Cleveland, 4 *ibid*, 206; Atwood vs. Reyburn, 5 *ibid*, 533; Fenton vs Russell and Lindley, 6 *ibid*, 143; Weisenecker vs. Kepler et al., 7 *ibid*, 52; Cason vs. Tate, Nolley & Cook, and Dyer, 8 *ibid*, 45; Chase vs. Chase, *ibid*, 103.

Digitized by Google

ing 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. (r)

No appeal allowed unless certain requisites be complied with.

SEC. 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 judgment is by default or non-suit, within ten days after the refusal of the justice to set aside the default or non-suit 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 upon 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.

Form of recognizance.

SEC. 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.,"

"Attest: G. H., Justice." "C. D."

Oath required before appeal allowed, that the same is not for vexation or delay.

SEC. 5. No appeal shall be allowed, unless the party applying therefor, or some person for him, will make oath that the application for an appeal is not made for vexation or delay, but because he believes the appellant is injured by the judgment of the justice.

(r) *Vide*, Fenton vs. Russell & Lindley, 6 Missouri Rep., 143.

Digitized by Google

Affidavit to be filed with the justice.

SEC. 6. When such application shall be made, the affidavit shall be filed with the justice, which may be taken by any officer qualified to administer oaths; and if the applicant has not an affidavit prepared, the justice shall prepare one, and administer the oath, for which [he] shall receive a fee of twelve and one half cents.

No appeal shall be dismissed for want of affidavit, if one be filed when objection made.

SEC. 7. No appeal shall be dismissed for want of an affidavit, if the appellant, or some person for him, will file in the circuit court the affidavit required by law, before a motion to dismiss is determined.

Duty of justice when appeal is allowed.

SEC. 8. 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 other 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, and on the presentation of such certificate to the constable, he shall forthwith release the property of the defendant that may have been taken in execution.

When office of justice becomes vacant, how appeal is to be obtained.

SEC. 9. If the office of a justice who tries a cause becomes vacant, or, if the party entitled to an appeal dies within the time allowed for entering the same, it shall be granted within ten days after the office shall be filled, or the docket of the justice shall have come into the hands of another justice in the manner provided by law, or an administrator or executor shall have qualified; and if an execution has been issued, it may be revoked by the officer granting the appeal, or by an officer or officers, or court authorized to grant injunctions, in the manner above prescribed.

Circuit court, by rule and attachment, may compel justice to allow an appeal, when, &c.

SEC. 10. If the justice fail to allow an appeal in the cause, when the same ought to be allowed, or, if by absence, sickness, or any other cause on his part, an appeal cannot be taken within time, 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.

If abated in circuit court, appeal may be revived and new parties added as in other cases.

SEC. 11. When an appeal is pending in the circuit court from a justice of the peace, the suit may be revived, if abated, and new parties may be introduced in the same manner as in an original suit in said court.

SEC. 12. On or before the first day of the court next after

Digitized by Google

an 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.

When justice shall file his transcript in circuit court.

SEC. 13. 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.

On return of justice being filed, court shall be possessed of the cause and try it de novo.

SEC. 14. 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.

Court may compel justice to amend return.

SEC. 15. 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.

Court may compel proceedings and papers to be sent up.

SEC. 16. The validity of the proceedings of the justice shall not be impaired, nor in any wise affected, for the reason that the original writ or summons in the cause did not run in the name of the state of Missouri, if the defendant appeared in the justice's court, unless he objected in that court to the sufficiency of the writ, and such objection was overruled by the justice, and so appears on the justice's docket.

Appearance of defendant in justices' court, to cure all defects in the writ.

SEC. 17. 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, or some person for him, will, before the motion to dismiss is determined, enter, before the court, into such recognizance as he ought to have entered into before the allowance of the appeal, and pay all costs that shall be incurred by reason of such defect or omission.

Appeal shall not be dismissed because there is no recognizance; but it may be entered into before motion to dismiss is determined.

SEC. 18. The same cause of action, and no other, that was tried before the justice, shall be tried before the circuit court upon the appeal.

Only the same cause of action shall be tried in the circuit court.

SEC. 19. In cases wherein the summons shall be personally served on the defendant, no set-off shall be pleaded in the circuit court that was not pleaded before the justice.

No new set-off shall be pleaded in circuit court, &c.

SEC. 20. 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.

All appeals shall be determined at first term, when.

SEC. 21. If the appeal be not allowed on the same [day]

Digitized by Google

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 within the knowledge of the justice, the service may be by leaving a copy of such notice with the justice.

If appeal not allowed on day judgment is given, notice must be given.

SEC. 22. If the appellant fails to give notice of his appeal, where such notice is required, the cause shall, at the option of the appellee, be tried at the first term, if he shall enter his appearance on the first day thereof, or at his instance shall be continued as a matter of course, until the succeeding term, at the costs of the appellant; but no appeal shall be dismissed for want of such notice.

If no notice be given, the appellee may have a continuance. Act Feb. 14, 1841, p. 102, sec. 5.

SEC. 23. In all cases of appeals from a justice's court, if the judgment of a 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.

If judgment of justice be affirmed, it shall be entered against principal and securities.

SEC. 24. 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.

If principal shall not pay, securities must.

SEC. 25. 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 paid by him, together with interest thereon at ten per centum 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. (s)

If security pay any, he shall be entitled to judgment for the amount, with ten per cent. interest, against principal.

Approved March 26, 1845.

(s) On thesubject of justices' courts, see further the cases of Sipp vs. The St. Louis circuit court, 1 Missouri Rep., 253; Downing vs. Garnier, *ibid* 539. All matters of mere form dispensed with before justices' courts; Casey vs. Clark, 2 *ibid*, 12; Myers vs. Woolfolk, 3 *ibid*, 246; Henry vs. Lane, 2 *ibid*, 163; Myers vs. Hay, 3 *ibid*, 72; The State vs. M'Gunnegle, 3 *ibid*, 284; Wilson vs. Tiernan, *ibid*, 396. Ex parte, Bishop, 4 *ibid*, 219; Spencer vs. Medder, 5 *ibid*, 458; Lutes vs. Dulancy & Perkins, 6 *ibid*, 57; Davis vs. Wood, 7 *ibid*, 162.

Digitized by Google

CHAPTER 94.

JUSTICES COURTS—BREACHES 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 and batteries not indictable, but cognizable before justices of the peace.
2. Certain offences not cognizable before justices of the peace, but shall be punishable 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 justice, warrant to issue; proceedings; when such offences committed in his presence, how to proceed.
5. Justice to hear and determine the complaint in a summary way.
6. Trial may be postponed by justice; defendant to give recognizance; condition thereof.
7. Failing to give recognizance, to be committed to jail.
8. Breach of recognizance to be certified to circuit court.
9. If offence not cognizable before justice, to proceed as in criminal cases.
10. Injured party to be summoned and others who may be material witnesses on the trial.
11. Trials to be by jury; fine not less than $1, nor more than $100.
12. Name of injured party to be entered as prosecutor, when.
SEC. 13. Judgment to be entered for fine and costs, when. Commitment. Execution.
14. Defendant, after ten days, may take the benefit of the insolvent debtor's act. Costs, how paid, &c.
15. Appeals may be taken; affidavit to be filed; recognizance to be entered into, and how.
16. Appeals, when to be returned.
17. When appeal is perfected, witnesses to be recognized; duty of justice to certify proceedings, &c.
18. Cause, when to be tried by the circuit court.
19. Appeals, to be taken, when.
20. If judgment be affirmed, &c., judgment to be for fine and costs in both courts, &c.
21. Execution from circuit court, when to issue; out of what property to be satisfied.
22. Proceedings, how regulated.
23. Justice to certify the amount of fine to county treasurer; duty of the county treasurer, constable and 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, &c., how recovered.
26. When justice continues a cause, witnesses present need not be summoned, but may be verbally notified to attend.

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

Assaults, batteries, &c., not indictable; cognizable before justices of the peace.

SECTION. 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.

Certain offences not cognizable before justices of the peace, but shall be punishable by indictment.

SEC. 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.

Digitized by Google

On complaint made, justice to issue warrant for offences cognizable before him.

SEC. 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.

By whom to be executed.

Offences in the last section, committed within the knowledge of the justice, warrant to issue; proceedings.

Such offences committed in his presence, how to proceed.

SEC. 4. If any justice of the peace shall have personal knowledge, that any of the offences mentioned in the last section 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.

Justice to hear and determine the complaint in a summary way.

SEC. 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.

Trial may be postponed by justice; defendant to give recognizance; condition thereof.

SEC. 6. Upon good cause shown, the justice may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into a 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.

Failing to give recognizance, to be committed to jail.

SEC. 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.

Breach of recognizance to be certified to circuit court.

SEC. 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.

If offence not cognizable before justice, to proceed as in criminal cases.

SEC. 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

Digitized by Google

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.

Injured party to be summoned, and others who may be material witnesses on the trial.

SEC. 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.

Trials to be by jury; fine not less than $1 nor more than $100.

SEC. 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.

Name of injured party to be entered as prosecutor, when.

SEC. 12. When 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.

Costs, how paid.

Judgment to be entered for fine and costs, when.

Commitment; execution.

SEC. 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.

Defendant, after ten days, may take the benefit of the insolvent debtors act.

SEC. 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, (*a*) 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.

Costs, how paid, &c.

Appeals may be taken; affidavit to be filed, recognizance to be entered into and how.

SEC. 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

(*a*) See Rev. Code of 1835, p. 327.

Digitized by Google

with the condition required in appeals from a justice of the peace in civil cases.

Appeals, when to be returned.

SEC. 16. All appeals taken fifteen days, or more, before any term of the circuit court of the county, shall be returned to that term, but if taken within fifteen days next before the commencement of a term, shall be returnable to the second term.

When appeal is perfected, witnesses to be recognized; duty of justice to certify proceedings, &c.

SEC. 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 recognizance of the defendant and witnesses, duly certified.

Cause when to be tried by the circuit court.

SEC. 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 shown for a continuance, and the costs in both courts shall abide the event of the trial in the circuit court.

Appeals may be taken, when.

SEC. 19. All appeals may be taken at any time within ten days after the day of trial before the justice.

If judgment be affirmed, &c., to be for fine and costs in both courts, &c.

SEC. 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.

Execution from circuit court, when to issue; out of what property to be satisfied.

SEC. 21. If the judgment in 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.

Proceedings, how regulated.

SEC. 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.

Justice to certify the am't of fine to county treasurer.

SEC. 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

Digitized by Google

CHAP. 94.

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.

Duty of the county treasurer, constable and county court, in such cases.

Penalty on officers refusing to perform duties required by this act; also on persons refusing to aid in arresting offenders.

SEC. 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.

Fines, &c., how recovered.

SEC. 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.

When justice continues a cause, witnesses present need not be summoned, but may be verbally notified to attend.

SEC. 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 witnesses 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 March 10, 1845.

Digitized by Google

CHAPTER 95.

LANDS.

AN ACT to provide for the selection and sale of the lands granted to this state by an act of congress, approved September 4, 1841.

SEC. 1. Governor shall appoint a commissioner to select the residue of the lands granted to this state.
2. In what counties such lands shall be selected.
3. When the commissioner shall proceed in his duties. He shall select lands on which rights of pre-emption are forfeited.
4. Registry of such selected lands to be kept.
5. Land offices established for the sale of the selected lands.
6. Officers for the sale of said lands to be appointed by the governor; their compensation; their removal, how effected.
7. After 1844, the said officers shall be appointed by the general assembly.
8. Said officers shall take an official oath and give bond.
9. Lands forfeited by pre-emptors may be selected. Said selection not to affect the rights of said pre-emptor by the laws of the United States.
10. Officers to proceed to the land offices to take proof of rights of pre-emption. Governor's proclamation to issue when such rights of pre-emption shall be established, and one year, from the date of such proclamation, given to establish the same.
11. Who shall be entitled to a right of pre-emption.
SEC. 12. On payment being made by pre-emptors, patent to issue; where the same shall be recorded.
13. Rights of pre-emption made assignable.
14. Questions of right of pre-emption, by two or more claimants, to be decided by register and receiver.
15. Appeal allowed from their decision to the governor.
16. Proceeds of such sales, (called "internal improvement fund") to be paid quarterly into the state treasury.
17. Governor may prescribe rules, &c., for the officers appointed under this act.
18. Quarterly reports of sales to be made to the register of lands.
19. Rights granted to settlers by the U. States, secured by this act.
20. Commissioner to make weekly returns of lands selected by him.
21. Register of lands to transmit to the officers appointed under this act, plats of the located lands.
22. Mileage allowed to receivers.
23. If lands cannot be selected in the counties named in this act, they may be selected in other counties named by the governor.
24. The commissioner to be a practical surveyor. No chain carriers to be employed by him.

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

SECTION 1. That the governor shall appoint some competent person, whose duty it shall be, under such regulations and restrictions as may be hereinafter provided, to select the balance of the five hundred thousand acres of land, granted to this state by an act of congress, approved September fourth, one thousand eight hundred and forty-one, remaining unselected by the commissioners appointed by the governor of this state. Governor shall appoint a commissioner. 1843.

SEC. 2. Said lands shall be selected in the counties of Platte, Buchanan, Andrew and Holt. Lands shall be selected, where.

Digitized by Google

CHAP. 95.

When commissioner shall proceed to execute his duties, &c.

SEC. 3. The said commissioner shall, as soon as proclamation is made by the president of the United States, for the sale of the public lands in said counties, proceed to the execution of his duties, as required by this act. And as soon as the right of pre-emption, now held to any of said lands, by any act of congress, shall become forfeited, from any cause, the said commissioner shall immediately proceed to select the same, or any such part thereof as he may deem advisable, and report the fact of such selection to the register of the land office where such lands are advertised for sale by the United States, setting forth in said report the particular lands selected, the ranges, townships, sections and parts of sections, and number of acres.

To enter the lands he may select in a book, &c.

SEC. 4. Said commissioner shall enter, in a book to be kept for that purpose, all such lands as he may select, designating each tract by its section or part of section, township and range, and number of acres; and after such selections are completed, he shall deliver the same to the register of lands, at the city of Jefferson, to be filed in his office.

Land offices established. At Sparta.

SEC. 5. A land office shall be, and is hereby established at the town of Sparta, in Buchanan county, at which place all the lands selected in Platte, Buchanan, Andrew and Holt counties, under the provisions of this act, shall be sold, and there is hereby established three additional land offices, for the sale of the lands heretofore selected under the act of congress aforesaid, at the following places to wit: *First*, At the town of Edina, in the county of Knox, for the sale of all lands now selected north of the Missouri river, and east of the range line dividing ranges seventeen and eighteen; *Second*, At the town of Chillicothe, in Livingston county, for the sale of all lands north of said river, and west of said range line; and, *Third*, At the town of Springfield, in Green county, for the sale of all lands now selected south of the Missouri river.

At Edina.

At Chillicothe.

At Springfield.

Registers and receivers to be appointed

SEC. 6. The governor shall appoint a register and receiver for the land office at Sparta, as soon as the commissioner shall make his report as is provided in the fourth section of this act. He shall likewise appoint a register and receiver for each of the places in the last preceding section mentioned, to superintend the sale of the lands in their respective districts, who shall receive for their services, one per cent. each on the whole amount received at their respective offices, and said registers and receivers shall hold their offices until the first

Their fees and tenure of office

Digitized by Google

day of January, one thousand eight hundred and forty-five, unless sooner removed for malfeasance in office, and the governor is hereby empowered, upon good cause known to him, to remove any such register or receiver, and to fill any vacancy occasioned thereby, or from any other cause.

To be elected, when and how.

SEC. 7. After the first day of January, one thousand eight hundred and forty-five, the offices of register and receiver shall be filled by joint vote of the general assembly, for the term of two years.

Shall take an oath.

SEC. 8. Said registers and receivers, before entering upon their duties, shall take an oath, before some person authorized by law to administer oaths, faithfully and impartially to discharge the duties imposed upon them by this act, or which may be imposed upon them by any law. They shall likewise enter into bond, to the state of Missouri, the register in the sum of five thousand dollars, and the receiver in the sum of twenty thousand dollars, with good and sufficient security to be approved by the governor, conditioned for the faithful performance of the duties of their respective offices; the said bonds to be filed and recorded in the office of the secretary of state, and may be sued on by the attorney general or any circuit attorney in the circuit court of the county in which said register or receiver may reside; and a certified copy of such bond is hereby made sufficient evidence in any court of this state.

Duties of commissioner.

SEC. 9. The commissioner, in the discharge of his duties, may select all such lands as may, from any cause, be forfeited by persons entitled to pre-emptions to the same under any act of congress; but such persons, after the selection of any such lands by the commissioner, shall have the same right of pre-emption to the said lands, under the authority of this state, as they possessed prior to said forfeiture, under any of the acts of congress, and, in making proof of the right of pre-emption, which shall be before the register and receiver, they shall be governed by the same laws, rules and regulations, as are required by the United States.

Duties of registers and receivers.

SEC. 10. The registers and receivers, who may be appointed under the provisions of this act, immediately after their appointment, shall proceed to the respective districts and offices assigned them by the governor, to take proof of pre-emptions under this act; and the governor shall issue his proclamation, giving notice to all persons claiming pre-emp-

Digitized by Google

tions, to come forward and prove, and pay for the same; and all persons claiming such pre-emptions, shall have one year from the date of such proclamation, to prove and pay for the same, at the rate of one dollar and twenty-five cents per acre.

Who entitled to a pre-emption right.

SEC. 11. Every person, being the head of a family, or widow, or single man over the age of twenty-one years, and who is a bona fide citizen of this state, and has made, or shall hereafter make a settlement or improvement on the lands heretofore located by this state, under or by virtue of the act of congress, approved the fourth of September, one thousand eight hundred and forty-one, or who shall inhabit or improve the same, or who has a dwelling, or who shall erect a dwelling thereon, shall be, and is hereby declared entitled to a pre-emption right on said land of one hundred and sixty acres, to include his improvements, or if he desire it, a less quantity, according to the legal subdivisions prescribed by the laws of the United States.

On proof and payment, duplicate receipts to be issued.

SEC. 12. Upon any person proving any pre-emption, and paying for the same at the rate of one dollar and twenty-five cents per acre, the register and receiver shall issue duplicate receipts, one to the purchaser and the other to be certified to the secretary of state, and upon the receipt of the same by the secretary of state; the governor shall grant a patent to said purchaser, his heirs and assigns, and all patents so made out, shall be signed by the governor, countersigned by the secretary of state, and recorded in his office.

Pre-emption rights transferable.

SEC. 13. All pre-emption rights under this act shall be transferable, and certificates of purchase may be transferred or assigned, and patents may issue in the name of the assignee.

Conflicting rights to be decided in favor of first settler.

SEC. 14. When two or more persons claim pre-emptions on the same land as heretofore selected, or which may, hereafter be selected, the right shall be deemed to be in him or her who shall have made the first settlement on said land, to be decided by the register and receiver of the proper land office: *Provided*, That this section shall not be so construed as to apply to any case when the person who made the first settlement has transferred or sold his interest in or to said land, but in such case the right of pre-emption shall vest in the person then in possession of the same.

Proviso.

Either party may appeal in such cases.

SEC. 15. In all cases when two or more persons claim the right of pre-emption under this act to the same land, either party may have the right of appeal from the decision of the

Digitized by Google

register and receiver to the governor, whose decision shall be final.

Moneys to be paid quarterly into the treasury of the state, &c.

SEC. 16. That the moneys arising from the sale of lands, as heretofore mentioned, shall be paid by the respective receivers, quarterly, into the treasury of the state, and it shall there be set apart by the treasurer as, and denominated, the "internal improvement fund," and the auditor and treasurer shall place all moneys received into the treasury arising from the sale of said lands, to the credit of said fund.

Governor to prescribe further rules and regulations.

SEC. 17. In order to carry fully into effect the provisions of this act, the governor of this state shall prescribe, from time to time, such further rules and regulations, in relation to the duties of all officers appointed under the provisions of this act, as he may deem advisable.

Registers to make quarterly reports.

SEC. 18. It shall be the duty of the register to make quarterly reports of all lands sold, under the provisions of this act, at his office, to the register of lands, at the city of Jefferson, describing said lands by ranges, townships, sections or parts of sections, the number of acres, by whom entered, and the amount paid for same, and the said register of lands shall record the same in a book to be kept for that purpose.

Construction of the 9th section of this act.

SEC. 19. The ninth section of this act shall be so construed as to guaranty to all persons the same rights and preferences, under this act which they now have, or may hereafter have under any of the pre-emption laws of the United States.

Commissioner to make weekly returns.

SEC. 20. That the commissioner, appointed by virtue of the first section of this act, shall make weekly returns to the land office of the district, in which said lands may be situate, of the lands by him located.

Duty of the register of lands.

SEC. 21. That the register of lands of this state shall, immediately upon the appointment by the governor of the several registers and receivers required by this act, transmit to said registers and receivers the plats of all lands that may have been located in their respective districts.

Compensation to receivers for traveling expenses.

SEC. 22. That each receiver, in addition to one per cent. on the money by him received, shall receive for his traveling fees to the seat of government to make payment into the treasury, at the rate of five cents per mile, going and coming, and no more.

Governor to appoint com'rs to select lands, &c.

SEC. 23. If the said lands of good quality cannot be selected in the counties named in the second section of this act, the governor is hereby authorized and required to appoint a com-

Digitized by Google

CHAP. 96.

missioner or commissioners to select the said lands in any other part of the state that may be designated by the governor.

Commissioner to be a practical surveyor.

SEC. 24. No person shall be appointed a commissioner, under the provisions of this act, unless he be a competent practical surveyor, and he shall not be permitted to employ any other surveyor, nor shall any chain carriers be employed by said commissioner.

This act to take effect from and after its passage.

Approved February 27, 1843.

CHAPTER 96.

LANDS.

AN ACT amendatory to an act entitled "An act to provide for the selection and sale of the lands granted to this state by an act of congress, approved September 4, 1841," approved February 27, 1843.

SEC. 1. Persons entitled to pre-emption rights, what time given them to pay for their land.
2. In what time pre-emption rights must be proven, or right forfeited.
3. Pre-emptor proving his right, entitled to a certificate.
4. Full payment may be made at time of making proof.
5. What persons entitled to a pre-emption right, on what quantity of land, and at what price.
6. Lands authorized to be sold to the highest bidder, for not less than $1.25 per acre; if not sold may be bought at private sale at said price.
7. Law liberally construed in favor of pre-emptors.
8. No affidavit required when pre-emption is proven.
9. Certificates of pre-emption assignable.
10. Assignment and acknowledgment thereof prima facia evidence.
11. Who authorized to administer oaths and to take testimony.
12. Additional lands may be selected in certain counties. Compensation of commissioner.
13. Penalty for trespassing on the state lands.
14. All fines under this act to be paid into the state treasury.

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

Persons entitled to pre-emption rights, what time given them to pay for their land.

SECTION 1. All persons entitled to pre-emption rights under the act to which this is amendatory, or who shall be entitled under the provisions hereinafter contained, may pay for their land at any time previous to the third Monday in November, in the year of our Lord eighteen hundred and forty-seven.

In what time pre-emption rights must be proven, &c.

SEC. 2. Every pre-emptor, wishing to avail himself of the benefits of the preceding section, shall be required to make proof of his rights, as such, on or before first day of Novem-

Digitized by Google

ber next, and any claimant failing to make the proof required by this act, and the act to which this is amendatory, within the time required by this act, shall forfeit his pre-emption right.

Pre-emptor proving his right, entitled to a certificate.

SEC. 3. Each pre-emptor, upon making proof, as in the last preceding section required, shall be entitled to a certificate from the register and receiver, setting forth the fact of the proof of the pre-emption right.

Full payment may be made at time of making proof.

SEC. 4. Any pre-emptor, at the time of making proof, may make full payment, and, upon making full payment, shall be entitled to a full receipt.

What persons, entitled to pre-emption right, on what quantity of land, and at what price.

SEC. 5. Every person, being the head of a family, or over twenty-one years of age, or widow, who has heretofore made, or who shall hereafter make, a settlement in person upon any of the lands granted to this state by said act of congress, upon which no right of pre-emption shall, at the time, exist, and who has erected, or shall erect, a dwelling house thereon, and who shall inhabit and improve the same, shall be entitled to a pre-emption right, at one dollar and twenty-five cents per acre, to one quarter section of land, to include the improvement: *Provided*, That where such settlement shall not have been made upon a quarter section, but upon other legal sub-divisions, such settler shall be entitled to a pre-emption right upon adjoining legal sub-divisions, to include the improvement, so as not to exceed one hundred and sixty acres, or the number of acres contained in a quarter section: *Provided*, A quarter quarter section shall not be considered a legal sub-division.

Lands authorized to be sold to the highest bidder, for not less than $1.25 per acre; if not sold, may be bought at private sale at said price.

SEC. 6. All lands held by this state, under and by virtue of said act of congress, not held by pre-emption, shall be offered for sale, to the highest bidder, for cash, by the registers and receivers, at their respective land offices, on the first Monday in December, eighteen hundred and forty-five, which sale shall continue from day to day, without delay, until all such lands shall be sold, or offered for sale, and no such lands shall be sold for less than one dollar and twenty-five cents per acre; and all such lands, not sold, shall be subject to private entry, immediately after such sale, at one dollar and twenty-five cents per acre: *Provided*, Such sales and entries shall be in legal sub-divisions of half quarter sections.

Law liberally construed in favor of pre-emptors.

SEC. 7. The act, to which this is amendatory, shall be liberally construed in favor of persons claiming the right of pre-emption under said act.

Digitized by Google

CHAP. 96.

No affidavit required when pre-emption is proven.

SEC. 8. The act, to which this is amendatory, shall not be so construed as to require any affidavit, by the pre-emptor, upon making proof of his pre-emption right.

Certificates of pre-emption assignable.

SEC. 9. Certificates, authorized by the third section of this act, shall be assignable, and patents may issue in the name of the assignee.

Assignments and acknowledgment thereof prima facia evidence.

SEC. 10. Assignments of pre-emption rights, and certificates of purchase, authorized by this act, or the act to which this is amendatory, evidenced by writing executed in the presence of a subscribing witness, and proved or acknowledged before any justice of the peace, or other officer authorized by law to take the proof or acknowledgment of conveyances, shall be prima facia evidence of such assignment.

Who authorized to administer oaths and take testimony.

SEC. 11. The registers and receivers are hereby authorized to administer oaths, and to hear testimony relative to the proof of pre-emption rights and assignments, or such testimony may be taken before any judge, justice of the peace, or clerk of any circuit or county court.

Additional lands may be selected in certain counties.

SEC. 12. Any additional lands there may be to select, the commissioner is hereby authorized to locate in the counties of Buchanan, Andrew, Holt, Clinton, Gentry and DeKalb, and any land located in the county of Clinton shall be sold at the land office at Savannah, and said commissioner who may be employed in locating any remnant there may yet be of the five hundred thousand acre grant, shall be entitled to receive three dollars per day for his services, and one dollar for each township plat he shall necessarily procure in the discharge of his duty. The amount to which such commissioner shall be entitled, to be ascertained by the governor, who shall certify the amount to the auditor, and the auditor shall draw his warrant for the same on the treasurer, to be paid out of the proceeds of the five hundred thousand acre grant.

Compensation of commissioner.

Penalty for trespassing on the state lands.

SEC. 13. Any person cutting or injuring the timber upon the lands of the state, shall be fined four-fold the injury done, to be recovered by indictment: *Provided*, The fine shall not be less than twenty dollars in any case: *And, provided further*, That this section shall not extend to pre-emptors cutting timber upon lands to which they are entitled by pre-emption right: *Provided*, That any person fined for cutting timber upon land that has been offered for sale according to this act, may, by entering the land upon which the trespass was com-

Digitized by Google

mitted, and paying all cost incurred by reason of any suit for such trespass, be released from such fine.

SEC. 14. All fines imposed under this act, shall be paid into the state treasury and added to the internal improvement fund.

All fines under this act to be paid into the state treasury.

This act to take effect, and be in force, from and after its passage.

New act.

Approved March 13, 1845.

CHAPTER 97.

LANDS—FEES OF REGISTERS AND RECEIVERS.

AN ACT regulating the fees of the registers and receivers of the state land office, and for other purposes.

SEC. 1. Registers and receivers to keep their offices in the same house.
2. Fees of registers and receivers.
SEC. 3. Certain counties added to the territory out of which lands shall be selected, &c.

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

SECTION 1. That the registers and receivers of the state land offices, in this state, shall hold and keep their offices in the same house, and they shall be allowed a reasonable compensation for office rent, not to exceed fifty dollars per year, to be audited as other claims against the state, and paid out of the proceeds of the sales of the lands belonging to the state, sufficient vouchers therefor being first exhibited.

Registers and receivers to keep their offices in the same house, &c.

SEC. 2. The registers and receivers of said land offices shall each be allowed the sum of fifty cents in every pre-emption case proved before them, to be paid by the person proving up a right of pre-emption, at the time of proving the same; and the receivers shall each be allowed one fifth of one per cent. on all moneys paid into the state treasury by him: *Provided*, The amount of fees for taking proof of pre-emptions and commissions shall not exceed, to a register or receiver, the sum of one thousand dollars per annum; and all sums received over that sum, shall be paid into the state treasury, to the internal improvement fund; and the registers and receivers shall furnish, on oath, to the auditor of public accounts, the amount of fees received by them: *Provided*, That, in addition, the auditor may, in his discretion, allow

Fees of registers and receivers.

Digitized by Google

CHAP. 98.

mileage to receivers, at the rate of five cents per mile, for paying money into the state treasury quarter-annually.

Certain counties added to the territory out of which lands shall be selected, &c.

SEC. 3. That the counties of Nodaway and Atchison shall be added to the territory out of which the state commissioner shall be permitted to make any selections of lands therein, if he shall deem it the interest of the state to do so; and the lands hereafter to be selected, shall be sold at the land office in Savannah. (*a*)

This act to be in force from and after its passage.

Approved March 28, 1845.

(*a*) For the disposition of the proceeds of the sales of said state lands, see title "Distribution," Chap. 52, p. 424.

CHAPTER 98.

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 life of another.
3. Free-hold 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. Attornment of a tenant to a stranger void, except in certain cases.
SEC. 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; lien 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 a re-entry on the premises.
18. Recovery of the demised premises and costs, when.
19. If before judgment in such action the rent and all 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.

Digitized by Google

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

Executor or administrator of tenant for life, may recover rents, when. 1835, p. 375.

SECTION 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.

Remedy by action, &c., for rents dependant upon the life of another.

SEC. 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 as are due and unpaid, at the death of such other person, as he might have had if such other person was in full life.

Freehold estate in rents in right of the wife, may be recovered after her death, &c.

SEC. 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.

Remedy for rents in arrears upon lease for life.

SEC. 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.

Remedy of executor or administrator, &c.

SEC. 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. (*a*)

Tenant in possession, served with summons in ejectment, to give notice to landlord, &c. Penalty for failure.

SEC. 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.

Tenant giving notice of intention to quit, and shall not deliver possession, liable for double rent.

SEC. 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

(*a*) See Rector, administrator, vs. Rankin, 1 Missouri Rep., 371.

Digitized by Google

CHAP. 98.

heirs or assigns, double the rent reserved during all the time such tenant shall so continue in possession.

How and when to be recovered.

SEC. 8. Such double rent shall be recovered in the same manner, at the same time, that the single rent is recoverable.

Tenants, &c., after termination of their term, and after demand and notice, liable for double rent.

SEC. 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 tenants, 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 persons 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.

No relief in equity, &c.

SEC. 10. There shall be no relief in equity against any recovery had at law under the preceding section.

Attornment to a stranger void, except in certain cases.

SEC. 11. The attornment of a tenant to a stranger shall be void, and shall not, in any wise, 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.

Landlord may recover in action on case for use and occupation, when.

SEC. 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. (*b*)

If a parol demise, &c., appear on the trial, it shall be evidence of amount, &c.

SEC. 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.

Landlord has a lien upon the crop grown, &c.

SEC. 14. Every landlord shall have a lien upon the crop grown on 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. (*c*)

Ejectment may be brought, when.

SEC. 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

(*b*) Garvey vs. Dobyns, 8 Missouri Rep., 213; McFadin vs. Rippey, 8 Missouri Rep., 738.

(*c*) The right of distress for rent does not exist in this state; Crocker vs. Mann, 3 Missouri Rep., 331.

Digitized by Google

bring an action of ejectment to recover the possession of the demised premises.

Summons in such action, how it may be served.

SEC. 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.

Service shall stand instead of a demand for rent and of a re-entry.

SEC. 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.

Judgment for recovery of demised premises and rent, when.

SEC. 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.

If there is a tender of rent and costs before judgment, proceedings to cease.

SEC. 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.

Lessee, &c., barred from relief, when.

SEC. 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.

Landlord shall hold premises discharged of lease, when.

Provision and reservation in favor of mortgagees of lease in such cases.

SEC. 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. (*d*)

Approved January 4th, 1845.

(*d*) On the subject of landlords and tenants, see Stark vs. Miller, 3 Missouri Rep., 380; Tiernan vs. Johnson, et al., 7 *ibid*, 43; Garesche vs. Boyce, 8 *ibid*, 228; O'Fallon, administrator, vs. Boismenu, 3 *ibid*, 286.

Digitized by Google

CHAPTER 99.

LAW COMMISSIONER.

AN ACT to authorize the appointment of a law commissioner for the county of St. Louis.

SEC. 1. The governor to appoint a law commissioner for St. Louis county; his qualifications and duties.
2. Proceedings of commissioner in taking depositions.
3. Shall have power to issue subpœnas to witnesses, &c.
4. Shall have a place of business in St. Louis.
5. Shall have exclusive power of taking depositions to be read in the courts of Saint Louis county, except, &c.
6. Shall keep a docket of cases, &c.
7. Proceedings in case of objections to the admissibility of testimony.
SEC. 8. Shall provide a seal, &c.
9. Compensation of commissioner.
10. Shall have power to take acknowledgments of deeds, &c., in certain cases.
11. Power of commissioner in preserving order, &c.
12. How removed from office, and for what causes.
13. Depositions, how to be returned into court.
14. Term of service of commissioner.
15. Oath of office.
16. Commissioner failing to signify his acceptance within thirty days, the office shall be considered vacant.
17. Vacancies, how filled.

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

Governor to appoint a law commissioner for St. Louis county. His qualifications and duties.

SECTION 1. The governor of this state, as soon as may be after the passage of this law, shall appoint some suitable person, who shall be a resident of the county of St. Louis, and who shall have been previously admitted to practice law in the several courts of law and chancery in this state, to take testimony under commission from the several courts of record in said St. Louis county, or from any other county in this state, or of any other state, or by the consent of parties, without such commission, who shall be styled the "The law commissioner of St. Louis county."

Proceedings of commissioner in taking depositions.

SEC. 2. It shall be the duty of said commissioner to proceed without delay to appoint a time, of which both parties shall be duly notified, upon which he will proceed to execute said commission, at which time the parties shall appear before him and offer the testimony which they desire to be taken, which testimony the said commissioner shall cause to be reduced to writing in their presence in a fair and legible hand, as early as may be, in the language of the witness, and the taking of said depositions shall not be delayed, except upon such grounds as are held to be sufficient to authorize the continuance of causes in the several courts of record in this state, and by the rules of the court from which the commission issues.

Digitized by Google

Shall have power to issue subpœnas to witnesses, &c.

SEC. 3. The said commissioner shall have power to issue subpœnas for witnesses in like manner with the several courts of law and chancery in this state; which subpœnas may be served either by the sheriff of the county or by such constable of any township of St. Louis county as the parties applying for the same may direct, and the said commissioner shall have the same power to compel the attendance of witnesses, as is possessed by the several courts of law.

Shall have a place of business in St. Louis.

SEC. 4. It shall be the duty of said commissioner to have some suitable, convenient and fixed place of business which shall be within the city of St. Louis.

Shall have the exclusive power of taking depositions to be read in the courts of St. Louis, except, &c.

SEC. 5. The said commissioner shall possess the sole and exclusive power of taking depositions to be read in evidence in the several courts of record in St. Louis county; but in case of his death, resignation, sickness, absence from the county, or inability from any other cause, said depositions may be taken in the manner now prescribed by law.

Shall keep a regular docket of cases, &c.

SEC. 6. It shall be the duty of said commissioner to keep a regular docket of cases coming before him; which he shall proceed to dispose of in the order in which they are docketed, except for good cause shown.

Proceedings in case of objections to the admissibility of testimony.

SEC. 7. If objection be made before the commissioner, either by the parties or by their counsel, to the admissibility of any testimony, the commissioner shall note down said objection, but if desired, shall proceed to write down such testimony, and when he has concluded the taking of evidence in any cause, he shall cause the witness to sign the same, and shall append thereto his certificate made under his hand and seal, showing that the deposition or examination was subscribed and sworn to by the witness, and the day or days on which the same was done.

Shall provide a seal, &c.

SEC. 8. It shall be the duty of said commissioner to provide a seal of office, on which shall be inscribed "The law commissioner of St. Louis county," and every deposition by him taken shall be certified by his hand and seal of office.

Compensation of commissioner.

SEC. 9. The compensation to said commissioner for taking depositions and issuing process as aforesaid, shall be the same that is now allowed to the several clerks of the courts of record in this state for issuing process therefrom and for making copies of documents or papers recorded in their offices, and the additional sum of twenty-five cents for every deposition taken before him, which compensation shall be paid in all

Digitized by Google

CHAP. 99.

cases before the said deposition shall be returned to the court where the cause is pending in which it is to be used, and which cost shall be added by the clerk of the court to the other costs in the case, and abide the final determination of the cause.

Shall have power to take acknowledgments of deeds, in certain cases.

SEC. 10. The said commissioner shall have the same power to take the acknowledgment of all instruments of writing that is now possessed by the several justices of the peace in this state, and shall receive like compensation therefor.

Power of commissioner in preserving order.

SEC. 11. The said commissioner shall have power to preserve order, and enforce the same in like manner as is possessed by the several courts of record in this state.

How removed from office and for what causes.

SEC. 12. If the said commissioner shall be convicted of bribery, perjury, or any other wilful misdemeanor in office, he shall be removed from office, and the governor shall immediately proceed to appoint another in his place.

Depositions how to be returned into court.

SEC. 13. When the said commissioner shall have completed the taking of depositions in any cause, and shall have been paid his fees therefor, he shall cause the same, with all due diligence, to be returned, under his hand and seal of office, to the clerk's office of the court from which the commission issued.

Term of service of commissioner.

SEC. 14. The term of office of said commissioner shall be four years, to commence from the date of his commission as such.

Oath of office.

SEC. 15. Before entering upon the duties of his office, the said commissioner shall, within thirty days after the receipt of his commission by the governor, take an oath to support the constitution of the United States, and of this state, and faithfully to demean himself in office, which commission, and oath endorsed on the same, shall be recorded in the office of the clerk of the county court of St. Louis county, which shall be an acceptance of such appointment; and the clerk of the said county court, when he records the same, shall certify to the governor the acceptance of said commission.

Commissioner failing to signify his acceptance within 30 days, office to be vacant.

SEC. 16. If, after the appointment by the governor, the person so appointed by him shall fail or refuse, within thirty days, to signify his acceptance, in the manner pointed out in the preceding section, the office shall be considered as vacant.

Vacancies, how filled.

SEC. 17. Whenever a vacancy shall occur in said office, it shall be immediately filled by the governor of the state.

This act to take effect from and after its passage.

Approved January 14, 1845.

Digitized by Google

CHAPTER 100.

LAWS.

AN ACT concerning laws.

ARTICLE I. Of common law and British statutes.
II. Of the authentication of statutes without the approval of the governor.
III. Of the taking effect and repealing of laws.
IV. Of the duty of the secretary of state relative to enrolled bills.

ARTICLE I.

Of common law and British statutes.

SEC. 1. Common law of England, and all general statutes and acts of parliament prior to the 4th year of James 1st, in force.
SEC. 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:

SECTION 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, custom or usage, to the contrary notwithstanding. Common law and what British statutes are in force.

SEC. 2. Punishment, by virtue of the common law, shall, in no wise, be other than fine and imprisonment, and such fine shall not exceed one hundred dollars, and the term of such imprisonment shall not exceed two months; nor shall any of the British statutes, for the punishment of crimes and misdemeanors, be in force in this state. Punishment by the common law limited; British statutes for punishment of crimes, &c., not in force.

Digitized by Google

ARTICLE II.

Of the authentication of statutes without the approval of the governor.

SEC. 1. Statutes, how authenticated if the governor disapprove.
SEC. 2. Bills not returned by governor, how authenticated.

Statutes, how authenticated, if the governor disapprove.

SECTION 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 again be presented to the governor, to be by him deposited with the laws in the office of the secretary of state.

Bills not returned by governor, how authenticated.

SEC. 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 repealing of laws.

SEC. 1. Law repealing a former law being itself repealed, not to revive former law, &c.
SEC. 2. Laws hereafter passed to take effect ninety days after passage, &c.

Law repealing a former law being itself repealed, not to revive former law, nor to affect suits commenced under such law.

SECTION 1. When a law repealing a former law, clause or provision, shall be itself repealed, it shall not be construed to revive such former law, clause or provision, unless it be otherwise expressly provided; nor shall any law, repealing any former law, clause or provision, be construed to abate, annul, or in any wise affect 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 judgment and

Digitized by Google

termination, as if the repealing law had not passed, unless it be otherwise expressly provided.

SEC. 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.

Laws hereafter passed to take effect 90 days after passage, &c.

ARTICLE IV.

Of the duty of secretary of state relative to enrolled bills.

SEC. 1. After the laws are printed, the secretary of state to have the enrolled bills bound and indexed.

SECTION 1. As soon as practicable after the laws passed at any session of the general assembly, shall be printed and delivered, the secretary of state shall cause the original rolls to be bound in a strong and substantial manner, and properly labeled, and shall make therein a written index referring to each act, and shall preserve the volumes thus bound, safely in his office. (*a*)

After the laws are printed, the secretary of state to have the enrolled bills bound and indexed.

Approved January 14, 1845.

(*a*) *Vide*, sections 1 and 2 of the act concerning the laws and journals, chap. 102.

CHAPTER 101.

LAWS—REVISED STATUTES.

AN ACT concerning the revised statutes.

SEC. 1. Ten thousand copies of the revised statutes to be published and distributed.
2. What acts the revised statutes shall contain.
3. What acts shall not be published in the revised statutes.
4. Four thousand copies of the militia law to be published, how and by whom; on what terms and how distributed.
5. Constitution of United States, Missouri, &c., to be published with revised statutes.
6. Commissioner appointed to superintend the publication of the revised statutes; his duties, &c.
7. Vacancy in office of commissioner, how filled.
SEC. 8. The terms "heretofore" and "hereafter," construed.
9. When the plural number is used, to include the singular also.
10. Construction of words importing the singular number, or the masculine gender.
11. In what cases the rules in two preceding sections shall apply.
12. Construction of repugnant provisions contained in revised statutes.
13. Acts local, private, &c., not repealed, to continue in force, or expire by their own provisions.
14. Repeal of statutory provisions, not to affect any act done, or right accrued, &c., but such act, right, &c., shall be valid and effectual, &c.

Digitized by Google

CHAP. 101.

SEC. 15. Offence committed, and fine, &c., incurred, shall not be affected by repeal, &c.
16. Actions, plea, prosecutions, &c., pending at the time of repeal, &c., proceedings, how conducted.
17. Offence committed before, but conviction after taking effect of criminal code, what sentence shall be pronounced.
18. All acts of a general nature to take effect from the first day of August, 1845.
SEC. 19. All public acts, not revised, are continued in force.
20. Former acts in force, &c., repealed by the revised acts of the present session.
21. Seven thousand copies of the school law to be published, how and by whom.
22. Acts specially applicable to St. Louis county, not repealed, unless by some act applicable to said county.
23. This act in force from its passage, &c.

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

10,000 copies to be published.

SECTION 1. There shall be published and distributed, an edition of ten thousand copies of the revised statutes of this state.

What acts the revised statutes shall contain.—1835.

SEC. 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 their own provisions.

What acts shall not be published in the revised statutes.

SEC. 3. The acts passed during the present session, which are continued in force, and not to be published in the revised statutes, are as follows: 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.

4,000 copies of the militia law to be published, how and by whom. How distributed.

SEC. 4. Four 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; thirty-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.

Constitution of U. States, of Missouri, &c., to be published with revised statutes.

SEC. 5. The constitution of the United States, and of this state, and the amendments thereto, the act of congress, approved March sixth, eighteen hundred and twenty, authorizing the people of Missouri territory to form a state government, and the ordinance of the convention of the people of Missouri, by their representatives, of the nineteenth July, eighteen hundred and twenty, declaring the assent of the people of Missouri to the conditions and provisions of the

Digitized by Google

above recited act of congress, shall be prefixed to, and be published with, the revised statutes.

Commissioner appointed to superintend the publication of revised statutes; his duties, &c.

SEC. 6. The commissioner appointed to superintend and direct 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.

Vacancy in office of commissioner, how filled.

SEC. 7. If any vacancy occur in the office of commissioner of printing the revised statutes, the governor shall appoint some other suitable person to discharge the duties required by this act.

The terms "heretofore," and "hereafter," construed.

SEC. 8. 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.

When plural number is used, it shall include the singular also.

SEC. 9. Whenever, in any statute, words importing the plural number are used in describing or referring to any matter, parties or persons, any single matter, party or person, shall be deemed to be included, although distributive words may not be used.

Construction of words importing the singular number, or the masculine gender.

SEC. 10. 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.

In what cases rules in two last sections shall apply.

SEC. 11. The rules prescribed in the last two 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.

Construction of repugnant provisions contained in revised statutes.

SEC. 12. 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

Digitized by Google

CHAP. 101.

is inconsistent with such last provision, shall be deemed repealed thereby.

Acts local, private, &c., not repealed, to continue in force or expire according to their own provisions.

SEC. 13. All acts or parts of acts of a private, local or temporary nature, in force at the commencement of the present session of the general assembly, not repealed by or repugnant to some act of the present session, shall continue in force or expire according to their respective provisions and limitations.

Repeal, &c., by this act, not to affect any act done or right accrued, &c., but such act, right, &c., shall be valid and effectual.

SEC. 14. The repeal of any statutory provision by this act, shall not affect any act done, or right accrued or established on 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.

Offence committed, fine, &c., incurred, shall not be affected by repeal, &c.

SEC. 15. 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.

Actions, prosecutions, &c., pending at the time of repeal, &c., proceedings how conducted.

SEC. 16. No action, plea, prosecution, 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.

Offence committed before, but conviction after taking effect of criminal code, what sentence shall be pronounced.

SEC. 17. If any person 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.

All acts of a general nature to take effect, when.

SEC. 18. All acts of a public, permanent and general nature passed by the present general assembly, and approved by the governor, shall take effect and be in force from and after the

Digitized by Google

first day of August, eighteen hundred and forty-five, unless it be otherwise provided in such act.

All public acts not revised, are continued in force.

SEC. 19. All acts or parts of acts of a public, permanent and general nature, not revised at the present session, and in force at the commencement of the present session of the general assembly, and not repealed by or repugnant to some act passed at the present session of the general assembly, shall be and the same are hereby continued in full force and effect.

Former acts in force, &c., repealed by the revised acts of the present session.

SEC. 20. All acts of a public, general and permanent nature, revised at the present session of the general assembly, so soon as such acts shall take effect, shall be taken and construed as repealing the acts in force at the commencement of the present session of the general assembly so revised.

7,000 copies of the school law to be printed, how and by whom.

SEC. 21. There shall be printed and published seven thousand copies of the revised act of the present session entitled "An act to provide for the organization, support and government of common schools," with a complete index thereto, in the same manner as the private acts of the general assembly are required to be printed, and by the same person, and for the same terms, if the printer of said private acts will print the same therefor, otherwise the secretary of state shall procure said printing to be done on the best terms that can be procured; and said pamphlet shall be distributed by the secretary of state among the several counties in proportion to their free white population as near as may be.

Acts specially applicable to St. Louis county, not repealed, unless by some act applicable to said county.

SEC. 22. All acts and parts of acts specially applicable to the city or county of St. Louis, and in force at the commencement of the present session of the general assembly, and not repealed or modified by some act of the present session, specially applicable to said county or city, shall be, and the same are hereby continued in force.

In force from passage, &c.

SEC. 23. This act shall take effect from its passage, and shall be published with and as a part of the revised statutes.

Approved March 27, 1845.

Digitized by Google

CHAPTER 102.

LAWS AND JOURNALS—PUBLICATION.

AN ACT to provide for the publication and distribution of the laws and journals.*

SEC. 1. Original rolls to be deposited with secretary of state.
2. Such rolls shall be well bound and indexed.
3. Secretary shall as soon as practicable, copy such rolls and deliver same to the printer or superintendent, &c.
4. Secretary to affix marginal notes, &c., and make index, &c.
5. Secretary's duty relating to superintending the printing of the laws and correction of proof sheets.
6. Number of copies of laws to be printed; manner of executing the work.
7. Copies of laws to be distributed immediately to certain officers.
8. What number secretary to retain for use of legislature.
9. Duty of the secretary in relation to distributing and selling the laws.
10. Clerks to distribute the laws in the county.
11. Clerk to take receipts for each copy delivered; only one copy to each person.
12. When an office becomes vacant, the officer shall deliver his copy to clerk.
13. Secretary of senate and clerk of house to cause their journals to be copied for the press,
14. A certain number of copies of journals to be printed and bound.
SEC. 15. Such copies to be deposited with clerk of circuit courts, &c., who are entitled to same.
16. Additional persons entitled to copies.
17. Compensation for copying laws and journals.
18. All copies of laws and journals of other states to be kept by secretary of state.
19. Secretary to advertise for proposals to print laws two months before meeting of the legislature.
20. Price per thousand ems must be specified in bid, accompanied with specimen of style of work, &c.
21. Bids for job printing must specify price per thousand ems.
22. Manner of presenting bids.
23. Proposals to be delivered to legislature to determine on.
24. Contractor to print, to enter into bond, &c.; condition thereof.
25. Where bond deposited; suit to be brought on it, if not complied with.
26. Each house has power to contract for its own printing.
27. The printing may be given to others than those who bid.
28. Printer failing to comply with contract, the governor may employ some other person.
29. When contract has been complied with, auditor to settle with the contractor and draw on the treasurer.

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

Original rolls shall be deposited with secretary of state. Digest of 1825.

SECTION 1. The original rolls of all laws and concurrent resolutions, passed by the general assembly of this state, shall immediately after the passage thereof, be deposited in the office of secretary of state.

Such rolls shall be well bound and indexed. Sess. acts, 1840–1, p. 104.

SEC. 2. The secretary shall cause the said original rolls to be bound in a strong and substantial manner, and properly labeled, and shall insert therein a written index referring to each particular act, and shall preserve the volumes thus bound safely in his office.

* This act has been in force since 1825, but was omitted in the Rev. Code of 1835.

Digitized by Google

Secretary, as soon as practicable, to copy such rolls and deliver the same to the printer or superintendent.

SEC. 3. As soon after the passage of any law or joint resolution as is practicable, the secretary of state shall cause the same to be copied, together with such notes and references as may appear on the original rolls in his office, and prepare for the press, and deliver the same to such person or persons as may be by law appointed to superintend the printing the laws, and if no such person shall be selected as aforesaid, then the secretary of state shall superintend the printing the laws, as is herein provided.

Secretary shall affix marginal notes, &c., and make index, &c.

SEC. 4. The said secretary shall affix proper marginal notes to each paragraph or section, stating briefly the purport thereof, each act or joint resolution making one chapter, numbered in chronological order, and he shall make out an index to the acts and resolutions alphabetically arranged.

Secretary's duty in relation to superintending the printing of the laws and correction of proof-sheets.

SEC. 5. The said secretary shall deliver the copies of the laws and resolutions, and index so prepared, to the printer appointed to print the same, he shall direct and superintend the printing thereof, collate with, and correct by the original rolls the proof sheets of the printed copies, and when the whole are printed, he shall note all errors which have been committed, and cause a memorandum thereof to be annexed, together with an attestation, under his hand, that he has collated the laws and resolutions, therein contained, with the original rolls in his office, and corrected the same thereby.

Number of copies of laws to be printed; manner of executing the work.

SEC. 6. There shall be printed, by the printer appointed for that purpose, as many copies of the laws and resolutions passed at each session, as the general assembly shall, by concurrent resolution require, and the said laws and resolutions shall be neatly printed, on good paper, in book form, of a royal octavo size, with the marginal notes and index prepared by the secretary of state; and the acts and resolutions of each session, unless otherwise directed by the general assembly, shall be stitched together in one pamphlet with a strong paper cover, after the manner in which the acts of congress are usually covered, and delivered to the secretary of state.

Copies of laws to be immediately distributed to certain officers.

SEC. 7. The secretary of state shall cause the printed copies of the laws and resolutions, passed at each session, to be distributed immediately after receiving the same, in the manner following, namely: To the governor, lieutenant governor, secretary of state, auditor of public accounts, attorney general, state treasurer, and register of lands, each one copy; to the secretary of the department of state of the United

Digitized by Google

CHAP. 102.

States, and to the executive of each state and territory within the United States, each three copies; to the university of the state of Missouri, and the law library association of St. Louis, each two copies.

What number secretary shall retain for use of the legislature.

SEC. 8. He shall retain in his office thirty-three copies for the use of the senate, and one hundred copies for the use of the house of representatives of this state, and shall deliver the same to the chief clerks of the respective houses, during each session of the general assembly, and five hundred copies subject to the disposition of the general assembly.

Duty of the secretary in relation to distributing and selling the laws.

SEC. 9. He shall apportion to each county as many copies as may be necessary to supply all persons entitled to a copy under this act, and shall cause the same to be deposited in the office of the clerk of the circuit court of each county, for which the said clerks shall give their receipts respectively; and he shall cause the balance to be apportioned to the several counties according to population, as near as practicable, and shall [cause the same to] be deposited with the several clerks as aforesaid, and said clerks shall receipt for the same, and shall be authorized to sell, at cost and carriage, all such copies as may be left, after supplying all who, by this act, are entitled to a copy; and said clerks shall certify to the auditor, in November in each year, the number of copies sold, and the number on hand not disposed of, and shall account for all moneys by them received on that account, in like manner as other revenue which may come to their hands.

Clerks to distribute the laws in their respective counties.

SEC. 10. The clerks of the circuit courts, in their respective counties, immediately after the receipt of the laws for distribution, shall distribute the said copies, by delivering one to each of the following officers, who shall reside in the county, to wit: Each member of the general assembly, judge and clerk of any court of record, each justice of the county court, each justice of the peace, sheriff and coroner; and the remainder, if any, shall be retained to supply such deficiencies as may occur, or to be distributed to other officers, as aforesaid, who may thereafter be appointed.

Clerk to take receipt for each copy delivered; only one to each person.

SEC. 11. The clerk shall take a receipt for each copy so delivered, to be entered in a book to be kept for that purpose, and no more than one copy shall be delivered to any one person, although such person may hold two or more offices.

SEC. 12. If any of the officers aforesaid, to whom copies of the laws and resolutions are directed to be delivered, members

Digitized by Google

of the general assembly excepted, shall resign, be removed from office, or his office be in any manner vacated, it shall be his duty to deliver the copies of all laws by him received, to the clerk of the circuit court of the county in which he received the same, to be deposited in his office for the use of his successor; and in case of the death of any of the said officers, members of the general assembly excepted, the said copies shall be delivered by their legal representatives; and for failure of any such officers or their representatives to return such copies for the space of three months, they shall forfeit the sum of five dollars, to be recovered by action of debt, to the use of the county, before any justice of the peace.

When an office becomes vacant, the officer shall deliver his copy to clerk.

SEC. 13. It shall be the duty of the secretary of the senate and the chief clerk of the house of representatives, to cause the journals of their respective houses to be copied and prepared for the press, without delay, and at the close of each session to deliver the same to the secretary of state.

Secretary of senate and clerk of house to cause their journals to be copied for the press.

SEC. 14. There shall be printed, under the superintendence of the secretary of state, by the printer appointed for that purpose, as many copies of the journals of the proceedings of each house of the general assembly, at each session, as they shall, by concurrent resolution, require; and the said journals shall be printed in book form, of a royal octavo size, on small pica type. The secretary of state shall examine and correct the proof sheets of the journals, and prepare a table of errata, if any errors have been made, and the journals, when completed, shall be stitched together in separate pamphlets, with a strong paper cover, and delivered to the secretary of state.

Certain number of copies of journals to be printed and bound.

SEC. 15. It shall be the duty of the said secretary, so soon after he shall have received the journals as practicable, to cause to be deposited in the offices of the clerks of the circuit courts of the respective counties in this state, a sufficient number of the copies of the journals of each house, allowing one to each of the following officers, to wit: Secretary of the senate, clerk of the house of representatives, judge of any court of record, justice of the county court, member of either house of the general assembly; and the said clerks of the circuit courts shall deliver the same accordingly.

Such copies to be deposited with clerks of circuit courts, &c., who are entitled to same.

SEC. 16. The said secretary of state shall also cause to be delivered one copy of the journals of each house to the governor, attorney general, auditor, treasurer and register, retaining

Additional persons entitled to copies.

Digitized by Google

one copy for himself; and he shall transmit two copies of each to the secretary of the department of state of the United States, and two copies to the university of this state, and to the law library association of St. Louis: the remaining copies shall be preserved, subject to the order of the general assembly.

Compensation for copying laws and journals.

SEC. 17. There shall be allowed to the person copying the laws or journals, for the press, the sum of ten cents for every hundred words, and for making and preparing an index to the laws, the sum of fifteen cents for every hundred words; and the auditor of public accounts shall audit and adjust any account presented to him, for services as aforesaid, and draw on the state treasury for the amount found to be due, to be paid out of moneys appropriated for that purpose.

All copies of laws and journals of other states, to be kept by secretary of state.

SEC. 18. It shall be the duty of the secretary of state to keep safely in his office, subject to the order of the general assembly, all copies of laws, journals and public documents, transmitted to the executive of this state by the executive of the United States, or any state or territory.

Secretary to advertise for proposals to print laws, two months before the meeting of the legislature.

SEC. 19. It shall be the duty of the secretary of state, two months, at least, before the commencement of each session of the general assembly, to cause a notice to be published in some newspaper printed at the seat of government, stating that he will receive duplicate sealed proposals for printing, and delivering at his office, the laws and joint resolutions passed at each session, and like proposals for printing and delivering the journals of both houses of the general assembly, and separate sealed proposals, in duplicate, for the job printing which may be required by both houses.

Price per 1,000 ems must be specified in bid, accompanied with specimen of style, &c.

SEC. 20. All proposals for printing the laws or journals, shall specify particularly the price at which the printing will be done, per page, for the first five hundred copies, and for every hundred copies thereafter, and shall specify the number of thousand ems each page will contain, and shall be accompanied by a specimen of the style in which the work will be executed, and the quality of the paper to be employed.

Bids for job printing must specify the price per 1,000 ems, &c.

SEC. 21. All proposals for job printing shall specify particularly the price per thousand ems for close work, for the first hundred copies, and for every hundred copies thereafter; the price for open work per page, foolscap, for the first hundred copies, computing each page to contain twenty-seven lines, and each line forty-four ems, printed in small pica type.

Digitized by Google

Manner of presenting bids.

SEC. 22. Each set of proposals shall be in duplicate, sealed up, with a proper endorsement denoting their contents, and the name of the person making the proposal.

Proposals to be delivered to legislature to determine on.

SEC. 23. It shall be the duty of the secretary of state, immediately after the meeting of the general assembly, to deliver to the presiding officer of each house, one set of the duplicate proposals in his office, to be presented to their respective houses, and the two houses shall, by concurrent resolution, determine on the proposals for printing the laws and journals, or either of them.

Contractor for printing to enter into bond, &c.

SEC. 24. The person, whose proposals to print the laws and journals, or either of them, are accepted, shall enter into bond to the state, in such penalty and with such security as the secretary of state shall approve, conditioned that he will faithfully perform his duties as printer of the laws and journals, or either of them, as the case may be, and will execute the work according to law and the specimen exhibited by him, which shall be attached to the bond, and that he will deliver such number of copies as shall have been previously ordered by the general assembly, to the secretary of state, on or before a day to be in such bond named, which shall not be more than sixty days after the delivery of the copy of the original rolls, and the index herein required to be made, shall be printed within thirty days after the delivery of the same.

Condition thereof.

Where bond to be deposited; who shall bring suit thereon.

SEC. 25. Said bond shall be deposited in the office of the secretary of state, and it shall be the duty of the said secretary to institute suit, in case the obligations of the bond are not complied with.

Each house has power to contract for its own printing.

SEC. 26. Each house of the generally assembly shall determine on the proposals for job printing, and may conclude a contract for the printing required, without the concurrence of the other house, and take such security as may be thought proper.

The printing may be given to others than those who bid.

SEC. 27. Nothing, in this act contained, shall be construed to prevent the employment of any person, other than those submitting proposals, as aforesaid, to print the laws or journals, or to do the job printing of either house.

Printer failing to comply with contract, some other to be employed.

SEC. 28. If any person employed to print the laws and journals, shall fail to comply with his contract, the governor may employ some other person to do the work, taking bond as aforesaid.

SEC. 29. On presentation of the certificate of the secretary

Digitized by Google

CHAP. 103.

When contract is complied with, auditor to settle with contractor and draw on the treasurer.

of state, certifying that the contract has been fully complied with, it shall be the duty of the auditor of public accounts, to settle with the persons employed to print the laws and journals, and draw his warrant on the treasury for the amount which shall be found due, according to the terms of the contract, to be paid out of the moneys appropriated for that purpose.

Approved March 25, 1845.

CHAPTER 103.

LEAD FURNACES.

AN ACT directing the fencing and inclosing 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 and before whom damages recovered.
3. Where occupier leaves the furnace inclosed, if pulled down by another person, he shall not be liable to the penalties provided by preceding section, &c.

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

Furnaces to be inclosed: in what manner.

SECTION 1. The owners or occupiers of every furnace, or other works used for the smelting of lead, are required to keep the same inclosed 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 and other stock, from having access within the said inclosure; and to keep and maintain the said fences and inclosures 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.

Penalty for neglect; liability to party injured; how and before whom damages to be recovered.

SEC. 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 inclosure, 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, the person so offending shall forfeit and pay the sum of one dollar, for each day the said furnace or works shall remain without such inclosure, or such inclosure shall be out of repair; to be recovered, with costs, before any justice of the peace, by any person who will sue for the same, and shall also be liable to the party injured.

Digitized by Google

Where occupier leaves the furnace inclosed, if pulled down by another person, not liable.

SEC. 3. Where the owner or occupier of a furnace or works ceases to occupy the same, and leaves the premises inclosed according to the provisions of this act, he shall not be liable to the penalties prescribed by the preceding section, if, before the expiration of the six months, the inclosure is pulled down or removed by another person, without the direction or consent of said owner or occupier.

Approved January 8, 1845.

CHAPTER 104.

LEGISLATURE—MEETING.

AN ACT fixing the time of meeting of the general assembly.

SEC. 1. General assembly to meet third Monday in November, 1836, and every two years thereafter.

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

General assembly shall meet, when.

SECTION 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.

CHAPTER 105.

LEGISLATURE—VACANCIES.

AN ACT to fill vacancies in the general assembly.

SEC. 1. Resignation of members, how made; vacancies 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:

SECTION 1. If any member elected to either house of the general assembly shall resign in the recess thereof, he shall

Digitized by Google

Resignation of members how made; vacancy to be certified to the governor.

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.

Duty of governor in case of vacancy.

SEC. 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.

Writs of election how directed in certain cases.

SEC. 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.

Election to supply vacancies, how held; duty of sheriff.

SEC. 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.

SEC. 5. When any district or county shall be so altered or

Digitized by Google

divided, during the term for which a member shall be elected, and the new district or county shall be authorized to elect their members 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.

District or county divided, new district entitled to elect a member, &c.

Approved March 2, 1845.

CHAPTER 106.

LEGISLATURE—PETITION.

AN ACT respecting notice of petition 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:

SECTION 1. No petition or petitions shall, after the end of the 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 affect 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.

Petitioners to change county lines, erect new counties, or remove seats of justice, to give notice, when and how.

Approved February 26, 1835.

Digitized by Google

CHAPTER 107.

LEGISLATURE.—PROCEEDINGS.

AN ACT to regulate proceedings of the general assembly in certain cases.

SEC. 1. Joint meeting of both houses of general assembly, 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:

Joint meeting, how organized.

SECTION 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.

President of the senate to preside; by what rules governed.

SEC. 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 the like conduct before them, by the constitution of this state.

Member, how punished for disorderly behavior.

SEC. 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.

SEC. 4. If any person, whether a member or not, shall be guilty of any disorder in the presence of either house or a

Digitized by Google

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.

Persons guilty of disorderly behavior may be ordered into custody, when.

SEC. 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 committed before a joint committee of both houses, the president of the senate shall issue process, and both houses in joint meeting proceed thereon.

Disturbing committees, how punished.

SEC. 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.

Depositions may be taken and read before either house, when.

SEC. 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.

Commissions, how and by whom issued; depositions how taken and returned.

SEC. 8. Each house, or both houses in joint meeting, may cause to be issued necessary writs and process to summon 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.

Power to issue writs and process.

SEC. 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

Subpœnas and process how issued, attested and executed.

Digitized by Google

CHAP. 107.

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.

Compensation of witnesses.

SEC. 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 traveling allowance as for the time being shall be allowed by law to witnesses for their attendance, to be paid as other costs.

Fees, costs and expenses, how and by whom paid.

SEC. 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.

Each house to control its contingent expenses, &c.

SEC. 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.

Joint expenses, how controlled, adjusted and certified.

SEC. 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.

Majority of all present necessary to determine elections, &c.

SEC. 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; when such election shall be by joint vote, the president of the senate shall grant

Digitized by Google

the person elected a certificate, which, in all cases where a commission is required, shall be sufficient to authorize the granting such commission.

Power to administer oaths.

SEC. 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.

CHAPTER 108.

LEGISLATURE.—COMPENSATION.

AN ACT to fix the pay of the general assembly and their officers.

SEC. 1. Compensation of the members, the president of the senate and speaker of the house.
2. In cases of sickness, after arrival at the place of meeting, compensation to continue.
SEC. 3. Compensation of secretary of the senate, chief clerk, &c., other clerks, door-keeper and sergeant-at-arms.
4. Certificate for compensation, how granted and issued.

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

Compensation of the members, the president of the senate and speaker of the house.

SECTION 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 traveling as members.

In cases of sickness, after arrival at the place of meeting, compensation to continue.

SEC. 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.

Digitized by Google

CHAP. 109.

Compensation of secretary of the senate, chief clerk, &c., other clerks, door-keeper and sergeant-at-arms.

SEC. 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.

Certificate for compensation, how granted and issued.

SEC. 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 20, 1835.

CHAPTER 109.

LIMITATIONS.

AN ACT prescribing the times of commencing actions.

ARTICLE I. Of the time of commencing actions relating to real property.

II. Of the time of commencing actions for the recovery of any debts or damages, or of any personal property, or of any penalty, or forfeiture given by any statute of this state.

III. General provisions concerning the commencement of suits, and the persons and cases exempted from the operation of this act.

IV. On the presumption of payment arising from the lapse of time.

Digitized by Google

ARTICLE I.

Of the time of commencing actions relating to real property.

SEC. 1. Actions not to be commenced for lands, tenements, &c., after the lapse of twenty years, unless, &c.
2. No entry deemed valid as a claim, unless suit thereon be instituted within one year after entry, &c.
SEC. 3. Right of possession not impaired by a descent cast, &c.
4. Saving as to persons under disabilities.
5. If person under disability die, when and within what time his heirs may make entry and bring suit.

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

SECTION 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.

Actions not to be commenced for lands, after the lapse of 20 years, unless, &c. 1835, p. 392.

SEC. 2. No entry upon any lands, tenements or hereditaments, shall be deemed sufficient or valid as a claim, unless an action be commenced thereon 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.

No entry deemed valid as a claim, unless suit thereon be instituted within one year after entry, &c.

SEC. 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 any such estate.

Right of possession not impaired by a descent cast, &c.

SEC. 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 within the age of twenty-one years, or insane, or imprisoned on any criminal charge, or in execution upon some conviction of a criminal offence for any term less than life, or 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.

Saving as to persons under disabilities.
Minority.
Insanity.
Imprisonment.
Conviction.
Coverture.

SEC. 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

Proceedings when person laboring under disability dies.

Digitized by Google

accrued, his heirs, or any person claiming from, by or under him,* 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 debts or damages, or of any personal property, or any penalty or forfeiture given by any statute of this state. (*a*)

SEC. 1. What actions shall be commenced within ten years.
2. What actions shall be commenced within five years.
3. What actions shall be commenced within two years.
4. All actions of replevin and for slanderous words spoken, to be commenced within one year.
5. Saving to persons under disabilities, the right to bring action after disabilities removed.
6. On death of persons under disabilities, cause of action to survive.
7. If defendant be out of this state before, or depart after cause of action commences, when the action may be commenced.

What actions shall be commenced within ten years.

SECTION 1. The following actions shall be commenced within ten years after the cause of *such* action accrued and not after: All actions founded on any writing whether sealed or unsealed, for the direct payment of money or property.

What actions shall be commenced within five years.

SEC. 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

* Rev. Code of Massachusetts, 1836, p. 697, sec. 6.

(*a*) When a note is payable "on demand," the statute of limitations begins to run from the date of the note; Easton vs. Administrator of Long, 1 Missouri Rep., 472. Although the administration law allows five years within which demands may be exhibited against the decedent's estate, yet, if any demand by the general law of limitations has not that period to run at the time of taking out letters of administration, it must be exhibited within such time as will prevent a bar by the general law; Labeaume vs. Hempstead, 1 Missouri Rep., 554. To constitute a bar, the statute of limitations must be plead; Trammell vs. Adam, 2 Missouri Rep., 126. At the time a note was made, the limitation was five years; at the time it became due it was ten years. The limitation of the latter statute governed the action; Davies vs. Hascall, 4 Missouri Rep., 58. Under the act of 1825, suits on bonds or notes executed before its passage, may be brought within ten years from the date of the act, and not from the time the action accrued; Weber vs. Manning, 4 Missouri Rep., 229. *Sed quære?* When a note is payable at a time subsequent to its execution, non assumpsit infra decem annos is a bad plea; Johnson, administrator, vs. Buckner, 4 Missouri Rep., 624. The state is not included in, nor barred by any act of limitation, unless expressly named; Parks vs. The State, 7 Missouri Rep., 194. It is a general and well settled principle of law, that, in contracts the time of limitation depends on the law of the country in which the action is brought, and not on the law of the country in which the contract is made. For, although contracts are to be construed according to the laws of the country in which they are made, or according to the laws of that country in reference to which they are made, yet, the remedy on them must be conformable to the laws of that country in which the remedy is sought; King vs. Lane, 7 Missouri Rep., 241. The term, "beyond sea," in the first section of the statute of 1825, means out of the state; Shreeve vs. Administrator of Whittlesey, 7 Missouri Rep., 473; Bedford vs. Bradford, 8 Missouri Rep., 233. The rule of law that the state is not included within the statute of limitations, does not apply to suits on official bonds, taken in the name of the state for the use of individuals; The State for the use of Menard vs. Pratte & Menard, 8 Missouri Rep., 286.

Digitized by Google

or liability, and not in this act otherwise specially limited, nor brought upon any judgment or decree of any court of record; *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.

What actions to be commenced within two years.

SEC. 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.

Replevin and slander to be brought within one year.

SEC. 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. (*c*)

Saving to persons under certain disabilities, the right to bring suit after disabilities removed.

SEC. 5. If any person entitled to bring an action in this article specified, at the time the cause of action accrued, be either within the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution under a sentence of a criminal court for a less term than for his natural life, or 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.

On death of persons under disability, cause of action to survive.

SEC. 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.

If defendant be out of the state before, or depart after the cause of action accrues, when the action may be commenced.

SEC. 7. If, at any time, when any cause of action specified in this article accrues against any person who is a resident of this state, he is 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

(*c*) In an action for slander, the cause of action accrues from the time the slanderous words are spoken, and not from the time they came to the knowledge of the plaintiff; Barnard and wife vs. Boulware, 5 Missouri Rep., 454.

Digitized by Google

be deemed or taken as any part of the time limited for the commencement of such action. (*d*)

ARTICLE III.

General provisions concerning the commencement of suits, and the persons and cases exempted from the operation of this act.

SEC. 1. Alien subject, or citizen, of a 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 nonsuit; judgment arrested or reversed, actions in such cases may survive; against whom.
4. If defendant die after suit commenced, and before judgment, if action survive, 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 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.
SEC. 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 shall not extend to actions limited by other statutes.
11. Shall not extend to covenants in conveyances, but an action on such covenants to be brought within ten years.
12. This act not to apply to demands against corporations.
13. Actions barred by this act shall require a written promise to revive them.
14. One joint debtor cannot revive a demand, barred by this act, against the other debtor.
15. Nothing in the two preceding sections to lessen the effect of payment of principal, &c.
16. This act not to apply to rights of action accrued before first December, eighteen hundred and thirty-five; this section not to extend to actions of covenant.

Alien subject of country at war with United States, time of continuance of such war not to be computed under this act.

SECTION 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.

Preceding section not to apply to certain actions.

SEC. 2. The preceding section shall not apply to actions for any penalty or forfeiture given by any statute of this state.

SEC. 3. If any action shall have been commenced within the times respectively prescribed in the preceding articles, and

(*d*) Replication to a plea of the statute of limitations that, before the cause of action accrued, the defendant removed from the state where the debt was contracted, the domicil of said defendant being then and theretofore beyond seas: held, the issue of such replication is immaterial, such a proviso not being in the statute of 1825; Smith, administrator, vs. Bogliolo, 5 Missouri Rep., 344. The saving of actions under this section extends to foreigners, or those who have resided altogether out of this state, as well as to citizens who may be absent for a time; whether the defendant be a resident of this state and occasionally absent, or whether he resides altogether out of the state, is not material. If the cause of action arises abroad, it is sufficient to save the statute from running in favor of the party to be charged, until he comes within the state; King vs. Lane, 7 Missouri Rep., 241.

Digitized by Google

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; or if no executor or administrator be qualified, then, within one year after letters testamentary or of administration shall have been granted to him.

Remedy in case of non-suit, arrest or reversal of judgment, &c. Rev. Code of Mass., 1836, p. 700, sec. 11.

SEC. 4. If any action shall have been commenced within the time 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, devisees, assigns, executorsor 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.

If defendant die after suit commenced, and before judgment, if action survive, when and against whom new suit may be brought.

SEC. 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; or, if no executor or administrator be appointed within that time, then, within one year after letters testamentary or of administration shall have been granted to nim.

Remedy in case of death of plaintiff.

SEC. 6. Whenever the commencement of any suit shall be stayed by an injunction of any court, or officers authorized to grant the same, 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.

Suit stayed by injunction, time which it is in force not to be computed.

SEC. 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.

Disability to exist at the time the right accrued.

Digitized by Google

CHAP. 109.

Remedy against absconding or concealing defendant.

SEC. 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 time herein limited, after the commencement of such action shall have ceased to be so prevented. (e)

All disabilities must be removed.

SEC. 9. When there are two or more disabilities existing at the time *of* the right of action or entry accrued, the limitation herein prescribed, shall not attach until all such disabilities be removed.

This act not to extend to actions limited by other statutes.

SEC. 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.

Not to extend to covenants in conveyances.

SEC. 11. Nothing hereinbefore contained shall be construed to extend to actions of covenant, on the covenants of warranty and seizin, contained in conveyances of land; but all actions of covenant, brought on any covenant of warranty contained in any deed of conveyance of land, shall be brought within ten years next after there shall have been a final decision against the title of the covenantor in such deed; and all actions of covenant, brought on any covenant of seizin contained in any such deed, shall be brought within twenty years next after the cause of action shall accrue, and not after.

Actions of covenant may be brought within ten years, &c.

Not to apply to demands against corporations.

SEC. 12. None of the provisions of this act shall apply to suits brought to enforce payment of bills, notes, or other evidences of debt, issued by moneyed corporations.

Written promise required to revive actions barred by this act.

2 Kent, p. 489, note.

SEC. 13. In actions of debt, or upon the case, founded on any contract, no acknowledgment or promise, hereafter made, shall be evidence of a new or continuing contract, whereby to take any case out of the operation of the provisions of this act, or deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing, subscribed by the party chargeable thereby.

Provision for joint debtors.

SEC. 14. If there be two or more joint contractors, or joint executors or administrators of any contractor, no such joint contractor, executor or administrator, shall lose the benefit of

(e) If an individual secretly takes the money of another, and converts it to his own use, the statute does not commence running, until the owner obtains knowledge of the taking and conversion; Arnold vs. Scott, 2 Missouri Rep., 14. Where a debtor absconds or removes, it is not necessary that a creditor should sue out an attachment, in order to prevent his action from being barred; Hancock vs. Hough, 1 Missouri Rep., 484; see Bobb vs. Shipley, 1 Missouri Rep., 164; Cartmill vs. Hopkins, 2 Missouri Rep., 179.

Digitized by Google

the provisions of this act, so as to be chargeable by reason only of any acknowledgment or promise, made or subscribed by any other, or others, of them.

Two preceding sections not to apply to certain cases.

SEC. 15. Nothing contained in the two preceding sections shall alter, take away or lessen the effect of a payment of any principal or interest made by any person.

This act not to apply to rights of action accrued before the first of Dec., 1835; this section not to extend to actions of covenant.

SEC. 16. 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 first day of December, eighteen hundred and thirty-five, but the same shall remain subject to the laws then in force. This section shall not extend to actions of covenant, but the limitation to all such actions, hereafter accruing, shall be governed by the provisions of this act.

ARTICLE IV.

On the presumption of payment arising from the lapse of time.

SEC. 1. Provisions as to judgments and decrees after and before 1st of December, 1835; presumed to be paid within twenty years from that time, &c.

SEC. 2. Provision as to sealed instruments; presumed to be paid within twenty years from first of December, eighteen hundred and thirty-five.

Provisions as to judgments and decrees after and before first Dec., 1835; presumed to be paid within twenty years from that time, &c.

SECTION 1. Every judgment and decree of any court of record of the United States, or of this or any other state or territory, made or rendered after the first day of December, in the year eighteen hundred and thirty-five, shall be presumed to be paid and satisfied after the expiration of twenty years from the time of the rendition of such judgment or decree; and every judgment and decree rendered or made on or before the first day of December, eighteen hundred and thirty-five, shall be presumed to be paid and satisfied after the expiration of twenty years from the said day, 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.

SEC. 2. After the expiration of twenty years from the time a right of action shall accrue, upon any sealed instrument for the payment of money, after the first day of December, eigh-

Digitized by Google

CHAP. 110.

Provisions as to sealed instruments; presumed to be paid in 20 years from 1st Dec., 1835.

teen hundred and thirty-five, such right shall be presumed to have been extinguished by payment; and a right of action upon any sealed instrument, for the payment of money, made prior to the first day of December, eighteen hundred and thirty-five, shall be presumed to be paid and satisfied after the expiration of twenty years from the said first day of December, and [after] such right of action shall accrue; but such presumption in either of the preceding cases, 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 27, 1845.

CHAPTER 110.

LOST MONEY AND GOODS.

AN ACT respecting lost money and goods.

SEC. 1. Duty of persons finding lost money, goods, &c.
2. Justice to appoint appraisers.
3. Duty of appraisers.
4. Justice to file list made by appraisers.
5. Finder to advertise, how and when.
6. Proceedings, if no owner appear within forty days.
7. If owner appear within a year, finder to restore property.
8. Owner may recover by action, when.
9. Finder failing to make discovery, penalty.

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

Duty of persons finding lost money, goods, &c., 1835, 397.

SECTION 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.

Justice to appoint appraisers.

SEC. 2. Such justice shall then, if necessary, summon three disinterested householders to appraise the same.

Duty of appraisers.

SEC. 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.

Digitized by Google

SEC. 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. Justice to file list of appraisers.

SEC. 5. The finder shall set up at the court house door, and four other public places in the township, a copy of such valuation within ten days. Finder to advertise, how and when.

SEC. 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 thereafter 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. Proceedings if no owner appear within forty days.

SEC. 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. Finder to restore property, when.

SEC. 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. Owner may recover by action, when.

SEC. 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. Finder failing to make discovery, penalty.

Approved January 8, 1845.

CHAPTER 111.

LOTTERIES.

AN ACT for the entire abolition of lotteries.

SEC. 1. Lotteries, and devices in the nature of lotteries, abolished.
SEC. 2. Penalty on persons engaged in selling lottery tickets, &c.

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

SECTION 1. All lotteries, and devices in the nature of lotteries, are utterly and entirely abolished. Lotteries, &c., abolished. Rev. C., 1835.

SEC. 2. 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 Penalty on persons engaged in selling lottery tickets, &c.

Digitized by Google

CHAP. 112.

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 lottery, or device in the nature of a lottery, within this state or elsewhere, and any person 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 one thousand dollars, or undergo an imprisonment in the county jail not less than six months.

Approved January 8, 1845.

CHAPTER 112.

MANDAMUS.

AN ACT to regulate proceedings upon writs of mandamus.

SEC. 1. Return to be made to first writ.
2. Person suing or prosecuting the writ may plead to, or traverse the return.
3. Person making return may reply, take issue or demur.
4. Proceedings shall be had thereon, as in an action on the case for false return.
5. Issue to be tried in the court that issued the writ.
6. Damages may be recovered.
7. Peremptory writ to issue.
8. Costs, how adjudged.
9. Recovery, a bar to further suit for making return.
10. Time allowed for making return and pleadings.

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

Return to be made to first writ.

SECTION 1. Where any writ of mandamus shall be issued out of any court in this state, (*a*) directed and delivered to any person, who, by law, is required to make return of such writ, such person shall make his return to the first writ of mandamus. (*b*)

Person suing the writ may plead to, or traverse the return.

SEC. 2. When any writ of mandamus shall be issued, and return shall be made thereto, the person suing or prosecuting such writ shall plead to, (*c*) or traverse all or any of the material facts contained in such return.

(*a*) See sec. 3 art. v. of the constitution of the state; Vernon & Blake vs. Boggs, 1 Missouri Rep., 116; Astor vs. Chambers, 1 Missouri Rep., 191; Byrne vs. Harbison, 1 Missouri Rep., 225; County of Boone vs. Todd, 3 Missouri Rep., 140; Dixon vs. Judge of the second judicial circuit, 4 Missouri Rep., 289; Duncan vs. Travis, 4 Missouri Rep., 369; St. Louis County Court vs. Ruland, 5 Missouri Rep., 268, 6 Missouri Rep., 44.

(*b*) Mullanphy vs. St. Louis County Court, 6 Missouri Rep., 563.

(*c*) The relator may demur to the return of the writ; Johns. Rep., 61.

Digitized by Google

Person making return shall reply, &c.

SEC. 3. The person making such return shall reply, take issue, or demur to the pleading of the party suing or prosecuting such writ.

Proceedings as in action on the case for false return.

SEC. 4. Such further proceedings shall be had therein for the determination thereof, and in such manner as might have been had, if the person suing such writ had brought his action on the case for false return. (*d*)

Issue, where tried.

SEC. 5. If any issue shall be joined upon such proceedings, the person suing such writ shall try the same in the court from which such writ of mandamus issued.

Damages may be recovered.

SEC. 6. In case a verdict shall be found for the person suing such writ, or judgment given for him on demurrer, or by nil dicit, or for want of a replication or other pleading, he shall recover his damages and costs in such manner as he might have done in an action on the case for a false return, and the same may be levied by execution, as in other cases. (*e*)

Peremptory writ may issue.

SEC. 7. A peremptory writ of mandamus shall be granted, without delay, for him for whom judgment shall be given, as might have been, if such return had been adjudged insufficient.

Costs, for whom adjudged.

SEC. 8. In case judgment shall be given for the person making the return to the writ, he shall recover his costs of suit, to be levied by execution, as in other cases.

Recovery a bar to further suit for making return.

SEC. 9. If any damages shall be recovered, by virtue of this act, against any person making return to such writ, he shall not be liable to be sued in any other action or suit for making such return.

Time allowed for making return or pleadings.

SEC. 10. The court, issuing any writ of mandamus, may allow to the person to whom such writ shall be directed, or other person, who shall sue or prosecute the same, such convenient time, respectively, to make return, plead, reply, rejoin or demur, as to the court shall seem just and reasonable.

Approved January 17, 1845.

(*d*) See section 10, art. vi., of the act to regulate practice at law.

(*e*) The remedy, before the statute, for a false return to a writ of mandamus was an action on the case; Selwyn's Nisi Prius, 1115. The statute does not take away the remedy by action on the case, except when damages are recovered by virtue of the statute; *Ib.* Buller's Nisi Prius, 203. See sec. 9 of this act.

Digitized by Google

CHAPTER 113.

MARKS AND BRANDS.

AN ACT to regulate marks and brands.

SEC. 1. Owners of stock to have a mark or brand.
2. Description to be delivered to clerk, and by him recorded.
3. At what age to brand or mark.
4. Disputes concerning marks or brands, how decided.
5. No more than one mark or brand to be used in the same family.
6. Penalty for using mark or brand not recorded.
7. Penalty for altering or defacing mark or brand.
8. Penalty for mis-marking or mis-branding.
9. Duty of persons killing hogs or cattle running at large.
10. Penalty for concealing offences in the two preceding sections, &c.
11. Minors may have marks and brands in certain cases.
12. Penalties, how recovered and appropriated.

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

Owners of stock to have a mark or brand. Rev. C., 1835.

SECTION 1. Every person who hath cattle, hogs or sheep, shall have a mark or brand different from the mark and brand of his neighbors.

Description to be delivered to clerk and recorded.

SEC. 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.

At what age to brand or mark.

SEC. 3. Every person shall mark all his hogs and sheep over six months old, and mark or brand his cattle over twelve months old.

Disputes concerning mark or brand, how decided.

SEC. 4. If any dispute shall arise about the question of whose any particular mark or brand may be, it shall be decided by the record of the clerk.

No more than one mark or brand to be used in the same family.

SEC. 5. 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.

Penalty for using mark or brand not recorded, &c.

SEC. 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.

Penalty for altering or defacing mark or brand.

SEC. 7. If any person alter or deface the mark or brand of any other person, for every head of stock whose mark or brand he shall alter or deface, he shall forfeit not exceeding one hundred dollars: such prosecutions shall be instituted within six months after the discovery of the offence.

Digitized by Google

Penalty for mis-marking, &c.

SEC. 8. If any person wilfully, and with intent to defraud, mis-mark or mis-brand any stock not his own, he shall forfeit five dollars over and above the value thereof.

Duty of persons killing hogs or cattle running at large.

SEC. 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 of the township, under the penalty of ten dollars.

Penalty for concealing offences in the two preceding sections, &c.

SEC. 10. If any person see another 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 that there was probable cause for giving such information.

Minors may have marks and brands.

SEC. 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.

Penalties, how recovered and appropriated.

SEC. 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 20, 1845.

CHAPTER 114.

MARRIAGE CONTRACTS.

AN ACT concerning marriage contracts.

SEC. 1. Contracts to be in writing, sealed and acknowledged or proven.
2. How acknowledged or proved and certified.
3. To be recorded, where.
4. When deposited for record, shall impart notice.
5. No marriage contract shall be valid, or affect third persons until delivered for record.
6. If duly authenticated shall be received in evidence.
7. If lost, a certified copy shall be evidence.

Digitized by Google

CHAP. 114. *Be it enacted by the General Assembly of the State of Missouri, as follows:*

To be in writing, sealed and acknowledged, or proven. Rev. C., 1835.

SECTION 1. All marriage contracts (*a*) whereby any estate, real or personal, in this state, is intended to be secured or conveyed to any person or persons, or whereby such estate may be affected 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.

How acknowledged, or proved and certified.

SEC. 2. Such marriage contracts shall be acknowledged or proved before a court of record, or some justice, judge 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 conveyance for land are or shall be required by law to be acknowledged or proved and certified.

To be recorded, where.

SEC. 3. When any such 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 situated, or may be found.

When deposited for record, shall impart notice.

SEC. 4. When any such marriage contract is deposited in the recorder's office, for record, it shall (as to all property affected thereby in the county where the same is deposited) impart full notice to all persons of the contents thereof.

Shall not affect third person until delivered for record.

SEC. 5. No such 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 may be found.

If duly authenticated, shall be received in evidence.

SEC. 6. Such 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.

If lost, a certified copy shall be evidence.

SEC. 7. When it shall appear to the court that such 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 27, 1845.

(*a*) *Vide*, Pratte vs. Wright, 5 Missouri Rep., 192; Green vs. Spencer, 3 *ibid*, 319; M'Nair vs. Dodge, administrator, 7 *ibid*, 404.

Digitized by Google

CHAPTER 115.

MARRIAGES.

AN ACT regulating marriages.

SEC. 1. Marriage, in law, a civil contract.
2. In what degrees marriages declared to be incestuous and void.
3. Marriage of white person with negro or mulatto, illegal and void.
4. Penalty on persons contracting or solemnizing marriage contrary to two preceding sections.
5. Marriage without the state, if valid when contracted, shall be valid in the state, when.
6. Who may perform the ceremony of marriage.
7. Minors not to be married without consent of parent or guardian.
8. Certificate of consent to be registered and filed in recorder's office, &c.
9. Records of marriages to be kept, and certificates filed; penalty for neglect.
10. Recorder to register certificates; his fees; penalty for neglect.
11. Religious societies may solemnize marriages, how.
12. Record of marriage and certified copies, evidence.
13. Penalty for making false return or false entry of marriage, &c.

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

SECTION 1. Marriage is considered in law as a civil contract, to which the consent of the parties capable in law of contracting is essential. Marriage in law a civil contract.

SEC. 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 legitimate children and relations. In what degrees marriages declared to be incestuous and void.

SEC. 3. All marriages of white persons with negroes or mulattoes, are declared to be illegal and void. Certain marriages illegal and void.

SEC. 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 a 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. Penalty on persons contracting or solemnizing marriage contrary to two preceding sections.

SEC. 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. When marriage without the state valid.

Digitized by Google

CHAP. 115.

Who may perform the ceremony of marriage.

SEC. 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.

Minors not to be married without consent of parent or guardian.

SEC. 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.

Certificate of consent to be registered and filed in recorder's office.

SEC. 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 that 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.

Penalty for marrying minors without consent, &c., how recovered.

Record of marriages to be kept and certificates filed; penalty for neglect.

SEC. 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.

Digitized by Google

Recorder to register certificate; his fees; penalty for neglect.

SEC. 10. The recorder of each county 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 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.

Religious societies may solemnize marriage, how.

SEC. 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.

Record of marriage and certified copies, evidence.

SEC. 12. The books 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.

Penalty for making false return or false entry of marriage, &c.

SEC. 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 20, 1835.

Digitized by Google

CHAPTER 116.

MARRIAGES.

AN ACT amendatory of an act entitled "An act regulating marriages."

SEC. 1. Evidence of marriage how supplied, if person performing ceremony die before filing certificate.

SEC. 2. Effect of affidavits endorsed and filed according to the provisions of the preceding section. Proviso.

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

Evidence of marriage, how supplied, if person performing the ceremony die before filing certificate.

SECTION 1. If any preacher, judge or justice of the peace, who has heretofore performed any marriage ceremony, and died without returning a certificate of such marriage to the office of the recorder of the county, according to law, it shall be lawful to supply the place of such certificate, by filing in said recorder's office the affidavit of at least two respectable persons who were present at the marriage, stating the time and place of the marriage, the names of the parties married, and the person performing the marriage ceremony: every such affidavit shall be endorsed by one of the parties married, (unless both of said parties be dead,) such endorsement stating that the facts set forth in the affidavit are true; said endorsement shall also be sworn to before some officer authorized to administer oaths.

Effect of affidavits under preceding section.

SEC. 2. Affidavits endorsed and filed according to the provisions of the preceding section, shall have the like force and effect, in all respects, as the certificate of marriage required to be filed by law, by persons performing marriage ceremonies: *Provided*, Such affidavit shall be filed as aforesaid within six months after this act takes effect.

Approved March 27, 1845.

Digitized by Google

CHAPTER 117.

MECHANICS LIENS.

AN ACT for securing liens to mechanics and others.

SEC. 1. Lien of artisans, builders, mechanics, &c., for materials and labor.
2. Within six months an account on oath to be filed with the clerk of the circuit court.
3. Proceedings of sub-contractor to procure a lien.
4. Effect of certificate of settlement, and liability to sub-contractor.
5. Payment made by proprietor before filing settlement, valid; not liable to pay until the time of credit has expired.
6. Duty of clerk relative to liens filed in his office.
7. Proceedings against property bound by lien, and to obtain judgment; extent and effect of judgment and execution.
SEC. 8. Plaintiff to proceed by scire facias, against whom; judgment on scire facias.
9. Scire facias, how served.
10. Lien under this act to expire in twelve months, unless suit shall have been brought.
11. Sub-contractor to file a release, when.
12. Satisfaction of lien to be entered, when and how.
13. Forfeiture on creditor failing to enter satisfaction.
14. Land, not exceeding 500 square feet clear of building, subject to lien.
15. If title be incumbered, person who procures work done, considered the owner of the land to the extent of his right and interest.

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

SECTION 1. That artisans, builders, mechanics, and those who furnish materials for buildings, under contract with the proprietor thereof, and all sub-contractors, shall have a lien for such materials furnished; and for work and labor done on houses and other edifices by them hereafter erected, in whole or in part, each artisan, builder, mechanic, laborer and sub-contractor, for his own work and materials furnished.

Lien of artisans, builders, mechanics, &c., for materials and labor. 1840–1, p. 105, sec. 1.

SEC. 2. It shall be the duty of every person, except a sub-contractor, who wishes to avail himself of the benefits of this act, to file with the clerk of the circuit court of the county in which the building to be charged with the lien is situated, and within six months after the materials shall have been furnished, or the work and labor performed, a just and true account of the demand due him, after all credits, which is to be a lien upon such building; and he 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 said lien.

Within six months, an account on oath to be filed with the clerk of the circuit court.—*Ib.*

SEC. 3. Every sub-contractor, wishing to avail himself of the benefits of this act, shall give notice, in writing, to the

Digitized by Google

Proceedings of sub-contractor to procure a lien. *Ib.*, secs. 1-2.

owner or proprietor, or his agent, of his intention to furnish materials for, or perform labor on the building, and the probable value thereof; and if afterwards materials are furnished, or labor done, the sub-contractor shall settle with the contractor therefor, and having made the settlement, in writing, the same, signed by the contractor and certified by him to be just, shall be presented to the owner or proprietor, or his agent, and left with him; and within ten days from the time the materials shall have been furnished, or the labor performed, the sub-contractor shall file with the clerk of the circuit court of the county in which the building is situate, a copy of the settlement between him and the contractor, which shall be a lien on the building for which the materials were furnished, or on which the labor was performed, and shall at the same time file a correct description of the property to be charged with the lien.

Effect of certificate of settlement and liability to sub-contractor. *Ib.*, sec. 1.

SEC. 4. The certificate of settlement made as aforesaid, shall be a justification to the employer in withdrawing from the contractor the amount appearing thereby to be due to the sub-contractor, until he is satisfied that the same has been paid; the employer shall become the debtor of the sub-contractor for the amount, and may use it as a set-off, or plead its payment in bar of an action therefor, by the contractor.

Payments made by proprietor before filing of settlement, valid; not liable to pay till the time of credit has expired. *Ib.*, sec. 5.

SEC. 5. All payments made by the proprietor or owner of a building, before he is served with notice of the filing of the settlement, shall be valid, and he shall only be liable to the sub-contractor for the amount due from him to the contractor at the time of the service of the notice; and no owner or proprietor of any building shall, by virtue of any thing contained in this act, be bound to pay the value of any work or materials, or subject to any suit therefor, before the expiration of the time for which credit for such work and materials may have been agreed upon between the owner and contractor, if such contract for credit shall have been made before the sub-contractor shall have furnished any materials or performed any work.

Duty of clerk relative to liens filed in his office.

SEC. 6. It shall be the duty of the clerk to make an abstract of all liens filed in his office under this act, 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

Digitized by Google

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 one half cents. (*a*)

Proceedings against property bound by lien, and to obtain judgment.

SEC. 7. 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 proportional part of the property charged with the lien, as his demand bears to the whole amount of liens that are charged upon the said property under this act, which proportional part shall be decided by the court, and also against other property of the defendant; but, if a part of the property cannot be separated from the residue, and sold, without damage to the whole, then, the whole may be sold, subject to all other incumbrances under this act; but 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 of the commencement of said suit, or unless a scire facias shall first have issued, and been served upon the owner or possessor of such property, requiring him to appear and show cause why judgment should not be entered up, and execution had against such property. (*b*)

Extent and effect of judgment and execution.—1825, p. 195, sec. 3.

Plaintiff to proceed by scire facias, against whom.

SEC. 8. 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 whom he wishes to proceed; but no judgment to be rendered on the 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. (*c*)

Judgment on scire facias.

Scire facias, how served.

SEC. 9. 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

(*a*) The failure of the clerk to record the lien does not affect its validity. The account of the demand is evidence of notice of the existence of the lien. Cornelius et al. vs. Grant & Abbott, 8 Missouri Rep., 59.

(*b*) See Sibley et al. vs. Casey & Biddle, 6 Missouri Rep., 164.

(*c*) In proceeding under this section, the account of the demand stands in the place of a declaration, and is considered a record; Cornelius et al. vs. Grant & Abbott, 8 Missouri Rep., 59.

Digitized by Google

CHAP. 117. charged, for six weeks at least before the return of the said scire facias.

Limitation of lien.

SEC. 10. 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 in this act.

Sub-contractor to file a release, when. 1840-1, p. 106, sec. 6.

SEC. 11. Within five days after the demand, of any sub-contractor who may have filed his lien by virtue of this act, shall be satisfied, either by the principal contractor or the owner of the property, such sub-contractor shall file in the office of the clerk in which the lien is filed, a release of the same, under a penalty of one hundred dollars, to be recovered by action of debt, in the name of the owner of the property affected by the lien.

Satisfaction of lien to be entered, when and how.

SEC. 12. Whenever any debt, which is a lien upon any building, shall be paid to any creditor other than a sub-contractor, he shall enter satisfaction on the margin of the record of said lien.

Creditor failing to enter satisfaction, forfeiture.

SEC. 13. If any creditor refuse or neglect to enter such satisfaction within ten days after the payment and request, he shall forfeit the amount of the lien which he claimed, to be recovered by action of debt, in the name and for the use of the owner of the building.

Land, not exceeding 500 square feet clear of building, subject to lien.

SEC. 14. The land upon which any building shall be erected, together with a convenient space around the same, not exceeding five hundred square feet clear of the building, shall also be subject to the liens which may be created 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 be erected.

If title incumbered, the person who procures the work done considered the owner of the land to the extent of his right and interest. 1842-3, p. 82, sec. 1.

SEC. 15. If the person who shall have caused the building to be erected, has an estate in fee, for life, or any less estate, either in law or in equity; or, if the land on which the building is erected at the time of the contract for building, or for furnishing materials therefor, is mortgaged, or under any other lien or incumbrance, by contract or statute, the person who procures the work to be done, shall, nevertheless, be considered as the owner, to the extent of his right and interest in the land, and the lien before provided for by this act, shall bind his whole estate and interest therein, and the creditor may cause the right of redemption, or whatever other right or

Digitized by Google

estate the owner had in the land, to be sold, and applied to the discharge of his debt, according to the provisions of this act. (*d*)

Approved March 19, 1845.

(*d*) See Sess. Act 1843, page 83, for the law concerning mechanics liens in St. Louis county.

CHAPTER 118.

MERCHANTS.

AN ACT to license and tax merchants.

SEC. 1. Who declared to be a merchant.
2. Not to deal without a license. Penalty of not less than $50 nor more than $500.
3. Clerk shall issue blank licenses; form of license.
4. To be delivered and charged to collector.
5. Statement to be delivered to collector by applicant.
6. Statement to be signed, and under oath.
7. Oath, how made and attested.
8. Rates of tax on licenses.
9. Fee of $00.50 allowed to clerk.
10. Ad valorem tax on merchandise.
11. Not to be levied, when.
12. Collector to make return to county court at each term.
SEC. 13. Court to settle with collector, when and how.
14. Collector failing to make return to be charged $200.
15. Clerk shall certify to auditor the amount charged against collector for tax on licenses.
16. Extent of license.
17. Authority to sell liquors limited.
18. Duty of collector to offer to furnish licenses, and to report to each grand jury all delinquents.
19. Duty of officers and citizens to give information of violations of this act. Justice to issue warrant, &c.
20. Proceedings, if the accused be found guilty.

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

SECTION 1. Every person, or co-partnership of persons, who shall deal in the selling of goods, wares or merchandise, at any store, stand, or place occupied for that purpose, is declared to be a merchant. (*a*) Who declared to be a merchant. 1835, p. 403.

SEC. 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 such offence. (*a*) Not to deal without a license.

SEC. 3. The clerk of the county court of each county shall issue as many blank licenses, for vendors of merchandise, under the seal of the court, as the court shall direct, which Clerk shall issue blank licenses.

(*a*) See Tracy & Wahrendorf vs. The State, 3 Missouri Rep., 3; State vs. Martin, 5 Missouri Rep., 361.

Digitized by Google

Form of license.

licenses shall be in the following form: "The state of Missouri, to all who shall see these presents, greeting: Know ye, that A. B., having, on the —— day of ——, 18—, paid to C. D., collector within and for the county of C., the sum of —— dollars, being the semi-annual tax imposed on him as a vendor of merchandise; Therefore, the said A. B. is hereby authorized to vend merchandise, at any one place within said county, for six months, ending the —— day of ——, next. In testimony whereof, I, G. A. P., clerk of the county court of the county of C., have affixed the seal of said court, this —— day of ——, 18—." "G. A. P., Clerk."

"Granted, this —— day of ——, 18—."

"C. D., Collector."

To be delivered and charged to collector.

SEC. 4. Such clerk shall deliver to the collector of his county all licenses so issued, and charge him therewith, in a book to be kept for that purpose. (a)

Statement to be delivered to collector by applicant.

SEC. 5. Before any person, or co-partnership, shall receive a license to vend merchandise, he or they shall deliver to the collector of the proper county, an aggregate statement, in writing, of the amount of all goods, wares and merchandise, (except such as are the growth, produce, or manufacture of this state,) received at his or their store, stand or warehouse, for retail, for the last six months next preceding the application for such license.

Statement to be signed and under oath.

SEC. 6. The person, or co-partnership, making application for such license, or some credible person for him or them, shall sign such statement, and make oath (or affirmation) before the collector, or some judge or justice of the peace, that such statement contains a just and true account of the aggregate amount of all the goods, wares and merchandise, received for sale within the last six months.

Oath how made and attested.

SEC. 7. Such oath (or affirmation) shall be in writing, annexed to such statement, subscribed by the person making it, and attested by the collector, judge or justice.

Rates of tax on licenses.

SEC. 8. There shall be levied upon every such license, to be paid to the collector before the delivery thereof, as follows: *First*, Where the amount of merchandise, received for sale as aforesaid, does not exceed the amount of five thousand dollars, the sum of ten dollars; *Second*, Where the amount of merchandise, received for sale aforesaid, exceeds the value

(a) See Tracy & Wahrendorf vs. The State, 3 Missouri Rep., 3; State vs. Martin, 5 Missouri Rep., 361.

Digitized by Google

of five thousand dollars, but is less than ten thousand dollars, the sum of fifteen dollars; *Third*, When the amount of merchandise, received for sale as aforesaid, is as much in value as ten thousand dollars, but less than fifteen thousand dollars, the sum of twenty dollars; *Fourth*, When the amount of merchandise, received for sale as aforesaid, is as much in value as fifteen thousand dollars, the sum of twenty-five dollars.

Fee of fifty cents allowed to clerk.

SEC. 9. The collector shall, at the time of delivering such license, collect the further sum of fifty cents, the fee allowed by this act to the clerk for issuing the same.

Ad valorem tax on merchandise.

SEC. 10. The collector shall collect, as an ad valorem tax, such per centum upon all merchandize offered for sale as aforesaid (except such as may be offered in the packages, boxes, bales, barrels or crates in which they were imported, or in which they may have remained without being broken) such an amount as may, for the time being, [be levied] *paid* as a tax upon real estate.

Not to be levied, when.

SEC. 11. Such ad valorem tax shall not be levied on any goods on which the applicant for license may have paid such tax, within the twelve months next preceding.

Collector to make return to county court at each term.

SEC. 12. Each collector, at each regular term of the county court of his county, shall return: *First*, All blank licenses not granted by him; *Second*, A list of all licenses granted by him, and not before accounted for, showing the names of the persons to whom granted, the amount of taxes collected on each, and the commencement and termination of each license so granted by him; *Third*, The aggregate statements of the amount of merchandise, sworn to and delivered to him by the person or persons to whom licenses were granted.

Court to settle with collector, when and how.

SEC. 13. The county court, at each regular term thereof, shall settle and adjust the account of the collector for licenses delivered to him under the provisions of this act, giving him credit for all blank licenses returned, and charging him for all licenses not returned, according to the aggregate statements required to be returned by the third sub-division of the next preceding section.

Collector failing to return, to be charged $200.

SEC. 14. If the collector shall fail to return a number of such aggregate statements, corresponding in number with the licenses not returned, the court shall, for each license not returned, above the number of such aggregate statements returned, charge him, in such settlement, the sum of two hundred dollars.

Digitized by Google

CHAP. 118.

Clerk to certify to auditor amount charged against collector.

SEC. 15. The court on ascertaining the amount received by the collector for licenses and taxes on, or for which he shall have become chargeable, under this law, shall cause their clerk at each term to certify to the auditor of public accounts the amount so charged against the collector of their county.

Extent of license.

SEC. 16. No license granted in virtue of this law, shall authorize any person, or co-partnership, to deal in the selling of goods, wares and merchandise in any other county than the one in which the license was granted, nor at more than one place in the proper county, at the same time, nor for a longer period than six months.

Authority to sell liquors limited.

SEC. 17. No such license shall authorize any merchant to sell wines or spirituous liquors in less quantities than one quart, nor in any quantity to be drank at his store, stand or warehouse or other place of business.

Duty of collectors to offer to furnish licenses, and to report to grand jury all delinquents.

SEC. 18. It shall be the duty of the several collectors to call at least as often as once in every three months on all merchants, grocers and auctioneers, who are required by law to take out a license, and offer to furnish such as have not a license, with a license, and the said collector shall report to each grand jury of his county, the names and location of all who refuse to take out or to renew their license at the proper time, as required by law.

Duty of officers and citizens to give information of violations of this act.

SEC. 19. When any person shall be found dealing as a merchant, contrary to the provisions of this act, every sheriff, collector, assessor, coroner and constable of the proper county, city or township shall, and every citizen may, give information thereof, to some justice of the peace of the county, without

Warrant to issue, &c.

delay. The justice shall issue his warrant, directed to the sheriff or any constable of the county, and cause the offender to be arrested and brought before himself or some other justice of the peace of the county.

Proceedings, if the accused be found guilty.

SEC. 20. If, upon examination, the justice 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 of the county, or of the criminal court of St. Louis county, on the first day thereof, to answer any indictment which may be preferred against him, and in default of such recognizance, the justice shall commit the offender to the county jail of the county.

Approved March 25, 1845.

Digitized by Google

CHAPTER 119.

MERCHANTS.

AN ACT supplementary to "An act to license and tax merchants."

SEC. 1. Druggists not exempt from license tax imposed on merchants. Penalty on druggists for dealing without license. Proviso.

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

SECTION 1. The act to which this act is supplementary, shall not be so construed as to exempt dealers in drugs and medicines from the same license tax that is imposed on merchants, and all persons dealing in drugs or medicines, without license, shall be subject to all the penalties imposed by the act to which this act is supplementary, on merchants who may sell without license: *Provided*, That this act shall not extend to practicing physicians for medicines used in their practice.

Druggists not exempt from license tax imposed on merchants. Penalty on druggists for dealing without license. Proviso.

Approved March 27, 1845.

CHAPTER 120.

MILLS AND MILLERS.

AN ACT concerning mills, millers, and the rates of toll.

SEC. 1. What are declared public mills.
SEC. 2. Water grist-mills declared public.
SEC. 3. To grind for customers four days in each week.
SEC. 4. Grain, how to be ground.
SEC. 5. Rates of toll.
SEC. 6. When bolting machine is turned by hand, duty of owner.
SEC. 7. Extent of liability of owner. His duty to deliver flour, &c.
SEC. 8. Cases of loss in which miller is not responsible.
SEC. 9. Not liable for bags, barrels, &c., not branded.
SEC. 10. Millers to give due attendance to their customers.
SEC. 11. To keep sealed measures.
SEC. 12. Penalty for violation of this act.
SEC. 13. Proceedings to convert a public into a private mill.
SEC. 14. Converting a public water-mill into a private mill, deemed a forfeiture of privilege; may be dealt with as a public nuisance.

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

SECTION 1. All grist-mills which grind for toll, are hereby declared public mills.

What are declared public mills—1835.

SEC. 2. All water grist-mills, that have heretofore been, or shall hereafter be built on any water course, by authority of any statute, or order of any court, are hereby declared to be public mills.

Water grist mills declared public.

Digitized by Google

CHAP. 120.

To grind for customers, &c.

SEC. 3. All public mills shall grind for customers at least four days in each week.

Grain, how to be ground.

SEC. 4. All grain brought to a public mill, shall be ground in turn as the same shall be brought, and as well as the nature and condition of the mill will permit.

Rates of toll.

SEC. 5. The owner or occupier of every public mill, shall be entitled to toll all grain ground thereat, according to the following rates: *First*, If a water-mill, one-eighth, and if a steam-mill, one-sixth, and no more; *Second*, If a horse or ox mill, the one-fifth part, when the owner or occupier of such mill furnishes the team for grinding the same; *Third*, When the team shall be furnished by the owner of the grain, and with the assent of the owner or occupier of such horse or ox mill, the toll shall be one-eighth part, and no more.

When bolting machine is turned by hand, duty of owner.

SEC. 6. 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.

Extent of liability of miller, his duty to deliver flour, &c.

SEC. 7. 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 all sacks, bags, barrels and casks, in which the same was received, and shall, when called for, deliver the flour, meal, hominy or malt, made from such grain, together with such sacks, bags, barrels and casks, to the owners or their agents or servants.

Cases of loss in which miller is not responsible.

SEC. 8. The owner or occupier of a public mill shall not be liable for the loss of any grain, sacks, bags, barrels or casks, when such loss shall happen: *First*, Without the fault or neglect of such owner or occupier; or, *Second*, By inevitable accident.

Not liable for bags, barrels, &c., not branded.

SEC. 9. No owner or occupier of a public mill shall be liable for any sacks, bags, barrels or casks, that are not branded or marked with the owner's name.

Millers to give due attendance to their customers.

SEC. 10. 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 may be brought by them for the purpose of being ground, and the material which shall be made thereof.

To keep sealed measures.

SEC. 11. 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 court, and proper toll dishes for such measures.

Digitized by Google

SEC. 12. 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. Penalty for violation of this act.

SEC. 13. Every owner or occupier of a public mill who shall desire to convert the same into a private mill, shall give at least thirty days notice of such intention, by a written or printed advertisement, put up and kept up in some conspicuous and easily accessible place in such mill. Proceedings to convert a public into a private mill.

SEC. 14. Whenever any water-mill, which shall have been erected pursuant to the provisions of the law concerning mills and mill-dams, shall be converted into a private mill, all the privileges of such mill conferred by law, or the judgment or decree of any court, shall be thereby forfeited, and the same shall be subject to be dealt with as a public nuisance. Converting a public water mill into a private mill, declared a forfeiture of privilege; may be dealt with as a public nuisance.

Approved March 17, 1845.

CHAPTER 121.

MILLS AND MILL-DAMS.

AN ACT concerning mills and mill-dams.

SEC. 1. When proprietor may erect a dam; how to proceed.
2. Owning land on one side of a stream may erect a dam, when.
3. Petition to be filed under first section.
4. What the petition shall set forth.
5. Petition to be filed in the case supposed in the second section; what it shall set forth.
6. Where to be filed.
7. Writ of ad quod damnum to be issued; to whom directed; command thereof.
8. Duty of sheriff in executing the writ; subjects of inquiry.
9. Further duty in case under second section.
10. To set apart one acre of land.
11. Proprietor to be notified of the inquest, how.
12. Power of sheriff.
13. Inquest to be in writing, signed by jury and returned by sheriff.
14. Proceedings on return of inquest.
15. Issues to be tried as in civil cases.
16. Costs, how adjudged.
17. Court may order new suit.
18. Court may enter an order of permission to erect a dam, when.
19. May include in its order a decree vesting title, when.
20. Order and decree subject to conditions.
21. Land decreed for mill privileges shall revert to original owner, when.
22. Altitude of dam may be increased, how.
23. Inquest or order not to bar right of action, except, &c.
24. Penalty for building or heightening dam without lawful permission.
25. Power of circuit court to prevent the erection of dams in certain cases.
26. What dams deemed public nuisances.
27. Effect of failure to build according to law.
28. Privilege to construct a dam shall cease, when.

Digitized by Google

CHAP. 121. *Be it enacted by the General Assembly of the State of Missouri, as follows:*

When proprietor may erect a dam. Rev. C., 1835.

SECTION 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 is provided.

Owning land on one side of stream, may erect a dam, when.

SEC. 2. Any person being the owner, in fee simple, of the land on one side of such water course, including a part of the bed of the stream at a point where he proposes to erect a dam, may, nevertheless, erect such dam by proceeding as in this law is provided.

Petition to be filed under 1st section.

SEC. 3. In the case supposed in the first section, the person proposing to erect a dam shall file a petition in the circuit court of the county in which he proposes to erect his mill or other machinery in connection with the dam.

What the petition shall set forth.

SEC. 4. The petition shall set forth: *First*, A description of the land and an abstract of his title thereto; *Second*, The name of the water course, and a description of the point at which he proposes to erect his dam; *Third*, The altitude of the dam which he proposes to erect; and, *Fourth*, The kind of mill or other machinery which he proposes to connect with the dam.

Petition to be filed in a case supposed in 2d section.

What it shall set forth.

SEC. 5. In the case supposed in the second section, the person proposing to erect a dam, shall file a petition as in the third section is provided, and in addition to the requirements of the fourth section, shall set forth: *First*, The name and place of residence of the owner of the land on the other side of the water course whereon he would abut his dam; *Second*, On what side of the water course he proposes to erect his mill, or other machinery, in connection with the dam; and, *Third*, A prayer that the title to one acre of the land on the opposite side of such water course, to include the place where he will abut his dam, may be decreed to him, and that the same may be set apart by metes and bounds.

Where to be filed.

SEC. 6. Such petition shall be filed in the circuit court of the county within which the petitioner proposes to erect such mill or other machinery.

Writ of ad quod damnum to be issued.

To whom directed.

SEC. 7. Upon filing 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, directed to the sheriff, commanding him to summon twelve fit persons of his county to meet at the

Digitized by Google

place where it is proposed to erect a dam, on a day to be named in the writ, then and there to inquire, by the said jury, touching the matters contained in the petition, a copy of which shall accompany the writ. Command thereof.

SEC. 8. The sheriff shall attend the jury on the day and at the place appointed, and upon full examination, inquire by such jury: *First*, What damage each proprietor will sustain by reason of inundation consequent upon the erection of the dam, as proposed; *Second*, Whether the mansion house of any such proprietor, or the out houses, curtilages or gardens thereto immediately belonging, or orchard will be overflowed thereby; *Third*, 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; and, *Fourth*, Whether the health of the neighborhood will be materially annoyed in consequence of such erection. Duty of sheriff in executing the writ. Subjects of inquiry.

SEC. 9. In the case supposed in the second section, the sheriff shall further inquire by the jury the value of the one acre of land mentioned in the prayer of the petition. Further duty in case, under 2d section.

SEC. 10. The sheriff shall, with the assistance of the jury, set apart one acre of land by metes and bounds. To set apart an acre of land.

SEC. 11. In such case the sheriff shall give the proprietor of the land whereof one acre is prayed for, a reasonable notice 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 actual tenant thereof, he shall set up such notice at some conspicuous place on the land. Proprietor to be notified of the inquest, how.

SEC. 12. The sheriff shall have power, with the jury, to go into and act in an adjoining county, when necessary, to the discharge of the duties under this act. Power of the sheriff.

SEC. 13. The inquest of the jury shall be reduced to writing, signed by each of the jurors, and 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. Inquest to be in writing, signed by the jury, and returned by sheriff.

SEC. 14. Upon the return of such inquest and writ, any person aggrieved by the verdict of the jury, may file his objections to the proceedings under such writ, and to the verdict, and show cause why the proceedings should be quashed and the verdict set aside. Proceedings on return of inquest.

Digitized by Google

CHAP. 121.

Issues to be tried as in civil cases.

SEC. 15. The court may, thereupon, direct issues to be made up and tried as in other civil cases, and, if good cause be shown therefor, the court shall quash the proceedings and set aside the verdict.

Costs, how adjudged.

SEC. 16. The costs attending the trial of such issues, shall be adjudged against the unsuccessful party as in other civil cases.

Court may order new writ.

SEC. 17. The court, on motion, may order a new writ of ad quod damnum to issue, for the purpose of having the damages assessed according to law.

Court may enter an order of permission to erect a dam, when.

SEC. 18. If no objections be filed to the proceedings under the writ, or to the verdict of the jury, and it shall appear to the court, upon a view of the inquest, that the mansion house of any proprietor, or the out-houses, curtilages or gardens thereto belonging, or orchard, will not be overflowed, or that the health of the neighborhood will not be materially annoyed by the stagnation of water consequent upon the erection of the proposed dam, the court shall then consider whether, all the circumstances weighed, it be reasonable that the permission to erect such dam, as prayed for, should be given, and thereupon enter an order giving permission, or not, accordingly. (*a*)

May include in its order a decree vesting title, when.

SEC. 19. When the party petitioning shall have prayed for an acre of land whereon to abut his dam, the court shall include in its order, granting the permission to erect the dam, a decree vesting the title of such acre of land in the party petitioning, his heirs and assigns forever.

Order and decree subject to conditions.

SEC. 20. 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 following: *First*, Such conditions in reference to the obstructions to fish of passage and ordinary navigation, as the court shall think proper to impose; *Second*, That all damages and valuations, assessed and made by the jury, shall be paid; *Third*, That the dam and mills, or other machinery, shall be commenced within one year, and finished and ready for business within three years, from the date of the order of permission; *Fourth*, That whenever the dam or 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 or mill, or other machinery, shall be an

(*a*) Hook vs. Smith, 6 Missouri Rep., 225.

Digitized by Google

infant, or of unsound mind, femme covert, or imprisoned at the time such dam or mill, or other machinery, shall be destroyed or materially impaired, then within three years after such disability is removed.

Land decreed for mill privileges shall revert to original owner, when.

SEC. 21. In case of non-compliance with any of the conditions concerning the building, re-building 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 representatives.

Altitude of dam may be increased, how.

SEC. 22. Any owner of any dam and mill, or other machinery, erected in virtue of this or any previous law, may increase the altitude of his dam by permission of the court, under and by the same proceedings, regulations and conditions hereinbefore provided.

Inquest or order not to bar right of action, except, &c.

SEC. 23. 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.

Panalty for building or heightening dam without lawful permission.

SEC. 24. Any person who shall build or heighten any dam, or any other stoppage or obstruction, on 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 injury, to be recovered by action on the case.

Power of circuit court to prevent the erection of dams in certain cases.

SEC. 25. The circuit court of the proper county shall have power as a court of chancery, upon petition, to prevent the erection or raising of any dam, stoppage or obstruction, across any stream which shall operate to the nuisance and injury of any mill or other machinery erected, or of any dam, the erection of which had been authorized by the order of any competent tribunal, of a date earlier than that permitting the erection and raising of such first mentioned dam, stoppage or obstruction; and such court may, upon a final hearing of such petition, decree that such dam, stoppage or obstruction, be abated by the sheriff of the proper county.

What dams deemed public nuisances.

SEC. 26. All dams, stoppages and obstructions not made according to law, shall be deemed to be public nuisances, and may be dealt with as such. (*b*)

(*b*) See Welton and Edwards vs. Martin, 7 Missouri Rep., 307; Porter et al. vs. Withinham et al., 17 Maine Rep., 292; 11 Mass. Rep., 364, 462.

Digitized by Google

CHAP. 122.

Effect of failure to build according to law.

SEC. 27. If any person, or his legal representative, to whom permission to erect a dam, in virtue of this law, shall have been given, shall fail to build, re-build 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.

Right to construct a dam to cease if it obstructs the making of improvements on navigable stream by the state.

SEC. 28. If the improvement of the navigation of any stream shall be undertaken by the state, or by any county or other lawful authority under the state, then the privilege to keep any dam across such stream, the right to construct which may be hereafter granted, shall cease if the same would prevent or obstruct the making of such improvement, and it shall be the duty of the owner or owners of such dam, either to remove the same or to make such change in the same as will render the navigation safe and convenient, according to the plan of such improvement; said change or alteration in such dam shall be so constructed as to be approved of by the proper officers or agents who shall have the superintendence of the improvement of such stream.

Approved March 3, 1845.

CHAPTER 122.

MORTGAGES.

AN ACT concerning mortgages.

SEC. 1. Petition to foreclose mortgage, where to be filed; what it shall set forth.
2. Petition, where to be filed, if part of the property be real estate.
3. Assignee may sue in his own name.
4. Proceedings in case of the death of mortgagee, or assignee, or mortgagor.
5. Summons to issue; to what county; service and return.
6. Summons returned, defendant not found; proceedings.
SEC. 7. Claimant of interest, to be made a defendant, how.
8. Incumbrancers and persons having an interest, to be made parties.
9. Order of publication, when and how made.
10. Judgment by default to be rendered, when.
11. Debtor not summoned or appearing, what the judgment shall be.
12. If summoned or appearing, what the judgment shall be.

Digitized by Google

SEC. 13. Execution to be a special fieri facias.
14. When returnable; sales under, how conducted.
15. Fieri facias, where directed.
16. Title which the purchaser acquires.
17. Where personal representative has been summoned, or appears, what judgment shall be rendered.
18. Mortgages of leasehold estates.
19. Proceedings in suits under this act.
20. This act not to prevent the mortgagee or his assigns from proceeding in a court of chancery.
SEC. 21. On notice, mortgaged personal property, other than slaves, may be sold without suit, when. Notice, how and when given.
22. Acknowledgment of satisfaction to be entered of record, &c.
23. Fofeiture for failure to acknowledge satisfaction, or execute a deed of release.
24. Attorney in fact empowered to execute a deed of release. Effect of such deed.
25. Redemption, by payment to officer, before sale, certificate to be given. To be recorded. Effect thereof.

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

SECTION 1. All mortgagees of real estate, or slaves, and mortgagees of personal estate, other than slaves, when 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, 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 sold to satisfy the amount due. (a)

Petition to foreclose mortgage, when and where filed, what it shall set forth. Rev. C., 1835. p. 409.

SEC. 2. If any part of the property be real estate, the peti-

(a) Proceedings to foreclose a mortgage, under our statute, are proceedings at common law; Carr vs. Holbrook, 1 Missouri Rep., 172; Milam et al. vs. Administrator of Bruffee, 6 Missouri Rep., 635. A deed made for lands, to be absolute on the payment of certain notes, but in default of payment to be void, is to be considered a mortgage; Carr vs. Holbrook, 1 Missouri Rep., 172. As to the difference between mortgages and conditional sales and pledges, see Desloge & Rozier, vs. Ranger, 7 Missouri Rep., 327; Williams vs. Rozier, *ibid.*, 556. The mortgagor of personal property will be restrained from removing the mortgaged property out of the state, before payment of the debt; Berry & Smith vs. Buckhart, 1 Missouri Rep., 296. An agreement that land should be chargeable with, and security for, the payment of a debt, though not a legal, is yet an equitable mortgage; Davis vs. Clay, 2 Missouri Rep., 130. An assignee of a debt secured by mortgage may, by a bill in chancery, compel the sale of the mortgaged premises for the payment of the debt, as the mortgage, by the assignment of the debt, passes as an incident to it; Labarge vs. Chauvin, 2 Missouri Rep., 145. Subsequent incumbrancers cannot be permitted to redeem a part, without paying the prior incumbrancer his whole demand; Russell vs. Heirs of Mullanphy, 3 Missouri Reports, 319. The circuit court has jurisdiction over a suit for the foreclosure of a mortgage, as well after the death of the mortgagor as before; Ayres vs. Heirs of Shannon, 5 Missouri Rep., 282. A deed of mortgage, with a power of sale in the mortgagee, is valid in this state, and a sale by the mortgagee, if made in pursuance of the provisions of the deed, vests in the purchaser a valid title; Carson vs. Blakey, 6 Missouri Rep., 273. If a creditor, whose debt is due by instalments, and secured by mortgage, sell the whole of the mortgaged premises under a judgment for the first instalment, he cannot, afterwards, under a judgment for the second instalment, sell the same premises; Buford et al. vs. Smith, 7 Missouri Rep., 489. As to the construction of mortgages, see Berry vs. Craig, 3 Missouri Rep., 360; Desloge et al. vs. Ranger, 7 Missouri Rep., 327. A mortgage deed may be assigned, by writing, unsealed; Crinion et al. vs. Nelson, 7 Missouri Rep., 466.

Digitized by Google

Petition, where filed, if part of the property be real estate.

tion may be filed in any county where any part of the mortgaged premises is situated; if it be exclusively personal estate, it may be filed, and proceedings commenced as in other personal actions.

Assignee may sue in his own name.

SEC. 3. In all cases of assignment of any mortgage debt, whether by writing or operation of law, the assignee may sue for the recovery of the debt in his own name, alleging the assignment, and proceeding in other respects according to the provisions of this act.

Proceedings in case of death of mortgagee, or assignee, or mortgagor.

SEC. 4. In case of the death of the mortgagee or his assignee, or of the mortgagor, whether before or after action brought, the personal representative of the deceased party shall be made plaintiff or defendant, as the case may require.

Summons to issue; to what county; service and return.

SEC. 5. The clerk shall issue a summons to the defendants to answer the petition, and if the defendants reside in different counties, a separate summons shall be directed to each county, and the service and return of such summons shall be made as in actions of law: a copy of the petition shall accompany every such summons.

Proceedings on return of non est.

SEC. 6. If a return be made on such summons that any defendant cannot be found, such proceedings shall thereupon be had, as in ordinary actions of law.

Claimant of interest may be made defendant, how.

SEC. 7. 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.

Incumbrancers, &c., to be made parties.

SEC. 8. All incumbrancers, or persons having an interest existing at the commencement of the suit, subsequent as well as prior in date to the plaintiff's mortgage, provided the same shall be of record in the county where the same may be situated at the commencement of the suit, shall be made parties, otherwise they shall not be bound by the judgment.

Order of publication, when and how made. 1838-9, p. 186, sec. 3.

SEC. 9. If any plaintiff shall allege in his petition, that the mortgagor, or other defendant, is not a resident of this state, or that his place of residence is unknown, or that he is dead, and there is no personal representative in this state, or that his name or place of residence is unknown, the court or clerk being satisfied of the truth of any of said facts, shall make an order of publication, which shall conform, as near as may be, to orders of publication in chancery, and shall be published in like manner as said orders.

Digitized by Google

Judgment by default. *Ib.*, sec, 7.

SEC. 10. Judgment by default shall be rendered against any defendant, who, after being summoned or notified, shall not appear, and plead or answer at the time allowed in ordinary actions at law.

Debtor not summoned or appearing, what the judgment shall be. *Ib.*, sec. 8.

SEC. 11. When the debtor is not summoned, and has not appeared, the judgment, if for the plaintiff, shall be, that he recover the debt and damages found to be due, and costs, to be levied of the mortgaged property, describing it as in the mortgage.

If summoned or appearing, what the judgment shall be. *Ib.*, sec. 9.

SEC. 12. When the debtor has been duly summoned, or appears to the action, the judgment, if for the plaintiff, shall be as in the preceding section specified, with the addition, that if the mortgaged property be not sufficient to satisfy said debt, damages and costs, then the residue to be levied of other goods, chattels, lands and tenements, of said debtor.

Execution a special fieri facias.

SEC. 13. The execution to be issued shall be a special fieri facias, directed to the sheriff, and shall be in conformity to the judgment. (*b*)

When returnable; sales under, how conducted.

SEC. 14. 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.

Fieri facias, where directed.

SEC. 15. If such mortgage be for real estate, such writ of fieri facias shall be directed to the sheriff of the county in which the same is situated; and if it be for personal property, it may be directed to any county.

Title which the purchaser acquires. *Ib.*, sec. 11.

SEC. 16. A purchaser under a sale by virtue of an execution on a judgment rendered under this act, shall take a title as against the parties to the suit, and he shall not be permitted to set it up against the subsisting equity of those incumbrancers who are not parties to the same, and who are required to be made parties thereto by the eighth section of this act. (*c*)

SEC. 17. When the personal representative of the debtor

(*b*) It is contrary to the policy of the act regulating mortgages, that a mortgagee should sue at law for the mortgage debt, and, under a judgment thus obtained, sell the premises mortgaged for the payment of that debt; McNair et al. vs. O'Fallon et al., 8 Missouri Rep., 188. After a mortgagee has obtained judgment of foreclosure and sale, against the mortgagor, another creditor may sell the equity of redemption of the mortgagor under execution, and the mortgagee may become the purchaser of such equity; Benton vs. O'Fallon, executor of Mullanphy, 8 Missouri Rep., 650.

(*c*) The eighth and sixteenth sections of this act were designed to restore the law to what it was believed to be, before the decisions of the supreme court in the cases of Mullanphy vs. Simpson, 3 Missouri Rep., 345, and Russell vs. Mullanphy's heirs, 4 Missouri Rep., 319. As to the equity of those sections, *vide* 3 Johnson's Chan. Rep., 459, Haines et al. vs. Bench et al.

Digitized by Google

When personal representative has been summoned or appears, what judgment shall be rendered.

has been duly summoned, or appears to the action, the judgment, if for the plaintiff, shall be as before directed; and if, in such case, the mortgaged property be insufficient to satisfy the debt, damages and costs, the judgment, as to the residue, shall have the effect of a judgment against an executor or administrator as such.

Mortgages of leasehold estates.

SEC. 18. Mortgages of leasehold estates, shall be proceeded on as in mortgages of real estate.

Proceedings in suits under this act. *Ib.*, sec. 13.

SEC. 19. In all suits commenced in virtue of this act, the proceedings shall conform, as near as may be, to the proceedings in actions at law.

Remedy in court of chancery not prevented. *Ib.*

SEC. 20. Nothing in this act shall be so construed as to prevent a mortgagee, or his assignee, or the representative of either, from proceeding in a court of chancery to foreclose a mortgage, according to the course of proceeding in chancery in such cases.

On notice, mortgaged personal property, other than slaves, may be sold without suit, when.

SEC. 21. In all mortgages in which personal estate, other than slaves, only, is conveyed, and the debt, exclusive of interest, secured by the same, shall not exceed one hundred dollars, it shall and may be lawful for the mortgagee, or his personal representatives, upon default being made in the payment of the mortgaged debt, by the mortgagor or his legal representatives, to sell the mortgaged property, or so much thereof as will satisfy his debt, giving the mortgagor sixty days previous notice, in writing, that the mortgaged property will be sold, unless the debt secured by it is paid, and giving thirty days notice of the time and place of sale; the notice to be published in the same manner as a sheriff's notice of the sale of real estate: in all other mortgages of personal estate, no sale of such property shall be made by the mortgagee, but by foreclosure and sale, as in mortgages of real estate.

Notice, how and when given.

New prov.

Acknowledgment of satisfaction to be entered of record, &c. 4 Kent, 138.

SEC. 22. If any mortgagee, his executor or administrator, or assignee, receive full satisfaction of any mortgage, he shall, at the request of the person making the same, 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.

Forfeiture for failing to acknowledge satisfaction, or make deed of release.

SEC. 23. If any such person, thus receiving satisfaction, do not, within thirty days after request, 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, ten per cent. upon the amount of the mortgage

Digitized by Google

money absolutely, and any other damages he may be able to prove he has sustained, to be recovered in any court of competent jurisdiction.

Attorney in fact empowered to execute a deed of release. Effect of such deed.

SEC. 24. Any attorney in fact, to whom the money due on any mortgage is paid, shall have power to execute said release, as specified in section twenty-two of this act: 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 re-vest in the mortgagor or his legal representatives, all title to the mortgaged property.

Redemption before sale, certificate to be given.

SEC. 25. 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 acknowledgments 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.

To be recorded, effect thereof.

Approved March 20, 1845.

CHAPTER 123.

NEGROES AND MULATTOES.

AN ACT concerning free negroes and mulattoes.

SEC. 1. Who deemed a mulatto.
2. Negro or mulatto not to carry arms without a license.
3. Weapons found in possession of negro or mulatto, shall be forfeited.
4. County court to bind as apprentices, free negroes or mulattoes between the ages of 7 and 21.
5. How the courts shall proceed in such cases.
6. Clerk to keep a register; what he shall enter therein.
7. Free negro or mulatto, not to reside in this state without a license.
8. County courts authorized to grant licenses.
9. To whom license shall be granted.
10. Evidence to be produced to county court before license granted.
11. License to be granted, when; what it shall contain.
12. How authenticated.
13. Authority of license.
14. Copy of license shall not be granted, until, &c.
15. Duty of officers to seize copies of licenses and free papers, when.
16. Duty of clerks relative to copies of licenses and free papers.
17. Violation of law deemed a violation of the conditions of the bond.
18. County court may declare license revoked, when.
19. Duty of free negro or mulatto moving from one county to another.
20. Fees of clerks under this act.
21. This act to extend to persons whose right of freedom was acquired out of this state.

Digitized by Google

CHAP. 123.

SEC. 22. Persons bringing slaves into this state entitled to freedom, &c., deemed guilty of a misdemeanor.
23. Officers to apprehend negro or mulatto, and take him before some justice of the peace.
24. Duty of harbor master of the city of St. Louis.
25. Penalty for introducing free negroes into this state.
26. Justice may issue warrant to apprehend a free negro or mulatto, when.
SEC. 27. Shall commit him as a runaway slave, when.
28. May sentence him to pay a fine and leave the state, when.
29. To stand committed until fine and costs are paid. Proceedings if judgment of the justice is not complied with.
30. Duty of sheriff hiring such negro or mulatto.
31. Time allowed negro or mulatto to depart this state.
32. This act to extend to certain cases.

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

Who deemed a mulatto. 1835, p. 413.

SECTION 1. Every person, other than a negro, any one of whose grand fathers or grand mothers is, or shall have been a negro, although all his or her other progenitors, except those descending from the negro, may have been white persons, shall be deemed a mulatto; and every such person, who shall have one fourth or more negro blood, shall, in like manner, be deemed a mulatto.

Negro or mulatto not to carry arms without a license.

SEC. 2. No free negro or mulatto shall be suffered to keep or carry any firelock or weapon of any kind, or any amnunition, 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 revoked at any time by the justice granting the same, or by any justice of the county.

Weapons found in possession of negro or mulatto shall be forfeited.

SEC. 3. Any gun, firelock, or weapon of any kind, or any ammunition found in the possession 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, before any justice of the peace of the county in which such seizure shall have been made, shall be forfeited, by order of such justice, to the person making the seizure, for his own use.

County court to bind as apprentices free negroes or mulattoes between the ages of 7 and 21.

SEC. 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.

SEC. 5. The courts shall proceed in such cases in the same

Digitized by Google

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 case of bound apprentices. How the courts shall proceed in such cases.

SEC. 6. The clerk of the county court shall keep a register of all such bound negro and mulatto apprentices and servants, and enter therein the name, age and personal appearance of 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. Clerk to keep a register; what he shall enter therein.

SEC. 7. No free negro or mulatto 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. Free negro or mulatto, not to reside within this state without a license.

SEC. 8. The several county courts, in 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. County courts authorized to grant licenses.

SEC. 9. Such license shall not be granted to any free negro or mulatto, except: *First*, Such as were residents of this state on the second day of January, eighteen hundred and forty, and continue to be such residents at the time of the application; *Second*, such as have been emancipated or born free within this state; *Third*, Such as have been, or shall be, bound as apprentices or servants, according to the laws of this state, and shall have faithfully served out their terms of apprenticeship; *Fourth*, The husband or wife of a slave held and owned within this state, the parties having been married before the first day of December, one thousand eight hundred and thirty-five, 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, the parties having been married, by consent of the owner of the slave, before such slave was brought into this state; *Sixth*, Free negroes or mulattoes who produce a certificate of citizenship from some one of the United States. To whom license shall be granted.

SEC. 10. When a free negro or mulatto shall make application to a county court for a license, such free negro or Evidence to be produced to county

Digitized by Google

CHAP. 123.

court, before license granted. 1842–3, p. 68, sec. 12.

mulatto shall produce satisfactory evidence that he is of the class of persons who may obtain such license, as specified in the last preceding section, and that he is of good character and behavior, and shall, moreover, enter into a bond to the state, with one or more securities, the penalty of which bond shall not exceed one thousand dollars, conditioned that such free negro or mulatto shall be of good behavior.

License to be granted, when. What it shall contain.

SEC. 11. When the provisions of the preceding section are complied with, the county court may grant the applicant a license to reside within this state; and such license shall contain a description of the applicant, his name, age, size, personal appearance and occupation, and shall authorize him to reside within the state as long as he shall be of good behavior, and no longer.

How authenticated.

SEC. 12. 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.

Authority of license.

SEC. 13. Every license issued and registered according to the foregoing provisions, shall, until the same is revoked, authorize the person therein named and described, and his or her children, under the age of twenty-one years, to reside within this state.

Copy of license shall not be granted until, &c.

SEC. 14. But no copy of such license shall be issued, or made out and certified, and delivered to any free negro or mulatto within this state, until the clerk of the court, or the court in term, shall be satisfied that the applicant is upon the eve of leaving the county, in which the order was made granting the same, and if such applicant shall return to said county, after having had a copy of the same delivered to him, he shall, within five days after such return to said county, deposite the said copy of said license with the clerk issuing the same.

Duty of officers to seize copies of licenses and free papers, when.

SEC. 15. It shall be the duty of the sheriffs of the several counties in this state, and the constables of townships and cities, and the deputies of each, within their respective jurisdictions, to seize and take away from all free negroes and mulattoes, all copies of licenses granted by virtue of this act, and all other free papers found in the possession of any such free negro or mulatto, and deposit the same in the office of

Digitized by Google

the clerk of the county court of the proper county, for safe keeping, unless such free negro or mulatto be traveling on a journey, or about to start upon a journey.

Duty of clerks relative to copies of licenses and free papers.

SEC. 16. It shall be the duty of each of the clerks of the several county courts in this state, to receive and safely keep the copies of licenses, and other free papers of any free negro or mulatto, in the county of which he is clerk; and any free negro or mulatto, who shall refuse to deliver to any sheriff or constable, as specified in the last preceding section, any copy of a license or his free papers, may be taken to the jail of the county, and committed till he deliver over the same; and any free negro or mulatto, who shall neglect, for more than five days, to return any copy of his license or any free paper, to the clerk of whom he may have received the same, after he shall have returned from any journey, may be taken before any justice of the peace of the county, and sentenced to receive not exceeding thirty lashes, in the discretion of the justice.

Violation of law deemed a violation of bond.

SEC. 17. Any violation of law shall be deemed a violation of the condition of the bond required by the tenth section of this act.

County court may declare license revoked, when.

SEC. 18. The county court shall, upon the conviction of such licensed free negro or mulatto, for any crime or misdemeanor, not amounting to a felony, declare such license revoked and forfeited, and shall cause such free negro or mulatto to be sent out of the state, at the expense of such free negro or mulatto; and if such free negro or mulatto has not the means, then at the expense of the county.

Duty of free negro or mulatto removing from one county to another.

SEC. 19. 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, and file the same in his office for safe-keeping.

Fees of clerks under this act.

SEC. 20. 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.

This act to extend to persons whose right of freedom was acquired

SEC. 21. Every free negro or mulatto, whose right to freedom shall have accrued without this state, although such [right] may have been established by suit in this state, shall be treated as if he had been actually free at the time of his

Digitized by Google

coming or being brought into this state, and, as such, shall be subject to the provisions of this act.

out of this state.

Persons bringing slaves into this state entitled to freedom, &c., deemed guilty of a misdemeanor.

SEC. 22. Every person who shall bring, or cause to be brought into this state, any slave entitled to freedom at a future period, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in a county jail not exceeding six months, and shall, moreover, give bond with security, for conveying, or causing to be conveyed, such slave to the state or county from which he was brought.

Officers to apprehend negro or mulatto, when.

SEC. 23. It shall be the duty of every sheriff, constable, coroner and marshal, whenever he shall know, or have cause to believe, that there is in his county, a negro or mulatto, not authorized to reside within this state, to apprehend such negro or mulatto, and take him before some justice of the peace.

Duty of harbor master of the city of St. Louis. 1842–3, p. 67.

SEC. 24. The harbor master of the city of St. Louis, shall report to the recorder of said city, the arrival of any steamboat or other vessel, having on board any free negro or mulatto, not authorized to remain within this state, and such recorder shall possess all the powers, and perform the duties, intrusted by this act to justices of the peace.

Penalty for introducing free negroes into this state.

SEC. 25. Any person who shall introduce into this state, any free person of color, contrary to the provisions of this act, or who shall employ, harbor, or entertain such person, after he is so introduced or brought within this state, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine not less than fifty dollars, nor exceeding two hundred dollars.

Justice may issue warrant to apprehend a free negro or mulatto, when.

SEC. 26. 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.

Shall commit him as a runaway slave, when.

SEC. 27. Whenever any negro or mulatto shall be brought before any justice or other officer, such magistrate or court, unless satisfied that such negro or mulatto is a free person, shall commit him as a runaway slave.

May sentence him to pay a fine and leave the state, when.

SEC. 28. If such negro or mulatto appear to be a free person, but without a license to reside in this state, and without a certificate of his citizenship in some other state, attested by the seal of a court of record of the state of which he claims to be a citizen, the justice shall sentence him to pay a fine of ten dollars, and forthwith to leave the state.

Digitized by Google

To stand committed until fine and costs are paid.

Proceedings if judgment of the justice is not complied with.

SEC. 29. The person convicted under the preceding section, shall stand committed until the fine and costs are paid; and if the judgment of the justice is not complied with before the term of the county court next holden in the county, such court shall cause the prisoner to be brought before it, and if he does not then establish his right to residence within the state, the court may, in its discretion, order him to receive not less than ten, nor more than twenty lashes, and immediately depart the state, or order the sheriff to hire him out for such time as shall be sufficient to raise from the hire, the fine, costs and expenses of imprisonment.

Duty of sheriff hiring out such negro or mulatto.

SEC. 30. 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 in the bond,) will keep the person hired employed in his own service, and provide him with sufficient food, clothing and lodging, and not permit him to go at large as a free person.

Time allowed negro or mulatto to depart this state.

SEC. 31. Every free negro or mulatto, not entitled to reside within this state, shall be allowed three days, and one additional day 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.

This act not to extend to certain cases.

SEC. 32. The provisions of this act shall not apply to any person traveling 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 26, 1845.

Digitized by Google

CHAPTER 124.

NOTARIES PUBLIC.

AN ACT respecting notaries public.

SEC. 1. Governor to appoint notaries; term of office.
2. Power to administer oaths.
3. Their powers and duties.
4. To keep a record, &c.
5. In case of vacancy, his records and papers to be delivered to the recorder.
6. To provide a notarial seal, and authenticate his official acts therewith.
7. Shall take an oath and give bond; condition thereof.
8. Bond, &c. shall be recorded.
9. Limitation of actions against notaries.

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

Governor to appoint notaries.—1835.

SECTION 1. The governor shall appoint and commission in each county, as occasion may require, one or more notaries public, who shall hold their offices for four years.

Power to administer oaths.

SEC. 2. They may administer oaths and affirmations in all matters incident or belonging to the exercise of their notarial office.

Their powers and duties.

SEC. 3. They may receive the proof or acknowledgment of all instruments of writing, relating to commerce and 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 power and perform all the duties of register of boatmen. (*a*)

To keep a record, &c.

SEC. 4. Every notary shall keep a fair record of his official acts, and, if required, shall give a certified copy of any record in his office upon the payment of the fees therefor.

In case of vacancy his records and papers to be delivered to the recorder.

SEC. 5. If any notary die, resign, be disqualified or remove from the county, his record, and official and public papers of his office shall, within thirty days, be delivered to the recorder of the county, to be delivered to his successor when qualified.

To provide a notarial seal, &c.

SEC. 6. Every notary shall provide a notarial seal, containing his name, surname of office, and place of residence, and he shall authenticate all his official acts, attestations and instruments therewith.

Shall take an oath and give bond.

SEC. 7. Every notary, before entering on the duties of his office, shall take the oath of office, (*b*) which shall be en-

(*a*) *Vide*, Robinson vs. Johnson, 1 Mo. Rep., 308; Moore vs. Bank of State of Missouri, 6 *ibid.*, 379.

(*b*) *Vide*, Art. 3, Sec. 32, of the Constitution of the State.

Digitized by Google

dorsed 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. Condition thereof.

SEC. 8. Such bond, commission and oath shall be recorded in the recorder's office of the county, and the bond shall be filed in the office of the secretary of state, and may be sued on by any party injured. Bond, &c., shall be recorded, where.

SEC. 9. No suit shall be instituted against any such notary or his securities, more than three years after such cause of action accrues. (c) Limitation of actions against notaries.

Approved January 14, 1845.

(c) Act of February 24, 1843, omitted in this revision.

CHAPTER 125.

OATHS AND AFFIRMATIONS.

AN ACT concerning oaths and affirmations.

SEC. 1. Mode of administering oaths.
2. Person may be sworn with uplifted hand, when.
3. May affirm, when.
4. Court may swear a person in his peculiar mode, when.
5. Person may be sworn according to the peculiar ceremonies of his religion.
6. Who admitted to be sworn.
7. Person not required to declare his belief in the existence of a Supreme Being; but his belief or disbelief may be proven.
8. Last section not to extend to infants and persons of weak intellect.
9. Who shall have power to administer oaths.
10. Oath required to be taken before a particular court or officer, may be taken before any other court or officer, unless, &c.
11. Oath may be taken according to forms prescribed in this act; swearing in such form deemed lawful, and swearing falsely, perjury.

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

SECTION 1. The usual mode of administering oaths now practiced, 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. Mode of administering oaths.—1835.

SEC. 2. Every person who shall desire it, shall be permitted to swear, with uplifted hand, in the following form: "You do solemnly swear." Persons may be sworn with uplifted hand.

SEC. 3. Every person who shall declare that he has con-

Digitized by Google

scientious 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"

May affirm, when.

Court may swear a person in his peculiar mode, when.

SEC. 4. Whenever the court or officer, 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 officer may adopt such mode of swearing.

Person may be sworn according to the peculiar ceremonies of his religion.

SEC. 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 the modes hereinbefore prescribed.

Who admitted to be sworn.

SEC. 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.

Person not required to declare his belief, &c., but belief or disbelief may be proved.

SEC. 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 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.

Last section not to extend to infants, &c.

SEC. 8. The last section shall not be construed to prevent any court or officer, 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 officer from enquiring what are the peculiar ceremonies observed by him in swearing, which he deems obligatory.

Who shall have power to administer oaths.

SEC. 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 administer oaths, and to take affidavits and depositions within their respective jurisdictions, in all cases where oaths and affirmations are required by law to be taken.

Oath required to be taken before a particular court or

SEC. 10. Whenever an oath or affirmation is required by law to be taken before a particular court or officer, the same may be done before any other court or officer, empowered to

Digitized by Google

administer oaths, unless it is expressly prohibited; and when no court or officer is named, by whom an oath may be administered, or affidavit taken, the same may be done by any court or officer authorized to administer oaths.

officer, may be taken before any other court, unless, &c.

SEC. 11. 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 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.

In what form oaths may be taken.

What form deemed lawful.

Swearing falsely deemed perjury.

Approved January 8, 1845.

CHAPTER 126.

OFFICERS.

AN ACT act authorizing officers to call to their assistance the power of the county.

SEC. 1. Officer may call to his aid the power of the county.

SEC. 2. Penalty for failing to obey summons of officer.

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

SECTION 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, in the county in which the officer is authorized to act.

Officer may call to his aid the power of the county.

SEC. 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.

Penalty for failing to obey summons of officer.

1835, p. 448.

Approved January 31, 1845.

Digitized by Google

CHAPTER 127.

OFFICERS.

AN ACT allowing suits against officers for services rendered under illegal orders.

SEC. 1. Officer liable to injured party for causing him to render service, or expend time or money illegally; exception in favor of judicial officers.

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

Officer liable to the injured party for causing him to render service or expend time or money illegally.

SECTION 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 to expend time or money in the performance of any service, not authorized by the laws of the land, the officer directing, ordering or compelling, the performance of such unauthorized service, shall be liable to the person or persons performing 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, body politic or corporate, for any 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. Nothing contained in this act shall extend to judicial officers when acting judicially. (*a*)

Exception in favor of judicial officers. 1835, p. 110.

Approved February 25, 1845.

(*a*) See the case of Stone vs. Graves, 8 Missouri Rep., 148.

CHAPTER 128.

PARTITION.

AN ACT to provide for the partition of land and personal property.

SEC. 1. Joint tenants, tenants in common and coparceners may petition circuit court for partition of lands.
2. What the petition shall set forth.
3. Parties in interest to be made parties to the proceeding.
4. When the name or interest of a party is unknown, what course to be pursued.
5. Service of the petition, how made, and by whom.
6. Notice of the application, how directed.
7. Notice by publication.
8. When the court shall proceed.
9. Any party in interest may, on appearance and application, be made a party.
10. How a party appearing may plead; what may be plead in defence.
11. Replications and further proceedings.

Digitized by Google

Sec. 12. Issues, pleadings, &c., to be as in actions at law.
13. Default to be entered; when.
14. Duty of court to give judgment of partition.
15. Court may set off shares in one parcel, and divide residue.
16. Parcel set off to several, how held and enjoyed.
17. How the court may decide on adverse claims.
18. Court shall appoint commissioners to make partition; when.
19. Commissioners shall take oath.
20. Shall proceed to make partition; how. If it cannot be made without prejudice, proceedings.
21. How the commissioners shall divide the land.
22. May divide land into lots, &c., and make return; when.
23. Commissioners to make report.
24. Report to be proved and acknowledged; how.
25. May be set aside and new commissioners appointed.
26. Report shall be confirmed and judgment given; when. Effect of partition and judgment.
27. A copy of report and judgment to be recorded; where.
28. When premises or part of them may be sold.
29. Proceedings when the commissioners report that a part only of the shares have been set off.
30. Effect of confirmation of report, setting off parcel subject to adverse claim.
31. Report of commissioners and plat of land laid out under 22d section to be filed with recorder.
32. What the order of sale shall specify.
33. May be renewed; when.
34. Premises may be sold separately or divided.
35. Duty of sheriff; shall make a deed; effect thereof.
36. Sheriff and his securities responsible on his official bond for his acts in cases of partition.
37. When sheriff goes out of office, he shall execute all unfinished business relative to cases of partition, unless, &c.
38. Compensation of the sheriff.
39. Sheriff to report his proceedings to the court.
Sec. 40. Proceeds of sale to be divided.
41. Shares of absent parties, how invested.
42. Sheriff to retain money arising from sales of adverse claims.
43. Party claiming such moneys, to file his petition in the circuit court.
44. Summons to issue, to whom and where directed.
45. Order of publication, when and how made.
46. How and where published.
47. What defendant's answer shall state.
48. Questions of fact to be tried, how; form of issues.
49. Judgment by default may be rendered, when.
50. Court shall adjudge and order payment, when.
51. Joint tenants, and tenants in common, entitled to remedy for partition.
52. Partition not to be made contrary to will of testator.
53. Authority of guardians in division of lands.
54. Court to appoint guardians, when.
55. Such guardian required to give bond, when; condition thereof.
56. Real estate of decedent lying in several counties, petition may be filed in any county by widow or adult children.
57. If it appear to the court that parties in interest are adults, commissioners to be appointed; to take an oath.
58. Commissioners to make report, when.
59. Report to be confirmed and judgment rendered, when; effect of the judgment.
60. If land not susceptible of division, proceedings.
61. Vacancies, how filled.
62. Compensation of commissioners.
63. Majority of commissioners have power to act.
64. Appeals and writs of error allowed.
65. Power of circuit court to make partition of slaves and other personal property.
66. If it appear to the court that partition cannot be made in kind, sale may be ordered.

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

Section 1. When any lands, tenements or hereditaments, shall be held in joint tenancy, tenancy in common or copar-

Digitized by Google

Joint tenants, tenants in common and coparceners, may petition circuit court for partition of lands.

cenary, it shall be lawful for any one or more of the parties (a) 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.

What the petition shall contain.

SEC. 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.

Parties in interest to be made parties to the proceeding.

SEC. 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.

When the name or interest of a party is unknown, what course to be pursued.

SEC. 4. In case one or more [of] 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.

Service of the petition, how made and by whom.

SEC. 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 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.

Notice of the application, how directed.

SEC. 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

(a) It is no objection that some of the parties are coparceners, and others joint tenants, or tenants in common; Chouteau & Smith vs. Paul, 3 Missouri Rep., 260. See Post., section 34.

Digitized by Google

unknown, and general to all others unknown, having any interest in such premises.

Notice by publication. 1840–1, p. 169.

SEC. 7. If any of the parties having such interests are unknown, or if any of the known parties reside out of the state, or cannot be found therein, and affidavit of such facts be filed in the clerk's office, with the petition, 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.

When the court shall proceed.

SEC. 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.

Any party in interest may on appearance and application be made a party.

SEC. 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.

How party appearing may plead; what may be pleaded in defence.

SEC. 10. 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.

Replications and further pleadings.

SEC. 11. Replications and further pleadings may be had between the parties respectively, according to the practice of the court in actions of law, until an issue, or issues of law or fact, be joined between the parties, or some of them.

Issues, pleadings, &c., to be as in actions at law.

SEC. 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.

SEC. 13. If any of the parties, duly notified by personal

Digitized by Google

CHAP. 128.

Default to be entered, when.

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.

Court to ascertain the rights of the parties and give judgment of partition.

SEC. 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 interests 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.

Court may set off shares in one parcel, and divide residue. 1838–9, p. 89.

SEC. 15. It shall be lawful for the court, in rendering judgment of partition, to order and direct that any number of shares be set off together in one parcel, and that the residue be divided among the other parties according to their several rights.

Parcel set-off to several, how held and enjoyed.—*Ib.*

SEC. 16. If partition be made according to such judgment, and the report of the commissioners, as hereinafter directed, be confirmed, the parcel so set off to several parties shall, thereafter, be held and enjoyed by them, in like portions and in the same estate as they before had in the whole.

How the court may decide on adverse claims.—*Ib.*

SEC. 17. Whenever it shall appear in any proceeding in partition, that there are parties claiming the same portions adversely to each other, the court may either decide upon such adverse claims, or, in its discretion, direct the share or shares so in controversy to be set off and allotted, subject to the claims of the parties in controversy against each other.

Court shall appoint commissioners to make partition, when.

SEC. 18. 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.

Commissioners shall take an oath.

SEC. 19. 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

Digitized by Google

to execute the trust reposed in them; 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.

Shall proceed to make partition, how.

SEC. 20. 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; or if a part only of the land ordered to be divided by the court is susceptible of division, the commissioners shall proceed to make division of such part, and make report thereof, and of the residue which in their opinion is not susceptible of division.

If it cannot be made without prejudice, proceedings. 1838–9, p. 89.

How the commissioners shall divide the lands.

SEC. 21. 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.

May divide lands into lots, &c., and make return, when. 1838–9, p. 89.

SEC. 22. Whenever, in the opinion of the commissioners, in any case of partition or order of sale, it will be to the interest of the parties to divide the lands into lots, and lay out streets, avenues, lanes or alleys, they may cause the same to be done, and in that case shall return with their report a plat of the land so laid out, which report shall be subject to the rejection or confirmation of the court, as in other cases.

Commissioners to make report in writing.

SEC. 23. 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.

Report to be proved and acknowledged, how.

SEC. 24. 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.

SEC. 25. Upon good cause shown by any of the parties, the

Digitized by Google

CHAP. 128.

May be set aside and new commissioners appointed.

court may set aside the report (*b*) and appoint new commissioners, as often as may be necessary, who shall proceed in like manner, as heretofore directed.

Report shall be confirmed and judgment given, when.

SEC. 26. If no such cause be shown, 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 proceedings and their representatives, and all other persons claiming under any of them by right derived after the commencement of the proceeding.

Effect of partition and judgment.

A copy of report and judgment to be recorded, where.

SEC. 27. A copy of such report and of the judgment of confirmation, 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.

When premises or part of them may be sold. 1840–1, p. 108.

SEC. 28. 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 situated, 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 sheriff sell the premises, or such portion of them as are reported unsusceptible of division, at public auction, to the highest bidder.

Proceedings when commissioners report that a part only of the shares have been set-off.

SEC. 29. Whenever the commissioners report that they have set off a part only of the shares, according to the division ordered, and such report is confirmed, only that part of the land which is not set off to any party shall be sold, and the proceeds apportioned among the parties to whom no land has been allotted, and the costs of the proceedings shall be paid by the parties in proportion to their respective shares in the land which is the subject of the proceedings.

Effect of confirmation on parties to adverse claims. 1838–9, p. 89.

SEC. 30. When, in any report of commissioners setting off a parcel, the subject of the adverse claims of different parties shall be confirmed, it shall be a bar to the claims of such parties to the residue of the lands, or the moneys arising thereon, if sold, and shall vest the part allotted, subject to the controversy, in the party who shall have title to the share or shares represented in the allotment.

SEC. 31. Where the commissioners have, in pursuance of

(*b*) Circuit courts have no power to reject the report and make partition themselves; George vs. Murphy, 1 Missouri Rep., 779; Murphy vs. Murphy et al., 1 Missouri Rep., 741.

Digitized by Google

the provisions of the twenty-second section, laid out the land into lots, streets, lanes or alleys, and have returned a plat of the land so divided, and their report is confirmed, a copy of the plat shall be filed in the office of the recorder of the county, in like manner, and with like effect, as in the case of plats of towns or additions made and filed by proprietors.

Report of commissioners and plat of lands laid out under 22d section, to be filed with recorder.—*Ib.*

SEC. 32. The order of sale to be made in pursuance of the provisions of this act, shall not specify the time of sale, but the sale shall take place during some day of the term of the circuit court, and be governed by the same regulations prescribed by law for sales of real estate under executions, notice thereof being given by the sheriff in the same manner as provided by law for such sales.

What the order of sale shall specify.

SEC. 33. Where any such order of sale has been made, and the sale has failed to take place, by reason of the failure of the term of the court or other cause, the court or clerk thereof in vacation shall renew such order of sale generally, without specifying any time for sale, and the clerk shall, without delay, deliver a certified copy of such order to the sheriff, who shall then proceed to advertise and sell, in conformity to the foregoing section.

Order of sale may be renewed, when. *Ib.*

SEC. 34. If the premises consist of distinct buildings, farms, tracts or lots of land, they shall be sold separately; or when 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.

Premises shall be sold separately or may be divided, when.

SEC. 35. The sheriff shall take the notes or bonds for the purchase money, collect and pay over the same according to the order of the court, and make the deed to the purchaser, which shall be acknowledged, or proved and recorded in the same manner as conveyances made by the sheriff of lands sold under executions, 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.

Duty of sheriff.—1840–1, p. 108.

Shall make a deed.

Effect thereof.

SEC. 36. The sheriff and his securities shall be responsible on his official bond for his acts in cases of partition, and for the notes, bond or money collected or received by him, and he may be compelled to account for and pay over the same, in the same manner as in cases of money collected on execution.

Sheriff and his securities responsible on his official bond, for his acts in cases of partition. *Ib.*

SEC. 37. If any sale be made by any sheriff before he goes out of office, and the business be not completed when he

Digitized by Google

CHAP. 128.

When sheriff goes out of office, he shall collect and pay over money, and make deed, unless, &c.

ceases to be sheriff, he may do all subsequent acts, collect and pay over the money, and make the deed, in the same manner as if he continued to be sheriff, unless the circuit court shall, by order, direct the business to be transferred to the next sheriff; in which case, all acts remaining to be done by the sheriff, at the date of such order, shall be done by the sheriff then in office.

Compensation of the sheriff.

SEC. 38. As a compensation for his services, the sheriff shall receive a commission on the amount of sales, not exceeding two per cent. on the first thousand dollars, and one per cent. on all sums over that amount and under five thousand dollars, and one half of one per cent. on all sums over that amount, to be allowed by the court; and if two different sheriffs shall do part of the business, the commission shall be equitably divided between them.

Sheriff to report his proceedings to the court. 1840-1, p. 108.

SEC. 39. After completing the sales, the sheriff shall report his proceedings to the court, with a description of the different parcels of the land sold, the name of the purchaser, and the price bid, which report shall be filed in the court; he shall also file in the clerk's office an accurate statement of all money received, and all costs and expenses paid or incurred in the transaction of the business, and the court shall allow such as are legal and reasonable.

Proceeds of the sales to be divided.

SEC. 40. 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 sheriff.

Shares of absent parties, how invested.

SEC. 41. Where any of the parties, whose interests have been sold, are absent from the state, without any legal representative 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.

Sheriff to retain money arising from adverse claims. 1838-9, p. 89.

SEC. 42. In all cases of adverse claims to any one or more shares, the money arising from sales, which belongs to the owner of such share or shares, shall be retained by the sheriff of the county, and by him held subject to the future order of the court.

Digitized by Google

Party claiming such moneys to file his petition.

What it shall set forth.

SEC. 43. Any party to the proceeding in partition, claiming such moneys as owner of the premises sold, may file his petition in the office of the clerk of the court, setting forth the nature of his claim in all its particulars, and the name and residence, if known, of the other party, claiming as aforesaid, and praying an order for the payment of the money to him, which petition shall be verified by the affidavit of the petitioner, or some credible person.

Summons to issue; to whom and where directed.—*Ib.*

SEC. 44. Upon the filing of such petition, the clerk shall issue a summons, directed to the sheriff of each county in this state in which any defendant resides, with a copy of the petition, which shall be served as in ordinary cases at law.

Order of publication, when and how made—*Ib.*

SEC. 45. If it appear that the name or *evidence* [residence] of a defendant is unknown, or that he is not a resident of this state, or cannot be found to be served with a summons, the court, judge or clerk, may make an order of publication, setting forth the nature and object of the petition, and requiring the defendant to appear and file his answer to the same, on or before a day to be named, which shall not be less than ninety days from the date of the order.

How and where published.—*Ib.*

SEC. 46. Such order shall be published in some newspaper in or nearest to the county in which the proceeding is had, weekly, for three weeks successively, the last insertion to be at least six weeks before the day named for filing the answer.

What defendant's answer shall state. *Ib.*

SEC. 47. The answer shall state the nature of defendant's claim in all its particulars, shall be verified by the affidavit of the defendant or some other credible person, and may be filed in vacation.

Questions of fact to be tried, how.

Form of issues. *Ib.*

SEC. 48. The court shall cause all questions of fact presented by the petition and answer, to be tried as other questions of fact, without the formality of replication, and shall prescribe the form of the issue or issues to be tried, upon which a special or general verdict may be found.

Judgment by default may be rendered, when.—*Ib.*

SEC. 49. A judgment by default may be rendered against any defendant, who does not appear and answer to the command of the summons or publication, and payment of the money ordered accordingly.

Court shall adjudge and order payment, when. *Ib.*

SEC. 50. When an answer is filed and the facts determined, the court shall proceed to adjudge and order the payment of the money to the party entitled.

Joint tenants, &c., entitled to remedy for partition.

SEC. 51. All joint tenants and tenants in common, who now hold, or hereafter shall hold, jointly or in common, for years or for life, or for lives, with the other or others of them, who

Digitized by Google

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 hereinbefore prescribed in other cases. (c)

Partition not to be made contrary to will of testator.

SEC. 52. 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 any such will and testament.

Authority of guardian in divisons of lands.

SEC. 53. 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.

Court to appoint guardians, when.

SEC. 54. 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.

Such guardian required to give bond, when.

SEC. 55. It shall be the duty of the said court, on appointing any guardian as aforesaid, to any minor entitled to moneys arising from the sale aforesaid, to require of said 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, when thereto lawfully required.

Condition thereof.

Real estate of decedent lying in several counties, petition may be filed in any county by widow or adult children. 1838-9, p. 39.

SEC. 56. When any resident of this state, owning lands or real estate lying in several counties, dies intestate, leaving a widow and children, after the settlement of such deceased's estate, by the administrator, if there be sufficient effects, exclusive of real estate, to pay all the debts thereof, the widow, and adult children of such deceased, may petition the circuit court of the county wherein any of the real estate is situated, setting forth a particular description of all the real estate belonging to the deceased, and proportion each petitioner is entitled to receive, together with all the other facts of the case, praying

(c) Chouteau & Smith vs. Paul, 3 Missouri Rep., 203.

Digitized by Google

an assignment of dower in the same to the widow, and a division and partition of the residue among the children or other descendants entitled to inherit.

If parties in interest are adults, court to appoint commissioners, who shall take an oath. *Ib.*

SEC. 57. The court, upon being satisfied that all the parties in interest are adults, and parties to the petition, shall, thereupon, make an order, appointing three persons as commissioners, who, before they enter on the discharge of their duties, shall take an oath or affirmation honestly and impartially to execute the trust reposed in them, and shall then proceed to view and appraise all the lands and real estate mentioned in the petition, and ascertain and set off the widow's dower therein, and apportion and divide the residue, according to quality and quantity, among the children or heirs, agreeably to their respective shares, giving to each his, or her part, in one contiguous body, or as nearly so as may be.

Commissioners to make report, when *Ib.*

SEC. 58. The commissioners shall make a full report of their proceedings to the court appointing them, at the next term thereof, and set forth and describe, by metes and bounds, the land assigned as dower to the widow, and the portions apportioned to each heir; which report may, for good cause, be set aside, and other commissioners appointed, who shall proceed as herein before directed.

May be set aside, &c.

Report to be confirmed and judgment rendered, when. *Ib.*

SEC. 59. If no such cause be shown, the report shall be confirmed, and the court shall give judgment thereon, as provided in the case of the partition of lands lying in the same or two contiguous counties, and the effect of the judgment shall be the same; and a copy of such report and judgment shall be recorded in the recorder's office of each county wherein any of the lands or real estate is situate.

If land not susceptible of division, proceedings.—*Ib.*

SEC. 60. If, in the opinion of the commissioners, the lands and real estate are not susceptible of division, without great prejudice to the owners thereof, the commissioners shall report that fact to the court, and the case shall be dismissed.

Vacancies, how filled.

SEC. 61. In case of the death, resignation, neglect or refusal to act, of any of the commissioners to be appointed by virtue of this act, 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 power and authority as if he or they had been originally appointed.

Compensation of commissioners.

SEC. 62. The commissioners to be appointed in pursuance of this act, shall be entitled to receive, from the person or

Digitized by Google

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.

Majority of commissioners have power to act. 1838-9, p. 90.

SEC. 63. A majority of the commissioners, in all cases under this act, shall have power to act, and all sales made under any of the provisions of this act, shall be made by the sheriff of the county.

Appeals and writs of error allowed.

SEC. 64. On all final judgments to be given upon partition made, or upon any order of 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 applicable to other cases.

Power of circuit courts to make partition of slaves and personal property.

SEC. 65. The several circuit courts of this state, shall have full power and authority to make partition of slaves and other personal property, among heirs, legatees, joint tenants, and tenants in common, in the same manner, upon the same terms, and with the like effect, as is provided in the foregoing sections, in regard to the partition of real estate.

New provision.

If it appear to the court that partition cannot be made in kind, sale may be ordered.

SEC. 66. If, in any case, from the nature and amount of the property, real or personal, sought to be divided, and the number of the owners, it shall be apparent to the court, that partition thereof in kind cannot be made, without great prejudice to the owners, an order of sale may be made without the appointment of commissioners. (*d*)

New provision.

Approved February 21, 1845.

(*d*) On the subject of partition, see the cases of Chouteau et al. vs. Paul, 3 Missouri Rep., 186; Waddingham et al. vs. Gamble, 4 *ib.*, 465; McCabe vs. Heirs of Hunter, 7 *ib.*, 355; Millington vs. Millington, *ib.*, 446.

Digitized by Google

CHAPTER 129.

PATROLS.

AN ACT concerning patrols.

SEC. 1. County court to appoint patrols.
2. Company to consist of how many.
3. Duty of patrol.
4. To visit negro quarters, &c.
5. When slaves are found strolling about, to be whipped.
6. Compensation of patrols.
7. Captain of patrol to be notified of his appointment.
8. Penalty on captain of patrol for neglect of duty.
9. This act not to affect slaves in certain cases.

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

SECTION 1. The county court shall, from time to time, when to them it shall seem proper, appoint in each township in their respective counties, one or more companies of patrol, to continue in office one year. County court to appoint patrols.—1835.

SEC. 2. Each 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 be severally sworn to perform the duties assigned them by this act. Company to consist of how many. To take an oath.

SEC. 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 them. Duty of patrol.

SEC. 4. The patrol shall visit negro quarters, and any other places, suspected of unlawful assemblages of slaves. To visit negro quarters, &c.

SEC. 5. Any slave found at such assembly, or who shall be found strolling about from one plantation to another, without a pass from his 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 twenty. When slaves found strolling about to be whipped.

SEC. 6. Persons appointed as patrols, and performing the duties as such, shall be paid such sum as the county court may allow, not exceeding twenty-five cents per hour, for the time which said patrol shall be employed in the discharge of their duties; to be ascertained by the report of the captain of the said company of patrol, which report he is hereby required to make upon oath or affirmation, before any such allowance shall be made. Compensation of patrols.

Digitized by Google

CHAP. 130.

Captain of patrol to be notified.

SEC. 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.

Penalty on captain of patrol for neglect of duty.

SEC. 8. Whenever the captain of a patrol shall wilfully fail, or neglect to discharge the duties required to be performed by him in the preceding sections, he shall forfeit *at* [and] pay not less than three, nor more than ten dollars, to be recovered for the use of the county, by action of debt, in the name of any person who shall sue to the use of the county.

This act not to affect slaves in certain cases.

SEC. 9. 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 day.

Approved March 15, 1845.

CHAPTER 130.

PEDDLERS.

AN ACT to license and tax peddlers.

SEC. 1. Who declared to be a peddler.
2. Not to deal without a license, &c. Not to sell liquors.
3. What the license shall state.
4. Clerk to issue blank licenses; to deliver and charge them to collector.
5. County court, at each term, to settle with collector, and certify amount due by him.
6. Who may obtain a peddler's license.
7. Rates of tax on peddler's licenses.
8. Penalty for dealing as a peddler contrary to law.
9. Who deemed a clock peddler; to have a special license; $50 tax on such license.
10. Penalty for dealing as a clock peddler without a license.
11. Penalty of $10 on a peddler for refusing to exhibit his license.
12. Information to be given of peddlers dealing without a license.
13. Justice to issue warrant to arrest offender.
14. Duty of justice when party is brought before him.
15. Limitation of prosecutions.
16. Any person may deal as a book peddler without license.

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

Who declared to be a peddler.

SECTION 1. Whoever shall deal in the selling of goods, wares and merchandise, other than the growth, produce or manufacture of this state, by going from place to place to sell the same, is declared to be a peddler.

Not to deal without license, &c.; not to sell liquors.

SEC. 2. No person shall deal as a peddler without a license, and no two or more persons shall deal under the same license, either as partners, agents, or otherwise; and no peddler shall sell wines or spirituous liquors.

Digitized by Google

SEC. 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, of the kind of cart or carriage, or, if on the water, the kind of boat or vessel to be employed. What the license shall state.

SEC. 4. The clerk of his county court shall, from time to time, issue, under the seal of his court, as many blank peddlers' licenses, of the several kinds, as may be necessary, deliver the same to the collector of the county, and charge such collector therewith. Clerk to issue blank licenses; to deliver and charge them to collector.

SEC. 5. The county court shall, at each regular term thereof, settle with the collector of the county on account of such licenses, and charge him with all the licenses not returned, and give him credit for such as are returned; and said court shall cause the amount thus charged against such collector, to be certified to the auditor of public accounts. County court at each term to settle with collector.

SEC. 6. Any person may obtain a peddler's license by application to the collector of the county in which he intends to carry on his trade, and by paying the amount levied on such license. Who may obtain a peddler's license.

SEC. 7. There shall be levied and paid on all peddlers' licenses, (except clock peddlers,) a state tax of the following rates: *First*, If the peddler travel and carry his goods on foot, three dollars for every period of six months; *Second*, If on one or more horses, or other beasts of burden, ten dollars for every period of six months; *Third*, If in a cart or other land carriage, twenty dollars for every period of six months; *Fourth*, If in a boat or other river vessel, at the rate of one dollar per day for any period not less than five days; and such license may be renewed, at the expiration of the first license, for any period not greater than six months, on payment of fifty cents a day, the number of days to be specified in such license. Rates of tax on peddler's licenses.

SEC. 8. Every person who shall be found dealing as a peddler, contrary to law or the terms of his license, shall forfeit, if a foot peddler, the sum of ten dollars; on one or more beasts of burden, twenty-five dollars; in a cart or other land carriage, fifty dollars; in a boat or other vessel, one hundred dollars. Penalty for dealing as a peddler contrary to law.

SEC. 9. Every person who shall deal in selling, exchanging, bartering, leasing, hiring or lending clocks, or who shall dispose of the same by any kind of artifice, device or contrivance whatever, in order to evade the act, by traveling from place Who deemed a clock peddler.

Digitized by Google

CHAP. 130.

to place, shall be deemed a clock peddler, and shall have a special license for that purpose, which may be obtained in the same manner and by the same means above provided in case of peddlers of merchandise; there shall be levied and paid, on every clock peddler's license, fifty dollars for the term of every six months.

To have a special license.

Fifty dollars tax on such license.

Penalty for dealing as a clock peddler without a license.

SEC. 10. Every person who shall deal as a clock peddler, without a special license for that purpose, shall, on conviction, forfeit not less than fifty dollars, nor more than four hundred dollars, and be imprisoned until the fine and costs are paid.

Penalty of ten dollars on peddler for refusing to exhibit his license.

SEC. 11. Every peddler 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.

Information to be given of peddlers dealing without a license.

SEC. 12. When any person shall be found dealing as a peddler without a license, or contrary to the terms of his license, it shall be the duty of every assessor, collector, sheriff and constable of the proper county, to give, and every citizen householder may give, information thereof to some justice of the peace without delay.

Justice to issue warrant to arrest offender.

SEC. 13. The justice shall issue his warrant, directed to the sheriff or any constable of the county, and cause the offender to be arrested and brought before himself, or some other justice of the peace of the county.

Duty of justice when party is brought before him.

SEC. 14. If, upon examination, the justice shall find the accused guilty of the offence charged, he shall require him to enter into a 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 that may be preferred against him, and in default of such recognizance, the justice shall commit the offender to the common jail of the county.

Limitation of prosecutions.

SEC. 15. All prosecutions under this act shall be commenced within six months after the commission of the offence.

Person may deal as a book peddler without license.

SEC. 16. Any person may deal as a peddler in the selling of books, maps, charts and stationery, without obtaining a license therefor.

Approved March 5, 1845.

Digitized by Google

CHAPTER 131.

PENAL BONDS.

AN ACT to regulate actions on penal bonds.

SEC. 1. Plaintiff, in his declaration, shall set out condition of bond, and assign breaches.
2. What defendant may plead in bar.
3. On payment of principal, interest and costs, action shall be discontinued.
4. Judgment, how rendered.
5. In what action specific breaches shall be assigned.
6. Jury to assess damages for breach.
7. Inquiry of damages to be awarded; when.
8. Verdict and judgment; proceedings thereon.
9. Form and direction of execution.
10. Judgment for the penalty to remain as security for damages for further breaches.
11. On further breach, plaintiff to have a scire facias.
12. Proceedings to obtain damages.
13. Effect of execution; how proceeded on.
14. If assignment of breach is found to be not true, it shall be a bar to another scire facias, &c.
15. Suits on official bonds to be in the name of the state, &c.
16. Pleadings and proceedings in such actions.
SEC. 17. Judgment for defendant shall be a bar to suit on same bond, &c., by same relator.
18. Any party aggrieved may sue on such bond; effect of pendency of the suit.
19. Person who recovered judgment may again prosecute an action on such bond.
20. No scire facias shall be brought on judgment by same or other relator.
21. Suit to use of party aggrieved deemed a private suit; relator liable for costs.
22. Suits not barred by plea of judgment recovered pleaded by security, unless accompanied by allegation, &c.
23. When defendant shall be discharged from all further liability.
24. Proceedings in estimating the amount of surety's liability.
25. Judgment and execution; how satisfied.
26. Proceedings, if there are several judgments.
27. Execution upon several judgments; money how apportioned.
28. Who may bring suit under this act, and against whom suit may be brought.

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

SECTION 1. In all actions brought upon bonds, in 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. (*a*)

Plaintiff in his declaration shall set out condition of bond, and assign breaches. 1835.

SEC. 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, although the payment was not strictly according to such condition.

What defendant may plead in bar.

SEC. 3. Whenever any action shall be pending on such bond, the defendant may, at any time before judgment render-

(*a*) *Vide*, Clamorgan & Lisa vs. Guisse et al., 1 Missouri Rep., 144; Fulkerson vs. Steen, 3 Missouri Rep., 377, and 1 *ib.* 57; State to use, &c., vs. Woodward, 8 Missouri Rep., 353; Moore & Hunt vs. Platte county, 8 Missouri Rep., 467.

Digitized by Google

ed 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 costs in such action, and, thereupon, such action shall be discontinued.

On payment of principal, interest and costs, action discontinued.

Judgment, how rendered.

SEC. 4. If judgment be recovered on any such bond, such judgment shall be rendered for the sum really due, according to such condition, with interest and costs, and execution shall issue thereon accordingly.

In what action specific breaches shall be assigned.

SEC. 5. When an action shall be prosecuted in any court of law upon any bond, for the breach of any condition other than 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.

Jury to assess damages for breach.

SEC. 6. Upon the trial of such 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.

Inquiry of damages to be awarded, when.

SEC. 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 breach assigned be inquired into, and the damages sustained thereby be assessed at the same or the next term, and the court shall proceed therein in the same manner, as in other cases of inquiry of damages.

Verdict and judgment, proceedings thereon.

SEC. 8. In every such action, if the plaintiff recover, the verdict assessing 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.

Form and direction of execution.

SEC. 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.

Judgment for the penalty to remain as security for damages for further breaches, &c.

SEC. 10. The judgment rendered for the penalty of the bond sued on, or for the penal sum forfeited, 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

Digitized by Google

defendant, the performance of which was secured by such penal sum.

On further breaches, plaintiff to have a scire facias.

SEC. 11. Whenever such further 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 show cause why execution should not be had upon such judgment, for the amount of the damages sustained by such further breaches.

Proceedings to obtain damages.

SEC. 12. The like proceedings, to ascertain such damages, shall be had upon such writ, as hereinbefore 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.

Effect of execution; how proceeded on.

SEC. 13. The execution issued on such judgment shall have the 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.

If assignment of breach is found to be not true, it shall be a bar to another scire facias.

SEC. 14. Whenever, in any action brought according to the provisions of this act, the jury shall find that any assignment of breach 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.

Suits on official bond, to be in the name of the state, &c.

SEC. 15. In all cases where, by the law 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.

Pleadings and proceedings in such actions.

SEC. 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.

Judgment for defendant shall be a bar to suit on same bond, &c., by same relator.

SEC. 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.

Any party aggrieved may sue on such bond.

SEC. 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 such bond,

Digitized by Google

or a judgment recovered by or against any other person on such bond, shall not abate, or in any manner affect such suit, or the proceedings thereon, except as herein provided.

Person who recovered judgment may again prosecute an action on such bond.

SEC. 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 suit, and shall proceed therein as hereinbefore provided.

No scire facias on judgment by same or other relator.

SEC. 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.

Suit to use of party aggrieved, deemed a private suit.

SEC. 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.

Relator liable for costs.

Suits not barred by plea of judgment recovered by security, unless, &c.

SEC. 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 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.

When defendant shall be discharged from all further liability.

SEC. 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 shall be rendered in his favor.

Proceedings in estimating amount of security's liability.

SEC. 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.

Judgment and execution, how satisfied.

SEC. 25. Whenever a judgment shall be obtained on an official bond against principal and securities, a direction shall be endorsed on the execution, by the plaintiff or his attorney,

Digitized by Google

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.

Proceedings if there are several judgments.

SEC. 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 are liable, the court shall order the money 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.

Executions upon several judgments, money how apportioned.

SEC. 27. If executions be issued upon such several judgments obtained at the same term, and sufficient money shall not be made to satisfy all the executions, the court shall distribute the money collected thereon, to the relators, in proportion to their respective recoveries.

Who may bring suits under this act, and against whom suits may be brought.

SEC. 28. The provisions of this act, in relation to suits on official bonds, shall apply as well as to suits on 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 [be] 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. (*b*)

Approved February 12, 1845.

(*b*) *Vide*, Clark vs. Murphy, 1 Missouri Rep., 115; An action of covenant will not lie on an administrator's bond. See State, to use of Crawford & Adams, vs. Woodward et al., 8 Missouri Rep., 353; Covenant will not lie on a penal bond conditioned to be defended by the performance of collateral conditions.

Digitized by Google

CHAPTER 132.

PENITENTIARY.

AN ACT to establish and regulate the penitentiary.

ARTICLE I. Of the government of the penitentiary.
II. Of the treatment and conduct of convicts, and other matters.

ARTICLE I.

Of the government of the penitentiary.

SEC. 1. Where the penitentiary shall be maintained; to be under the direction of inspectors.
2. Who to be inspectors; their oath.
3. Two inspectors a quorum.
4. Compensation of inspectors.
5. Their duties.
6. To examine into discipline and treatment of convicts, &c.
7. Inspectors shall report to the legislature at each session; what the report shall set forth.
SEC. 8. Shall provide for religious instruction of convicts.
9. Shall keep a minute of their proceedings.
10. Duty of lessees relative to inspectors.
11. Penalty for receiving reward from convict.
12. Lessees to receive felons, pardoned on condition of imprisonment.
13. Register to be kept by physician; its contents.

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

Where the penitentiary shall be maintained.—1835.

SECTION 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.

Who to be inspectors; their oath.

SEC. 2. The treasurer, auditor and attorney general, shall be ex-officio inspectors of the penitentiary, who shall severally take the oath of office prescribed by the constitution, before they enter upon the discharge of their duties as inspectors, which shall be filed in the office of the secretary of state.

Two inspectors a quorum.

SEC. 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.

Compensation of inspectors. 1843, p. 101, sec. 4.

SEC. 4. The inspectors shall each be allowed the sum of one hundred dollars per annum, as full compensation for all the services required of them by law.

Their duties. *Ib.*, secs. 3, 4.

SEC. 5. The board of inspectors shall make such rules for the government, discipline and police of the penitentiary, and

Digitized by Google

for the punishment of the prisoners therein confined, not inconsistent with law, as they may deem expedient; they shall exercise a general superintending control over the government and discipline of the penitentiary, cause such rules and regulations as they may prescribe for the government of the prison, to be printed and placed in some conspicuous place in said prison, and shall visit said prison as often as once in a fortnight, and as much oftener as may be necessary to keep them well informed of its general condition and management.

To examine into discipline and treatment of convicts, &c.—*Ib.*, secs. 5, 6 and 10.

SEC. 6. The inspectors shall have power, and it shall be their duty, from time to time, to examine and inquire into all the matters connected with the government, discipline and police of the penitentiary, the punishment and treatment of the prisoners therein confined, they shall inspect them, listen to any complaints of oppression or misconduct on the part of the keepers of the penitentiary, inquire into any improper conduct which may be alleged to have been committed by the by the lessees, or others employed in the prison, and for that purpose shall have the power of a justice of the peace to issue subpœnas, compel the attendance of witnesses, and administer oaths.

Inspectors shall report to the legislature at each session.

What the report shall set forth. 1843, p. 100, sec. 1.

SEC. 7. At each biennial session of the general assembly, the board of inspectors shall make thereto, in writing, a report, exhibiting a comprehensive view of the government, discipline, and transactions of the penitentiary during the two preceding years, which shall particularly set forth: *First*, The number of convicts confined in the penitentiary, the various branches of business in which they have been employed, the number employed in each branch, the age, sex, and place of nativity of the convicts, their term of imprisonment, the offences for which they were committed, from what county they were sent, the number of convicts that have escaped or died, or have been pardoned or discharged during the two preceding years; *Second*, The quality and quantity of food and clothing allowed to the convicts, and the general state of their health during the two preceding years; *Third*, The manner in which the convicts have been treated by the lessees, the number that have been punished, the nature of the punishment, how often inflicted, and for what offence.

Shall provide for religious instruction of convicts.

SEC. 8. It shall be the duty of the inspectors to provide for the moral and religious instruction of the convicts, and for that purpose they are hereby authorized to employ a chaplain,

Digitized by Google

at an expense not exceeding one hundred and fifty dollars per annum, to be paid quarter-annually, out of the state treasury.

Shall keep a minute of their proceedings. *Ib.*, sec. 8.

SEC. 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.

Duty of lessees relative to inspectors. 1843, p. 101.

SEC. 10. It shall be the duty of the lessees, and others employed in the penitentiary, to admit the inspectors, or any one of them, into every part of the prison; to communicate to them in writing all the information they may desire relative to the business, management, discipline and government thereof; shall faithfully and strictly enforce all rules and regulations adopted by the board of inspectors for the government of the prison, and shall render the inspectors every facility in their power to enable them to discharge their duties.

Penalty for receiving reward from convict. 1835, sec. 13.

SEC. 11. No inspector, lessee or other officer of the penitentiary, shall receive, under any pretence whatever, from any of the convicts, or from any other person on behalf 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.

Lessees to receive felons pardoned on condition of imprisonment. *Ib.*, sec. 35.

SEC. 12. The lessees 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.

Register to be kept by physician; its contents. *Ib.*, sec. 40.

SEC. 13. The physician shall keep a register of all 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 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.

Digitized by Google

Of the treatment and conduct of convicts and other matters.

SEC. 1. Clothing and food of convicts; diet in case of sickness.
2. Quality of clothing and food.
3. Penalty for furnishing convicts with spirituous liquors, unless, &c.
4. Penalty for conveying letters to or from convicts, without consent of lessees.
5. Inspectors to provide convicts with a bible.
6. Certificate of sentence to be delivered with convict, to lessees.
7. Duty of lessees and overseers on arrival of convicts.
8. Lessees to take charge of the money or property of convicts; how disposed of.
9. To keep an account thereof; amount how and to whom paid.
10. Lessees to furnish discharged convicts with clothes and money.
SEC. 11. Lessees to keep a journal; entries they shall make therein.
12. Convicts under the laws of the United States to be received in the penitentiary.
13. If such prisoner escape, or attempt to escape, how punished.
14. Liability of lessees for neglect or violation of duty toward such prisoner.
15. Convicts may be brought up by habeas corpus to testify; when.
16. In what cases convict shall be deemed a competent witness.
17. What persons authorized to visit the penitentiary.
18. Visitor to report abuses, &c., to inspectors.
19. Exemptions of lessees and officers of the penitentiary.
20. Provision for re-taking convicts who escape.
21. Lessees to have sheriff's authority over the power of the county.

SECTION 1. The convicts shall be clothed in the uniform of the penitentiary, and shall receive the allowance of food prescribed by the rules, and no other; but convicts, under the care of the physician, shall be allowed such diet as he may direct. Clothing and food of convicts; diet in case of sickness. 1835, art. 2, sec. 10.

SEC. 2. 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. Quality of clothing and food.

SEC. 3. If any person shall furnish any convict with any wine, 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, (other than a lessee,) he shall be forthwith dismissed. Penalty for furnishing convicts with spirituous liquors, unless, &c. *Ib.*, sec. 11.

SEC. 4. No person, without the consent of the lessees, shall bring into, or carry 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. Penalty for carrying letters to or from convicts, without consent of lessees. *Ib.*, sec. 12.

Digitized by Google

CHAP. 132.

Inspectors to provide convicts with a bible.

SEC. 5. It shall be the duty of the inspectors of the penitentiary to provide for each convict, who can read, a copy of the Holy Bible, to be purchased at the expense of the state on the most reasonable terms.

Certificate of sentence to be delivered with convict to lessees.

SEC. 6. Whenever any convict shall be delivered to the lessees of the penitentiary, the officer having such convict in his charge, shall deliver to the lessees the certified copy of the sentence received by such officer from the clerk of the court, and shall take from the lessees a certificate of the delivery of such convict.

Duty of lessees and overseers on arrival of convicts.

SEC. 7. On the delivery of a convict at the penitentiary, he shall be examined by the lessees, 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 his 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.

Lessees to take charge of the money and property of convicts; how disposed of.

SEC. 8. The lessees 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 lessees shall sell the property, and place the money at interest, for the benefit of such convict or his representatives.

To keep an account thereof.

Amount how and to whom paid.

SEC. 9. The lessees 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 the 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.

Lessees to furnish discharged convicts with clothes and money.

SEC. 10. Whenever any convict shall be discharged, either by pardon or otherwise, the lessees shall (at their expense,) furnish to such convict necessary clothing, not exceeding ten dollars in value, and such sum of money, not exceeding four dollars, as the lessees may deem necessary and proper.

SEC. 11. The lessees shall keep a journal, in which they

Digitized by Google

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.

Lessees to keep a journal; What entries to make.

SEC. 12. The lessees 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.

Convicts under laws of the United States, to be received in prison.

SEC. 13. 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.

If such prisoner escape or attempt to escape, how punished.

SEC. 14. The lessees 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.

Liability of lessees for neglect or violation of duty towards such prisoner.

SEC. 15. Whenever any convict confined in the penitentiary shall be considered an important witness in behalf of the 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 the court, or judge thereof, in vacation, 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.

Convicts may be brought up by habeas corpus to testify, when.

SEC. 16. Such convict may be examined, 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.

In what cases convict shall be deemed a competent witness.

SEC. 17. 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 and circuit courts, attorney general, auditor of public accounts, treasurer, secretary of state, register of the land office and circuit attorneys, and no other person shall be permitted to enter within the walls of the prison, except by the

What persons authorized to visit the penitentiary.

Digitized by Google

CHAP. 133.

special permission of the lessees, or under such regulations as the inspectors shall prescribe.

Visitors to report abuses, &c., to inspectors.

SEC. 18. Any visitor who shall discover any abuse, or infraction of law, or oppression, shall make the same known to the inspectors or one of them, and if any of the inspectors are implicated, such visitor shall make the same known to the governor.

Exemptions of lessees and officers of the penitentiary.

SEC. 19. The inspectors, lessees, and all other officers and guards of the penitentiary, shall, during their continuance in office, be exempt from working on roads, serving on juries, and from military duty.

Provision for re-taking convicts who escape.

SEC. 20. Whenever any convict shall escape from the penitentiary, it shall be the duty of the lessees to take all proper measures for the apprehension of such convict, and for that purpose they shall offer and pay a reward not exceeding fifty dollars, for the apprehension and delivery of such convict, such reward to be in no event chargeable to the state.

Lessees to have sheriff's authority over the power of the county.

SEC. 21. The lessees shall, in all cases of alarm or danger at the penitentiary, severally have the authority of a sheriff, over the power of the county in which the prison is situate.

Approved March 8, 1845.

CHAPTER 133.

PERPETUATING TESTIMONY.

AN ACT concerning perpetuating testimony.

ARTICLE I. Of taking depositions to perpetuate testimony.
II. Of establishing boundaries.

ARTICLE I.

Of taking depositions to perpetuate testimony.

SEC. 1. Depositions may be taken to perpetuate testimony, when.
2. A commission, on petition, shall be granted; by whom.
3. By whom and how issued; to whom directed.
4. Notice of the time and place of taking depositions to be given.
5. Notice, upon whom served in certain cases. Guardian ad litem may be appointed.
6. Publication of notice to persons residing without the state.
7. Summons to witnesses, how and by whom issued.
8. Duty of justices or clerk.

Digitized by Google

SEC. 9. Questions put to witnesses, to be reduced to writing by the justice or clerk.
10. Answers of witnesses to be reduced to writing.
11. Power of adjournment.
12. Depositions, how certified and to whom delivered.
SEC. 13. May be sent by mail or otherwise, when.
14. Duty of clerk on receiving such depositions.
15. In what cases such depositions, legally taken, may be read.
16. All legal exceptions may be taken to such depositions.

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

SECTION 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, necessary to the recovery or security of an estate, real or personal, or any other personal right.

Depositions may be taken to perpetuate testimony, when.

SEC. 2. A commission shall be granted to take such depositions, by any judge of the supreme or circuit court, on a 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.

A commission on petition shall be granted, by whom.

SEC. 3. The commission shall be issued by the clerk of the court in which the judge granting the same presides, and being witnessed by the clerk, and the seal of his court, shall be directed to any two justices of the peace, or to the clerk of any circuit court, or supreme court, being in the county where such testimony is to be taken, requiring such justices or clerks to take the depositions of the witnesses therein named.

By whom and how issued; to whom directed.

SEC. 4. The party applying for the commission 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 agent or attorney, at least thirty days before the taking of the same, and a copy of the petition, and affidavit upon which the commission was granted, shall accompany such notice.

Notice of the time and place of taking depositions to be given.

SEC. 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 commission, when there is no guardian.

Notice upon whom served in certain cases.

SEC. 6. The publication of such notice in some newspaper

Digitized by Google

printed in this state, at least three weeks consecutively, the last insertion to be twenty days before the day of taking the depositions, shall be sufficient notice to all persons residing without the state.

Publication of notice to persons residing without the state.

SEC. 7. The justices or clerk may issue a summons to such witnesses, requiring them to appear and testify at a time and place therein named, and may enforce obedience thereto by attachment.

Summons to witnesses, by whom issued.

SEC. 8. The justices or clerk shall attend at the time and place appointed for taking such depositions.

Duty of justices or clerk.

SEC. 9. If it shall appear to such justices or clerk that notice has been given as 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, and 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.

On legal notice given, questions to be reduced to writing.

SEC. 10. Such justices or clerk shall also reduce to writing all the answers of the witnesses to such questions, and all such questions and answers shall be written in the English language, or the language of the witness if he does not understand the English language, and being distinctly read to such witness, shall be sworn to and subscribed by such witness.

Answers of witnesses to be reduced to writing.

SEC. 11. The justices or clerk shall have power to adjourn from day to day the taking of such depositions, when the same shall be necessary.

Power of adjournment.

SEC. 12. The justices, or clerk taking such depositions, shall attach thereto his or their certificate, stating the time and place, when and 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 commission and the evidence 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 suit is pending, or in which the property or matter is situate or belongs, to which such depositions relate.

Depositions how certified, and to whom delivered.

SEC. 13. 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 immediate delivery thereof, then it shall be lawful to send the same by mail, or other safe conveyance.

May be sent by mail or otherwise, when.

Digitized by Google

Duty of clerk on receiving such depositions.

SEC. 14. 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 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 commission issued.

In what cases such depositions, legally taken, may be read.

SEC. 15. Depositions taken and certified in conformity to the preceding provisions of this act, or duly certified copies of the record of such depositions, may be used and read as evidence in any case to which they relate: *First*, If the deponent be dead; *Second*, If he be unable to give testimony by reason of insanity, or imbecility of mind; *Third*, If he be rendered incompetent by judgment of law; *Fourth*, If he be removed so that his testimony cannot be obtained.

All legal exceptions may be taken.

SEC. 16. 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.

ARTICLE II.

Of establishing boundaries.

SEC. 1. If corners of land be in a perishable condition, survey may be made.
2. Duty of surveyor in placing corner stones or posts.
3. To make out a plat and certificate of survey; its contents.
4. Corners destroyed or obliterated by time or accident, may be established by testimony, how.
5. Duty of justices in procuring attendance of surveyor and witnesses.
6. Justices to proceed to the examination, when and where.
7. Justices have power to adjourn from day to day.
8. Examination of witnesses to be reduced to writing.
SEC. 9. Notice of taking depositions under five preceding sections, how given.
10. Evidence of notice required before justices proceed.
11. County surveyor, if required, to place a stone or post at decayed corners, &c.
12. Shall make a plat and certificate of survey.
13. Shall record the same, and deliver the original and depositions to the recorder.
14. Recorder shall record the same.
15. Plats, certificates and depositions, and certified copies of the same, evidence.
16. Costs attending proceedings under this act, how paid.

If corners of land be perishable, survey may be made.

SECTION 1. Any person, his agent or attorney, owning or being interested in any tract of land within this state, any corner or corners of which shall be in a decayed or perishable

Digitized by Google

condition, may require the surveyor of the county to make a survey thereof.

Duty of surveyor in placing corner stones or posts.

SEC. 2. Such surveyor shall cause to be planted, by the person requiring such survey, at each of such decayed corners, a stone or post, and noting particularly the situation and condition of the 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.

To make out a plat and certificate of survey; its contents.

SEC. 3. He 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 the variations from the original lines at the time of making such survey.

Corners destroyed by time or accident, may be established by testimony, how.

SEC. 4. When the corner or corners of any survey shall have been destroyed or obliterated by time or accident, the owner 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 situate, for the purpose of establishing such corners by testimony.

Duty of justices in procuring surveyor and witnesses.

SEC. 5. Such justices shall, upon application, issue their warrant to any constable or sheriff of the county, to cause to come before them, at a place on the land, 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 persons interested, may require.

Justices to proceed to the examination, when and where.

SEC. 6. 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 lands, or of the corners or boundaries of any adjoining lands, when the same may be necessary or conducive to the accomplishment of the object of the application.

Justices have power to adjourn.

SEC. 7. Such justices shall have power to adjourn, from day to day, when the same may be necessary to the accomplishment of the examination.

Examination to be reduced to writing.

SEC. 8. Such justices shall reduce the examinations of the witnesses to writing, which shall be signed and sworn to by

Digitized by Google

the deponents, and being certified and signed by the justices, shall be by them delivered to the county surveyor.

Notice, how given.

SEC. 9. The same notice shall be given previous to taking depositions, under the five preceding sections, in all respects as is required to be given by the fifth and sixth sections of [the first article of] this act.

Evidence of notice required before justices proceed.

SEC. 10. Satisfactory evidence of such notice shall be required by the justices before they proceed to take such depositions, which shall appear in their certificate annexed to their depositions.

County surveyor, if required, to place a stone or post at decayed corners, &c.

SEC. 11. The county surveyor shall, if required by the party owning or being interested in such survey, make a survey thereof, and cause to be planted a stone or post, at each of the decayed or obliterated corners, and shall be governed in his survey and in planting such stone or post at the corners, by the depositions which shall have been taken and delivered to him in relation thereto.

Shall make a plat and certificate of survey.

SEC. 12. 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.

Shall record the same, and deliver the original and depositions to the recorder.

SEC. 13. He shall record such plat and certificate in a book, to be by him kept and provided for that purpose, and shall deliver the original, with any depositions delivered to him, duly certified to the recorder of the county.

Recorder shall record the same.

SEC. 14. The recorder, to whom such plat and certificate and depositions shall be delivered, shall record the same in a book, to be by him provided and kept for that purpose, and shall deliver the original to him at whose instance the survey was made.

Plats, certificates and depositions and certified copies thereof, evidence.

SEC. 15. Plats, and certificates of survey, and depositions to establish corners, or certified copies of the record thereof, when the same shall have been made or taken in conformity to the provisions of this act, may be used and received in evidence in all cases at law, or in equity, to which they may relate, subject to exceptions for irrelevancy or incompetency.

Costs, how paid.

SEC. 16. All fees and costs attending the proceedings under this law, shall, in the first instance, be paid by the party on

Digitized by Google

CHAP. 134.

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 19, 1845.

CHAPTER 134.

POOR.

AN ACT to provide for the support of the poor.

SEC. 1. The poor, by whom supported and maintained.
2. Definition of a poor person.
3. Who deemed an inhabitant under this act.
4. County court to make an order for relief of the poor, when.
5. Relief, discretionary with the court.
6. Funeral expenses may be allowed.
7. Court may purchase not exceeding one hundred and sixty acres of land.
8. Poor-house may be erected on such land.
9. Superintendent shall be appointed, when.
10. Duty of superintendent.
11. Power of court to prescribe rules for government of poor-house.
12. Manner of levying poor tax.
13. When directed by court, treasurer to demand such funds.
14. Shall keep accounts.
15. Court may remove superintendent.

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

The poor, by whom supported.—1835.

SECTION 1. Poor persons shall be relieved, maintained and supported, by the county of which they are inhabitants.

Definition of a "poor person."

SEC. 2. Aged, infirm, lame, blind or sick persons, who are unable to support themselves, shall be deemed poor persons.

Who deemed an inhabitant under this act.

SEC. 3. No person shall be deemed an inhabitant within the meaning of this act, who has not resided, for the space of twelve months next preceding the time of any order being made respecting such person, in the county, or who shall have removed from another county for the purpose of imposing the burden of keeping such person, on the county where he or she last resided, for the time aforesaid.

County court to make an order for the relief of the poor, when.

SEC. 4. The county court in each county, on the knowledge of the justices of such tribunal, or any of them, or on the information of any justice of the peace, of the county in which any person entitled to the benefit of this act resides, shall, from time to time, and as often, and for as long a time as may be necessary, provide, at the expense of the county, for the relief, maintenance and support of such person.

Digitized by Google

Relief, discretionary with court.

SEC. 5. The county court shall, at all times, use its discretion and grant relief to all citizens who may require its assistance.

Funeral expenses may be allowed.

SEC. 6. The county court of the proper county shall allow such sum as it shall think reasonable, for the funeral expenses of any person who shall die within the county without means to pay such funeral expenses.

Court may purchase not exceeding 160 acres of land.

SEC. 7. The several county courts shall have power, whenever they may think it expedient, to purchase any quantity of land in their respective counties, not exceeding one hundred and sixty acres, and receive a conveyance to their county for the same.

Poor-house may be erected on such land.

SEC. 8. Such county court may cause to be erected, on the land so purchased, a convenient poor-house, and cause other necessary labor to be done, and repairs and improvements made, and may levy, upon their respective counties, such sum as will be sufficient to pay the purchase money, and to defray the necessary expenses.

Superintendent shall be appointed, when.

SEC. 9. Whenever such poor-house is erected, the county court shall have power to appoint a fit and discreet person to superintend the same, and the poor who may be kept thereat, and to allow such superintendent a reasonable compensation for his services.

Duty of superintendent.

SEC. 10. Such superintendent shall have power to cause persons kept at such poor-house, who are able to do useful labor, to perform the same by reasonable and humane coercion.

Power of court to prescribe rules for government of poor-house.

SEC. 11. The county court shall have power to make all necessary and proper orders and rules for the support and government of the poor kept at such poor-house, and for supplying them with the necessary raw materials, to be converted by their labor into articles of use, and for disposing of the products of such labor and applying the proceeds thereof to the support of the institution.

Manner of levying poor tax.

SEC. 12. The sum levied upon the county, by virtue of the provisions of this act, shall be levied and collected in the same manner that county taxes are levied and collected, and the collector shall account for the same in the same manner, except that he shall pay over such sums as he may have collected at any time, when demanded by the treasurer of the county.

Duty of treasurer.

SEC. 13. The treasurer of the county shall demand such funds whenever directed by the county court, and his duty in

Digitized by Google

relation thereto, shall be the same as that prescribed by law in relation to other county funds.

Shall keep accounts separate.

SEC. 14. The treasurer shall keep the accounts of such funds separate from all other accounts.

Court may remove superintendent.

SEC. 15. The county court may, at any time, for good cause remove a superintendent, and appoint another to fill the vacancy.

Approved February 13, 1845.

CHAPTER 135.

PRACTICE AT LAW—PETITION IN DEBT.

AN ACT for the speedy recovery of debts due on bonds and notes.

SEC. 1. Holder of bond or note may commence suit by petition in debt.
2. Form of petition.
3. Assignee must set out assignment.
4. Petition, bond, or note, and assignment must be filed. Writ how executed and returned.
5. Personal service of process, trial at first term; pleadings regulated.
6. Proceedings under this act, how proceeded in to final judgment.
7. Common law actions on bonds, bills and notes.
8. Proceedings regulated.

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

Holder of bond or note may sue by petition in debt.—1835.

SECTION 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. (*a*)

(*a*) Petition in debt will not lie on an account stated, and where defendant, after a long account, the amount of which is added up and stated at the foot in figures, writes opposite the amount these words: "Amount due T. & B., July 25th, 1835;" it is nothing more than an account stated, and cannot sustain this action; Wilson vs. Turner & Brown, 4 Missouri Rep., 274. This action may be maintained on an instrument for the direct payment of money or property, even though the same instrument should contain some immaterial collateral obligations; Casey vs. Barcroft, 5 Missouri Rep., 128. It will not lie on a note which does not show on its face when it became due. To maintain suit on such a note, it is necessary to make an averment of the time when the note became due, and no such averment can be made in this form of action; Curle vs. McNutt, 6 Missouri Rep., 495. It will not lie on a bond containing other stipulations than those for the payment of money or property; Curle vs. Pettus, 4 Missouri Rep., 497. It may be maintained by the holder of a negotiable note within the meaning of the statute, against the maker thereof; Warne vs. Hill, 7 Missouri Rep., 40. It cannot be maintained, where an averment is necessary to show the right of action; but if an averment is made when it is wholly unnecessary, it may be rejected as surplusage; Middleton vs. Atkins, 7 Missouri Rep., 184. It will lie on a negotiable promissory note discounted by the bank of the state of Missouri; 7 Missouri Rep., 219. An acknowledgment of a debt in these terms: "Due A. B. one hundred dollars," is a good promissory

Digitized by Google

Form of petition.

SEC. 2. The petition may be in the following form: "To the —— circuit court: ———, plaintiff, states that he is the legal owner (*b*) of a bond, or note, (as the case may be) against the defendant, ———, (*c*) to the following effect, (here insert a copy of the instrument sued upon.) (*d*) Yet the debt remains unpaid, therefore he demands judgment for his debt, and damages for the detention thereof, together with costs. (*e*)

SEC. 3. If the plaintiff be the owner of the instrument sued

note, upon which suit, by petition in debt, will lie; McGowen vs. West, 7 Missouri Rep., 569. See sections 5, 6, 7 and 8, of article 1, of the act to regulate practice at law.

(*b*) In petition in debt, brought by a mercantile firm consisting of several partners, on a note executed to them in the name of the firm, it must be averred in the petition, that the note set out was executed to the plaintiffs by that name; Tabor, Shaw & Tatum vs. Jamison, 5 Missouri Rep., 494, McGirk, J., dissenting. In Dyer & Mason vs. Sublette & Campbell, 6 Missouri Rep., 14, the court re-affirmed the doctrine of Tabor, Shaw & Tatum vs. Jamison, Napton, J., concurring in the reversal, because the question was one of form, believing the petition to be good under the statute. But in the case of Lee & Remington vs. Hunt & Paddock, 6 Missouri Rep., 163, the court were unanimous in overturning this doctrine, upon the ground that the statement in the petition, that the plaintiffs are the legal owners of the note sued on, includes the averment that the note set out was executed to the plaintiffs by the partnership name. Our statute, making promissory notes assignable, and authorizing the assignee to sue in his own name, makes the assignee the legal owner of the instrument, and consequently erroneous to institute suit in the name of the assignor for the benefit of the assignee; Jeffers vs. Oliver, 5 Missouri Rep., 433; Langham vs. Lebarge, 6 Missouri Rep., 355; *vide*, Arthur et al. vs. Pendleton et al., 7 Missouri Rep., 519.

(*c*) A bond, signed by a partner in the name of the firm, may be described in a petition in debt as the bond of any one of the partners; our statute permitting the obligee to sue as many of the obligors as he thinks proper; Griffin & Kinote vs. Samuel, 6 Missouri Rep., 50.

(*d*) In petition in debt, it is not a material variance for the pleader, in setting out a copy of the note sued on, to write correctly words that are wrongfully spelled in the original; Dent vs. Miles, 4 Missouri Rep., 419. In petition in debt on a promissory note, the note offered in evidence, varied from the one recited in the petition, by the omission of the word "pay." *Quere?* Whether such variance be material. At all events the circuit court will not err in permitting an amendment to be made at the trial; Atwood vs. Gillespie, 4 Missouri Rep., 423; *vide*, Hamilton vs. Stewart, 5 Missouri Rep., 266. In copying the note sued on in the petition, plaintiff copied the word "after" twice, by mistake, which mistake he was, on motion, allowed to rectify; thereupon, defendant moved for a continuance, which was refused, and a new trial, which was also refused. Held, that there was no error in refusing either motion; Chambers vs. Lane, 5 Missouri Rep., 289. The *date* of the note was indistinct, it being uncertain whether it was 2 or 4. The circuit court, upon inspection of the note, decided it was 4, as set forth in the petition. Held, that, whether the date was 2 or 4, was matter of inspection, and the circuit court having satisfied itself upon that point, the supreme court would not undertake to pronounce the decision erroneous, particularly, as only a fac simile of the note was preserved in the bill of exceptions; Butterworth vs. Ratcliff, 7 Missouri Rep., 550. More than one note or bond may be set out in a petiiton in debt; the several bonds or notes may be considered as several counts; Jones vs. Coxe et al., 7 Missouri Rep., 173.

(*e*) When the pleadings admit the bond sued on, the court will take the date set out in the petition, as the true date of the bond, and will calculate the interest accordingly; Bentzen vs. Zierlein, 4 Missouri Rep., 417. The statute does not require that the petition should be signed by the plaintiff or his attorney, and if it did, the court might permit the plaintiff or his attorney to sign the petition at the return term, and such permission would be no ground for a continuance; Harvey vs. Renfro, 7 Missouri Rep., 187.

Digitized by Google

Assignee must set out assignment.

upon, as assignee thereof, the fact of the 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.

Petition, instrument sued on, &c., shall be filed.

SEC. 4. The petition, together with the instrument sued upon, and the assignments, shall be filed (*f*) in the clerk's office, and a writ may be sued out, executed and returned, in the same manner and with the like effect as upon a declaration in the ordinary form. (*g*)

When defendant shall plead.

SEC. 5. If the defendant shall have been personally served with process, (*h*) he shall plead (*i*) 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, (*j*) and the suit in such cases shall be determined at the same term unless continued for good cause. (*k*)

Suit when to be determined.

Suit, how proceeded in to final judgment.

SEC. 6. 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. (*l*)

Common law actions on bonds, bills and notes.

SEC. 7. In all common law actions of debt, and actions of assumpsit, founded on bonds, bills, or notes, in the circuit court, the defendant, if he shall have been personally served

(*f*) Petition in debt, pleas non est factum and non-assignment, judgment against defendant, and motion for a new trial, on the ground that the instrument sued on, was not filed in the clerk's office with the petition; Held, that the objection, if any, could only be taken advantage of in the court below, by motion to dismiss, or it might have been good cause for continuance, but that defendant waived such objection by pleading; White & Cross vs. Collier, 5 Missouri Rep., 82.

(*g*) Where the summons varies from the declaration, the court may permit the former to be amended, and it is no ground for a continuance. A variance between the declaration and writ cannot be taken advantage of on a motion to quash; Jones vs. Coxe et al., 7 Missouri Rep., 173. See secs. 2, 3, 4, 10 and 11, of article 1, of the act to regulate practice at law.

(*h*) The sheriff's return stated that he had read the summons to the defendant, but did not state that he had either read the petition, or left a copy, held, that after judgment by default, the return of the sheriff may be amended; Muldrow vs. Bates, 5 Missouri Rep., 214.

(*i*) Vide Thompson & Price vs. Elliott, 5 Missouri Rep., 118. Non assumpsit is not a good plea to an action of debt by petition and summons, Hoover & Hayden vs. Hays, 5 Missouri Rep., 125

(*j*) When there has been personal service, and defendant pleads within the first two days of the term, or at such time before as the court may prescribe, the trial must be at the same term; but where there is no personal service, the defendant has six days to plead in, and if he so plead, the cause is continued as a matter of course; Donaldson vs. Anderson et al., 5 Missouri Rep., 480.

(*k*) See note (*y*) to sec. 3, article 4, of the act to regulate practice at law.

(*l*) See the act to regulate practice at law.

Digitized by Google

with process, twenty days before the return day thereof, 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, and if not, then within such time in the term, as the court shall direct, and the suit shall, in such cases, be determined at the same term, unless continued for good cause.

Proceedings regulated.

SEC. 8. All common law actions of debt, and actions of assumpsit, founded on bonds, bills, or notes, except where it is otherwise provided in the next preceding section, shall be proceeded in to final judgment and execution, in the same manner and with like effect as in ordinary cases. (*m*)

(*m*) The true construction of the several enactments (sec. 5 and 7 of this act, and sec. 1 and 9 of art. iii., and sec. 2 of art. iv., of the act to regulate practice at law,) in regard to the time within which a defendant is bound to plead, and having pleaded, is bound to go to trial, is understood to be, that if the action be "petition in debt," and the defendant has been personally served with process fifteen days before the return day, he is bound to plead on or before the second day of the return term, and go to trial at the same term; if the service of the process has not been personal, he has the first six days of the return term to plead in, and the cause is continued of course; Donaldson vs. Anderson, 6 Missouri Rep., 480. If the foundation of the action be a bond, bill, or note, and the plaintiff, either from necessity or choice, adopts a common law action, and causes the defendant to be personally served with process twenty days before the return day, the defendant is bound to plead and go to trial, within the same time that he would be if the action were "petition in debt;" and though the action may be founded on a bond, bill or note, if the process be not served personally on the defendant, or, being so served, but served less than twenty, and as much as fifteen days, or even constructively served fifteen days, the defendant has the first six days of the term to plead in, and the cause is continued, of course; Southack vs. Morris, 6 Missouri Rep., 351. In all other cases, (except, perhaps where there is an enactment regulating some particular proceeding,) the manner of the time of service (so that it be fifteen days before the return day) does not alter the time of pleading, or trial, and the defendant has six days to plead in, and the cause is triable at the second term.

Digitized by Google

CHAPTER 136.

PRACTICE AT LAW.

AN ACT to regulate practice at law.

ARTICLE I. Of the commencement of suits, and the service and return of process and notices.
II. Of proceedings by and against infants.
III. Of pleadings, interlocutory judgments and assessments of damages.
IV. Of trials and their incidents.
V. Of the abatement of suits, and their revival; of consolidating and referring actions.
VI. Of amending pleadings and proceedings.
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 may be instituted.
2. Declaration to be filed before writ issues.
3. Writ to be annexed to declaration or copy thereof, and delivered to officer.
4. Date of writ; when returnable to first, when to second term.
5. Suits by summons, in what cases, and where brought.
6. Suits by attachment, and where brought.
7. Defendants in different counties, suits may be brought in either.
8. Defendant in attachment having property in several counties, writs may issue to each.
9. Original writ shall be a summons, unless, &c.
10. Summons, how executed.
11. Refusal to hear or receive a copy, deemed a sufficient service.
12. Officer to make return of writs, how.
13. By whom notice may be served in the commencement or progress of suits.
14. How served.

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

How suits at law may be instituted. 1835, p. 450.

SECTION 1. Suits at law may be instituted in courts of record, except when 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 against the person, or of attachment against the property of the defendant.

Declaration to be filed before writ issues.

SEC. 2. No such original writ shall be issued until the declaration be filed in the clerk's office.

Digitized by Google

Writ to be annexed to declaration, or copy thereof, &c.

SEC. 3. The writ, when issued, shall be endorsed upon, or annexed to the declaration, or a copy thereof; and the declaration, or a copy thereof, together with the writ, shall be delivered to the officer charged with the execution of the same. (*a*)

Date of writ, when returnable to first, when to second term.

SEC. 4. 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.

Suits by summons, in what cases and where brought.

SEC. 5. Suits instituted by summons, shall be brought, *First*, When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found; or, *Second*, When the defendant is a non-resident of the state, in any county within which the defendant may be found.

Suits by attachment, where brought.

SEC. 6. Suits commenced by attachment against the property of a person, shall be brought in the county in which such property may be found.

Defendants in different counties, suit may be brought in either, &c.

SEC. 7. When there are several defendants in a suit instituted by summons, 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.

Writs of attachment may issue to several counties, when.

SEC. 8. 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.

Original writ shall be a summons, unless, &c.

SEC. 9. 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 summon the defendant to appear in 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. (*b*)

Summons, how executed.

SEC. 10. A summons shall be executed, either: *First*, By reading the declaration and writ to the defendant; or, *Sec-*

(*a*) A variance between the declaration and the writ, cannot be taken advantage of, by a motion to quash; Jones vs. Coxe, et al, 7 Missouri Rep., 173; Freeman and Snowden vs. Camden, 7 Missouri Rep., 298.

(*b*) An original writ, requiring the defendant to appear before the judge of the circuit court, &c., to answer the demand, instead of to appear in court, &c., to answer the complaint of the plaintiff, is sufficient; Payne vs. Collier and Pettus, 6 Missouri Rep., 321.

Digitized by Google

ond, 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. (*bb*)

Refusal to hear, or receive a copy, deemed a sufficient service.

SEC. 11. In all cases when 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.

Officer to make return of writs, how.

SEC. 12. 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.

By whom notice may be served in the commencement or progress of suits.

SEC. 13. 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.

How served.

SEC. 14. 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.

(*bb*) If notice of a writ be served by leaving a copy, it must appear to have been left with a white person of the family; Dobbins vs. Thompson, 4 Missouri Rep., 118; *vide*, Spencer vs. Medder, 5 Missouri Rep., 458; Atwood vs. Reyburn, 5 Missouri Rep., 533.

ARTICLE II.

Of proceedings by and against infants.

SEC. 1. Suits by infants, how commenced and prosecuted
2. Next friend, by whom to be appointed.
3. To be made on petition of infant, and written consent of person appointed.
4. Next friend to give bond, if required by officer; its condition.
5. Bond to be delivered to officer, and filed with the clerk, before appointment of next friend shall be made.
SEC. 6. Petition for next friend, his consent and order of appointment to be filed, where.
7. Guardian, or next friend, responsible for costs.
8. Suits against infants not to proceed till guardian be appointed.
9. How, and by whom appointed.
10. Defendant failing to procure appointment of guardian, court shall appoint one.
11. Guardian not liable for costs, unless, &c.

Suits by infants, how commenced.

SECTION 1. Suits by infants may be commenced and prosecuted, either: *First*, By the guardian of such infant;

Digitized by Google

or, *Second*, By a next friend appointed for him in such suit. (*c*)

Next friend by whom appointed.

SEC. 2. 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.

To be made on petition of infant and written consent of person appointed.

SEC. 3. 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.

Next friend to give bond if required by officer.

SEC. 4. Before any person shall be appointed next friend for an infant, in any suit to recover any personal property, debt or damage, 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 money or property which may be recovered in such suit.

Its condition.

Bond to be delivered to officer and filed with the clerk.

SEC. 5. 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.

Petition for next friend, his consent and order of appointment to be filed, where.

SEC. 6. The petition for the appointment of next friend, the written consent of the person proposed to be 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.

Guardian or next friend responsible for costs.

SEC. 7. The guardian or next friend of any infant, who commenced or prosecuted a suit, shall be responsible for the costs thereof.

Suits against infants not to proceed till guardian be appointed.

SEC. 8. 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.

How and by whom appointed.

SEC. 9. 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

(*c*) An infant cannot appear by attorney, and if it appear by attorney, as well as next friend, it will be error. Every plaintiff and defendant will be taken to be of full age, till the point is made, and evidence heard, and a judgment against an infant will be good until reversed; Jeffrie vs. Robideaux, 3 Missouri Rep., 33; but see section 7, of article 6, of this act, 7th sub-division. The refusal to dismiss a cause from the docket because there was no evidence to prove that the person styling himself next friend, was such, after pleading to the merits, is no ground of error; Montgomery vs. D'Lashmutt & Tipton, 1 Missouri Rep., 446.

Digitized by Google

CHAP. 136.

be filed in the office of the clerk of the court before any plea by such infant shall be filed.

Defendant failing to procure appointment of guardian, court shall appoint one.

SEC. 10. 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.

Guardian not liable for costs, unless, &c.

SEC. 11. 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 assessments of damages.

SEC. 1. Defendant served with process 15 days before return day, shall appear, &c.; if less than 15 days, when to appear.
2. Several defendants, some served with process 15 days before return day, and others not, how to proceed.
3. Suit shall not be delayed longer than one term to bring in others, without consent.
4. No essoin or wager of law allowed, &c.
5. Parties may prosecute in person or by attorney.
6. Warrant of attorney, not necessary, except, &c.
7. Pleadings to be signed, time of filing endorsed; and if filed in term, a minute shall be made thereof.
8. Pleas in abatement to be on oath.
9. Pleas, when to be filed.
10. Replications to be filed within 30 days.
11. Subsequent pleadings, when to be filed.
12. Pleadings filed in vacation, copies to be served.
13. Similiters and joinders in demurrer may be filed at any time.
14. Court may extend the time for filing pleadings.
15. Person not to be prejudiced by ancient terms and forms of pleading.
16. No demurrer sustained, if pleading be sufficient in substance.
17. Duplicity, or want of profert when necessary, a substantial objection.
SEC. 18. Demurrers may be joint and several; and sustained as to part of the pleadings and overruled as to the residue.
19. Pleas in abatement, dilatory pleas and demurrers, when to be determined.
20. Party having cause of action against several, may sue all or part.
21. Plaintiff in actions on contract not to be non-suited for failing to prove that all the defendants are parties.
22. Suit may be maintained on lost instrument; excuse for want of profert to be alleged, &c.
23. Profert shall be made and oyer given.
24. Action of debt for money received contrary to any statute, what allegations sufficient in the declaration.
25. Assumpsit for money received contrary to any statute, what allegations sufficient in the declaration.
26. Trover or detinue for property received contrary to statute, what sufficient to set forth in the declaration.
27. How a defendant may plead.
28. Executors or administrators not personally liable, by reason of pleading a false plea.
29. Payment may be plead in bar, when.
30. In actions against public officers, &c., general issue may be plead, and special matter given in evidence.

Digitized by Google

SEC. 31. Also, in actions against other persons assisting such officers.
32. Pleadings in defence in actions against persons for acts done by authority of any statute.
33. Replication that defendant acted without authority of any statute.
34. On trial, the whole matter to be given in evidence.
35. When court may allow replication and rejoinder of several matters.
36. Failing to file pleadings within the legal time, interlocutory judgment, by default, to be given.
37. Such judgment may be set aside for good cause.
38. Plaintiff failing to reply, &c., judgment of non pros. to be given.
39. Such judgment may be set aside.
40. Several defendants, and some appear and plead, and others make default; proceedings.
41. Interlocutory judgment by default, nil dicit, &c., shall be made final if demand be liquidated.
42. In other cases, of interlocutory judgments, writ of inquiry of damages shall be awarded, at what term.

SECTION 1. Every defendant served with process (*d*) fifteen days before the return day thereof, shall appear (*e*) 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. When defendant shall appear to the suit.

SEC. 2. When there are several defendants in a suit, and some of them are served 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 discontinue as to all not served, and not served in due time, and proceed against those who are bound to appear, or he may continue the suit until the next term, and take new process against those that are not served. Several defendants, some served with process 15 days before return day and others not, how to proceed.

SEC. 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. Suit shall not be delayed longer than one term to bring in others, &c.

SEC. 4. No essoin or wager of law shall be allowed, nor shall any suit be deferred or delayed by reason of the non-age of any of the parties. No essoin or wager of law allowed, &c.

SEC. 5. Parties may prosecute and defend their own suits in proper person, or by an attorney or counsellor of the court. Parties may prosecute and defend, how.

SEC. 6. It shall not be necessary to file any warrant of attorney, to authorize any attorney to appear in any court for Warrant of attorney not necessary, &c.

(*d*) The want of service of a writ is cured by appearance and defence; Griffin & Kinote vs. Samuel, 6 Missouri Rep., 50; *vide*, Lutes & Dulany vs. Perkins, *ib.*, 57. It is error to enter judgment against a party who has not been served with process, and does not answer to the action; Bascom impleaded with Mylius vs. Young, 7 Missouri Rep., 1. A judgment rendered against a party who had no notice of the proceedings, is utterly void; Smith vs. Ross & Strong, 7 Missouri Rep., 463; *vide*, Whiting & Williams vs. Budd, 5 Missouri Rep., 443.

(*e*) Bartlett vs. McDaniel 3 Missouri Rep., 55; Barnett & Ivers vs. Lynch, *ib.*, 369.

Digitized by Google

either party to an action brought therein, except in cases where it shall be specially required by law. (*f*)

Pleadings to be signed, time of filing endorsed, &c.

SEC. 7. 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 upon the minutes.

Pleas in abatement to be on oath.

SEC. 8. 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.

Pleas, when to be filed.

SEC. 9. 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. (*g*)

Replications to be filed within thirty days.

SEC. 10. Replications shall be filed within thirty days after the commencement of the term at which the defendant is bound to appear. (*h*)

Subsequent pleadings, when to be filed.

SEC. 11. 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. (*i*)

Pleadings filed in vacation, copies to be served.

SEC. 12. 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.

Similiters and joinders in demurrer may be filed, when.

SEC. 13. Similiters and joinders in demurrer may be at any time, and without serving a copy thereof upon the adverse party or his attorney. (*j*)

Court may extend the time for filing pleadings.

SEC. 14. The courts, upon good cause shown, and for the furtherance of justice, may extend the time prescribed in

(*f*) A suit instituted without any authority from the person in whose name it is conducted, should be dismissed; and upon a suitable suggestion of facts, the attorney will be required to show some authority, either verbal or written for conducting the suit; Keith vs. Wilson, 6 Missouri Rep., 435.

(*g*) Whiting & Williams vs. Budd, 5 Missouri Rep., 443; Cave & Morris vs. Hall, administrator, 5 Missouri Rep., 59.

(*h*) Dempsey vs. Harrison & Glasgow, 4 Missouri Rep., 267. Action of trespass, defendants pleaded severally liberum tenementum, and jointly, the same plea as to one, and license as to the other, plaintiff inadvertently failed to reply to the last plea in term time, and at the next term judgment was entered for defendants; held, that as the last plea required two replications, which could not be filed without leave of the court, and especially as the plea was unnecessary, the court should have permitted the plaintiff to reply at the subsequent term. Matthew vs. Boas & Murphy, 6 Missouri Rep., 597. When replications are not filed within the time prescribed by the statute, and no objections are made to the filing of them after that time, and no motion made for a judgment of non pros; after verdict for plaintiff, it is too late to raise the objection; Magehan vs. Orme & Speers, 7 Missouri Rep., 4; *vide*, Buford, adm'r, vs. Byrd, 8 Missouri, Rep., 240.

(*i*) Bates vs. Hinton, 4 Missouri Rep., 78.

(*j*) Hubble vs. Patterson, 1 Missouri Rep., 392.

Digitized by Google

this act for filing any pleading, upon such terms as shall be just. (*k*)

Persons not to be prejudiced by ancient terms and forms.

SEC. 15. 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.

No demurrer sustained if pleadings sufficient in substance.

SEC. 16. No demurrer shall be sustained, when offered either by plaintiff or defendant to any part of the pleadings, if the statement contained in such pleadings substantially apprise the adverse party of the point or points intended to be relied on, and amount to a substantial cause of action or defence.

Duplicity, &c., substantial objection.

SEC. 17. Duplicity, or want of profert when necessary, is a substantial objection to the declaration or other pleadings.

Demurrers may be joint and several, and sustained as to part of pleadings, and overruled as to the residue.

SEC. 18. Demurrers may be joint and several, and may be sustained as to a 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. (*l*)

Pleas in abatement, and dilatory pleas, and demurrers, when to be determined.

SEC. 19. All pleas in abatement, and other dilatory pleas not involving the merits of the cause, and all demurrers, shall be determined during the *time* [term] at which they are filed; and when filed in vacation, shall be determined at the term next after the filing thereof. (*m*)

Party having cause of action against several, may sue all, or part.

SEC. 20. Every person that shall have a cause of action against several persons, and be entitled by law to only one

(*k*) The failure of a defendant to serve the plaintiff with a copy of his pleas, (in pursuance of an agreement giving defendant further time to plead,) is waived by the plaintiff pleading over; Cave & Morris vs. Hall, administrator, 5 Missouri Rep., 59.

(*l*) Risher vs. Thomas, 1 Missouri Rep., 739; Dempsey vs. Glasgow & Harrison, 4 Missouri Rep., 270; *vide*, Marshall vs. Bouldin, 8 Missouri Rep., 244.

(*m*) The usual practice is to determine demurrers during the term at which they are filed, though they are sometimes continued by consent; and in a case, Risher vs. Thomas, cited and approved in Dempsey vs. Glasgow & Harrison, supra, where a demurrer to two pleas had been continued, and, at the next subsequent term, the plaintiff withdrew it as to one of the pleas, and filed a replication, (see section 1, article 4, of this act,) the supreme court held that the defendant was entitled to a continuance, as a matter of course; and the same practice prevails, whether a demurrer is continued or not, in cases where the demurrer is filed at the trial term, as in cases of petition in debt, where there has been a personal service of process, and in common law actions on bonds, bills, and notes, where there has been personal service twenty days before the return day. The general practice in regard to demurrers, whether general or special, is understood to be, that when a demurrer is sustained, the party to whose pleadings it is sustained, asks leave, before judgment is entered on the demurrer, to amend, which generally is granted, of course, and which, in effect, arrests the judgment upon the demurrer. And when the demurrer is overruled, the party demurring asks leave, before judgment is entered, to withdraw his demurrer, and plead, reply, or rejoin, as the case may require, which generally is granted, of course; see section 1, article 6, of this act.

Digitized by Google

satisfaction therefor, may bring suit thereon jointly against all, or as many of the persons liable as he may think proper. (*n*)

Plaintiff in actions on contract not to be nonsuited for failing to prove that all the defendants are parties.

SEC. 21. In all actions founded on contract, and instituted against several defendants, the plaintiff shall not be nonsuited by reason of his failure to prove that all the defendants are parties to the contract, but may have judgment against such of them as he shall prove to be parties thereto. (*o*)

Suit may be maintained on lost instrument; excuse for want of profert to be alleged, &c.

SEC. 22. 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. (*oo*)

Profert shall be made and oyer given, when.

SEC. 23. When any declaration, or other pleading, shall be founded upon any instrument of writing charged to have been executed by the other party, or his testator or intestate, or other person represented by such party, and not therein alleged to be lost or destroyed, profert thereof shall be made, and oyer given. (*p*)

Action of debt for money received contrary to any statute, what allegations sufficient in declaration.

SEC. 24. 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.

Assumpsit for money received contrary to statute, what

SEC. 25. 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

(*n*) A judgment against one of two several obligors, without satisfaction, is no bar to an action against the other; Armstrong vs. Prewett, 5 Missouri Rep., 476.

(*o*) This section is the substance of the first section of an act passed on the 13th February, 1839, session acts, p. 99, and the supreme court held, in reference to that enactment, (Campbell & Mason vs. Hood, 6 Missouri Rep., 211,) that, if a plaintiff includes a person in his suit, whether ex contractu or ex delicto, against whom there is no evidence, the court may direct the jury to find a verdict as to such person, and he may then be used as a witness. But there must be an entire want of testimony, to justify the court in allowing a party this privilege; *vide*, Brown vs. Pearson, 8 Missouri Rep., 159. This section is applicable to suits against partners, when a note has been executed by one in the name of the firm, without the express or implied authority of the other; Finney vs Allen, 7 Missouri Rep., 416.

(*oo*) See section 1, article 1, of the act to regulate practice in courts of chancery, and also Miller and others, vs. Wells, 5 Missouri Rep., 10.

(*p*) *Vide*, Kearney vs. Woodson & Trigg, administrators, 4 Missouri Rep., 114; also, 1 Missouri Rep., 502, 356; Fields vs. Hunter, 8 Missouri Rep., 128.

Digitized by Google

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. allegations sufficient.

SEC. 26. 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 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. Trover or detinue for property received contrary to statute, what shall be set forth in the declaration.

SEC. 27. 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. How defendant may plead.

SEC. 28. Persons sued as executors or administrators, and as sureties of 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 executor or administrator having pleaded any false plea. Executors and administrators not personally liable by reason of pleading a false plea.

SEC. 29. 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 upon such bond or judgment, in bar of such action or writ. (q) Payment may be plead in bar, when.

SEC. 30. 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 or appointment, the defendant may plead the general issue, and give the special matter in evidence. In actions against public officers, &c., general issue may be plead and special matter given in evidence.

SEC. 31. In every action brought against any other person, who, by the command of such officer or person, or in their aid and assistance, does any thing touching the duties of such office or appointment, the defendant may plead the general issue, and give the special matter in evidence. Also, in actions against other person assisting such officer.

SEC. 32. 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 justification of

(q) A party cannot plead any matter to a scire facias on a judgment, which he might have pleaded to the original action; Watkins vs. the State, 7 Missouri Rep., 334.

Digitized by Google

Pleadings in defence in actions against persons for acts done by authority of any statute.

the act done, alleging therein that the same was done by the 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.

Replication that defendant acted without authority of any statute.

SEC. 33. To every such plea, the plaintiff may reply, that the defendant did the act complained of without authority of any statute of this state.

On trial, whole matter given in evidence.

SEC. 34. Upon the trial of any issue so joined, the whole matter may be given in evidence by both parties.

When court may allow replication and rejoinder of several matters.

SEC. 35. Whenever it shall become necessary to the attainment of justice, to allow a plaintiff to reply several matters to a plea of the defendant, (*r*) 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 to reply or rejoin, may allow the same to be done.

Failure to file pleadings within the legal time, &c., interlocutory judgment by default to be given.

SEC. 36. 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. (*s*)

Such judgment may be set aside for good cause.

SEC. 37. Such judgment may, for good cause shown, be set aside, at any time before the damages are assessed, upon such terms as shall be just. (*t*)

Judgment of non pros. to be given, when.

SEC. 38. If the plaintiff shall fail to file his replication, or other pleading, within the time prescribed by law, or the rules

(*r*) *Vide*, Matthews vs. Boas & Murphy, 6 Missouri Rep., 597.

(*s*) Hanly vs. Dewes, 1 Missouri Rep., 16; Hickman vs. Barnes, 1 Missouri Rep., 156. Error in taking judgment by default before the time of pleading expires is not cured by opening the judgment on the motion of the plaintiff, unless the defendant has notice thereof; Currin vs. Ross & Glasgow, 2 Missouri Rep., 203; Dempsey vs. Harrison & Glasgow, 4 Missouri Rep., 267. Where pleas have been put in, and issue joined, the court cannot give a judgment by default; the judgment should be on the finding of the issues; Elliott vs. Leake, 4 Missouri Rep., 540.

(*t*) In an affidavit to set aside a judgment by default, the defendant should state that he has, or that he believes he has merits; Barry vs. Johnson, 3 Missouri Rep., 372; but see Elliott vs. Leake, 4 Missouri Rep., 540, where it is said that such an affidavit should contain a positive averment of merits. Something more than an affidavit of merits is necessary to authorise the circuit court to set aside a judgment by default. The "good cause" required to be shown, must not only be a meritorious defence, but the exercise of all due diligence by the party; Green vs. Goodloe, 7 Missouri Rep., 25; *vide*, also, Weimer vs. Morris, 7 Missouri Rep., 6, and Lecompte and wife vs. Wash, 4 Missouri Rep., 557. An affidavit, on motion to set aside a judgment by default, stating that the defendant was advised, &c., without stating that he was advised by his counsel, is insufficient; Lecompte vs. Wash, supra; *vide*, Hickman vs. Barnes, 1 Missouri Rep, 156, and Boisse vs. Langham, 1 Missouri Rep., 572.

Digitized by Google

of practice of the court, and to serve the adverse party or his attorney, with a copy thereof, when the same is required, judgment of non pros. shall be given against him. (*u*)

SEC. 39. Such judgment may, for good cause shown, be set aside at any time during the term at which it shall be given, upon such terms as shall be just. Such judgment may be set aside.

SEC. 40. 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. Several defendants, and some appear and plead and others make default, proceedings.

SEC. 41. Whenever an interlocutory judgment shall be rendered for the plaintiff, by default, by nil dicit, 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. (*v*) Interlocutory judgment by default, nil dicit, &c., shall be made final if demand be liquidated.

SEC. 42. But in all other cases of such interlocutory judgment, the damages shall be assessed by a jury, impaneled in the court for that purpose, and every such inquiry 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. In other cases of interlocutory judgment, writ of inquiry of damages shall be awarded; at what term.

(*u*) Matthews vs. Boas & Murphy, 6 Missouri Rep., 597.
(*v*) Dent vs. Morrison, 1 Missouri Rep., 130; McCutchen vs. Batterton, 1 Missouri Rep. 342; Maupin vs. Triplett, 5 Missouri Rep., 422.

ARTICLE IV.

Of trials and their incidents.

SEC. 1. When there are several issues of law and fact, issues of law to be first determined.
2. Causes to be continued at first term; to be determined at second term.
3. Court may continue causes, when and upon what terms.
4. Application for continuance to be accompanied by affidavit.
5. On second application, affidavit must state the facts, &c.
6. If affiant refuse to set forth facts or opposite party to admit them, no continuance allowed.
7. Power of courts to compel the production of books, papers and documents.
8. Proceedings to entitle a party to an order for such production.
9. For what reasons such order may be vacated.
10. Party neglecting to obey such order, may be non-suited, his plea and notice of set-off be stricken out, and barred of his defence relating to such books, papers, &c.
11. Power of the court in such cases limited to the remedies provided by this act.
12. Discovery, as in equity, may be had by either party.
13. Discovery, how applied for.
14. Order for discovery, when to be made.

Digitized by Google

SEC. 15. Suit may be stayed till order be complied with or vacated.
16. Petition and order to answer shall be filed and served on adverse party.
17. Proceedings shall be as in a court of equity.
18. Answer to be evidence; effect thereof.
19. If party refuse to answer, petition shall be taken as confessed, and the facts stated given in evidence.
20. All issues of fact shall be tried either by the court, by a jury, or by referees; when, &c.
21. Imperfect counts in a declaration, may, on motion, be stricken out.
22. On such motion, what objections valid.
23. Instrument of writing on which suit is founded, to be received in evidence, unless denied on oath.
24. Last section not to apply to persons acting in a fiduciary capacity.
25. Bills of exception, how taken.
26. Court refusing to sign, to certify cause of refusal.
SEC. 27. May be signed by three bystanders, if court refuse.
28. Bill of exceptions shall form a part of the record.
29. If court refuse to permit bill signed by bystanders to be filed, affidavits to be taken.
30. Affidavits to be deposited with the clerk.
31. Court, on appeal or writ of error, to admit as part of the record the bill of exceptions, thus taken.
32. Truth of such bill to be tried by the affidavits required by this act.
33. Non-suit not allowed after the case is submitted to a jury or the court.
34. Where a party is permitted to prove loss of instrument, by his own oath, &c., adverse party may be examined.
35. If negotiable note, or bill of exchange be lost, parol, or other evidence of the contents thereof may be given, and party may recover.
36. Bond and security to be given to entitle the party to such recovery; condition of bond.

Issues of law to be first determined.

SECTION 1. When there are several issues of law and of fact in any suit, the issues of law shall be first determined. (*w*)

Causes to be continued at first term; to be determined at second term.

SEC. 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. (*x*)

Court may continue causes, when and upon what terms.

SEC. 3. Every court of record, in which any suit is pending, may, at any term, for good cause shown, continue such suit until the next term, or any subsequent term, and every continuance granted upon the application of either party, shall

(*w*) When there is a special demurrer, and a plea of payment to the declaration, the demurrer must be disposed of before judgment between the parties; and a judgment for the plaintiffs, when there is a plea of payment without a replication, is erroneous; Menefee vs. D'Lashmutt & Starling, 1 Missouri Rep., 258; *vide*, Ellis vs. Loumier et al., 1 Missouri Rep., 26); the State vs. Gaither and Pearce, 1 Missouri Rep., 501. When a demurrer was filed to the declaration, but no judgment entered on the demurrer, and issue afterwards joined on a plea to the action, the supreme court will presume that the defendant withdrew his demurrer. Sweeny vs. Willing, 6 Missouri Rep., 174. The rule that when a demurrer is overruled, and not withdrawn, it remains on the record a confession of the facts set forth in the pleading demurred to, does not apply where the court does not give judgment on the demurrer, but suffers the parties to go before a jury on issues made up under the direction of the court; such subsequent action of the court amounts to an implied withdrawal of the demurrer; Dickey et al, vs. Malichi, 6 Missouri Rep., 178.

(*x*) A scire facias is a suit within the meaning of this section, and judgment cannot be rendered on it until the next term after the one at which the defendant is bound to appear; Milsap vs. Wildman, 5 Missouri Rep., 425.

Digitized by Google

be at the cost of such party, unless otherwise ordered by the court. (y)

Application for continuance, to be accompanied by affidavit.

SEC. 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.

On second application, affidavit must state the facts, &c. 1838-9, p. 99.

SEC. 5. Whenever either party to an action shall make a second application for a continuance thereof, on account of the absence of a material witness, the affidavit shall set forth the name of the witness, and the facts he is expected to prove, if the court require it.

If affiant refuses to set forth the facts, or opposite party admit them, no continuance allowed.—*Ib.*

SEC. 6. If the affiant shall fail or refuse to set forth such facts, when thereto required, or if the opposite party shall admit the truth of the facts, when disclosed, and agree that they be received in evidence, the court shall refuse to continue the cause.

Power of courts to compel the production of books, papers, &c.

SEC. 7. Every court 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. (z)

Proceedings to entitle a party to an order for such production.

SEC. 8. To entitle a party to the production of such books, papers and documents, he shall present a petition, verified by the affidavit of himself, or some other credible person, to the court, or to the 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.

(y) When a party uses due diligence to procure testimony, and fails, and the court refuses a continuance, the supreme court will, for that cause, reverse the judgment; M'Lane vs. Harris, 1 Missouri Rep., 700; Riggs vs. Fenton, 3 Missouri Rep., 28; Moore & Porter vs. McCulloch, 6 Missouri Rep., 444. When a demurrer is withdrawn at the trial term, and a replication filed, the other party is entitled to a continuance, and it is error to refuse; Risher vs. Thomas, 1 Missouri Rep., 739; *vide*, Dempsey vs. Glasgow & Harrison, 4 Missouri Rep., 267. The issuing of attachment against a witness is not a ground for a continuance, unless it is made to appear that the witness cannot be procured until the next term; English vs. Mullanphy, 1 Missouri Rep., 780. The filing of a counter affidavit, in an application for a continuance, is a matter on which the law is silent, and is a matter of practice to be regulated by the circuit court; Riggs vs. Fenton, 3 Missouri Rep., 28. A motion for a continuance is addressed to the sound discretion of the court, and the court will be held to have exercised that discretion soundly, unless it appear otherwise from the record; Scogin vs. Hudspeth, 3 Missouri Rep., 123; Steel vs. McCutcheon, 5 Missouri Rep. 522; Pratt vs. Rogers, 5 Missouri Rep., 51; Kizer et al, vs. Wilkes, 5 Missouri Rep., 519; *vide*, Jones vs. Coxe et al, 7 Missouri Rep., 173; Sumner vs. Whitley, 1 Missouri Rep., 708.

(z) When from the very nature of the case, the defendant has notice that the plaintiff intends to charge him with the possession of an instrument, no further notice to produce is necessary; Hart vs. Robinett, 5 Missouri Rep., 11.

Digitized by Google

For what reasons such order may be vacated.

SEC. 9. 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.

Party neglecting to obey such order, may be non-suited, &c.

SEC. 10. If the party neglect to *pay* [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 motion of set-off, or debar him from any particular defence in relation to which such books, papers and documents, were required to be produced.

Power of the court in such cases limited.

SEC. 11. 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.

Discovery as in equity, may be had by either party.

SEC. 12. 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 all cases where the same party would be, by the rules of equity, entitled to the same discovery in a court of equity, in aid of such suit. (*aa*)

Discovery how applied for.

SEC. 13. To entitle a party to such discovery, he shall present a petition, verified by the affidavit of himself or 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.

Order for discovery, when to be made; party to answer or show cause.

SEC. 14. 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 show good cause in court why he should not answer the same. (*bb*)

Suit may be stayed, till order be complied with or vacated.

SEC. 15. Such court or officer may further order the trial of the suit to be stayed, until the order be complied with or vacated.

(*aa*) *Vide* Story's equity pleadings, 252 to 263, inclusive, 2nd edition; Smith vs. Anthony, 5 Missouri Rep., 505; Atwood vs. Reyburn, 5 Missouri Rep., 555; Price vs. Cannon, 3 Missouri Rep., 453; Dempsey vs. Harrison & Glasgow, 4 Missouri Rep., 267.

(*bb*) *Vide*, Wilson, administrator, vs. Woodruff, 5 Missouri Rep., 40.

Digitized by Google

Petition and order to answer shall be filed, &c.

SEC. 16. 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.

Proceedings shall be as in a court of equity.

SEC. 17. 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.

Answer to be evidence.

Effect thereof.

SEC. 18. The answer of the party to the interrogatories shall be evidence on the trial of the suit, in the same manner and with like effect, as an answer to a bill in equity for a discovery. (*bbb*)

If party refuse to answer, petition shall be taken as confessed and facts stated given in evidence.

SEC. 19. 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.

All issues of fact shall be tried either by the court, jury, or by referees, when, &c.

SEC. 20. 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 either party shall demand a trial by jury, and the cause is not referred; *Second*, It shall be by jury, when neither 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. (*cc*)

Imperfect counts in a declaration, may on motion, be stricken out.

SEC. 21. When there are several counts in a declaration, and one or more of them shall be 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.

On such motion, what objection valid.

SEC. 22. Upon such motion, no objection shall be valid, that would not be valid after a finding of the issue for the plaintiff.

Instrument of writing on which suit is founded, to be received in evidence, unless denied on oath.

SEC. 23. 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, (*dd*) such instrument shall be received

(*bbb*) Buckner vs. Armour, 1 Missouri Rep., 534; Yancy vs. Trammel, 3 Missouri Rep., 306; *vide*, also, section 30, article 2, of the act to regulate practice in courts of chancery.

(*cc*) See the act concerning arbitrations and references, and section 24, article 5, of this act.

(*dd*) See section 23, article 3, of this act.

Digitized by Google

CHAP. 136.

in evidence, unless the party charged to have executed the same, deny the execution thereof by plea, verified by affidavit. (*ee*)

Last section not to apply to persons acting in a fiduciary capacity.

SEC. 24. 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.

Bills of exception, how taken.

SEC. 25. 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, (*ff*) 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. (*gg*)

(*ee*) Maupin vs. Triplett, 5 Missouri Rep., 422. In an action against the acceptor of a bill of exchange, it is not necessary to prove his handwriting, unless it is denied by plea, verified by affidavit. Warne vs. Anderson & Thompson, 7 Missouri Rep., 46. But *quere* as to this, and see sections 2 and 3, of the act concerning bills of exchange.

(*ff*) Hill vs. Wilkins, 4 Missouri Rep., 86; Davidson vs. Peck, 4 Missouri Rep., 438; *vide*, Davis vs. Davis, 8 Missouri Rep., 56. Where the evidence is not preserved in a bill of exceptions, the supreme court cannot determine whether the court below erred, in refusing to grant a new trial, or not; Searcy vs. Devine, 4 Missouri Rep. 626; Thompson et al, vs. Child, garnishee, 6 Missouri Rep., 162; Gale vs. Pearson, 6 Missouri Rep., 253. Where plaintiff suffers non-suit, and makes no motion to set aside, and no bill of exceptions is taken, the supreme court cannot undertake to reverse the decision of the court below; Robbins vs. Stephenson & Hord, 5 Missouri Rep., 105; Howell vs. Pitman, 5 Missouri Rep., 246; Atkinson vs. Lane, 7 Missouri Rep., 403. When a motion is made to set aside the judgment of the court below, and grant a continuance, because of certain facts set forth in affidavits, the affidavits must be preserved in the bill of exceptions; Pratt vs. Rogers, 5 Missouri Rep., 51. Unless the bill of exceptions purports to recite the whole evidence in a cause, the supreme court cannot say whether the court below should have granted a new trial or not; Hughes vs. Ellison, 5 Missouri Rep., 110; Vaughn vs. Montgomery, *ib.*, 529; Gamble vs. Hamilton, 7 Missouri Rep., 469. After the introduction of a variety of proof, on the part of the plaintiff, defendant objected to whole, and saved his exceptions in that form. Such a course is not legal; but the objection should be made to such particular parts as defendant deemed exceptionable, and at the time they were respectively offered; Waldo vs. Russel, 5 Missouri Rep., 387. To entitle a party to the benefit of objections to any proceeding in the circuit court, it should appear upon the record that the same objections were made in that court; steamboat Thames vs. Erskine & Gore, 7 Missouri Rep., 213. The evidence and proceedings in a cause cannot be reviewed in the supreme court, unless they are preserved in a bill of exceptions; Crane vs. Taylor, 7 Missouri Rep., 285, and cases there cited. The supreme court will presume the circuit court decided correctly, unless the contrary appear from the facts and proceedings preserved in the bill of exceptions; Ingram vs. The State, 7 Missouri Rep., 293.

(*gg*) *Vide*, the case of Withington vs. Young, 4 Missouri Rep., 564. A motion for a new trial was argued by briefs in writing, before the judge of the St. Louis circuit court, whose commission expired before the motion was decided, or a bill of exceptions signed. A bill of exceptions was presented to his successor, with the affidavits of the witnesses sworn and examined on the trial, stating the testimony given by them respectively. The latter judge signed the bill of exceptions, and afterwards refused, and on the motion of the opposite party, to strike the bill from the record: Held, that the latter judge had no right to sign the bill of exceptions, without the consent of the opposite party, as the statute requires that exceptions to the opinion of the court shall be taken in the progress of the trial; Consaul vs. Lidell, 7 Missouri Rep., 259.

Digitized by Google

Court refusing to sign, to certify cause of refusal.

SEC. 26. If they refuse to sign such bill, on the account that it is untrue, they shall certify thereon, under their hands, the cause of such refusal.

May be signed by three by-standers, if court refuse.

SEC. 27. 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 court.

Bill shall form a part of the record.

SEC. 28. Every bill signed by the judges, or by the by-standers, and filed in court, shall form a part of the record of the cause in which it is filed.

If court refuse to permit bill signed by by-standers, to be filed, proceedings.

SEC. 29. When the judges shall refuse to permit any bill of exceptions, signed by the 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.

Affidavits to be deposited with the clerk.

SEC. 30. 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.

Courts on appeal or writ of error to admit as part of the record the bill of exceptions, thus taken.

SEC. 31. Every court, to which an appeal or writ of error shall be taken, shall admit, as 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.

Truth of such bill to be tried by affidavits.

SEC. 32. 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.

Non-suit not allowed after the cause is submitted to a jury or the court.

SEC. 33. 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, sitting to try the issue, for their decision.

When party is permitted to prove loss of instrument, by his own oath, &c., adverse party may be examined.

SEC. 34. Whenever a party to a 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.

If negotiable note or bill of exchange be lost, parol evidence of contents may be given, &c.

SEC. 35. In any suit founded upon any negotiable promissory note or bill of exchange, or in which such bill or note, 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 there-

Digitized by Google

on, 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.

Bond and security to be given to entitle the party to such recovery.

SEC. 36. To entitle a party to such recovery, he, or some 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 securities, 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 claims.

Condition of bond.

ARTICLE V.

Of the abatement of suits and their revival; of consolidating and referring actions.

SEC. 1. If more than one plaintiff, and one dies before judgment, action shall not abate.
2. Not to abate where there are two or more defendants, and one dies.
3. Death shall be stated upon the record, and the action proceed.
4. If but one plaintiff, and he die, action not to abate, but may be continued, how.
5. If but one defendant, and he die, suit not to abate, but may be continued by his legal representatives, how.
6. If party die after verdict, but before judgment, proceedings.
7. Construction of the preceding section.
8. When executor or administrator die or ceases to act, suit not to abate.
9. Such suit may be continued by administrator de bonis non.
10. When executor or administrator defendant die, or cease to act, suit not to abate.
11. Such suit may be continued against administrator de bonis non.
12. Female plaintiff marrying before judgment, husband to be made co-plaintiff.
SEC. 13. Husband to be made co-defendant, when.
14. Action by public officer, death or resignation not to abate the suit, if cause of action survive, &c.
15. Orders for introducing co-plaintiff or co-defendant, how made.
16. Orders for the purpose of substituting parties in place of the original parties, how made.
17. Scire facias for introducing new party, how sued out, executed and returned.
18. Limitation of time to sue out scire facias in such cases.
19. Person substituted, or made co-plaintiff or co-defendant, entitled to continuance.
20. Cause in such case to proceed as between original parties.
21. Suits, when to be consolidated.
22. Several suits for causes of action that may be joined, costs in such cases, how paid.
23. Court may refer cause to referees, with consent of parties, when.
24. May refer cause to referees without consent of parties, when the trial will require the examination of a long account.

If more than one plaintiff and one die before judgment, action shall not abate.

SECTION 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.

Digitized by Google

Not to abate, when there is more than one defendant.

SEC. 2. When there are two or more defendants, and one of them shall die before final judgment, such action shall not thereby be abated.

Death shall be suggested and action proceed.

SEC. 3. In either of 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.

If but one plaintiff and he die, action not to abate, but may be continued, how.

SEC. 4. When there is but one plaintiff in an action, and he shall die before final judgment, such action shall not thereby be 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.

If but one defendant, and he die, suit not to abate, but may be continued by his legal representatives, how.

SEC. 5. When there is but one defendant in an action, and he shall die before final judgment, such action shall not thereby be 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.

If party die after verdict, but before judgment, proceedings.

SEC. 6. 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 name of the original parties.

Construction of the preceding section.

SEC. 7. 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.

When ex'r or adm'r die or ceases to act, suit not to abate.

SEC. 8. 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.

Such suit may be continued by administrator de bonis non.

SEC. 9. Such suit may be continued by the person succeeding such plaintiff in the administration of the same estate, upon an order of the court substituting the person so succeeding, as plaintiff therein.

Digitized by Google

CHAP. 136.

When ex'r or adm'r die, or cease to act, suit not to abate.

SEC. 10. 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 thereby be abated.

Such suit may be continued against administrator de bonis non.

SEC. 11. Such suit may be continued against the person succeeding such defendant, in the administration of the same estate, upon an order of the court substituting the person so succeeding, as defendant therein.

Female plaintiff marrying before judgment, husband to be made co-plaintiff.

SEC. 12. 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.

Husband to be made co-defendant, when.

SEC. 13. If a female defendant marry before final judgment, her husband, either on his own application, or on the application of the plaintiff, may, by the order of the court, be made a co-defendant in the suit.

Action by public officer, death or resignation, not to abate the suit, if the cause of action survive.

SEC. 14. 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.

Orders for introducing a co-plaintiff, or co-defendant, how made.

SEC. 15. All orders made for the purpose of introducing into a suit, a new person, as a 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.

Orders for the purpose of substituting parties in place of the original parties, how made.

SEC. 16. All orders made for the purpose of substituting any person as plaintiff or defendant, in place of the original defendant or plaintiff, shall be made, either upon the voluntary appearance of the adverse original party, or after the service upon such party of a scire facias.

Scire facias for introducing new party, how sued out, executed and returned.

SEC. 17. All such writs of scire facias may be sued out in term time or vacation, may be directed to any county in the state, shall correspond as near as practicable, with writs of summons, and may be executed and returned in the same manner.

Limitation of time to sue out a scire facias in such cases.

SEC. 18. 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.

Digitized by Google

Person substituted or made co-plaintiff, or co-defendant, entitled to continuance.

SEC. 19. 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.

Cause in such case to proceed as between original parties.

SEC. 20. 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 to the suit.

Suits, when to be consolidated.

SEC. 21. 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 consolidated into one action.

Several suits for causes of action that may be joined, costs in such case, how paid.

SEC. 22. 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.

Court may refer cause to referees, with consent of parties, when.

SEC. 23. 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. (*hh*)

May refer cause to referees without consent of parties, when.

SEC. 24. 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. (*ii*)

(*hh*) See the act concerning arbitrations and references, and section 20, article 4, of this act.

(*ii*) *Ibid.*

Digitized by Google

Of amending pleadings and proceedings.

SEC. 1. Court has power to amend any pleading or proceeding, either in form or substance.
2. Pleading amended in substance, party allowed time to answer.
3. After judgment; what proceedings may be amended in affirmance, &c.
4. Variance in record, how amended.
5. Returns by officers or any court may be amended, how and by whom, as well before as after judgment.
6. Imperfections or defects in the award of venire, may be amended or supplied.
7. Imperfections and omissions enumerated for which certain judgments shall not be stayed or reversed.
8. The omissions, imperfections, defects, &c., in preceding section, may be supplied, or amended, when.
9. Process, pleading, or record, not to be amended or impaired by the clerk without the order of court.
10. To what actions, writs, &c., this article shall extend; shall not extend to indictments, or informations in any criminal matter.

Court has power to amend any process pleading or proceeding either in form or substance.

SECTION 1. The court in which any action may 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. (*jj*)

Pleading amended in substance, party allowed time to answer.

SEC. 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.

After judgment, what proceedings may be amended in affirmance, &c.

SEC. 3. After judgment rendered in any cause, any defects or imperfections in matters 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 such judgment shall not be reversed or annulled. (*kk*)

SEC. 4. Any variance in the record from any process,

(*jj*) Boisse vs. Langham, 1 Missouri Rep., 572. In Petition in debt on a promissory note, the note offered in evidence varied from the one recited in the petition, by the omission of the word "pay," the circuit court will not err in permitting an amendment to be made on the trial; Atwood vs. Gillespie, 4 Missouri Rep., 423. In petition in debt by the payee of a note to the use of the assignee, the plaintiff cannot amend by striking out the endorsements, with a view of showing himself the legal owner of the note, as the form of the action declares he is not the legal owner of the note; Langham vs. Lebarge, 6 Missouri Rep., 355. It is not necessary for the supreme court to determine the proper manner in which the circuit courts should allow amendments to be made; Riggin vs. Collier & Pettus, 6 Missouri Rep., 568. The power of amendment is left somewhat to the discretion of the circuit court, and this discretionary power will not be controlled by the supreme court, unless some good will result therefrom; Calloway vs. Munn, 7 Missouri Rep., 567. Amendments are not allowed, as a matter of course, by the statute, but are only permitted, in the discretion of the court, in furtherance of justice; Caldwell vs. M'Kee, 8 Missouri Rep., 334.

(*kk*) Hanley vs. Dewes, 1 Missouri Rep., 16; Hickman vs. Barnes, 1 Missouri Rep., 156; Ashby vs. Glasgow et al., 7 Missouri Rep., 320.

Digitized by Google

pleading, or proceeding had in such cause, shall be amended and certified according to such original process, pleading, or proceeding.

Variance in record, how amended.

SEC. 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 return shall be made, in their discretion, as well before as after judgment.

Returns by officers or any court may be amended, how and by whom, as well before as after judgment.

SEC. 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.

Imperfections or defects in award of venire, may be amended or supplied.

SEC. 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, nihil dicit, or non sum informatus, nor any judgment upon a writ of inquiry of damages, executed thereon, 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; (*ll*) *Fourth*, For any variance between the original writ, plaint, or declaration, or either of them; (**) *Fifth*, For any mispleading, miscontinuance, or discontinuance, insufficient pleading, jeofail, or misjoining of issue; *Sixth*, For want of any warrant of attorney by either party, except in cases of judgment by confession, when such warrant is expressly required by law; *Seventh*, For any party under twenty-one years of age, having appearance 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

Imperfections enumerated, for which certain judgments shall not be stayed or reversed.

(*ll*) *Vide*, Muldrow vs. Bates, 5 Missouri Rep., 214, and sections 8 and 9 of this article.

(**) Yates vs. Kimmel & Taylor, 5 Missouri Rep., 87.

Digitized by Google

omitting any allegation or averment, without proving which, the triers of the issue ought not to have given such a verdict; (*ll*) *Tenth*, For any mistake in the name of any party, or person, or in any sum of money, or in any description of any property, or in reciting or stating any day, month, or year, when the correct name, term, sum, or description, shall have been once rightly alleged, in any of the pleadings or proceedings; (*mm*) *Eleventh*, For a mistake in the name of any juror, or officer; *Twelfth*, For the want of any 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 the record; (*nn*) *Fourteenth*, For any other default or negligence of any clerk or officer of the court, or of the parties, or of their counsellors or attorneys, by which neither party shall have been prejudiced.

The omissions, defects, &c., in preceding section, may be supplied or amended, when.

SEC. 8. The omissions, 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 on 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. (*pp*)

Process pleading, or record, not to be amended, without the order of court.

SEC. 9. No process, pleading or record, shall be amended or impaired by the clerk, or other officer of the court, or by any person, without the order of such court, or of some court of competent authority.

To what actions, writs, &c, this article shall extend; shall not extend to indictments or informations.

SEC. 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 informations in the nature of a quo warranto, to writs of scire facias, and to the proceedings thereon, but shall not extend to indictments,

(*ll*) Helm vs. Wilson, 4 Missouri Rep., 481; Yates vs. Kimmel & Taylor, 5 Missouri Rep., 87.

(*mm*) Where a judgment is given by mistake, for a sum greater than the demand, and the sum is rightly stated in any of the pleadings, the supreme court will not, on that account, reverse it, but will allow the plaintiff, on his application, to enter a remittitur as to the excess; Atwood vs. Gillespie, 4 Missouri Rep., 423.

(*nn*) *Vide*, note (*kk*) ante.

(*pp*) See Muldrow vs. Bates, 5 Missouri Rep., 214.

Digitized by Google

or information for any criminal matter, or to the proceedings thereon. (*qq*)

(*qq*) If the court below fail to find a material issue, such error is not cured by the statute; Pratt vs. Rogers, 5 Missouri Rep., 51.

ARTICLE VII.

Of new trials, arrest of judgment, final judgment, and miscellaneous provisions.

SEC. 1. Motions for new trials and in arrest, when to be made.
2. Written specification to accompany motion.
3. Only one new trial allowed to either party; exceptions.
4. Costs of new trials, by whom paid.
5. After arrest of judgment, proceedings may be amended.
6. Costs to be paid by the one who made the first error.
7. Verdict for entire damages on several counts, good, &c.
8. Limitation of motion to set aside verdict.
9. Limitation of scire facias to revive judgment rendered at the time of taking effect of this act.
10. Limitation of such writ to revive judgments rendered after the taking effect of this act.
11. Persons may appeal to supreme court, when.
12. On what conditions appeal to be allowed.
13. Court to make an order allowing an appeal; in what cases the allowance shall stay execution.
14. Clerk to make out a docket of causes before the commencement of each term of the court, contents of docket.
15. List of causes docketed to be posted up by the clerk in his office, when and how.
16. Clerk to issue subpœnas for witnesses.
17. Penalty for failing to make out docket, to set up list of causes, or to issue subpœnas.
18. Plaintiff may dismiss his suit in vacation by paying costs.
19. In actions founded on written contracts, want or failure of consideration may be pleaded.
SEC. 20. Want or failure of consideration may be proven in whole or in part.
21. If such written contracts be given in evidence without being specially pleaded, the other party may prove the want or failure of consideration.
22. Nothing in three last sections to affect a bona fide endorsee.
23. Counts in case founded in tort, may be joined with counts in trespass.
24. Form of plea of general issue.
25. Whatever heretofore might have been given in evidence under general issue, either in case or trespass, may be given under the above form.
26. Interested witness made competent, how and under what circumstances.
27. If judgment sought to be obtained be admissable in evidence in favor of such witness, the same to be endorsed on declaration to prevent him from being profited thereby.
28. In what case jury to give damages by way of interest.
29. Statement of the name of the county in margin of declaration, sufficient.
30. Not when local description is necessary.
31. The terms "actionem non" and "precludi non," not necessary.
32. Preceding section not to extend to cases where estoppel is pleaded.
33. Form of commencement of plea.
34. Not necessary to state that pleading is by leave of court.
35. No protestation necessary in pleading.
36. Form of demurrer.
37. Form of joinder in demurrer.

SECTION 1. All motions for new trials (*rr*) and in arrest of

(*rr*) M'Knight & Brady vs. Wells, 1 Missouri Rep., 13; Hanley vs. Blanton, *ib.*, 49; M'Lane vs. Harris, *ib.*, 700; Valois vs. Warner, *ib.*, 730; Montgomery vs. Blair, 2 Missouri Rep., 189; Hays vs. Thomas, 3 Missouri Rep., 335; Johnson vs. Strader & Thompson, *ib.*, 359; Price vs. Cannon, *ib.*, 453; Singleton vs. Mann, *ib.*, 464; Clemens vs. Laveille & Morton, 4 Missouri Rep., 80; Hill vs. Wilkins, *ib.*, 86;

Digitized by Google

CHAP. 136.

Motions for new trials and in arrest, when to be made.

judgment, (*ss*) shall be made within four days (*tt*) after the trial, if the term shall continue so long, and if not, then before the end of the term.

Specification to accompany motion.

SEC. 2. Every such motion shall be accompanied by a written specification of the reasons (*uu*) upon which it is founded.

Only one new trial allowed to each party. Exceptions.

SEC. 3. Only one new trial shall be allowed to either party, except: *First*, Where the triers of the fact shall have erred in a matter of law; (*vv*) *Second*, When the jury shall be guilty of misbehavior. (*ww*)

Costs of new trials, by whom paid.

SEC. 4. The costs of all new trials shall either abide the event of the suit, or be paid by the party to whom such new trial is granted, according to the order of the court, [to be] made at the time of granting such new trial.

After arrest of judgment, proceedings may be amended.

SEC. 5. When a judgment shall be arrested, the court shall allow the proceeding in which the error was, to be amended in all cases when the same amendment might have been made before trial, (*xx*) and the cause shall again be proceeded in according to the practice of the court.

Oldham vs. Henderson, *ib.*, 295; Meechum vs. Judy Logan, *ib.*, 861; Elliott vs. Leake, *ib.*, 540; Polk vs The State, *ib.*, 544; Martin vs. Withington, *ib.*, 518; Martin vs. Hays, 5 Missouri Rep., 62; Pratt vs. Blakey, *ib.*, 205; Mulliken vs. Greer, *ib.*, 489; Steel vs. M'Cutcheon, *ib.*, 522; Vaughn vs. Montgomery, *ib.*, 529; Thompson et al., vs. Child, garnishee, 6 Missouri Rep., 162; Campbell & Maison vs. Hood, *ib.*, 211; Stout vs. Calver, *ib.*, 254; Dooly & Kirkland vs. Jennings. *ib.*, 61; Smiths vs. Matthews, *ib.*, 600; Hite vs. Lenhart et al., 7 Missouri Rep., 22; Lackey vs. Lane & M'Cabe, *ib.*, 220; Benoist & Hackney vs. Powell & Wilson, *ib.*, 224; Rennick vs. Walton, *ib.*, 292; Ferguson vs. Turner, *ib.*, 497; and see Davis vs. Davis, 8 Missouri Rep., 56.

(*ss*) Davidson vs. Peck, 4 Missouri Rep., 438; Griffin & Kinote vs. Samuels, 6 Missouri Rep., 50.

(*tt*) A motion for a new trial cannot be entertained after the lapse of four days from the trial; but the court, upon suggestion of counsel, or otherwise, has the power to grant a new trial, even after the expiration of that time, for reasons appearing to the court; the sufficiency of which reasons may, however, be brought up by writ of error; Edwards, J., in Williams vs. Circuit Court of St. Louis County, 5 Missouri Rep., 248; Tompkins, J., dissenting; M'Girk, J., in same case, held, where the motion was made within the four days, the court might allow the reasons to be filed after the expiration of four days; but if neither the motion, nor the reasons for the motion, be filed within the four days, the power of the court over the subject, ceases. A refusal to grant a new trial on motion made more than four days after the trial, is not error; Allen & Dougherty vs. Brown, 5 Missouri Rep., 323.

(*uu*) Chamberlain vs. Smith's administrators, 1 Missouri Rep., 718.

(*vv*) For errors of the jury in matters of law, but not for the error of the court, a second new trial may be granted; Hill vs. Wilkins, 4 Missouri Rep., 86. The error of law alluded to, on a motion for a second new trial, must be a misconception of the instructions of the court, or of the general law governing the case, (when no instructions have been given,) or an entire disregard of such instructions, which must be inferred from a comparison of the verdict with the facts in evidence. But when there is conflicting testimony submitted to a jury, and the facts found are supported by the testimony, there is no ground for supposing a misapprehension or perversion of the law, and, consequently, no ground for a second new trial; Hill vs. Deaver, 7 Missouri Rep., 57; *vide*, Humbert vs. Eckert, *ib.*, 269.

(*ww*) Stewart vs. Small, 5 Missouri Rep., 525.

(*xx*) See secs. 1, 7, 8 and 9, of the vi. article of this act, ante.

Digitized by Google

Costs paid by one who made the first error.

SEC. 6. In such case, the party in whose proceeding the first error was, shall pay all costs incurred thereby.

Verdict for entire damages on several counts, good.

SEC. 7. 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 shall be defective.

Limitation of motion to set aside verdict.

SEC. 8. Judgments, in any court of record, shall not be set aside for irregularity, on motion, unless such motion be made within five years after the term such judgment was rendered.

Limitation of scire facias to revive.

SEC. 9. 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.

Limitation of such writs to judgments hereafter.

SEC. 10. Such writs when brought to revive any judgment or recovery, rendered after the time this act takes effect, shall be brought within ten years thereafter.

Persons may appeal to supreme court, when.

SEC. 11. 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.

On what conditions appeal to be allowed.

SEC. 12. 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 for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

Court to make an order allowing an appeal.

In what cases the allowance shall stay execution.

SEC. 13. Upon the appeal being made, the circuit court shall make an order allowing the appeal; and such allowance 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

Digitized by Google

CHAP. 136.

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.

Clerk to make out a docket of causes before the commencement of each term of the court; contents of docket.

SEC. 14. 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 inquiry 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.

List of causes docketed to be posted up by the clerk in his office, when and how.

SEC. 15. Every clerk shall put up in some convenient place in his office, at least twelve 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.

Clerk to issue subpœnas for witnesses.

SEC. 16. 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.

Penalty for failing to make out such docket, set up list of causes, or to issue subpœnas.

SEC. 17. 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.

Plaintiff may dismiss his suit in vacation by paying costs.

SEC. 18. The plaintiff in any suit at law in any court of record, may dismiss such suit in the vacation of the court, upon the payment of all costs that may have accrued therein.

In actions founded on written contracts, want or failure of consideration may be pleaded.

SEC. 19. In any action founded upon any specialty, or other written contract for the payment of money or the delivery of property, the defendant, by special plea, or by notice attached to, and filed with the plea of the general issue, may allege the want or failure of the consideration, in the whole, or any part thereof, of such specialty, or other written contract.

Want or failure, &c., may be proven, &c.

SEC. 20. If any specialty, or other written contract for the payment of money or the delivery of property, is alleged by either party in any other stage of the procedings, the other party may aver in answer, and prove on the trial, the want or

Digitized by Google

failure, in the whole or in part, of the consideration of such specialty or other written contract.

If such specialty be given in evidence when not pleaded, other party may prove want of consideration.

SEC. 21. Whenever such specialty, or other written contract for the payment of money or the delivery of property, shall be given in evidence in any court by either party, without being pleaded, the other party may prove the want or failure of the consideration, in the whole or in part, of such specialty or other written contract.

Nothing in the three last sections to affect any bona fide endorsee.

SEC. 22. Nothing contained in the three next preceding sections, shall affect or impair the right of any bona fide endorsee of any contract in writing, made negotiable by the law of this state, when such instrument shall be negotiated before it becomes due.

Counts in case founded in tort, may be joined with counts in trespass.

SEC. 23. One or more counts in trespass on the case, founded in tort, may be joined with one or more counts in trespass in the same declaration, when all of such counts are for the same cause of action.

Form of the plea of general issue.

SEC. 24. The general issue to such declaration, may be in the following form: "C. D., ats. E. F., and the said defendant, by A. B., his attorney, (or in person,) says he is not guilty of the said supposed trespasses and grievances above laid to his charge, or any or either of them, or any part thereof, in manner and form, as the said plaintiff hath above thereof complained against him. And of this he puts himself upon the country."

What may be given in evidence in case and trespass under the general issue.

SEC. 25. Whatever might have been given in evidence, before the taking effect of the two preceding sections, under the general issue in trespass, may be given in evidence under such general issue to the counts in trespass; and whatever might have been given in evidence under the general issue in case, may be given in evidence, under such general issue to the counts in case.

Interested witness made competent, how, and under what circumstances.

SEC. 26. If any witness shall be objected to as incompetent, on the ground that the verdict, or judgment, in the action on which it shall be proposed to examine him, would be admissible in evidence for or against him, such witness shall, nevertheless, be examined; but in that case, a verdict or judgment in that action, in favor of the party on whose behalf he shall have been examined, shall not be admissible in evidence for him, or any one claiming under him, nor shall a verdict or judgment against the party on whose behalf he shall have

Digitized by Google

CHAP. 136.

been examined, be admissible in evidence against him, or any one claiming under him.

The name of witness objected to as incompetent, &c. in what case to be endorsed on the declaration.

SEC. 27. The name of every witness objected to as incompetent, on the ground that such verdict or judgment would be admissible in evidence for or against him, shall, at the trial, be endorsed on the declaration, or document on which the trial shall be had, together with the name of the party on whose behalf he was examined, by the clerk of the court, at the request of either party; and a copy of such endorsement, certified by the clerk, under the seal of the court, shall be sufficient evidence that such witness was examined, in any subsequent proceeding, in which the verdict or judgment shall be offered in evidence.

Effect of such endorsement.

In what case jury to give damages by way of interest.

SEC. 28. The jury, on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest, over and above the value of the goods at the time of the conversion or seizure, in all actions of trover or trespass, de bonis asportatis.

Statement of the name of county in the margin sufficient in all cases.

SEC. 29. The name of the county, may, in all cases, be stated in the margin of a declaration, and shall be taken to be the venue intended by the plaintiff; and it shall not be necessary to state a venue in the body of the declaration, or in any subsequent pleading.

Not when local description is necessary.

SEC. 30. Provided, That, in cases where local description is now required, such local description shall be given.

The terms "actionem non" and "precludi non," not necessary.

SEC. 31. In a plea, or subsequent pleading, intended to be pleaded in bar of the whole action generally, it shall not be necessary to use any allegation of actionem non, or to the like effect, or any prayer of judgment, nor shall it be necessary in replication, or subsequent pleading intended to be pleaded in maintenance of the whole action, to use any allegation of precludi non, or to the like effect, or any prayer of judgment; and all pleas, replications, and subsequent pleadings, pleaded without such formal parts, shall be taken, unless otherwise expressed, as pleaded respectively in bar of the whole action, or in the maintenance of the whole action.

Not to extend to estoppels.

SEC. 32. Nothing contained in the preceding section shall extend to cases where an estoppel is pleaded.

Form of commencement of plea.

SEC. 33. No formal defence shall be required in a plea, and it may commence as follows: "The said defendant, by ——, attorney (or in person, &c.) says that ——"

Digitized by Google

SEC. 34. It shall not be necesary to state in a second or other plea, that it is pleaded by leave of the court, or according to the form of the statute, or to that effect. Not necessary to state that pleading is by leave of court.

SEC. 35. No protestation shall hereafter be made in any pleading, but either party shall be entitled to the same advantage, in that, or other actions, as if a protestation had been made. No protestation necessary in pleading.

SEC. 36. The form of a demurrer may be as follows: "The said defendant, (or plaintiff, as the case may be,) by ——, his attorney (or in person, &c.) says that the declaration (or plea, &c.) is not sufficient in law." Form of a demurrer.

SEC. 37. The form of a joinder in demurrer may be as follows: "The said plaintiff (or defendant) says that the declaration (or plea, &c.) is sufficient in law." Form of joinder in demurrer.

Approved, March 27, 1845.

CHAPTER 137.

PRACTICE IN CHANCERY.

AN ACT to regulate the practice in courts of chancery.

ARTICLE I. Of the commencement of suits, the service and return of process.
II. Of the pleadings and exhibits and proceedings thereon.
III. Of the issues, trial, and the incidents thereto.
IV. Of the commissioner; his duty; report and proceedings thereon.
V. Of the abatement of suits by death, marriage or otherwise, and the revival thereof.
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; their powers.
2. In what county suits concerning or affecting real estate shall be brought.
3. In other cases, suits shall be brought where defendant resides.
4. If defendants are non-residents, where suits may be brought.

Digitized by Google

CHAP. 137.

SEC. 5. Commencement of suit must be by bill.
6. Summons to issue.
7. A separate summons shall issue, when.
8. Summons to be attached to copy of bill; how served.
9. Shall be delivered or left with defendant first served.
10. Refusal to hear, &c.; or receive a copy, deemed a sufficient service.
11. Affidavit of non-residence and order of publication.
12. If part of defendants are residents, how served.
13. On return of non est, order of publication may be made.
14. Order of publication in vacation, how made, and by whom.
15. In what manner, and how long published.
16. Several defendants, and some do not appear and are not summoned, complainant may dismiss as to them, or continue cause.
17. Complainant may cause a copy of bill to be delivered to non-resident of defendant.
18. Such copy may be served by any competent witness.

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

Jurisdiction of courts of chancery; their powers. Rev. C., 1835.

SECTION 1. In all cases where adequate relief cannot be had in the ordinary course of proceeding at law, (*a*) 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. (*b*)

In what county suits concerning real estate shall be brought.

SEC. 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.

(*a*) *Vide*, Clamorgan et al. vs. Guisse et al., 1 Missouri Rep., 141; Campbell vs. Edwards, *ibid*, 324; Head vs. Pitzer, *ibid*, 548; Cadwaleder vs. Atchison, *ibid*, 659; Sumner vs. Whitley, *ibid*, 708; Collier vs. Easton & Russell, 2 Missouri Rep., 145; Risher vs. Roush, *ibid*, 95; Barlett vs. Pettus et al., 3 *ibid*; 345.

(*b*) Clamorgan et al. vs. Guisse et al., 1 Missouri Rep., 141; Campbell vs. Edwards, *ibid*, 324; Rector vs. Price, *ibid*, 373; Byrd et al. vs. Ward and Cravens, *ibid*, 393; Ramsey vs. Ellis, *ibid*, 402; Berry and Smith vs. Burckhartt, *ibid*, 418; Evans and Ellis vs. Menefee. *ibid*, 442; Peay vs. Sublet and wife, *ibid*, 449; Strong vs. Hopkins, *ibid*, 530; Head vs. Pitzer, *ibid*, 548; Cadwaleder vs. Atchison, *ibid*, 659; Bird vs. Bolduc et al., *ibid*, 701; Risher vs. Roush, *ibid*, 702; Sumner vs. Whitley, *ibid*, 708: Risher vs. Roush, 2 Missouri Rep., 95; McKnight and Brady vs. Bright, *ibid*, 110; Bean et al. vs. Valle et al., *ibid*, 126; Collier vs. Easton and Russell, *ibid*, 145. Davis vs. Clay, *ibid*, 161; Laberge vs Chauvin, *ibid*, 179; West vs. Wayne, 3 Missouri Rep., 16; Bartlett vs. Pettis and Glendy, *ibid*, 345; Yantis vs. Burdett, *ibid*, 457; Buford vs. Caldwell, *ibid*, 477; Mullanphy vs. Simpson, and Russell vs. Mullanphy, *ibid*, 492; Perry vs. Craig, *ibid*, 516; Smith vs. D'Lashmutt, 4 Missouri Rep., 103; Burk et al. vs. Flournoy et al., *ibid*, 116; Jackson vs. Jackson et al., *ibid*, 210; Marsh vs. Turner and Lisle, *ibid*, 253; Baker vs. Welch, *ibid*, 484; Banks and wife vs. McCarty et al., 5 Missouri Rep.. 1; Miller et al. vs. Wells, *ibid*, 6; Davis vs. Davis, *ibid*, 183; Irwin vs. Henry, *ibid*, 469; Gallaher and McCabe vs. Hunter, *ibid*, 507; Tombs vs. Tucker, 6 Missouri Rep., 16; Bryan vs. Jamison, 7 Missouri Rep., 106; Shields and Hickerson vs. Bogliolo, *ibid*. 134; Welton and Edwards vs. Martin, *ibid*, 307; Rector vs. Hutchison et al., *ibid*, 522; Barton vs. Rector et al., *ibid*, 524; Stephenson vs. Smith, *ibid*, 610. A court of equity has no power to decree a partition of personal chattels between joint tenants or tenants in common; Gudgel and Austin vs. Mead et al., 8 Missouri Rep., 53; but see secs. 65 and 66 of chap. 128, ante, page 776.

Digitized by Google

In other cases suit to be brought where def't resides.

SEC. 3. In other cases, such suits shall be brought in the county within which the defendants or a majority of them, if inhabitants of the state, reside.

If non-residents, where suit brought.

SEC. 4. If all the defendants are non-residents, such suits may be brought in any county.

Commencement of suit must be by bill.

SEC. 5. 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.

Summons to issue.

SEC. 6. 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, requiring him to summon the defendants to appear and answer to the bill on the return day thereof.

Separate summons shall issue, when.

SEC. 7. Where there are several defendants residing in different counties, a separate summons shall be issued to each county, including all the defendants residing therein.

Summons to be attached to copy of bill; how served.

SEC. 8. Every summons shall be accompanied by a separate copy of the bill, and the service shall be, either: *First*, By reading the bill and writ to the defendant; or, *Second*, By delivering to the defendant, who shall be first summoned, a copy of the writ and bill, and to such as shall be subsequently summoned, a copy of the writ; or, *Third*, By leaving such copy at the usual place of abode of the defendant, with some white person of his family, above the age of fifteen years.

Shall be delivered to, or left with defendant first served.

SEC. 9. The copy of the bill accompanying the writ, shall be delivered to, or left at the place of abode of the defendant, who shall be first summoned.

Refusal to hear, &c., or receive a copy, deemed a sufficient service.

SEC. 10. In all cases where the defendant shall refuse to hear such bill and writ 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.

Affidavit of non-residence; order of publication. 1840–1, p. 113.

SEC. 11. 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-residents, notifying them of the commencement of the suit, and stating, briefly, the object and general nature of the bill, and requiring them to appear on a day to be therein named, allowing sufficient time for publication, to appear and answer the bill, or that the bill will be taken as confessed.

Digitized by Google

CHAP. 137.

If part of def'ts are residents, process, how served.

SEC. 12. If, in such case, part of the defendants are residents of the state, process shall be issued against them as in other cases.

On return of non est, order of publication may be made.

SEC. 13. 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.

Order of publication in vacation, how made and by whom.

SEC. 14. 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 non-residents, reciting, moreover, all allegations in relation to the interest of such unknown parties.

In what manner, and how long published.

SEC. 15. Every order against non-resident, 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.

Several defendants and some do not appear and are not summoned, complainant may dismiss as to them or continue cause.

SEC. 16. When there are several defendants, some of whom do not appear, and are neither notified nor summoned, 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. (c)

Compl't may cause a copy of bill to be delivered to non-resident defendant.

SEC. 17. 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.

SEC. 18. Such service may be made by any free white per-

(c) Evans & Ellis vs. Menefee, 1 Missouri Rep., 442; Hunter vs. Gallagher et al., 4 Missouri Rep., 364.

Digitized by Google

son 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.

Such copy may be delivered by any competent witness.

ARTICLE II.

Of the pleadings and exhibits, and proceedings thereon.

SEC. 1. Defendant shall file his exceptions, demur or answer, in the first six days.
2. Failing, interlocutory decree as confessed may be taken.
3. Defendant may appear and have decree set aside, when.
4. Exceptions to a bill to be determined, when.
5. Proceedings, if exceptions are allowed; complainant shall pay costs.
6. Defendant shall pay costs, when.
7. Under what restrictions defendant may plead several pleas.
8. Complainant shall pay costs, when.
9. Defendant to pay costs when plea found against him.
10. The part of the bill unanswered (if no plea filed) shall be taken as confessed.
11. Demurrer sustained, complainant to pay costs.
12. Demurrer overruled, defendant to plead instanter and pay costs.
13. Full answer must be made to the bill, except, &c.
14. Defendant may exhibit interrogatories.
15. Answer of complainant to be evidence.
16. In default of such answer, bill to be dismissed.
17. Who may take affidavits to verify bill or answer.
18. Exceptions to answer to be made within four days.
19. Costs on exceptions, by whom paid.
20. If answer adjudged insufficient, proceedings.
21. Second answer insufficient, proceedings.
SEC. 22. Third answer insufficient, proceedings.
23. Bill not to be dismissed after cross bill filed.
24. Cross bill not to be answered until sufficient answer be filed to original bill.
25. Pleas and demurrers, when disposed of.
26. Replications to be general, when to be filed.
27. Cause deemed at issue, when.
28. Cause set for hearing on bill and answer, when.
29. In such case answer taken as true.
30. When discovery is sought, answer not to be conclusive evidence.
31. If party rely on deed, record, &c., substance thereof to be stated in pleading and filed as exhibits.
32. If deed or writing cannot be produced, fact must be stated in pleadings, &c.
33. Power of court to compel the production of books, papers, &c.
34. If such books be not produced, allegations relating thereto taken as confessed.
35. All pleadings to be signed and filed.
36. Court may extend time of pleading.
37. May grant leave to amend, if no surprise given to the other party.
38. Exhibits to be carefully marked and filed.
39. Original instruments filed, after hearing, may be withdrawn, by leaving copies.

SECTION 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

Defendant shall file his exceptions, demur or answer in the first six days.

Digitized by Google

CHAP. 137. the term shall so long continue, and if not, then before the end of the term, unless further time be given by the court. (*d*)

Failing, interlocutory decree as confessed may be taken.

SEC. 2. If any such defendant fail to do as required by the preceding section, the bill may be taken as confessed, and an interlocutory decree entered, which may be made absolute at the next term, and carried into effect as other decrees. (*e*)

Defendant may appear and have decree set aside, when.

SEC. 3. No exceptions or plea shall be filed after an interlocutory decree, but if the defendant appear within the first six days of the term next after such decree is entered, and show good cause for not before appearing, the decree may be set aside, and the defendant allowed to file his answer or demurrer to the bill.

Exceptions to be determined, when.

SEC. 4. Exceptions to a bill, when filed, shall be argued and determined without delay.

Proceedings if exceptions are allowed.

SEC. 5. If any such exceptions are allowed, the complainant shall pay costs, and the defendant shall plead, demur, or answer the residue of the bill.

Defendant shall pay costs, when.

SEC. 6. If all such exceptions are overruled, the defendant shall pay costs, and plead, demur or answer to the whole bill immediately.

Under what restrictions def't may plead several pleas.

SEC. 7. 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.

Complainant shall pay costs, when.

SEC. 8. If a plea be found for the defendant, or such plea be allowed, the complainant shall pay costs.

Defendant shall pay costs, when.

SEC. 9. If the matter of a plea be found against the defendant, or the plea be overruled, the defendant shall pay costs.

Part unanswered may be taken as confessed, when.

SEC. 10. In such case no other plea shall be filed, and the defendant shall answer the bill, or in default thereof, the part unanswered shall be taken as confessed.

Demurrer sustained, complainant to pay costs.

SEC. 11. Demurrers shall be considered and determined without delay, and if sustained in whole, or in part, the complainant shall pay costs.

(*d*) Wilkson vs. Blackwell, 4 Missouri Rep., 428; Lyne vs. Guardian et al., 1 Missouri Rep., 410; Easton & Russell vs. Collier, 3 Missouri Rep., 378.

(*e*) Evans vs. The State, 1 Missouri Rep., 492; Divers vs. Mark et al., 3 Missouri Rep., 81.

Digitized by Google

Demurrer overruled, defendant to plead instanter and pay costs.

SEC. 12. If they are 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.

Full answer must be made to the bill, except, &c.

SEC. 13. 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.

Defendant may exhibit interrogatories.

SEC. 14. 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.

Answer of compl't to be evidence.

SEC. 15. The answer of the complainant shall be evidence in the cause, in the same manner as the defendant's answer.

In default of such answer, bill to be dismissed.

SEC. 16. In default of the complainant's answering such interrogatories, the bill may be dismissed.

Who may take affidavits to verify bill or answer.

SEC. 17. 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.

Exceptions to answer to be made within four days.

SEC. 18. Exceptions to answers 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.

Costs on exceptions, by whom paid.

SEC. 19. If such exceptions are overruled, the complainant [shall pay the costs;] if allowed, the defendant shall pay the costs.

Answer insufficient, proceedings.

SEC. 20. 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.

Second answer insufficient, proceedings.

SEC. 21. If such second 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.

Third answer insufficient, proceedings.

SEC. 22. 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.

Digitized by Google

Bill not to be dismissed after cross bill filed.

SEC. 23. No complainant shall be allowed to dismiss his bill, after a cross bill filed, without the consent of the defendant.

Cross bill not to be answered, till sufficient answer to original bill.

SEC. 24. 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.

Pleas and demurrers when disposed of.

SEC. 25. All pleas and demurrers shall be disposed of before proceeding on the defendant's answer.

Replications to be general, when to be filed.

SEC. 26. Replications shall be general, with the like advantage 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.

Cause deemed at issue, when.

SEC. 27. When a replication is filed, the cause shall be deemed at issue, and stand for hearing at the next term.

Cause set for hearing on bill and answer, when.

SEC. 28. If the replication be not filed within four days after the answer, the cause may be set for hearing on bill and answer.

In such case answer taken as true, &c.

SEC. 29. In such 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.

When discovery is sought, answer not to be conclusive evidence.

SEC. 30. 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 a replication be filed, may be contradicted or disproved as other testimony, according to the practice of courts of equity.

If party rely on deed, record, &c., substance to be stated in pleading and filed as exhibits.

SEC. 31. 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 authenticated copy of such record, and the original deed or writing so set forth, if in his power.

If deed or writing cannot be produced, fact must be stated in pleadings, &c.

SEC. 32. 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 reason be sufficient, he may file the best evidence in his power of the contents of such deed or writing.

Power of court to compel the production of books, papers, &c.

SEC. 33. The court shall have power, upon sufficient cause shown 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.

Digitized by Google

SEC. 34. 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 writings, the court may take the allegations in relation to the books, deeds and writings, not produced, as confessed, or may proceed against the party in default by attachment. If such books, &c., be not produced, allegations relating thereto taken as confessed.

SEC. 35. 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, in term, note the same on the minutes. All pleadings to be signed and filed.

SEC. 36. The court may extend the time for answering, replying, pleading or demurring, upon cause shown. Court may extend time of pleading.

SEC. 37. The court 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 surprised, or unreasonably delayed thereby. (*f*) May grant leave to amend if no surprise given to the other party.

SEC. 38. 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. Exhibits to be carefully marked and filed.

SEC. 39. 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. Original instruments filed, may be withdrawn, when.

(*f*) Wilkson vs. Blackwell, 1 Missouri Rep., 428.

ARTICLE III.

Of the issues, trial, and the incidents thereto.

SEC. 1. Causes shall be tried, when.
2. Costs of continuance, by whom paid.
3. Application for a continuance, affidavit required.
4. Clerk before the commencement of each term to make out a docket of causes.
5. Shall make out a list of causes and set it up in his office.
6. Court may direct issues to be tried by jury, when.
SEC. 7. No issue shall be made except as directed by the court.
8. Trial of such issues to be by jury; verdict may be general or special.
9. Court may award a new trial, but not more than one new trial to any one party.
10. Witness may be examined in court, or depositions read.
11. Depositions, how taken, certified and returned.

Digitized by Google

CHAP. 137.

Sec. 12. Court may order substance of testimony of witness to be reduced to writing, when.
13. Rules of evidence.
Sec. 14. Clerk shall issue subpœnas to take depositions.
15. Bills of exception may be allowed.

Causes shall be tried, when.

SECTION 1. All causes shall be tried, heard and determined, at the next term after they are set for hearing, or put at issue by replication, unless good cause be shown for a continuance.

Costs of continuance, by whom paid.

SEC. 2. Every continuance granted upon the application of either party, shall be at the costs of such party, unless otherwise ordered by the court.

Application for continuance, affidavit required.

SEC. 3. 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.

Clerk before commencement of each term to make out a docket of causes.

SEC. 4. 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 in 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.

Shall make out a list of cases and set it up in his office.

SEC. 5. 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.

Court may direct issues to be tried by jury, when.

SEC. 6. If at any time during the progress of a cause, it shall, in the opinion of the court, become necessary to determine any fact in controversy, by the verdict of a jury, the court may direct an issue, or issues, to be made.

No issue, except as directed by court.

SEC. 7. No issue shall be made except such as shall be directed by the court.

Trial of such issues to be by jury, &c.

SEC. 8. The trial of such issues shall be by jury, and the issues shall be disposed of by a general or special verdict, before a final decree shall be made therein. (g)

Court may award new trial, when.

SEC. 9. The court may award a new trial of any issue, upon good cause shown, but not more than one new trial of the same issue shall be granted to any one party.

Witnesses may be examined in court, &c.

SEC. 10. On the trial of issues, or questions of fact in a chancery cause, the witnesses shall be examined in open

(g) Woodson & Trigg vs. McClelland, 4 Missouri Rep., 495.

Digitized by Google

court, or depositions may be read in cases in which they are authorized to be read in actions at law.

Depositions, how taken, &c.

SEC. 11. All such depositions shall be taken, certified and returned, in all respects as in actions at law. (*k*)

Court may order substance of testimony of witnesses to be reduced to writing, when.

SEC. 12. Upon the hearing of a cause by the court, the court may order the substance of the testimony of all witnesses examined in court to be reduced to writing, under its direction, by such person as the court may appoint, and the court may allow such person a reasonable compensation therefor, to be taxed as costs in the suit.

Rules of evidence.

SEC. 13. The rules of evidence shall be the same in chancery as at law.

Clerk shall issue subpœnas to take depositions.

SEC. 15. The clerk of each court of chancery shall, from time to time, issue subpœnas for witnesses, and commissions to take depositions, when required by either party.

Bills of exception may be allowed.

SEC. 15. Exceptions may be taken to the opinions of the court, during the progress of any cause, or trial of an issue, or to any decree 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. (*i*)

(*k*) See the act concerning depositions, chap. 47, ante, p. 398.

(*i*) See sections 26, 27, 28, 29, 30, 31, 32, and 33, of article 4, of the act to regulate practice at law, chapter 136, ante, p. 821, and Risher vs. Roush, 1 Missouri Rep., 702; Richardson, administrator, vs. Harrison, 4 Missouri Rep., 232; Swearingen vs. Newman, administrator, 4 Missouri Rep., 456.

ARTICLE IV.

Of the commissioner, his duty; report and proceedings thereon.

SEC. 1. Court to appoint a commissioner to audit accounts and take testimony.
2. A special commissioner may be appointed, when.
3. Commissioner shall take an oath.
4. Commissioner to appoint a time and place for proceeding, and give notice. Shall proceed ex parte, when.
5. May adjourn from time to time.
6. Power to administer oaths and examine witnesses.
7. Depositions may be read in evidence, when.
8. Duty of commissioner in stating accounts.
9. All testimony taken before commissioner to be reduced to writing.
10. Commissioner to report speedily; what he shall report.
11. Exceptions to report to be filed, when.
12. If exceptions allowed, matter may again be referred.
13. Notices issued by commissioner, how served.
14. Notice and subpœnas may be served by competent witnesses, &c.

Court to appoint commissioner to audit accounts and take testimony.

SECTION 1. Each court of chancery may appoint a commissioner, whose duty it shall be to audit and adjust all accounts referred to him, and take testimony when thereto required, and make report thereon according to the order of the court.

Digitized by Google

A special commissioner may be appointed, when.

SEC. 2. When the commissioner is of kin to either party, or is interested in any cause, or when it may be necessary or proper, a special commissioner may be appointed.

Commissioner shall take an oath.

SEC. 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.

Commissioner to appoint a time and place for proceeding, and give notice.

SEC. 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.

Shall proceed ex parte, when.

May adjourn from time to time.

SEC. 5. The commissioner may adjourn his sittings from time to time, issue subpœnas for witnesses, and attachments to compel the attendance of such as, being summoned, fail or refuse to appear.

Power to administer oaths, &c.

SEC. 6. He shall have power to administer oaths, examine witnesses, and commit such as refuse to testify.

Depositions read in evidence, when.

SEC. 7. Depositions regularly taken in the cause, may be read in evidence before the commissioner.

Duty of commissioner in stating accounts.

SEC. 8. 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 require it, also, according to the views of each of them.

All testimony to be reduced to writing.

SEC. 9. 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 exclusion of evidence, the commissioner, if required, shall state the particulars of the exceptions in his report.

Commissioner shall report, when and how.

SEC. 10. The commissioner shall, in all cases, report as speedily as possible, reciting the order of the court, and showing 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.

Exceptions to report to be filed, when.

SEC. 11. 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 allowed, matter may be again referred.

SEC. 12. If exceptions are allowed, the matter may again be referred, with instructions, if necesssary, but if the report is affirmed, the court shall proceed thereon accordingly.

SEC. 13. All notices required to be given by the commis-

Digitized by Google

sioner 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.

Notices issued by commissioner, how served.

SEC. 14. Such notices, and all subpœnas 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.

Notices and subpœnas may be served by competent witnesses, &c.

ARTICLE V.

Of the abatement of suits by death, marriage, or otherwise, and the revival thereof.

SEC. 1. If cause of action survive, suit in chancery not to abate by death of one or more complainants or defendants, but may proceed.
2. In case of death, if cause of action do not survive, suit only to abate as to those who are dead.
3. If all of either party die, suit not to abate, but may be revived.
4. Bill of revivor not necessary to revive against deceased defendant's representatives; but on suggestion of death and petition of complainant, scire facias or order of publication may be had to make them parties.
5. Manner of serving scire facias and making publication.
6. Court may cause defendant's appearance to be entered, when.
7. Effect of answer of deceased party; if there be no answer, proceedings.
8. Court may order bill to be taken pro confesso, or compel answer.
9. What petition for revival shall state, to obtain further answer from representative.
10. A copy of petition to be annexed to summons.
11. Bill may be taken pro confesso against representatives, when.
12. Representatives may be made complainants, when; if necessary, may amend the bill.
13. Defendants to answer amended bill.
14. Representatives failing to make themselves complainants may be made defendants.
15. If no surviving complainant, or he fail to proceed against representatives of deceased complainant, proceedings. Order of court.
16. Bill may be dismissed if no cause of revivor be shown by representatives.
17. If defendant die, and cause of action do not survive, proceedings.
18. Proceedings of surviving defendant against representatives of co-defendants.
19. If representatives of deceased parties are not made parties by the third term, cause shall proceed between survivors.
20. Suit shall be dismissed, when.
21. If a female party marry, her husband may be made a party on his application.
22. Husband may be made a party on application of any party to the suit.
23. To proceed as if originally made a party.
24. Suit not to abate by death of party acting in a fiduciary capacity.
25. His successor may be made a party.
26. This act construed to give court power to make any person interested, a party.
27. No such person to be affected in any suit to which he is not a party.

SECTION 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

Suit in chancery not to abate by death.

Digitized by Google

shown, to the satisfaction of the court, the suit shall proceed in favor of, or against the surviving parties.

In case of death, suit only to abate as those who are dead.

SEC. 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.

If all of either party die, suit not to abate, but may be revived.

SEC. 3. If all the complainants, 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.

Bill of revivor not necessary to revive against dec'd defendant's representatives; proceedings.

SEC. 4. No bill of revivor shall be necessary to revive a suit against the representatives of a deceased defendant, but the death being suggested, 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, to be made parties, and also make an 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. (*j*)

Manner of serving sci. fa. and making publication.

SEC. 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. (*k*)

Court may cause defendant's appearance to be entered, when.

SEC. 6. If any person, so summoned or notified, shall not, within such time after the 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. (*l*)

Effect of answer of dec'd party; if no answer has been made, proceedings.

SEC. 7. In such cases the answer of the deceased party shall be deemed the answer of such representatives; and if there be no answer, proceedings may be had in all respects against such person as if he had been originally a defendant.

Court may order bill to be taken as confessed, or compel answer.

SEC. 8. The court may, in its discretion, order the bill to be be taken as confessed, or compel such representatives to answer by attachment or otherwise.

What petition for revival shall state to obtain further answer from representatives.

SEC. 9. If the deceased party shall have answered, and the surviving party shall deem it necessary to obtain further answer from his representatives, the petition for a revival shall state the matters as to which such further answer is required.

(*j*) See sections 11, and 14, of article 1, of this act.
(*k*) See sections 8, 9, 10, and 15, of article 1, of this act.
(*l*) See sections 1, 2, 3 and 36, article 2, of this act.

Digitized by Google

A copy of petition to be annexed to summons.

SEC. 10. A copy of such petition shall be annexed to the summons, or the substance stated in the order of publication against such representatives. (*m*)

Bill may be taken pro confesso against representatives, when.

SEC. 11. 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.

Representatives may be made complainants, when, may amend the bill.

SEC. 12. 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.

Defendants to answer amended bill.

SEC. 13. The defendants may be compelled to answer such amended bill, and the cause shall proceed to issue and hearing as in other cases.

Representatives failing to make themselves complainants; may be made defendants.

SEC. 14. 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. (*n*)

If no surviving compl't, or he fail to proceed against representatives of dec'd compl't, proceedings.

SEC. 15. 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 defendants, may order such representatives to show 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.

Order of court.

Bill may be dismissed if no cause of revivor be shown by representatives.

SEC. 16. If no such cause be then shown, 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.

If defendant die, and cause of action do not survive, proceedings.

SEC. 17. 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.

SEC. 18. In such case, the surviving defendants may proceed against such representatives, in the same manner as a

(*m*) See sections 4 and 5, of this article, and notes (*j*) and (*k*).
(*n*) See section 4, of this article.

Digitized by Google

CHAP. 137.

Proceedings of surviving def't against representatives of co-defendant.

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. (o)

If representatives of dec'd parties are not made parties by the third term, cause shall proceed between survivors.

SEC. 19. 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.

Suits shall be dismissed, when.

SEC. 20. If, in such case, there be no surviving complainant or defendant, the suit shall be dismissed.

If a female party marry, her husband may be made a party on his application.

SEC. 21. 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.

Husband may be made a party on application of any party to the suit.

SEC. 22. 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.

To proceed as if originally made a party.

SEC. 23. In such case, the husband may contest all facts in the same manner as if he had originally been made a party.

Suit not to abate by death of party acting in a fiduciary capacity.

SEC. 24. When a 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.

His successor may be made a party.

SEC. 25. In such case, 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 hereinbefore provided.

This act construed to give court power to make any person interested, a party.

SEC. 26. 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.

SEC. 27. No such representatives of a deceased party, or

(o) See sections 4, 5, 6, 7, 8, 9, 10, and 11, of this article.

Digitized by Google

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.

No such person to be affected in any suit to which he is not a party.

ARTICLE VI.

Of the decree, and subsequent proceedings thereon.

SEC. 1. Interlocutory decree and final decree thereon against defendant not summoned, or who has not appeared, may be set aside.
2. Decree shall stand absolute, if bill of review be not brought within a year after the service of notice.
3. If bill of review be not filed within five years, decree to stand absolute.
4. What such bill must show in order to set aside the decree.
5. If answer filed, cause to proceed; if not, decree to be absolute.
6. Sale or conveyance shall not be affected by setting aside the decree.
7. In such cases the court may decree an account between the parties.
8. Court may by decree pass the title without any act done by defendants.
9. Court may issue writ of possession, or proceed by attachment.
10. Operation of a decree in case a party refuses to make a conveyance, release, or acquittal as is therein required.
11. Court may compel obedience to its orders and decrees by attachment.
12. When damages may be assessed in lieu of performance of a decree.
13. Appeal allowed to supreme court.
14. Supreme court may grant an appeal by special order any time within two years.
15. Appeal not to operate as a supersedeas unless a recognizance be entered into.
16. Recognizance, how and by whom entered into; its conditions.

SECTION 1. When an 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, or 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, show good cause for setting aside such decree as against equity. (*q*)

Interlocutory decree and final decree thereon against defendant not summoned, or who has not appeared, may be set aside.

Proceedings by bill of review.

SEC. 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.

Decree shall stand absolute, if bill of review be not brought within a year after service of notice.

(*q*) See sec. 3 of this art., and Divers vs. Mark et al., 3 Missouri Rep., 81.

Digitized by Google

Limitation of filing bill of review.

SEC. 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.

What such bill must show in order to set aside the decree.

SEC. 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.

If answer is filed, cause to proceed.

SEC. 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.

Sale or conveyance shall not be affected by setting aside the decree.

SEC. 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 hereinbefore provided.

In such cases, the court may decree an account between the parties.

SEC. 7. In such cases the court may decree an account for all moneys received by the complainant, by virtue of such decree, over and above the amount justly due him, with costs, if the equity of the case require it.

Court may by decree pass the title without any act done by defendants.

SEC. 8. In all cases where the court may decree the conveyance of real estate, or the delivery of personal property, it may, by decree, pass the title of such property, without any act to be done on the part of the defendants, when, in its judgment, it shall be proper.

Court may issue writ of possession, &c.

SEC. 9. The court 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.

Operation of a decree in case a party refuse to make a conveyance, &c., as therein required.

SEC. 10. When an unconditional decree shall be made for a conveyance, release or acquittance, and the party required to execute the same shall not comply therewith, such 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.

Court may compel obedience to its orders and decrees by attachment.

SEC. 11. 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 contempt, and, if necessary, proceed by sequestration for disobedience of any decree.

SEC. 12. When complete justice cannot otherwise be done,

Digitized by Google

such courts may, on the petition of the party entitled to the benefit of a final decree, cause an inquiry 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 therein.

When damages may be assessed in lieu of performance of a decree.

SEC. 13. If any person shall deem himself aggrieved by any final decision, order or decree, of any 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 court. (r)

Appeal allowed to supreme court.

SEC. 14. The supreme court, or any judge thereof, upon the 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.

Supreme court may grant an appeal by special order, when.

SEC. 15. 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.

Appeal not to operate as a supersedeas, unless a recognizance be entered into.

SEC. 16. 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.

Recognizance, how and by whom entered into.

Its conditions.

Approved March 25, 1845.

(r) An appeal will not lie from a decree of a court of equity that partition be made between the parties; such decree is interlocutory; Gudgel & Austin vs. Mead et al., 8 Missouri Rep., 53.

Digitized by Google

CHAPTER 138.

PRACTICE AND PROCEEDINGS IN CRIMINAL CASES.

AN ACT to regulate proceedings in criminal cases.

ARTICLE I. Of proceedings to prevent the commission of offences.
II. Of arrest, examination, commitment, and trial.
III. Of grand juries, and their proceedings.
IV. Of indictments, and process thereon.
V. Of the arraignment, and other proceedings before trial.
VI. Of trials for offences, and proceedings incident thereto.
VII. Of the verdict and judgment, and proceedings thereon.
VIII. Of appeals, and writs of error, in criminal cases.
IX. Miscellaneous provisions.
X. Of the custody and management of the estates of convicts.

ARTICLE I.

Of proceedings to prevent the commission of offences.

SEC. 1. Officers authorized to keep the peace.
2. Duty of magistrate on complaint made that any person has threatened, or is about to commit, an offence.
3. Magistrate to issue a warrant, if it appear that there is reason to fear the commission of an offence.
4. Duty of magistrate, when person complained of is brought before him; may cause him to enter into recognizance to keep the peace, when,
5. If he give recognizance he shall be discharged; if he fail, to be committed.
6. If committed, may be discharged, how.
SEC. 7. Recognizance to be transmitted to clerk of circuit court.
8. Cases in which such security may be required, without complaint made.
9. Person recognized, to appear at next term of circuit court, or forfeit his recognizance.
10. Complainant failing to appear, party recognized to be discharged.
11. Proceedings on the appearance of the parties.
12. Recognizance not deemed broken except as in the 9th section provided.
13. Court shall order recognizance to be prosecuted, when.
14. Assignment of breaches and evidence in the action.

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

Officers authorized to keep the peace.—1835.

SECTION 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

Digitized by Google

persons to give security to keep the peace, in the manner provided in this article: 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.

Duty of magistrate on complaint made that any person has threatened or is about to commit an offence.

SEC. 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 witnesses who may be produced, on oath; to reduce such examination to writing, and cause the same to be subscribed by the parties so examined.

Magistrate to issue a warrant, when.

SEC. 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.

Duty of magistrate when person complained of is brought before him.

SEC. 4. Upon such person being brought before such magistrate, it shall be the duty of the magistrate to examine all witnesses which either party may require to be examined, and if it shall appear to the satisfaction of such magistrate that there is reason to fear the commission of such offence, he shall require the party complained of 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 next term 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.

May cause him to enter into recognizance, to keep the peace, when.

If he give recognizance, he shall be discharged, if he fail, to be committed.

SEC. 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.

If committed, may be discharged, how.

SEC. 6. Any person committed for not finding surety of the peace, as above provided, may be discharged by any magis-

Digitized by Google

trate authorized to bind to the peace, within the county, upon giving such security as was originally required of such person.

Recognizance to be transmitted to clerk of circuit court.

SEC. 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 taking the same.

Cases in which such security may be required without complaint made.

SEC. 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.

Person recognized, to appear at next term of circuit court or forfeit his recognizance.

SEC. 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 shown.

Complainant failing to appear, party recognized to be discharged.

SEC. 10. When any person shall have been bound to the peace on the complaint of another, and the complainant shall not appear, the party recognized shall be discharged, unless good cause to the contrary be shown.

Proceedings on the appearance of the parties.

SEC. 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, and in such cases costs shall be adjudged according to the discretion of the court.

Recognizance not deemed broken, except as in ninth section provided.

SEC. 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.

Court shall order recognizance to be prosecuted, when.

SEC. 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

Digitized by Google

attorney prosecuting for the circuit, shall proceed thereon accordingly.

SEC. 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. Assignment of breaches and evidence in the action.

ARTICLE II.

Of arrest, examination, commitment, and trial.

SEC. 1. Officers authorized to act under this article.
2. Duty of magistrate on complaint made.
3. When and how warrant to issue.
4. Warrant issued by a judge, executed in any part of this state; those by a magistrate within the county.
5. The latter, when endorsed, how and where executed.
6. Offender escaping, warrant to issue where he is found.
7. Person charged with a misdemeanor may be brought before a magistrate of the county in which he is taken.
8. Where he may be bailed.
9. Recognizance to be certified to the proper clerk.
10. If not bailed, or,
11. If the offence be felony, prisoner must be taken to the county where the offence was committed.
12. Before what magistrate prisoner is to be brought.
13. Complainant and witness examined.
14. Cross-examination allowed to prisoner.
15. Prisoner examined, when and how.
16. No witness to be present at examination.
17. Answer reduced to writing.
SEC. 18. Witnesses for prisoner examined.
19. Witnesses may be separated.
20. Testimony reduced to writing.
21. When prisoner to be discharged.
22. When not, prosecutor and witgesses to be recognized.
23. Security, when required.
24. Infants and married women, how their attendance may be secured.
25. Magistrate may commit witness.
26. When and how prisoner to be bailed.
27. When committed.
28. Endorsement on the warrant of commitment.
29. Examinations and recognizance to be certified to clerk of the court.
30. Penalty on magistrate for failing to certify.
31. Two justices may associate in such investigations.
32. When offender escapes, pursuit to be made.
33. When arrested, proceedings, &c.
34. Penalty on officer for failing to pursue and arrest.
35. Who authorized to bail, &c.
36. When bailed by a court, duty of clerk, &c.
37. When by an officer, duty of such officer.
38. Prosecutor's name to be returned to proper county.

SECTION 1. The magistrates enumerated in the first section of the first article of this act, within their jurisdiction 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. Officers authorized to act under this article.

SEC. 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 produced by him, on oath. Duty of magistrate on complaint made.

Digitized by Google

CHAP. 138.

Shall issue a warrant, when.

Command thereof.

SEC. 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.

Warrants where to be executed.

SEC. 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.

Proceedings if accused escape or be in any other county.

SEC. 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 handwriting 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.

Offender escaping, warrant to issue where he is found.

SEC. 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.

If charged with a misdemeanor, may be brought before a magistrate of the county where he is taken.

SEC. 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 imprisonment in the penitentiary, he shall, if he request it, be taken before some magistrate of the county in which he is so arrested.

When he may be bailed, and by whom.

SEC. 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.

Digitized by Google

Recognizances to be certified to the proper clerk.

SEC. 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.

If not bailed, may be taken before a magistrate where offence is committed.

SEC. 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.

If the offence be felony, prisoner must be taken to the county where the offence was committed.

SEC. 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.

Before what magistrate prisoner shall be brought.

SEC. 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.

Complainant and witnesses to be examined.

SEC. 13. The magistrate, before whom any such person shall be brought, shall proceed as soon as may be, to examine the complainant and 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.

Cross-examination allowed prisoner.

SEC. 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.

Prisoner examined, when and how.

SEC. 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

Digitized by Google

question put to him, and shall allow the prisoner reasonable time to advise with his counsel, and for that purpose to send for counsel if he require it.

No witness to be present at examination.

SEC. 16. None of the witnesses for or against the prisoner, shall be present at the examination of the prisoner.

Answer reduced to writing.

SEC. 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 to be the truth, shall be certified and signed by the magistrate.

Witnesses for prisoner examined.

SEC. 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.

Witnesses may be separated.

SEC. 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.

Testimony reduced to writing.

SEC. 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.

When prisoner to be discharged.

SEC. 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.

When not, prosecutor and witnesses to be recognized.

SEC. 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 recognizance, 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.

Security, when required.

SEC. 23. Whenever such magistrate shall be satisfied, by due proof, that there is good reason to believe that any such witness will not fulfill 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 court.

Digitized by Google

Attendance of infants and married women, how secured.

SEC. 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.

Magistrate may commit witness.

SEC. 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.

When and how prisoner to be bailed.

SEC. 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.

When committed.

SEC. 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.

Endorsement on the warrant of commitment.

SEC. 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 commitment, the sum in which bail was required.

Examination and recognizance to be certified to clerk of court.

SEC. 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.

Penalty on magistrate for failing to certify.

SEC. 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.

Two justices may associate in such investigations.

SEC. 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

Digitized by Google

and duties herein mentioned may be executed by such two magistrates so associated.

When offender escapes, pursuit to be made.

SEC. 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 offender 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.

When arrested, proceedings, &c.

SEC. 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.

Penalty on officer for failing to pursue and arrest.

SEC. 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.

Who authorized to bail, &c.

SEC. 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.

When bailed by a court, duty of clerk, &c.

SEC. 36. Whenever 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.

When by an officer, duty of such officer.

SEC. 37. 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.

Name of prosecutor to be returned to proper county.

SEC. 38. 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.

Digitized by Google

Of grand juries and their proceedings.

SEC. 1. How many compose a grand jury; foreman appointed.
2. When, by whom, and for what reason a grand juror may be challenged.
3. No challenge allowed except as above provided.
4. Foreman authorized to administer oaths, &c.
5. Clerk, how appointed; his duties.
6. Prosecuting attorney to attend grand jury when required.
7. May attend of his own motion for certain purposes; deliberations of the jury private.
8. Clerk to issue subpœnas when required by the foreman or prosecuting attorney.
9. Court may order compulsory process in certain cases.
10. Proceedings when a witness refuses to testify before a grand jury.
11. Proceedings if court determine that witness is bound to answer.
SEC. 12. Witness committed for refusal, shall not be discharged unless he enter into recognizance.
13. Court may, in its discretion, summon a second grand jury in certain cases.
14. Proceedings in such event.
15. When grand juries may disclose testimony given before them.
16. Not allowed to disclose votes or opinions of his own, or fellows.
17. Duty in relation to secrecy.
18. Duty of court in giving charge to the grand jury.
19. Indictment only found by a concurrence of twelve; how endorsed.
20. How endorsed when bill is ignored.
21. How presented to the court, &c.
22. When prosecutor necessary.
23. His name endorsed on indictment.
24. Prosecutor adjudged to pay the costs when indictment returned "not a true bill."

SECTION 1. There shall not be more than eighteen grand jurors summoned, nor less than fifteen 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. How many compose a grand jury. Foreman appointed. 1840–1, p. 98.

SEC. 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. When, by whom, and for what reasons a grand juror may be challenged.

SEC. 3. No challenge to the array of grand jurors, or to any person summoned as a grand juror, shall be allowed in any other cases than such as are specified in the last section. No challenge allowed, except as above provided.

SEC. 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 Foreman authorized to administer oaths, &c.

Digitized by Google

such grand jury, for the purpose of giving evidence in any matter cognizable by them.

Clerk, how appointed. His duties.

SEC. 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 given to the attorney prosecuting in the county, when so directed by the grand jury.

Prosecuting attorney to attend grand jury when required.

SEC. 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 giving them advice upon any legal matter.

May attend of his own request for certain purposes.

SEC. 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 or he 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.

Deliberations of the jury private.

Clerk to issue subpœnas, when required by foreman or prosecuting attorney.

SEC. 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 impanneled, shall issue subpœnas and other process to bring witnesses to testify before such grand jury.

Court may issue compulsory process against witness, when.

Proceedings.

SEC. 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 like proceedings, as provided by law for disobedience of a subpœna issued out of such court in other cases.

Proceedings if witness refuse to testify before a grand jury.

SEC. 10. If any witness, appearing before a grand jury, shall refuse to testify, (*a*) or to answer any interrogatories in the course of his examination, the fact shall be communicated to the court, in writing, on which the question 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.

(*a*) See crimes and punishments, art. 8, sec. 2, Ward vs. The State, 2 Missouri Rep., 121.

Digitized by Google

Proceedings if court determine that witness is bound to answer.

SEC. 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.

Witness committed for refusal, shall not be discharged, unless he enter into recognizance.

SEC. 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.

Court may summon a second grand jury, when.

SEC. 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.

Proceedings in such event.

SEC. 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.

When grand jurors may disclose testimony given before them.

SEC. 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.

No grand juror to disclose votes or opinions of his own, or fellows.

SEC. 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 grand jury, voted on any question before them, or what opinions were expressed by any juror in relation to any such question.

Duty in relation to secrecy.

SEC. 17. No grand juror shall disclose any evidence given before the grand jury, nor the name of any witness who appeared before them, 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.

Digitized by Google

CHAP. 138.

Duty of court in charging grand jury.

SEC. 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.

Indictment only found by concurrence of twelve, &c.

SEC. 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.*

How endorsed when bill is ignored.

SEC. 20. Where 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.

How presented to the court, &c.

SEC. 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.

When a prosecutor is necessary.

SEC. 22. No indictment for any trespass against the person or property of another, not amounting to felony, or for the first offence of petit larceny, 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.**

His name shall be endorsed on indictment.

SEC. 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; but no indictment shall be quashed for the want of such endorsement, if the same shall be made before the motion to quash is disposed of. (*b*)

When adjudged to pay the costs.

SEC. 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. (*c*)

* Thomas *vs.* The State, 6 Missouri Rep., 457; Pratte vs. The State, 8 Missouri Rep., 247.

** The State vs. M'Courtney, et al., 6 Missouri Rep., 649.

(*b*) See State vs. M'Courtney, 6 Missouri Rep., 649.

(*c*) Where an indictment, so endorsed, is returned not a true billl, the liability of the prosecutor is determined by the jury who try the case. See title costs in criminal cases.

Digitized by Google

ARTICLE IV.

Of indictments and process thereon.

SEC. 1. Indictments for a felony not open to inspection; when.
2. Disclosing fact that indictment is found, a misdemeanor.
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, tried and convicted.
6. In what counties indictments, trial and conviction, may be had 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.
13. Accessories to be tried, although principal not arrested.
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 issued and where executed.
19. Letting to bail of persons indicted, by what officers.
20. For misdemeanors, sheriff may admit to bail any one who will give security, &c.
21. No other officers authorized to let to bail in such cases.
22. Recognizance on letting to bail, where to be filed, &c.
23. If any person abscond, or flee, after indictment, &c., cause may be continued; proceedings.

SECTION 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. Indictment for felony not open to inspection, when.

SEC. 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. Disclosing fact that indictment is found, prohibited.

SEC. 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. Qualifications of last two sections.

SEC. 4. If there be at any time pending against the same defendant two indictments for the same offence, or two indict-

Digitized by Google

ments 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.

If two indictments for same matter, first to be quashed.

In what county receivers of stolen property may be indicted, &c.

SEC. 5. When 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. (*d*)

In what counties indictments may be found for offences on board of vessels, &c.

SEC. 6. When any offence shall have been committed within this state on board of any vessel in the course of any 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 like effect, as in the county where the offence was committed.

In what county for offences committed near the boundary line.

SEC. 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.

Allegation of property in indictment in case of several owners, &c.

SEC. 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 allege such property to belong to any one or more of such partners or owners, without naming all of them.

Proceedings when wound, &c., in one county and death in another.

SEC. 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.

Proceedings when wound, &c., given in this state and death in another,

SEC. 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

(*d*) See act crimes and punishments, article 9, sections 3 and 4, when the offence was committed in another state.

Digitized by Google

mortal injury was given or inflicted, in all respects, as if the death had happened in such county.

Proceedings when wound, &c., given in another state and death in this state.

SEC. 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.

Indictments against accessories, in what counties may be had.

SEC. 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.

Accessories to be tried, although principal not arrested.

SEC. 13. An accessory before, or after, the fact, (*e*) may be indicted, tried and punished, notwithstanding the principal felon may not have been arrested, tried or convicted.

When robbery and burglary may be tried in county to which property is carried.

SEC. 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.

Two or more to be included in same indictment, when.

SEC. 15. When two or more persons are charged with having committed an offence jointly, all concerned shall be included in one indictment.

Counts for different degrees of same offence.

SEC. 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. (*f*)

Indictments not to be affected by certain omissions or defects.

SEC. 17. No indictment shall be deemed invalid, nor shall the trial, judgment or other proceedings thereon, be stayed, arrested, or in any manner affected: *First*, By reason of the omission or misstatement 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 misstatement; 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

(*e*) See title crimes and punishments, article 9, sections 5 and 6; 1 Anne, statute 2, c. 9, s. 2; 22 Geo. 3, c. 58, s. 1; 7 Geo. 4., c. 64, s. 9; 3 Geo. 4, c. 38, s. 3.
(*f*) See title crimes and punishments, article 9, section 14, and same article section 16.

Digitized by Google

CHAP. 138.

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.

Warrants on indictments, by whom issued and where executed.

SEC. 18. A warrant, or other process, for the arrest of the 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, and may be directed to and executed in any county in this state.

Defendant may be let to bail, by what officers.

SEC. 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 justice of the county court of the county in which the indictment is pending.

Sheriff may admit to bail for misdemeanor. 1838–9, p. 97.

SEC. 20. When the indictment is for a misdemeanor, the sheriff may himself admit the defendant to bail, with sufficient security, in a sum proportioned to the offence, and which in no case shall be less than one hundred dollars, and the recognizance taken shall be signed by the prisoner and his securities, and attested by the sheriff.

No other officers to let to bail.

SEC. 21. No court, or officer, other than those specified in the two last sections, shall let to bail any person indicted for any offence.

Recognizance to be filed with the clerk.

SEC. 22. 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.

Cause may be continued from term to term, when.

SEC. 23. 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.

Digitized by Google

Of the arraignment and other proceedings before trial.

SEC. 1. All indictments tried at first term, unless, &c.
2. In capital cases, when copy of indictment to be furnished the prisoner.
3. In other cases, defendant entitled to a copy of indictment, on demand.
4. Duty of the court to assign counsel in certain cases; his privileges.
5. When plea of not guilty to be entered.
6. Dilatory pleas, when admissible.
7. Venue of plea laid without the county, how tried.
8. Defendant entitled to subpœnas, &c.
9. Disobedience punished as in civil cases.
10. Tender of fees unnecessary in criminal cases.
11. In what case a commission to take depositions may be granted.
12. Officer prosecuting may join in such commission, &c.
13. Interrogatories to be annexed; how executed and returned.
14. Depositions de bene esse, how taken, &c.
15. Change of venue, how made when the judge is indicted.
16. When ordered on account of interest in the judge.
17. When allowed, because of prejudice in the people, &c.
18. When allowed from one circuit to another.
19. Petition, by whom made, &c.
20. Such petition must be accompanied with an affidavit.
21. Change of venue allowed to be made by the judge, upon facts within his own knowledge.
22. Order of removal.
23. When application must be made during the term.
SEC. 24. If facts sufficient arise since last continuance, change allowed.
25. Order for removal of a cause, how made.
26. Recognizance, how and when taken.
27. Such recognizance may be taken by whom.
28. Restrictions upon the privilege.
29. Order to remove the body, when made.
30. Duty of sheriff in obeying the order.
31. Transcript of the record to be made out, &c.
32. Cause to proceed in all respects as if it originated therein.
33. How to proceed if transcript be not transmitted or received, &c., at the first term of court to which it was ordered.
34. Defendant, witness, &c., who are under recognizance, having notice of removal, to attend the place of trial; failure to do so, deemed a breach of recognizance.
35. Order of removal made in term, deemed a notice to persons under recognizance; in other cases, notice how, by whom given, and how served.
36. Costs and expenses in the removal, by what court to be adjusted; how taxed, &c.
37. Penalty on clerk who shall neglect to perform duties enjoined on him in removal of causes.
38. Several defendants, and cause for removal only as to part; others to be tried as if no order was made.
39. When cause is continued, the parties may require witnesses to enter into recognizance, &c.; penalty for non-attendance at next term; attachment may issue.

SECTION 1. All indictments shall be tried at the first term at which the defendant appears, unless the same be continued for cause. Indictments, when tried.

SEC. 2. 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 In capital cases, copy of the indictment to be furnished to the prisoner, when.

Digitized by Google

defendant or his counsel, at least forty-eight hours before he shall be arraigned on such indictment. (g)

In other cases defendant entitled to copy on demand, &c.

SEC. 3. 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.

Court to assign counsel in certain cases.

SEC. 4. 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 the 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.

When plea of not guilty to be entered.

SEC. 5. 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 when 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.

Dilatory pleas, when admissible.

SEC. 6. 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 some other evidence.

Venue of plea laid without the county, how tried.

SEC. 7. When any matters 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 same county where such plea is tendered.

Defendant entitled to subpœnas, &c.

SEC. 8. 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.

Disobedience punished as in civil cases.

SEC. 9. 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 sum-

(g) If the defendant pleads and goes to trial, without objecting for the want of such copy, the neglect of duty by the clerk will not be sufficient ground to set aside the verdict; Lisle vs. The State, 6 Missouri Rep., 429.

Digitized by Google

moned, in the same manner, and to the same extent, as in cases of witnesses summoned in a civil suit.

Tender of fees not necessary in criminal cases.

SEC. 10. 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 his non-attendance in the same manner as if the fees allowed to witnesses had been duly paid to him.

In what cases a commission to take depositions may be granted.

SEC. 11. 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 the state, is enciente, 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.

Officer prosecuting may join in such commission, &c.

SEC. 12. 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.

Interrogatories to be annexed; how executed and returned.

SEC. 13. 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.

Depositions de bene esse, how taken, &c.

SEC. 14. 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 is provided by law in civil suits.

Change of venue, how made when judge is indicted.

SEC. 15. 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.

SEC. 16. When any indictment or criminal prosecution shall

Digitized by Google

When ordered on account of interest, &c., in the judge.

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*, Where 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*, Where 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 any wise interested or prejudiced, or shall have been counsel in the cause.

When allowed because of prejudice in the people, &c.

SEC. 17. 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 in the same circuit, 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.

When allowed from one circuit to another.—1838–9, p. 98.

SEC. 18. Whenever it shall appear, in the manner hereinafter provided, that the inhabitants of the entire circuit are so prejudiced against the defendant, that a fair trial cannot be had therein, the cause shall, by order of the court, or judge, be removed to another circuit, in which such prejudice is not alleged to exist.

Petition, by whom made, &c.

SEC. 19. Such order of removal, as specified in the two preceding sections, shall be made on the application of the defendant, or where the defendant is under the age of sixteen, or is a slave, on the application of such slave, or of the owner of such slave, or the parent or guardian of such infant, and if such infant has no parent or guardian, then on the application of any two respectable citizens of the county where the cause is at issue.

Must be accompanied by an affidavit.

SEC. 20. The petition of the applicant for a change of venue shall set forth the facts, and the truth of the allegations shall be supported by the affidavit of the defendant, or some credible disinterested person, and reasonable previous notice of such application must be given to the prosecuting attorney.

When court or judge may make an order for change of

SEC. 21. 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,

Digitized by Google

such court, or judge, may make an order for such removal, without any application by the party, for that purpose. Venue without application.

SEC. 22. 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 removed. Order of removal.

SEC. 23. No order for the removal of any cause shall be made, on the application of the defendant, for the causes specified in the seventeenth or eighteenth sections, unless such application be made during the term of the court, at which the indictment is found, provided, said defendant be in custody, or on recognizance, and if not so in custody, or held to bail, then the application may be made at, or before, the first term after the defendant shall have been arrested, and not thereafter, except as provided for in the next succeeding section. When application must be made during the term.

SEC. 24. If the defendant will, in addition to the oath requisite in ordinary and timely applications, swear that the facts on which he grounds his application, have first come to his knowledge since the last preceding continuance of the cause, the court shall grant a change of venue, although such application be made at a term subsequent to that at which the prisoner was likely to be arraigned. If facts sufficient arise since last continuance, change may be allowed.

SEC. 25. Every order for the removal of a cause, 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. Order how made.

SEC. 26. 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. Recognizance how and when taken.

SEC. 27. 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. By whom.

SEC. 28. No order for the removal of a cause shall be effec-

Digitized by Google

Restrictions upon the privilege.

tual in the case of any defendant, not 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.

Order to remove the body, when made.

SEC. 29. 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 then deliver him to the keeper of such jail, together with the warrant or process, by virtue of which he is imprisoned or held.

Duty of sheriff in obeying the order.

SEC. 30. 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.

Transcript of the record to be made out, &c.

SEC. 31. 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 (*h*) of the record and proceedings in the cause, including the order of removal, the petition therefor, (if any,) and the recognizance 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.

Cause to proceed in all respects as if it originated therein.

SEC. 32. On the receipt of such transcript by the clerk of the court to which any 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.

How to proceed, if transcript be not transmitted or received, &c.

SEC. 33. 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

(*h*) Ruby vs. The State, 7 Missouri Rep., 206.

Digitized by Google

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.

Defendant and witnesses under recognizance, bound to attend the trial, &c.

SEC. 34. The defendant, and all witnesses, and others who shall have entered into any recognizance to attend the trial of 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 recognizance.

Order of removal a notice to persons under recognizance, when; notice in writing shall be given, when.

SEC. 35. 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.

Costs of removal, how adjusted and taxed.

SEC. 36. 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.

Penalty on clerk who shall neglect to perform duties enjoined on him in removal of causes.

SEC. 37. 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.

Proceedings when there are several defendants, and order of removal as to part only.

SEC. 38. Where there are several defendants in any indictment in a criminal prosecution, and the cause of the removal thereof exists only as to 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.

On continuance, witnesses may be recognized. 1842–3, 30.

SEC. 39. Whenever a criminal case shall be continued, all the witnesses in attendance shall be called by the court, and, as many of them as the parties may desire, shall be required to enter into recognizance for their appearance at the next term at which such case shall be set for trial, and if any such witness shall fail to appear in said court, when so called for the purpose of being recognized, such witness shall forfeit all his fees as witness in such cause, and may be compelled so to appear by attachment.

Penalty for non-attendance at next term.

Digitized by Google

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. State may challenge peremptorily four jurors.
5. Number of jurors to be summoned in criminal cases.
6. In what cases, and when list of jurors to be delivered to defendant.
7. Grand jurors who found indictment not to be on petit jury.
8. On trial of a slave, or of a person for injury to a slave, who shall not serve as a juror.
9. Certain persons not to serve as jurors in certain cases.
10. Persons who entertain certain opinions, not allowed as jurors for offences punishable with death.
11. Witness not to be sworn as a juror if challenged for that cause; juror to disclose facts in the cause, if he knows any, in open court.
12. What shall be good cause of challenge to a juror.
13. Challenges for cause, how tried; cause discovered after juror is sworn, may be discharged; when.
14. Defendant to be present at trial in person or by attorney, &c.; admitted to make proof, by competent witnesses.
SEC. 15. Proceedings, how regulated.
16. Law in civil cases, in what instances extended to criminal proceedings.
17. Verdict may be set aside, and new trial had on application of defendant; continuance granted to either party; when.
18. On trials for treason, what evidence of overt acts to be received; upon proof of what overt acts conviction to be had.
19. Proof necessary to sustain indictments for conspiracy.
20. Certain proof sufficient on indictments for rape, or the crime against nature.
21. On the trial of any criminal cause, the existence, constitution, &c., of any banking company, how proved.
22. Prosecutor, or person injured by offence, &c., competent witness.
23. When defendants to be tried separately; when jointly.
24. Defendants may file bills of exception; proceedings.
25. Prisoners indicted, when to be discharged.
26. Person indicted and held to answer on bail, when to be discharged.
27. On application for discharge under either of the two preceding sections, proceedings of the court.
28. Courts not to sum up or comment on the evidence or charge the jury as to matters of fact, &c.; but may as to points of law.

Issues of fact, how tried.

SECTION 1. All issues of fact in any criminal cause, shall be tried by a jury to be selected, summoned and returned, in a manner prescribed by law.

Jury for trial of aliens.

SEC. 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.

On indictment for criminal offence, in what cases defendant entitled to a peremptory challenge of jurors.

SEC. 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 no more; *Second*, If the offence be punishable by like

Digitized by Google

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.

State may challenge four jurors.

SEC. 4. In all criminal trials, the state may challenge, peremptorily, four jurors.

Number of jurors, to be summoned in criminal cases.

SEC. 5. 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.

In what cases and when list of jurors to be delivered to defendant.

SEC. 6. A list of the jurors summoned shall be delivered to the defendant, in the cases specified in the two first subdivisions of the third section of this article, at least forty-eight hours before the trial; (*i*) and in other cases, before a jury is sworn, if such list be requested.

Grand juror not to serve on petit jury.

SEC. 7. 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.

Who shall not serve as jurors where slaves are concerned.

SEC. 8. 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.

Certain persons not competent jurors.

SEC. 9. Where 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.

Persons on account of opinions not allowed to serve.

SEC. 10. 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.

Not to be sworn if challenged, &c.

SEC. 11. 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.

(*i*) See Lisle vs. The State, 6 Missouri Rep., 426.

Digitized by Google

What shall be a good cause of challenge to a juror.

SEC. 12. 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 prejudice or bias the mind of the juror, he may be sworn.

Challenges for cause, how tried, &c.

SEC. 13. 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 the juror is sworn, and before any part of the evidence is delivered, (*j*) he may be discharged or not, in the discretion of the court.

If cause discovered after juror is sworn, may be discharged.

Defendants to be present at trial, in person or by attorney.

SEC. 14. 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.

Admitted to make proof, &c.

Proceedings, how regulated.

SEC. 15. The proceedings prescribed by law in civil cases, in respect to the impanneling of jurors, the keeping them together (*k*) 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.

Law in civil cases, in what instances extended to criminal proceedings.

SEC. 16. The provisions of law in civil cases, relative to compelling the attendance and testimony of witnesses, their examination, the administration of oaths and affirmations, 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.

Verdicts may be set aside, new trials awarded, &c., as in civil cases.

SEC. 17. 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.

Evidence of overt acts on trials for treason, &c.

SEC. 18. 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.

(*j*) See Lisle vs. The State, 6 Missouri Rep., 430-1. It is too late to make such objections after verdict.

(*k*) *Vide*, M'Lean vs. The State, 8 Missouri Rep., 153.

Digitized by Google

Proof necessary to sustain an indictment for conspiracy.

SEC. 19. 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.

Proof on indictment for rape, &c.

SEC. 20. Proof of actual penetration into the body, shall be sufficient to sustain an indictment for a rape, or for the crime against nature.

Evidence of existence, powers, &c., of banking company, or corporation.

SEC. 21. 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 country, by which such corporation was created.

Prosecutor or person injured, a competent witness.

SEC. 22. 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 would be entitled to satisfaction for the injury, or is liable to pay the costs of the prosecution.

When defendants may be tried separately; when jointly.

SEC. 23. 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.

Defendants may file bills of exception; proceedings.

SEC. 24. On the trial of any indictment or prosecution for a criminal offence, exceptions to any decisions 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 bills, and the return thereof, as in civil cases.

Prisoners indicted and committed, when to be discharged. 1838-9, p. 98.

SEC. 25. 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, or shall be occasioned by the want of time to try the cause at such second term.

Digitized by Google

CHAP. 138.

Indicted and held to answer on bail, when entitled to discharge.

SEC. 26. 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, or be occasioned by the want of time to try such cause at such third term.

Proceedings of the court on application for discharge under either of last two sections.

SEC. 27. If, when application is made for the discharge of a defendant under either of the last two sections, the court shall be satisfied 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.

Courts not to sum up or comment on evidence or charge the jury as to matter of fact, except, &c., but may as to matters of law.

SEC. 28. 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, which instructions shall be in writing, unless the prosecuting attorney and the defendant consent to its being given orally.

ARTICLE VII.

Of the verdict and judgment, and proceedings thereon.

SEC. 1. Jury to specify the degree of offence, when defendant found guilty.
2. Jury to ascertain the value of property stolen, &c.
3. Jury to assess the punishment.
4. When court shall assess the same.
5. When it may be increased by the court.
6. When diminished.
7. General powers in court to reduce punishment.
8. Power of the court to require security of the peace, &c., from convicts.
9. Limitation of the preceding section.
10. When recognizance to be deemed broken in such case.
11. Judgment of court to be fully entered in minutes.
SEC. 12. Authority of sheriff to execute sentence of imprisonment in county jail.
13. Authority of sheriff to convey convict to the penitentiary; how to be executed.
14. Authority of sheriff in requiring assistance in such cases; penalty on those refusing assistance.
15. Authority of sheriff to execute sentence of death; time for executing.
16. Court or governor may prolong or suspend execution of convict.
17. Jury to be summoned to try the insanity of convict, when; notice to prosecuting attorney to be given.
18. Prosecuting attorney to attend such inquiry.

Digitized by Google

SEC. 19. Inquest, by whom to be signed; if the convict be found to be insane, duty of the sheriff.
20. Inquisition to be transmitted to the governor; his power and duty in such cases.
21. Jury to ascertain pregnancy of female convict, to be summoned by sheriff; proceedings.
22. Duty of sheriff if such convict be found quick with child, &c.
23. When execution of such convict to be directed; sentence may be commuted.
24. Supreme court may issue habeas corpus, or a warrant for the apprehension of a convict when sentence of death has not been executed; when.
25. Duty of court when such convict is brought before it.
26. Manner of executing convicts.
27. In misdemeanors, not to be discharged until sentence complied with.
28. Such fine may be commuted by a term of imprisonment, and then discharged on payment of costs.
29. Person detained for costs in criminal cases, may be discharged, how.
30. Property of a person charged with crime, bound for the payment of fine and costs, and from what time.
31. Executions to be issued for fines and costs, when.

SECTION. 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. (*l*)

Jury to specify the degree of offence when defendant is found guilty.

SEC. 2. Where the indictment charges an 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; but their failure to do so shall in no wise affect the validity of their verdict.

Jury to ascertain the value of the property stolen, &c.

SEC. 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.

Jury to assess the punishment.

SEC. 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 by confession, the court shall assess and declare the punishment, and render judgment accordingly. (*ll*)

When court shall assess the same.

SEC. 5. 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

When it may be increased by the court.

(*l*) See State vs. Shoemaker, 7 Missouri Rep., 180; McGee vs. The State, 8 Missouri Rep., 496; see also title crimes and punishments, section 14, article 9, and ante, sections 1, and 16, article 4.

(*ll*) See Foxe vs. The State, 7 Missouri Rep., 502.

Digitized by Google

pronounce sentence and render judgment according to the lowest limit prescribed by law in such case.

When diminished.

SEC. 6. If the jury assess a punishment, whether of imprisonment or fine, greater 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.

Power of court to reduce punishment.

SEC. 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, but the punishment assessed is greater than under the circumstances of the case ought to be inflicted.

Power of court to require security of the peace, &c., from convicts.

SEC. 8. The court before which any person shall be convicted of any criminal offence, 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.

Limitation of the preceding section.

SEC. 9. 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.

When recognizance deemed to be broken.

SEC. 10. No recognizance given under the provisions of the eighth 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.

Judgment of court to be fully entered in minutes.

SEC. 11. 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; but the omission of this duty, either by the clerk or judge, shall, in no wise, affect or impair the validity of the judgment.

Authority of sheriff to execute sentence of imprisonment in county jail.

SEC. 12. 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 such clerk, which shall be sufficient authority to such sheriff to execute such sentence, and he shall execute the same accordingly.

Digitized by Google

To convey convict to the penitentiary; how to be executed.

SEC. 13. 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.

Authority of sheriff requiring assistance in such cases.

SEC. 14. Such sheriff or deputy, while conveying a convict to the penitentiary, shall have the same power and like authority, to require the assistance of any citizen of this state, in securing such convict, and re-taking 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 offence were in his own county.

Penalty on those refusing to assist.

Authority of sheriff to execute sentence of death; time of executing.

SEC. 15. 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.

Execution may be suspended, by whom.

SEC. 16. For good cause shown, 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.

Jury to inquire into insanity of convict when summoned.

SEC. 17. 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 inquire into such insanity, giving notice thereof to the prosecuting attorney.

Prosecuting attorney to attend such inquiry, &c.

SEC. 18. The prosecuting attorney shall attend such inquiry, and may produce witnesses before the jury, and may cause subpœnas 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.

Proceedings.

Inquisition by whom signed; if convict found insane, duty of sheriff.

SEC. 19. 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 receives a warrant from the governor, or from the

Digitized by Google

supreme or circuit court, as hereinafter authorized, directing the execution of such convict.

Inquisition to be transmitted to the governor; his power and duty in such cases.

SEC. 20. 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 the 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.

Jury to ascertain pregnancy of female convict to be summoned by the sheriff, &c.

SEC. 21. 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.

Proceedings.

Duty of sheriff if such convict be found quick with child, &c.

SEC. 22. 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.

When execution of such convict to be directed; sentence may be commuted.

SEC. 23. Whenever the governor shall be satisfied that the cause of 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.

Supreme court may issue habeas corpus, or a warrant for apprehension of a convict, when sentence of death has not been executed, when.

SEC. 24. 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, 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.

Duty of court when such convict is brought before it; may issue a warrant for execution of sentence.

SEC. 25. Upon such convict being brought before the court, they shall proceed to inquire 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.

Digitized by Google

Manner of executing convicts.

SEC. 26. The punishment of death shall, in all cases, be inflicted by hanging the convict by the neck until he be dead.

Convict not to be discharged from imprisonment in county jail, unless, &c.

SEC. 27. Whenever 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.

Fine may be commuted by a term of imprisonment, and then discharged on payment of costs.

SEC. 28. When any person is held in custody or imprisonment, for a fine imposed 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 sections provided.

Prisoner may be discharged under the insolvent laws, when.

SEC. 29. 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.

Property of accused bound from arrest, &c., for fine and costs.

SEC. 30. 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, (whichever shall first happen,) for the payment of all fines and costs which he may be adjudged to pay.

Execution to be issued for fine and costs, when; how executed.

SEC. 31. 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.

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.

Digitized by Google

SEC. 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. Appeal by the state only in such cases as are enumerated in the next succeeding section.
10. Instances given when the state may appeal.
11. When appeal granted, defendant to be committed or recognized.
12. When proceedings are stayed, clerk to make out full transcript of the record, and transmit it to supreme court.
13. When proceedings are not stayed, transcript to be made out and returned on application of appellant or plaintiff in error.
14. Recognizance to be filed and copy included in the transcript, but when taken by the supreme court, kept by the clerk thereof.
15. As to forfeiture of such recognizance in supreme court.
16. On return of such appeal or writ of error to supreme court, how to proceed.
17. When defendant takes writ of error or appeal, and judgment of court below affirmed, sentence to be pronounced; when reversed, new trial granted or defendant discharged.
18. When state appeals and judgment of court below is affirmed, or reversed, proceedings.
19. Proceedings against defendant not appearing at new trial, &c.
20. Cause remanded for new trial, proceedings.

Appeals allowed to supreme court.

SECTION 1. In all cases of final judgment, rendered upon any indictment, an appeal to the supreme court shall be allowed the defendant, if applied for during the term at which such judgment is rendered.

Writs of error, when to issue.

SEC. 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.

When such appeal or writ of error to operate as a supersedeas.

SEC. 3. No such appeal or writ shall stay or delay the execution of such judgment or sentence; unless the supreme court, or 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.

If court, or judge refuse the order to stay proceedings, time to be allowed to apply to supreme court.

SEC. 4. If the circuit court, or 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.

Order to stay proceedings by supreme court, &c., to be filed, where, &c.

SEC. 5. When any 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

Digitized by Google

shall furnish the party filing the same, with a certificate thereof, together with a copy of the order.

How defendant to be kept, on writ or appeal being allowed.

SEC. 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 custody, without executing the sentence which may have been passed, to abide such judgment as may be rendered upon the appeal or the writ of error.

When and how defendant may be let to bail.

SEC. 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, authorised 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.

Condition of recognizance in such case.

SEC. 8. The recognizance shall be conditioned that the defendant shall appear in the supreme court, at the next term thereof, to receive judgment on the appeal, or writ of error, and in the court in which the trial or 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 in the premises.

Appeal allowed the state in cases specified in next section.

SEC. 9. The state, in any criminal prosecution, shall be allowed an appeal only in the cases and under the circumstances mentioned in the next succeeding section.

Instances given when the state may appeal.

SEC. 10. When any indictment is quashed, [or adjudged insufficient upon demurrer,] (*m*) or judgment is arrested, the circuit court, either from its own knowledge, or from information given by the prosecuting attorney, may cause the defendant to be committed, or recognized, to answer another indictment; or if the prosecuting attorney prays an appeal to the supreme court, the circuit court may, in its discretion, grant an appeal.

SEC. 11. If an appeal be granted, the circuit court shall order the defendant to be committed or recognized, and the

(*m*) From engrossed bill. The words included in brackets are attached to the end of the ninth section in the enrolled bill, but in the engrossed bill occupy the position here assigned them.

Digitized by Google

When appeal granted, defendant may be committed or recognized.

recognizance shall be to the same effect as the recognizance required when the defendant himself is appellant; and the party, if committed, shall be held in custody until the judgment of the supreme court shall have been passed on the case, to abide such judgment.

Clerk to make out and transmit transcript to supreme court, when.

SEC. 12. 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 make out a full transcript of the record in the cause, including the bill of exceptions, judgment and sentence, and certify and return the same to the office of the clerk of the supreme court, without delay.

To be made out and returned on application of appellant, &c., when.

SEC. 13. 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.

Recognizances to be filed and copy included in transcript, when.

SEC. 14. The recognizance authorized by this article, if taken by the court or judge before the whom the cause was tried, shall be filed with the clerk, and a transcript thereof transmitted, with the record, to the supreme court; if taken by the supreme court, or any judge thereof, the clerk of the supreme court shall certify a transcript of the same to the court in which the cause was tried, and such court shall proceed thereon as on a recognizance taken in that court.

Duty of clerk, if taken by supreme court.

Forfeiture of such recognizance in the supreme court.

SEC. 15. If the forfeiture of the recognizance is taken in the supreme court, the same shall be certified back to the circuit court; and the supreme court in such case, and in case the defendant breaks jail, shall proceed to determine the cause, and issue a capias if necessary.

On return of such appeal or writ of error to the supreme court, how to proceed.

SEC. 16. No assignment of error, or joinder in error, shall be necessary upon any appeal or writ of error, in a criminal case, issued or taken pursuant to the foregoing provisions of this article; but the court shall proceed upon the return thereof, without delay, and render judgment upon the record before them.

If judgment be affirmed, sentence to be pronounced.

SEC. 17. Where the appeal is taken, or the writ of error is sued out by the party indicted, if the supreme court 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.

If reversed, new trial granted, or defendant discharged.

Digitized by Google

Proceedings on affirmance or reversal, when the state appeals.

SEC. 18. Where the appeal has been taken by the state, if the judgment of the circuit court be affirmed, the party shall be discharged; if reversed, the supreme court shall direct the circuit court to enter up judgment upon the verdict rendered, or, where no verdict has been rendered, to proceed to trial on the indictment.

Proceedings against defendant not appearing at new trial, &c.

SEC. 19. 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.

Cause remanded for new trial, proceedings.

SEC. 20. 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.

SEC. 1. Search warrants, by whom and when to be issued.
2. To be directed to sheriff or constable; command of warrant.
3. Warrant may order the search of a particular place or house, in the night time, when.
4. By whom executed.
5. Committing magistrates authorized to search vagrants and persons accused.
6. Property alleged to be stolen, in possession of officer, to remain in his hands, subject to order, &c.
7. Magistrate may order its delivery to owner, when and on what terms.
8. Such property in custody of magistrate may be delivered to owner, when.
9. Court before which conviction is had, may order such property to be delivered to owner, when.
10. When no owner appears, may be sold.
11. Perishable property to be sold.
12. Property must be described so it can be identified.
13. Warrants need not be sealed.
SEC. 14. Recognizances, their form, &c.
15. Authority of officers to convey prisoners from one county to another.
16. Officer, or person having prisoner, not liable to arrest on civil process; may summon posse comitatus, &c.
17. Jailor of any county through which he passes, required to receive the prisoner.
18. Mode of securing fugitives from justice.
19. Expenses, how paid.
20. Governor authorized to offer reward for fugitives.
21. Proceedings in such cases.
22. Governor's pardon may be conditional.
23. No limitation to prosecutions for capital offences.
24. Limitation to prosecutions for other felonies.
25. Limitation to prosecutions for misdemeanors.
26. When party flees from justice, the time he is absent not to be computed.
27. If indictment is quashed, &c., the time the prosecution was pending not to be computed.

SECTION 1. Upon complaint being made on oath, to any officer authorized to issue process for the apprehension of

Digitized by Google

Search warrants, by whom and when to be issued.

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.

To be directed to the sheriff or constable. Command of warrant.

SEC. 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 particularly described in such warrant, and to bring such property before the magistrate issuing the warrant.

Warrant may order the search of a place or house in the night time, when.

SEC. 3. If there be positive proof that any property stolen, or embezzled, is concealed in any particular place, or house, the warrant may order the searching such place or house in the night time.

By whom only executed.

SEC. 4. Every such warrant shall be executed by a public officer, and not by any other person.

Committing magistrates authorized to search vagrants and persons accused.

SEC. 5. Any magistrate who shall commit any person charged with an 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.

Property alleged to be stolen, in possession of officer, to remain in his hands, subject to order, &c. 1840-1, p. 70.

SEC. 6. When property alleged to have been stolen, or to have been obtained in any of the modes specified in the thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-first, forty-second, forty-third, forty-fourth, forty-sixth, and forty-ninth sections, of the third article of the act entitled "An act concerning crimes and their punishments," shall come into the custody of any sheriff, coroner, constable, marshal, or any person authorized to perform the duties of such officers, he shall hold the same subject to the order of the officer authorized to direct the disposition thereof.

Magistrate may order its delivery to owner, when and on what terms.—*Ib.*

SEC. 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 any of the offences referred to in the preceding section, may order the same to be delivered to such owner, on his paying the reasonable and necessary expenses incurred in the preservation of such

Digitized by Google

property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property.

Such property in custody of magistrate may be delivered to owner, when.—*Ib.*

SEC. 8. If such 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.

Court before which conviction is had, may order such property to be delivered to owner, when.—*Ib.*

SEC. 9. If such property shall not have been delivered to the owner thereof, the court before which a conviction shall be had for the stealing, embezzling, or obtaining such property in any of the modes referred to in the sixth section of this article, 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.

When no owner appears, may be sold.—*Ib.*

SEC. 10. If such property shall not be claimed by the owner within six months from the time any person shall have been convicted of obtaining it, in any of the modes referred to in the sixth section of this article, 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.

Perishable property to be sold.—*Ib.*

SEC. 11. If the property thus obtained be a living animal, or 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 hereinbefore directed in respect to such property.

Property must be described so it can be identified—*Ib.*

SEC. 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 officer making the order of sale, so that the owner may identify the same, if he shall claim the proceeds within the time limited by law for making his claim.

Warrants need not be sealed.

SEC. 13. Warrants authorized by law to be issued in criminal cases, may be under the hand of the magistrate issuing the same, and shall be as valid and effectual in all respects as if sealed.

Recognizances, their form.

SEC. 14. All recognizances required or authorized to be taken in any criminal proceeding, in open court, by any court of record, shall be entered on the minutes of such court, and the substance thereof shall be read to the person recog-

Digitized by Google

nized; 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.

Authority of officers to convey prisoners from one county to another.

SEC. 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, 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.

Officer, or person having prisoner, not liable to arrest on civil process; may summon posse comitatus, &c.

SEC. 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 sheriffs 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.

Jailors of counties through which he passes, required to receive prisoner.

SEC. 17. The jailor 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.

Mode of securing fugitives from justice.

SEC. 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.

Expenses, how paid.

SEC. 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.

Governor authorized to offer reward for fugitives.

SEC. 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

Digitized by Google

hundred dollars, for the apprehension and delivery of such person to the custody of such sheriff or other officer, as he may direct.

Proceedings in such cases.

SEC. 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.

Governor's pardon may be conditional.

SEC. 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.

No limitation to prosecutions for capital offences.

SEC. 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.

Limitation to prosecutions for other felonies.

SEC. 24. No person shall be tried, prosecuted 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.

Limitation to prosecutions for misdemeanors.

SEC. 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 on a prosecution instituted within one year after the commission of the offence, or incurring the fine or forfeiture.

When party flees from justice, absent time not to be computed.

SEC. 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.

Further exceptions.

SEC. 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. (*n*)

(*n*) See State vs. English, 2 Missouri Rep., 182.

Digitized by Google

ARTICLE X.

Of the custody and management of the estates of convicts.

SEC. 1. Convicts for life civilitis mortuus, their estate administered accordingly.
2. Convicts for terms of years; their estate confided by the court of chancery to a trustee.
3. When appointed.
4. Trustee to take oath and give bond.
5. Trustee under the superintending control of the court.
6. Convict's estate vested in the trustee.
7. Powers and duties of the trustee.
8. What he may do under the direction of the court.
9. Further powers.
10. Further powers to be exercised under the direction of court.
11. Trustee to give notice; its contents.
12. How published.
13. Such notice not to affect his right of action.
14. Trustee authorized to submit matters in dispute to referees.
SEC. 15. How appointed; their powers, and duties, and compensation.
16. Duties of the trustee.
17. To make annual report; the court to declare annual dividends.
18. Creditors whose claims are not yet due, to receive their share on certain terms.
19. Set-offs allowed, when.
20. Sufficient money to be reserved to meet contingent demands.
21. Notice of dividends, when and how published.
22. For what purposes effects may, under the direction of court, be applied.
23. Upon the discharge of the convict, his effects to be delivered up.
24. In case of his death, the same order, &c.
25. Court authorized to enforce such order in a summary way.
26. Compensation of trustees.

Convicts for life civilitis mortuus; estates how disposed of.

SECTION 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.

Convicts for terms of years, their estates confided by the court of chancery to a trustee.

SEC. 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.

When appointed.

SEC. 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 is made, may immediately appoint a fit person to be trustee of the estate of such convict.

Trustee to take oath and give bond.

SEC. 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

Digitized by Google

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.

Trustee under the superintending control of the court.

SEC. 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.

Convict's estate vested in trustee.

SEC. 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.

Powers and duties of the trustee.

SEC. 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.

What he may do under the direction of the court.

SEC. 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.

Further powers.

SEC. 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.

Further powers to be exercised under the direction of the court.

SEC. 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.

Trustee to give notice; its contents.

SEC. 11. The trustee, immediately upon his appointment, shall give notice thereof, and therein shall require: *First*, All persons indebted to such imprisoned convict, by a day, and at

Digitized by Google

CHAP. 138.

a place therein to be specified, to render an account of all debts and sums of money 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 publication of such notice.

Where and how published.

SEC. 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.

Such notice not to affect his right of action.

SEC. 13. Notwithstanding such notice, the trustee may sue for and recover any property or effects of the convict, and any debts due to him, at any time before the day appointed for the delivery or payment thereof.

Trustee authorized to submit matters in dispute to referees.

SEC. 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.

How appointed, their powers and duties and compensation.

SEC. 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 shall 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.

Duties of the trustee.

SEC. 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.

To make annual report; the court to declare annual dividends.

SEC. 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 statement of his accounts, and the court shall thereupon, declare the dividends to be made among the creditors.

Creditors whose claims are not yet due, may re-

SEC. 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

Digitized by Google

other creditors, after deducting a rebate of legal interest upon the sum to be distributed, for the time unexpired of such credit. Creditors to receive their share on conditions.

SEC. 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. Set-off allowed, when.

SEC. 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 costs and expenses, to be applied according to the event of such suit. Money to be reserved to meet contingent demands.

SEC. 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. Notice of dividends, when and how published.

SEC. 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. For what purposes effects may, under the direction of the court, be applied.

SEC. 23. When 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 have been incurred in the execution of his trust, and his lawful commission. Upon the discharge of the convict, his effects to be delivered up.

SEC. 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. In case of his death, how to account.

SEC. 25. The transfer and settlement 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. Authority of court to enforce the order.

Digitized by Google

CHAP. 139.

Compensation of trustee.

SEC. 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 25, 1845.

CHAPTER 139.

PRACTICE IN THE SUPREME COURT.

AN ACT to regulate practice in the supreme court.

SEC. 1. When writs of error to issue out of supreme court.
2. Writs of error, when and in what cases to issue from circuit to 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 the supreme court.
6. What plaintiff in error may answer to allegations, that there are other persons living who ought to join.
7. Further answer to such allegations, by proof on affidavit. Proceedings thereon.
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.
SEC. 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.
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 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. In what manner the clerk is to docket all cases, and give notice in a newspaper.
23. When errors to be assigned; on failure, judgment affirmed.
24. Joinder in error, when to be filed.
25. Proceedings when one or more of plaintiffs or defendants die before joinder in error.
26. Proceedings when one or more of plaintiffs or defendants die after joinder in error.
27. If all the plaintiffs die after appeal or writ of error, and before judgment, proceedings.
28. If all the defendants die after appeal or writ of error, and before judgment, proceedings.
29. Husband may be joined with his wife as plaintiff after appeal or writ of error, when and how.

Digitized by Google

Sec. 30. Husband may be made co-defendant with his wife before judgment, how.
31. Statement of case and points to be made out and delivered to the judges.
32. Exceptions not to be taken on points not decided by circuit court.
33. Proceedings of the court on appeal or writ of error, or upon a special verdict.
Sec. 34. Upon affirmance of judgment, damages may be awarded.
35. Court divided in opinion, judgment of circuit court affirmed.
36. Judgments of the supreme court may be carried into effect, by execution, or the record may be remitted, with their decision, to the circuit court.
37. 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:

When writs of error to issue out of the supreme court. 1835.

SECTION 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.

Writs of error, when and in what cases to issue from circuit to county court.

SEC. 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 vacation, except in relation to probate matters, within ninety days from such judgment or decision.

All writs of error, when and in what time to be brought.

SEC. 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 thereafter.

Writ may be brought by survivor, when.

SEC. 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.

All living shall join in a writ of error, except otherwise ordered by the supreme court.

SEC. 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.

What plaintiff in error may answer to allegations that there are other persons living who ought to join.

SEC. 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

Digitized by Google

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.

Further answer to such allegations by proof on affidavit.

SEC. 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.

Proceedings thereon.

Court to cause an order to be entered of record that the person refusing to join, appear, when and where.

SEC. 8. The court shall, thereupon, cause an order to be entered on its record, directing the persons so refusing to join in such writ, 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.

A copy of the order to be served, when and how.

SEC. 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.

On application person named in the order may be permitted to join in the writ, when.

SEC. 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 on application, and without just cause, and the writ and proceedings shall be amended by inserting the name of such person.

If he do not appear, proceedings.

SEC. 11. If any person, named in such order, do not appear by the time therein 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 cause shall proceed in the same manner as if such person had been named in such writ, and in the proceedings thereon.

Person out of the state not joining in such writ, his right not impaired.

SEC. 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 name, the rights of such person shall not be impaired by the judgment on such writ, but he may

Digitized by Google

bring his writ of error in the same manner, separately, as if no such former writ had been brought.

Persons who ought to join in such writ may be permitted to do so, when and proceedings.

SEC. 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.

In what cases and when execution to be stayed by writ of error.

SEC. 14. No writ of error shall stay 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.

In what cases, and when order to be made by court or judge to stay execution on writ of error.

SEC. 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, or by the judge of the circuit court, in which the judgment was rendered, 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.

Order to be endorsed on the writ, when, &c.

SEC. 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.

If no execution has issued, or if issued, not fully executed, how to proceed to stay execution.

SEC. 17. If no execution be issued, the exhibition of such writ of error, so endorsed, to the adverse party or his attorney of record, or the clerk of the circuit court, where the judgment or decision complained of was rendered, shall stay the issuing of any writ of execution: If any execution shall have

Digitized by Google

been issued and not fully executed, upon the exhibition of such writ of error to the officer charged with the execution of the 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 to the final execution thereof.

Notice of writ of error to be served on adverse party; effect of failure.

SEC. 18. Every person suing out a writ of error, shall cause a notice thereof, in writing, to be served on the adverse party or his attorney of record, ten days before the return day of such writ: If such notice be not served, the writ shall be dismissed, unless good cause for such failure be shown.

Writs of error, how returned.

SEC. 19. Writs of error shall be returned, signed by the clerk of the court to which such writ shall be addressed, under the seal thereof.

Penalty on clerk for failing to make return of writ.

SEC. 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.

Appeals when and to what court returnable; transcript, when to be filed; on failure, proceedings.

SEC. 21. All appeals taken thirty days before the first day of the next term of the supreme court, shall be returnable in such next term; and all appeals taken [in] 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 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 shown.

In what manner the clerk is to docket all cases and give notice in a newspaper.

SEC. 22. It shall be the duty of the clerk to docket all causes from the same judicial circuit, in succession, in the order of the circuits, setting not more than five causes for each day, and a copy of the docket shall be printed in some newspaper, at least ten days before the commencement of the term.

When errors to be assigned; on failure, judgment to be affirmed. 1842–3, p. 50.

SEC. 23. On appeals, and writs of error, the appellant, and plaintiff in error, shall assign errors on or before the first day on which causes from the same circuit are set for hearing; 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 shown.

Digitized by Google

Joinder in error, when to be filed.

SEC. 24. Joinders in error shall be filed within four days after the filing of the assignment of error.

Proceedings, when one or more plaintiffs or defendants die before joinder in error.

SEC. 25. 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 survivor, and they shall plead to the assignment of errors.

Proceedings when one or more plaintiffs or defendants die after joinder in error.

SEC. 26. If there be several appellants, or plaintiffs in error, and one or more of them die after errors assigned, or if there be several appellees, or defendants in error, one or more of whom shall die after errors assigned, the appeal, or writ of error shall not thereby abate, but in either of such cases such death shall 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.

If all the plaintiffs die after appeal or writ of error, and before judgment, proceedings.

SEC. 27. 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 plaintiff, 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.

If all the defendants die after appeal or writ of error and before judgment, proceedings.

SEC. 28. 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, or heirs and devisees of such appellees, or defendants, may be compelled to become parties, and join in error, in like manner, as in an original suit.

Husband may be joined with his wife as plaintiff after appeal or writ of error.

SEC. 29. If a female appellant, or plaintiff in error, marry after the appeal taken, or writ of error brought, her husband may be joined with her, on his application, and his name shall thereupon be entered in the proceedings.

May be made co-defendant with his wife before judgment, how.

SEC. 30. 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.

Statement of case, &c., to be made out, &c.

SEC. 31. On appeals and writs of error, each party shall, before the argument of the cause, make out and furnish the

Digitized by Google

court with a clear and concise statement of the case, and the points intended to be insisted on in argument.

Exceptions not to be taken on points not decided by circuit court.

SEC. 32. 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.

Proceedings of the court on appeal, or writ of error, or upon a special verdict.

SEC. 33. 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.

Upon affirmance of judgment, damages may be awarded.

SEC. 34. 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 cent. on the amount of the judgment complained of, as may be just.

Court divided in opinion, judgment affirmed.

SEC. 35. When the supreme court shall be divided in opinion, the judgment or decision of the circuit court shall be affirmed.

Judgments of the court, how carried into effect.

SEC. 36. 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.

Foregoing provisions to extend to decrees and decisions in chancery.

SEC. 37. 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 decisions in suits at law.

Approved February 21, 1845.

Digitized by Google

CHAPTER 140.

PUBLIC PRINTER.

AN ACT to provide for electing a public printer.

SEC. 1. Office of public printer established.
2. To be elected by joint vote of the legislature.
3. Certificate of election to be furnished; he must give bond, take an oath, &c.
4. Bond payable to state, amount of penalty, condition thereof.
5. To be elected at each session for two years.
6. Governor to fill vacancies during recess.
7. What printing shall be done by him.
8. The printing is to be superintended by certain officers.
9. Book printing in certain type and a certain quantity on a page; a different type for head notes and index.
10. Job work for the legislature and executive to be in small pica type.
11. Advertisements, &c., in brevier type; and what shall be considered a square.
12. Public printing to be done skillfully and promptly.
13. Prices for printing blank forms.
14. Prices for doing job work for legislature.
15. The time in which printer must be furnished with a copy of the laws, and when he must print and bind the same.
SEC. 16. The time the journals are to be printed, folded, stitched and pressed.
17. Provisions as to the printing and binding decisions of the supreme court.
18. At the revision session the public printer to print and bind the local and private acts only.
19. Price for laws, journals, decisions of supreme court, and all other book printing.
20. Price for binding with strong paper cover.
21. Price for binding the laws in sheep.
22. Price per square for printing advertisements, &c., in newspaper.
23. Accounts of printer for printing the laws to be examined by secretary of state, and paid out of the treasury.
24. The accounts for job work for the legislature to be examined by the committee, and paid out of the state treasury, also.
25. Copy of the journal of each house to be furnished the printer every day.
26. Price for rule and figure work.
27. This act not to affect existing contracts for printing.
28. This act may be repealed or altered at pleasure by the legislature.

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

SECTION 1. There is hereby established an office, to be called the office of public printer. Office of public printer established.

SEC. 2. A public printer shall be elected at the present session of the general assembly, and at every regular session thereafter, by joint vote of the two houses. To be elected by joint vote of the legislature.

SEC. 3. The president of the senate, and speaker of the house of representatives, shall, without delay, furnish to the person elected as public printer, a certificate of his election, and within ten days after receiving the same, he shall give bond and security, and he shall take the oath of office, and enter upon the discharge of his duties, at such time as is hereinafter provided for, and if he fail to do so, his office shall become vacant. Certificate of election to be furnished. He shall give bond and take an oath.

Digitized by Google

Bond payable to state; amount of penalty. Condition thereof.

SEC. 4. The bond of the public printer shall be given to the state of Missouri, shall be signed by at least five good securities, shall be in the penalty of ten thousand dollars, shall be conditioned for the faithful and punctual performance of all the duties of his office, and be approved by the president of the senate, and speaker of the house of representatives, and shall be, without delay, filed in the office of the secretary of state, and by him recorded with other official bonds.

To be elected at each session for two years.

SEC. 5. The public printer to be elected at each session of the general assembly, shall hold his office for two years, commencing on the first day of May next, thereafter, and until his successor shall be elected and qualified, and the public printers thereafter elected, shall hold office for two years, and until their successors shall be elected and qualified.

Governor to fill vacancies during recess.

SEC. 6. If the public printer should die, or resign, or if from any other cause the office should become vacant, the governor shall appoint a public printer, who shall give bond and qualify, and shall hold his office for the same time that the printer in whose stead he shall be appointed, would have held.

What printing shall be done by the public printer.

SEC. 7. The public printer shall print the laws, the journals of the two houses of the general assembly, the public documents ordered to be printed by the general assembly, the decisions of the supreme court, and all forms and blanks that may be required to supply the offices of governor, auditor, treasurer, secretary of state, adjutant general, register of public lands, and superintendent of common schools, and shall also print the bills, resolutions, documents, and other job printing of either of the two houses of the general assembly, and shall publish in a weekly newspaper, to be printed at the city of Jefferson, all proclamations, orders, notices and advertisements of the officers above enumerated, except such as the said officers may consider more for the public interest to be published in other parts of the state, and the public printer shall do all other public printing for the state, unless otherwise expressly ordered by law.

The printing to be superintended by certain officers.

SEC. 8. The printing of the laws and journals, shall be done under the general superintendence of the secretary of state, the printing of the decisions of the supreme court shall be done under the superintendence of the attorney general, and the other public printing under the general superintendence of the officer ordering the same.

Digitized by Google

Book printing to be on small pica type, to contain at least 1,700 em's to a page. Head notes and index to be in brevier.

SEC. 9. The laws, journals, decisions of the supreme court, and all other printing in book form, shall be executed with small pica type, in pages to contain at least seventeen hundred ems, and shall be printed on strong fair paper of a good quality, to be approved of by the secretary of state; the head notes and indexes printed by the public printer, shall be in brevier type.

Job work for legislature and governor to be in small pica type.

SEC. 10. The bills, resolutions, documents and other job work, of the legislature and of the executive officers, shall, unless otherwise ordered, be printed with small pica type, on like good paper, and in such form as may be directed by the committee or officer having the superintendence thereof.

Advertisements, &c., to be in brevier. 280 em's a square.

SEC. 11. The proclamations, orders, notices and advertisements in the newspaper, shall be printed in brevier type, and two hundred and eighty ems shall be considered a square.

Public printing to be done skillfully and promptly.

SEC. 12. All the public printing shall be done in a neat, substantial, workmanlike manner, and shall be promptly performed and delivered, so that the public business shall not be delayed, nor the public interest permitted to suffer from any failure to have the work done in a proper time.

Prices for printing blanks and forms.

SEC. 13. For printing blanks and forms, the public printer shall receive sixty-two and a half cents for the first eight quires, each, and for every additional quire, fifty cents each; but in printing such blanks and forms, no charge shall be allowed for unnecessary blank paper, or constructive services of any kind.

Prices for job work for legislature.

SEC. 14. For printing bills, resolutions or documents, ordered by the general assembly, or either house thereof, the public printer shall receive fifty cents per thousand ems for the first hundred copies, and ten cents per thousand ems for every hundred copies additional; and all bills, resolutions and documents, shall be executed in close work, and without any unnecessary blank paper attached to the same.

Time in which the printer must be furnished with a copy of the laws, and when he must print and bind the same.

SEC. 15. The secretary of state shall furnish to the public printer, within fifteen days after the adjournment of the general assembly, at each session, a copy of all acts, memorials and joint resolutions, passed at such session, and the public printer shall, within forty days after such copy shall be furnished to him as aforesaid, print all the copies that may by law be required, passed at such session, and the secretary shall, within ten days after the same are printed, make out and deliver to the public printer an index to the same, who

Digitized by Google

shall, within thirty days, print the same and deliver to the secretary of state such copies of the laws, bound in such manner as may be by law required.

The time when the journals are to be printed, folded, stitched and pressed.

SEC. 16. Within sixty days after the adjournment of each session of the general assembly, the public printer shall print and deliver to the secretary of state such number of copies of the journals of each house of the general assembly as they may direct, folded, stitched, pressed, and covered with a strong paper cover; and such number of copies of public documents as may be ordered, which shall be folded, stitched, pressed and covered in the same manner.

Provisions as to printing and binding decisions of the supreme court.

SEC. 17. Whenever a part of a volume of the decisions of the supreme court shall be ready for publication, the copy shall be furnished to the printer, by the attorney general, and within sixty days after receiving such copy, he shall print, and deliver to the attorney general, one thousand copies of each part of a volume, neatly and substantially executed, of which two hundred copies (or more, if required by the attorney general,) shall be folded, pressed, stitched, and covered with a strong paper cover, and the residue shall be delivered in sheets: *Provided*, That nothing contained in this act shall in any wise interfere with existing contracts for printing the decisions of the supreme court.

At the revision session, the public printer to print and bind the local and private acts only.

SEC. 18. At the session at which the general revision of the laws takes place, the public printer shall print such number of copies as the general assembly may direct, of the private and local acts, which shall be stitched, folded, pressed, and covered with a strong paper cover, and delivered to the secretary of state within sixty days after the adjournment of the legislature.

Price for book printing.

SEC. 19. For printing the laws, journals, decisions of the supreme court, and all other book work, when the number of copies ordered to be printed shall not exceed one thousand, the public printer shall be allowed forty cents per thousand ems for the first hundred copies, and five cents per thousand ems for every additional hundred copies; when the number of copies ordered to be printed shall exceed one thousand, and be less than two thousand, the public printer shall be allowed thirty cents per thousand ems for the first five hundred copies, and five cents per thousand ems for every additional hundred copies; when the number of copies ordered to be printed shall exceed two thousand, and be less than four

Digitized by Google

thousand, the public printer shall be allowed twenty-five cents per thousand ems for the first five hundred copies, and five cents per thousand ems for every additional hundred copies; when the number of copies ordered to be printed shall exceed four thousand, the public printer shall be allowed twenty cents per thousand ems for the first five hundred copies, and four cents per thousand ems for every additional hundred copies.

Price for binding with strong paper covers.

SEC. 20. For pressing the sheets, folding and stitching, and covering with a strong paper cover, each volume thus to be executed, the public printer shall receive six and a quarter cents per volume.

Price for binding the laws in sheep.

SEC. 21. For binding the laws passed at each regular session, substantially in sheep, in one volume, the public printer shall be allowed thirty-eight cents per volume.

Price, per square, for printing advertisements.

SEC. 22. For all proclamations, orders, notices, advertisements and other matter, published for the state, in his newspaper, the public printer shall receive fifty cents per square of two hundred and eighty ems for the first insertion, and half that amount for ever subsequent insertion.

Accounts of printer for printing laws, how audited and paid.

SEC. 23. The accounts of the public printer, for printing and binding the laws, journals, decisions of the supreme court, and for all book work, and for all advertisements, forms and job work done for the executive officers, shall be lawfully and strictly examined by the secretary of state, and so much as appears to be justly due to the public printer, under his contract, shall be certified to the auditor of public accounts, who shall draw his warrant on the treasury therefor, payable out of any funds appropriated for that purpose.

Accounts for job work for the legislature, how audited and paid.

SEC. 24. The accounts of the public printer for bills, resolutions, documents, and all other job work for each house of the general assembly, shall be carefully and strictly examined by a committee, and so much as is justly due to him shall be certified to the auditor, by the presiding officer of the house for which the work was done, and, thereupon, the auditor shall draw his warrant on the treasury, in favor of the public printer, for the amount thus certified.

Copy of the journal of each house to be furnished the printer every day.

SEC. 25. The secretary of the senate and chief clerk of the house of representatives, shall each furnish to the public printer every day during the session of the general assembly, a copy of the journal of his house for the day preceding, till the whole journal shall be thus copied and delivered.

Digitized by Google

CHAP. 141.

Price for rule and figure work.

SEC. 26. For all rule and figure work, the public printer shall receive fifty per cent. more than the prices allowed for plain work under this act.

This act not to affect existing contracts for printing.

SEC. 27. Nothing contained in this act, shall, in any wise, interfere with existing contracts for printing the laws and journals of the present session.

Power to alter or repeal retained.

SEC. 28. This act may be amended, modified and repealed, by the legislature at pleasure.

New act.

This act shall take effect from its passage.

Approved March 24, 1845.

CHAPTER 141.

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:

Information in nature of, to be exhibited, when.—1835.

SECTION 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.

What shall be named in the information; how to proceed.

SEC. 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.

Several rights may be included in one information, by leave of court.

SEC. 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.

Digitized by Google

Appearance and plea, when, and proceedings thereon.

SEC. 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.

Defendant found guilty, judgment; acquitted, judgment.

SEC. 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.

Time may be allowed parties to plead, &c.

SEC. 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 March 7, 1845.

CHAPTER 142.

RECORDS—PUBLIC.

AN ACT to recover public records.

SEC. 1. Officer to deliver his records and papers to successor.
2. When such officer dies, his executors or administrators to deliver same.
3. Penalty on officer for failing to make such delivery.
4. Officer liable for illegal detention of same.
5. When office is vacated, on failure to deliver records and papers, who may issue warrant for the seizure of the same.
6. Authority given the officer in executing the writ.
7. Penalty on officer for not executing the writ.
8. Any person aggrieved by the issuing of such writ, may have citation issued, &c.
9. Obedience may be enforced to such citation.
10. Private person in possession of public records, to deliver same to proper officer.
11. On failure to do so, how proceeded against.

Digitized by Google

CHAP. 142.

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

Officer to deliver his records and papers to successor.—1835.

SECTION 1. If any civil or military officer, having any record, books, or papers, appertaining to any public office, or any court, shall resign, or his office be vacated, he shall deliver to his successor all such records and papers.

Executor or administrator shall deliver them, when.

SEC. 2. When such officer shall die, his executor or administrator shall deliver such records, books and papers, to his successor.

Penalty on officer for failing to make such delivery.

SEC. 3. If any such officer, or the executor or administrator of such officer, shall fail to deliver such 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.

Officer liable for illegal detention of same.

SEC. 4. Such officer, or the executor or administrator of such officer, 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.

When office is vacated, on failure to deliver records and papers, who may issue a warrant for their seizure.

SEC. 5. 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 the affidavit of any credible person, setting forth the facts, may issue his warrant, directed to the sheriff or coroner, commanding him to seize all the records, books and papers, appertaining to such officer, and deliver them to the proper officer named in such warrant.

Authority given the officer in executing the writ.

SEC. 6. The officer executing 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 before some judge or justice of the peace, to be dealt with for obstructing the execution of process.

Penalty on the officer for not executing the writ.

SEC. 7. 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 in relation thereto, 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.

Person aggrieved by the issuing of such

SEC. 8. Any person aggrieved by any such warrant, may apply to any judge of the supreme or circuit court, who, upon

Digitized by Google

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.

Writ, may have citation issued, &c.

SEC. 9. 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.

Obedience may be enforced to such citation.

SEC. 10. If any private person shall have, or obtain possession of any books, records, or papers, appertaining to any public office, he shall deliver them to the officer entitled to the same.

Private person in possession of public records shall deliver them, to whom.

SEC. 11. If any person fail to do as required in the preceding section, he shall be proceeded against, in all respects, as is provided for in cases of officers, by this act.

Failing to do so, how proceeded against.

Approved, March 8, 1845.

CHAPTER 143.

RECORDERS OFFICES.

AN ACT to establish recorders offices.

SEC. 1. Office of recorder in each county.
2. Where such office shall be kept.
3. Duty of recorder.
4. Circuit clerks to be recorders; exceptions.
5. Clerk to give bond before entering on the duties of recorder; condition thereof.
6. Bond, where deposited.
7. Penalty for entering on duties without giving bond.
8. Before the end of second term after the taking effect of this act, clerks to give bond.
9. What seal recorder shall use.
10. County court to settle accounts of recorder.
11. What it shall be the duty of recorder to record.
12. Certain instruments to be recorded in separate books.
13. List of instruments deposited for record, to be kept.
14. Manner of recording.
15. Certificate to be made on instrument recorded.
16. Index of such instruments to be kept.
17. What the index shall contain.
18. General index to all the records of the office to be kept.
19. Index to book of officers commissions.
20. Liability of recorder for neglect of duty.
21. Penalty, also, for neglect of duty.
22. Fees to be paid or tendered, before, &c.

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

SECTION 1. There shall be an office of recorder in each county, to be styled the recorder's office.

Office of recorder in each county.—1835.

Digitized by Google

CHAP. 143.

Where to be kept.

SEC. 2. Such office shall be kept at the seat of justice in each county.

Duty of recorder.

SEC. 3. The recorder shall duly attend the service of such office, and provide the same with large, well bound books, wherein shall be recorded in a fair and legible hand, all instruments of writing authorized or required to be recorded.

Circuit clerks to be recorders; exception.

SEC. 4. The clerks of the circuit courts, except the clerk of the circuit court of St. Louis county, shall be ex officio recorders in their respective counties; the clerk of the county court of St. Louis county shall be ex officio recorder in such county.

Clerk to give bond before entering upon the duties of recorder.

SEC. 5. Every clerk, before entering on the duties of his office as recorder, shall enter into bond to the state in a sum not less than fifteen hundred, nor more than twenty thousand dollars, at the discretion of the judge of the court of which he is clerk, with sufficient securities, to be approved by said judge, conditioned for the faithful performance of the duties enjoined on him by law, as recorder, and for the delivering up of the records, books, papers, writings, seals, furniture and apparatus belonging to the office, whole, safe and undefaced, to his successor.

Condition thereof.

Bond, where deposited.

SEC. 6. Such bonds shall be deposited in the office of the secretary of state and by him recorded.

Penalty for entering on duties without giving bond.

SEC. 7. No recorder shall enter upon or officiate in his office before he has given such security, upon pain of forfeiting the sum of three hundred dollars, one half to the county, and the other half to him who shall sue for the same, by action of debt.

Before the end of second term after the taking effect of this act, clerk to give bond.

SEC. 8. Each recorder of the several counties in this state, shall, at or before the end of the second term of the court, of which he is clerk, after the taking effect of this act, execute a bond, with sufficient sureties, in conformity with the fifth section of this act, if required by the court; and on failure to execute such bond when thus required, shall forfeit his office of clerk, and it is hereby made the duty of the said court to declare the office of such clerk vacated.

What seal recorder shall use.

SEC. 9. The recorder shall use the seal of the court of which he is clerk in all cases in which his official seal is to be affixed.

County court to settle accounts of recorder.

SEC. 10. It shall be the duty of the county court to audit and settle the accounts of recorders, for books purchased for the use of their offices, and allow, in their discretion, such

Digitized by Google

sums as shall be reasonable, to be paid out of the county treasury.

What it shall be the duty of the recorder to record.

SEC. 11. It shall be the duty of recorders to record: *First*, 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; *Second*, All 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 government; *Third*, All marriage contracts and certificates of marriage; *Fourth*, All commissions and official bonds required by law to be recorded in their offices.

Certain instruments to be recorded in separate books.

SEC. 12. The several classes of instruments of writing mentioned in the several sub-divisions of the preceding section, shall be recorded in separate books, according to their classification therein.

List of instruments deposited for record, to be kept.

SEC. 13. 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, in alphabetical order, the names of the persons, and date and nature thereof, the time of delivery or deposite for record, and shall give to the person depositing the same (if required,) a receipt specifying the particulars aforesaid.

Manner of recording.

SEC. 14. The recorder shall record without delay, every deed, mortgage, conveyance, deed of trust, bond, commission, or the 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 of time when the same shall have been delivered for record, by writing 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.

SEC. 15. The recorder shall certify on, or under such deed, mortgage, conveyance, deed of trust, bond, commission, or

Digitized by Google

Certificate to be made on instrument recorded.

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.

Index of such instruments to be kept.

SEC. 16. The recorder shall keep in his office a well bound book, and make and enter therein, an index direct and inverted 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.

What the index shall contain.

SEC. 17. Such index shall contain in alphabetical order, *First*, The names of the several grantors and grantees; *Second*, In case the deed be made by a sheriff, the name of the sheriff, and the defendant in the execution, and of the grantee; *Third*, If by executors or administrators, the name of each executor or administrator, and of the testator, or intestate, and of the grantee; *Fourth*, If by attorney, the name of such attorney and his constituent, and of the grantee; and *Fifth*, If by a commissioner, the name of such commissioner, and of the person whose estate is conveyed, and of the grantee.

General index to all the records of the office to be kept.

SEC. 18. The recorder shall in like manner, make, keep, and preserve, a similar index to all the books of record in his office, wherein marriage contracts and certificates of marriage are recorded.

Index of book containing officers' commissions to be kept.

SEC. 19. He shall in like manner make, keep, and preserve, a similar index to all the books of record, wherein commissions and office bonds are recorded, containing the names of the officers appointed, and of the obligee and obligors in any bond recorded.

Liability of recorder for neglect of duty.

SEC. 20. If any recorder to whom any deed, or other writing, proved, or acknowledged according to law, shall be delivered for record, *First*, Neglect, or refuse to make an entry thereof, or give a receipt therefor, as required by the thirteenth section of this act; or, *Second*, Neglect or refuse to record such deed, or other writing, within a reasonable time after receiving the same; or, *Third*, Record any deed, or other instrument of writing, before another, first brought into his office, and entitled to be recorded; or, *Fourth*, Record any deed, or other instrument of writing, untimely, or in any other manner than as hereinbefore directed; or, *Fifth*, Neglect or refuse to provide and keep in his office, such an index as is

Digitized by Google

required by this act, he shall pay to the party aggrieved, double the 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.

Penalty, also, for neglect of duty.

SEC. 21. 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.

Fees must be paid or tendered before, &c.

SEC. 22. The recorder shall not be bound to make any record for which a fee may be allowed by law, unless such fee shall have been paid, or tendered, by the party requiring the record to be made.

Approved February 15, 1845.

CHAPTER 144.

REGISTER OF LANDS.

AN ACT to establish the office of register of lands.

SEC. 1. Office of register of lands established.
2. Register's qualifications; to be appointed by whom; tenure of office.
3. His office to be kept at Jefferson City.
4. Vacancies in office of register, how filled.
5. Register to give bond, condition thereof, and take an oath.
6. The bond to be filed with secretary of state.
7. Register's duties relating to the books and papers of his office.
8. He shall communicate to the legislature and certain officers, such information as called for.
9. To keep seal of office, and furnish any person with copies of his books, papers, &c.
10. Liability of register to any person aggrieved.
11. Register subject to indictment for improper conduct.

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

Office of register established. 1840-1.

SECTION 1. AN office called the office of register of lands is established.

Register's qualifications; by whom appointed; term of office.

SEC. 2. The register shall be a free white citizen of the state, at least twenty-one years of age, shall have resided in the state at least four years, shall be appointed by the governor and confirmed by the senate, and shall hold his office for four years, and until his successor is appointed and qualified.

Digitized by Google

CHAP. 144.

His office, where kept.

SEC. 3. He shall reside and keep his office at the city of Jefferson.

Vacancies, how filled.

SEC. 4. Vacancies in the office of register shall be filled by the governor when the general assembly is not in session, and such appointments shall be laid before the senate for its confirmation or rejection at its next session thereafter.

Register to give bond and take an oath.

SEC. 5. Before he enters on the duties of his office, the register shall execute to the state a bond in a sum of at least ten thousand dollars, with at least five sufficient securities, conditioned for the faithful performance of all the duties of his office, and shall take the oath prescribed by the constitution, which shall be endorsed on his commission.

Bond, where to be filed.

SEC. 6. The bond, with the approval of the governor endorsed thereon, shall be filed in the office of the secretary of state.

Register's duties in relation to the books and papers of his office.

SEC. 7. The register shall perform all the duties enjoined upon him by law, faithfully keep all the records, books, papers and effects committed to his charge, and shall not permit any book or paper to be taken out of his office, unless the same be called for by the governor, or by the general assembly, or by either house thereof.

To communicate information, to whom and when.

SEC. 8. He shall communicate to the governor, auditor, or either house of the general assembly, such information relating to his office, as may be called for by them, respectively.

To keep a seal of office, &c.

SEC. 9. He shall procure, keep and use a seal of office, and shall furnish to any person, a certified copy of any record or paper in his office, when applied for, authenticated by such seal.

Liability of register to party aggrieved.

SEC. 10. If the register neglect or refuse to perform any duty required of him by law, or shall take fees not allowed by law, or greater fees than are allowed by law, the party aggrieved shall recover from him, by action of debt, not less than fifty, nor more than five hundred dollars.

Subject to indictment, &c.

SEC. 11. For wilful neglect of duty, or violation of law, the register may be indicted, and upon conviction thereof, shall be removed from office.

Approved March 27, 1845.

Digitized by Google

CHAPTER 145.

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 gives 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 failing 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. When property is delivered to sheriff in such cases, proceedings.
11. If property is not delivered in sixty days, sheriff may make such damages and costs by levy, &c.
12. When defendant elects to take the damages, the right to the property vests in the plaintiff.
13. Remedy of sheriff on plaintiff's bond.
14. Remedy of defendant on plaintiff's bond.
15. 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:

In what cases maintainable. 1835.

SECTION 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 damages sustained by reason of the unjust caption or detention, except as hereinafter specified. (*a*)

No cross replevin shall be brought.

SEC. 2. No cross replevin, or replevin for property in the possession of an officer by virtue of any legal authority, shall be brought.

Affidavit to be filed; its contents.

SEC. 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 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 the plaintiff's right of action accrued within one year.

Command of the writ to officer.

SEC. 4. The writ of replevin shall command the officer to whom it is directed to cause (if the plaintiff give the security

(*a*) See Rector vs. Chevalier, 1 Missouri Rep., 345; Ramsey vs. Waters et al., 1 Missouri Rep., 406; Penrose vs. Green, 1 Missouri Rep., 774; Crocker vs. Mann, 3 Missouri Rep., 472; Skinner vs. Stouse, 4 Missouri Rep., 93; Phillips vs. Townsend, 4 Missouri Rep., 101; Moore vs. Moore, 4 Missouri Rep., 421.

Digitized by Google

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.

Writ not to be executed until plaintiff gives bond; its condition.

SEC. 5. No writ of replevin shall be executed until the plaintiff, or some responsible person for him, as principal, enters into a bond to the officer to whom the writ is directed, with sufficient sureties, 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, keep harmless the officer touching the replevying the property, and pay all costs which may accrue in said action.

Writ, how executed.

SEC. 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.

Defendant may plead not guilty; what this plea shall put in issue.

SEC. 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.

Failure to prosecute suit with effect, proceedings.

SEC. 8. If a plaintiff in replevin fail 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 issuing the writ, until return thereof shall be made, as in other like cases.

Against whom and for what, judgment in such cases shall be given. 1838–9, sec. 1.

SEC. 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, at the election of the defendant; and also pay double the damages assessed for the detention of the property, and costs of suit.

Defendant not required to make election, until, &c.

SEC. 10. The defendant shall not be required to make such election, until the property is delivered to the sheriff on the execution, and the defendant has notice thereof.

Defendant may cause damages and costs to be levied, when. 1838–9, sec. 2.

SEC. 11. If such property shall not be produced and delivered to the sheriff within sixty days after execution issued, the defendant may cause the assessed value thereof, the damages and costs, to be levied.

When defendant elects to take damages,

SEC. 12. In such case, the defendant's right to the property shall not be impaired, by levying the assessed value thereof,

Digitized by Google

but if the property be delivered to the sheriff, and the defendant elect to take the value assessed, such election shall operate to vest all his right to the property in the plaintiff. right of property vests in plaintiff.

SEC. 13. If an officer is damnified 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. Remedy of sheriff on plaintiff's bond.

SEC. 14. If the plaintiff violate the condition of his bond, the defendant may sue thereon, in the name of the officer, to his own use. Remedy of defendant on plaintiff's bond.

SEC. 15. If the officer fail 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. Sheriff failing to return bond, or returning an insufficient one, liable for damages.

Approved March 8, 1845.

CHAPTER 146.

REPORTER.

AN ACT to provide for reporting the decisions of the supreme court.

SEC. 1. Attorney general ex officio reporter.
2. Counsel to make briefs; to be filed.
3. Opinion of the court to be in writing.
4. What it shall contain.
5. Clerk to endorse day of filing.
6. Duty of clerk.
7. Penalty on clerk for failure to do his duty.
8. Duty of the reporter to certify failure of the clerk.
9. Notes to be prefixed by reporter.
10. Reports to be published semi-annually.
11. Title page, lists of cases, &c., to be printed.
12. Index to be made out and published.
13. 1000 copies to be published, size, type, and paper.
14. How many to be stitched and bound.
15. Two copies to be transmitted to each clerk.
16. One for the use of the court, the other for use in his office.
17. When decisions completed to be delivered to secretary of state.
18. Twenty copies to be placed in state library.
19. Number of copies to be transmitted to county clerks.
20. To be delivered to county justices.
21. Contract for printing and binding to be let out.
22. Compensation to clerk of the supreme court.
23. Compensation to reporter.

Digitized by Google

CHAP. 146.

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

Attorney general, ex officio reporter. 1835.

SECTION 1. The attorney general shall be ex officio reporter of the opinions and decisions of the supreme court of this state.

Counsel to make briefs; to be filed.

SEC. 2. The counsel, who makes briefs under the rules and regulations of the supreme court, shall, after the statement of the case, 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.

Opinion of the court to be in writing.

SEC. 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.

What it shall contain.

SEC. 4. The opinion shall always contain a sufficient statement of the case, 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.

Clerk to endorse the day of filing.

SEC. 5. 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.

Duty of the clerk.

SEC. 6. The clerk shall also, at the same time, make a true copy of the points, and citations of authorities by the counsel, giving the names of counsel who signed the briefs, and distinguishing the same from the opinion of the court, and shall certify the same with a true copy of the decision in the cause, under the seal of the court, and transmit the same to the reporter, within thirty days.

Penalty on clerk for failure to do his duty.

SEC. 7. If the clerk of the supreme court fail to make out, certify, and transmit copies, within the time specified, he shall be fined in any sum not less than twenty dollars, nor more than one hundred dollars, in the discretion of the court.

Duty of reporter to certify failure of the clerk.

SEC. 8. 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, who shall examine into the matter, and if the court find said copies were not made out, certified, and transmitted in proper time, shall enter up a fine to the state against the clerk, which shall be collected, and certified to the auditor, as in other cases.

Digitized by Google

Reporter to prefix notes to decisions.

SEC. 9. The reporter shall prefix to each decision, a note, or notes, containing the points decided, and shall also make proper marginal notes.

Reports to be published semi-annually.

SEC. 10. The reports shall be published semi-annually in parts, each part to contain the decisions of the court at the term next preceding, and shall be printed in continuous paging, until there shall be sufficient matter to form one volume of not less than six hundred pages.

Title of causes, note of points, list of cases, title page, &c., to be published.

SEC. 11. 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, and there shall also be prefixed to, and published with the last part of each volume, a title page and an alphabetical list, direct and inverted, of the cases therein reported.

Index to be made out and published.

SEC. 12. The reporter shall make out and publish with the last part of each volume, a complete index to such volume.

1000 copies to be published, &c.

SEC. 13. There shall be published one thousand 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.

How many to be stitched and bound.

SEC. 14. 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.

Two copies to be transmitted to each clerk.

SEC. 15. It shall be the duty of the reporter to transmit to each clerk of a court of record, two copies, and to each judge of the supreme and circuit courts, and to each circuit attorney one copy each of each part of the reports, as soon as practicable, after it is published and ready for delivery.

One for the use of the court, the other for his office.

SEC. 16. 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 for the inspection and examination of all persons.

When decisions completed, to be delivered to secretary of state.

SEC. 17. As soon as the printing and binding of 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.

20 copies to be placed in state library.

SEC. 18. 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.

SEC. 19. The secretary of state shall transmit to the clerk

Digitized by Google

CHAP. 147.

What number transmitted to county clerks.

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.

To be delivered to county justices.

SEC. 20. The clerks of the county courts, respectively, shall deliver to each justice of the county court, one copy of each volume, and take his receipt therefor.

Contract for printing and binding to be let out.

SEC. 21. The reporter shall let out the contracts for the printing and binding required by this act, upon terms the most advantageous to the state, 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; the printer shall, in no case, print a greater number of volumes than he contracts to print.

Compensation to clerk of supreme court.

SEC. 22. The clerk of the supreme court, for making out transcripts for publication, as aforesaid, shall receive eight cents for every hundred words the transcript may contain.

Compensation to reporter.

SEC. 23. The reporter shall receive, as a full compensation for his services required by this act, one hundred and forty 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 8, 1845.

CHAPTER 147.

REVENUE.

AN ACT to provide for levying, assessing and collecting the revenue.

ARTICLE I. Of the objects of taxation, the rates of taxes, and subjects exempt from taxation.
II. Of the assessment of property for taxation.
III. Of the collection of the revenue, and miscellaneous provisions.
IV. Of the county revenue.
V. Of the sale of land for taxes.
VI. Of the duties of collectors when their term of service expires.

Digitized by Google

Of the objects of taxation, the rates of taxes, and subjects exempt from taxation.

SEC. 1. Objects on which taxes may be levied.
2. Subjects exempt from taxation.
3. Rates of poll tax and land tax.
4. Rates of taxes on licenses, under their appropriate heads.

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

SECTION 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 levied upon the following objects: *First*, All free male persons over twenty-one and under fifty-five years of age; *Second*, Lands and lots of ground, including the houses and improvements thereon; *Third*, Leasehold interest in land for the term of ten years, or more, as lands; *Fourth*, All slaves; *Fifth*, household furniture, to include silver and gold plate kept for use or ornament, used by any one family, above the value of two 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 incorporated companies, except hospitals, literary institutions and library associations; *Tenth*, Bills of exchange, bonds, notes, and other securities, and all money on hand, taken, negotiated and kept by brokers and exchange dealers in their business as such, other than such as may be the property of citizens of the state, except themselves; *Eleventh*, All money loaned at interest to citizens of this state, whether the same be secured by a bill of exchange, bond, note, or otherwise; all money in hand and all state warrants; *Twelfth*, the property of all corporations, over and above their capital stock, and all money held by such corporation in trust for persons or corporations, other than citizens and corporations of this state, and used in trade for the benefit of such persons or corporations; *Thirteenth*, Shares of stock or interest in any steamboat; *Fourteenth*, All licenses taxable by law; *Fifteenth*, Any charter of an incorporated company which exempts members or stockholders of such company from the

Objects on which taxes may be levied. 1835.

Digitized by Google

payment of any poll tax or revenue to the state, is hereby repealed to the full extent of such exemption.

Subjects exempt from taxation.

SEC. 2. The following subjects are exempted from taxation: *First*, All free white persons belonging to the army of the United States; *Second*, Lands and lots, public buildings and structures, with their furniture and equipments, belonging to the United States; *Third*, 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*, Lands and other property belonging to the state; *Fifth*, Lands and other property belonging to any county in the state; *Sixth*, Market houses, town halls and other public structures, with their furniture and equipments; and all public squares and lots kept open for health, use or ornament, belonging to any city, town, or village in the state; *Seventh*, Lands or lots of ground, granted by the United States, or this state, to any county, city, town, village, or township, for the purposes of education, until disposed of to individuals by sale or lease; *Eighth*, School houses, and other buildings for the purposes of education, with their furniture and equipments, and the lands appurtenant thereto and used therewith, so long as the same shall be used for that purpose; *Ninth*, Hospitals for the sick, and public poor houses, with their furniture and equipments, and the lands appurtenant thereto and used therewith, so long as the same shall be used for that purpose only; *Tenth*, Churches, chapels, and other public buildings for religious worship, with their furniture and equipments, and the lands appurtenant thereto, and used therewith, so long as the same shall be used for that purpose only; *Eleventh*, Cemeteries and grave-yards, set apart and used for that purpose only.

Rates of poll tax and land tax.

SEC. 3. The annual tax levied upon the subjects mentioned in this section shall be at the following rates: *First*, On free male persons, over twenty-one, and under fifty-five years of age, twenty five cents; *Second*, On lands and town lots, including the houses and improvements thereon, and all other property, real and personal, subject to taxation by this act, one sixth part of one per centum, of the assessed value thereof.

Reference to rates of taxes on licenses.

SEC. 4. The rates of taxes upon all licenses subject to taxation, are declared under their appropriate titles.

Digitized by Google

Of the assessment of property for taxation.

SEC. 1. County assessor to be elected.
2. Assessor of the county of St. Louis, except the city.
3. Time and manner of holding such elections.
4. Respective duties of the city and the county assessors of St. Louis county.
5. Assessors to be furnished with certificate of election.
6. If assessor does not give bond within a certain time, office vacated.
7. When appointed by the county court or clerk, the clerk to furnish him with a certificate of appointment.
8. Shall take an oath, penalty for failure.
9. To give bond; condition thereof.
10. Manner in which assessor shall proceed to make assessment.
11. List of taxable property to be delivered to assessor.
12. The contents of such list.
13. City or town lots, how described.
14. Assessor may require list to be sworn to.
15. Duty of assessor when property given in list lies in several counties.
16. If transmitted by mail, postage by whom paid.
17. When such list is not received in such county, assessor thereof to assess the property.
18. Assessor shall require every property-holder to give a list thereof.
19. Penalty for not giving such list.
20. Penalty for giving false list.
21. When no list is given, assessor may make out one.
22. President to give list of shares of each stockholder.
23. Shares to be assessed to the corporation, and owners to pay such corporation.
24. Penalty on president for failing to give list.
25. County recorder to make out abstract of lands.
SEC. 26. Such abstract, tax book of preceding year, and list of taxable lands, to be delivered to assessor.
27. When assessor completes his labor, penalty for not returning his list.
28. From such list, abstract, &c., assessor to make out his "tax book."
29. What the tax book shall contain.
30. How tax book shall be arranged.
31. Property to be assessed at its cash value; manner of valuing real and personal property.
32. Lands omitted by mistake for several years, when discovered, to be assessed with arrearages of tax also.
33. When requested, assessor shall deliver a list of property assessed to the owner thereof.
34. By what time the assessment to be returned.
35. County court, at what time and manner to determine appeals from valuation of assessor.
36. Tax book to remain in clerk's office ten days before session of court of appeals for inspection.
37. Appeal allowed to any person to county court from the assessor.
38. If a session of the county court cannot be had in thirty days, clerk and two justices of the peace can hold such court.
39. Court to hear and correct appeals in summary manner.
40. When clerk to make out collector's book.
41. Clerk to make out an abstract of tax book.
42. When assessor to administer oaths.
43. On failure of assessor to perform his duties, to be removed and sued.
44. Compensation allowed to assessor.
45. His account to be sworn to, certified to auditor, &c.

SECTION 1. There shall be elected by the qualified electors of the several counties in this state, except the county of St. Louis, on the first Monday in August, in the year one thousand eight hundred and forty-six, and at every general election for members of the general assembly, thereafter, a county assessor, and every such election shall be conducted in all things

County assessor to be elected.

Digitized by Google

CHAP. 147.

according to the laws regulating the election of other county officers.

Assessor of the county of St. Louis, without the city, &c.

SEC. 2. There shall be elected by the qualified electors of the county of St. Louis, (without the city of St. Louis, according to its chartered limits,) a county assessor; and by the qualified electors residing within the chartered limits of the city of St. Louis, a county assessor.

Elections, when held; how conducted.

SEC. 3. The elections provided for in the next preceding section, shall be held at the time, and conducted in the manner provided in the first section of this article.

Respective duties of the city and county assessors of St. Louis.

SEC. 4. The person elected as county assessor by the qualified electors of the county of St. Louis, without the city of St. Louis, shall perform the duties of county assessor in such county, without such city; and the person elected by the qualified electors residing within the city of St. Louis, shall perform the duties of county assessor within such city.

Certificate of election to be furnished.

SEC. 5. 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.

If assessor does not give bond within a certain time, office vacated.

SEC. 6. 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 November, 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.

When appointed by court or clerk, certificate to be delivered.

SEC. 7. 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.

Shall take an oath; penalty for failure.

SEC. 8. Every assessor shall take the oath of office prescribed by the constitution, (a) 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.

To give bond.

SEC. 9. 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

(a) See section thirty-two, article three, of the constitution of the state.

Digitized by Google

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 clerk of the county court. Condition thereof.

SEC. 10. Every assessor shall commence on the first day of February, in each year, during his continuance in office, and go through all parts of the county, or subdivision of the county, of which he is the assessor, and require every person who shall have owned, or shall have had the charge or management of any property, on the said first day of February in each year, taxable by law, except merchandise, and being within the county, to deliver to him a written list of the same, and every such person shall deliver to the assessor, on oath or affirmation, to be administered by the assessor, a just and true list of all such property. Manner in which assessor shall proceed to make assessment.

SEC. 11. In the same manner, every such person shall deliver to the assessor, a just and true list of all property taxable by law, except merchandise, 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. List of taxable property to be delivered to assessor.

SEC. 12. 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 a part of a public survey 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, but in all cases to be assessed to the person appearing to be the owner at the time of assessment. The contents of such list.

SEC. 13. Each town lot shall be described by the name of the city, town or village, the street or alley where situated, the number (if any) of the lot, and the square or block of which it forms a part, and the size in front, and depth. City or town lots, how described.

SEC. 14. If the assessor shall have cause to doubt the correctness of such list, when given or tendered to him, he may require the party to verify the same by oath or affirmation.* Assessor may require list to be sworn to.

SEC. 15. Every assessor, as soon as he shall have comple-

* From engrossed bill; omitted through *inadvertence?* in enrolled bill.

Digitized by Google

Duty of assessor when property given in lists lies in several counties.

ted his assessment, shall make out, from the lists delivered to him, under the eleventh section of this act, 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.

If transmitted by mail, postage by whom paid.

SEC. 16. If such lists shall be transmitted by mail, the postage thereon shall be paid by the assessor who receives the same, and the amount thereof shall be allowed and paid to him, at the time, and in the manner of paying other expenses of assessment.

If not received in such county, assessor thereof to assess the property.

SEC. 17. When the lists, transmitted from one assessor to another, as required in the fifteenth section of this act, 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 list 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.

Assessor shall require every property holder to give a list thereof.

SEC. 18. 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, (except shares of stock in bank, and other incorporated companies,) 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.

Penalty for not giving such list.

SEC. 19. 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.

Penalty for giving false list.

SEC. 20. 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.

When no list is given, assessor may make out one.

SEC. 21. 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

Digitized by Google

examine the owners of the property, or any other person, upon oath, touching the same.

President to give list of shares of each stockholder.

SEC. 22. Persons owning shares of stock in banks and other incorporated companies, taxable by law, are not required to deliver to the assessor a list thereof; but the president, or other chief officer of such corporation, shall deliver to the assessor a list of all shares of stock held therein, and the names of the persons who hold the same.

Shares to be assessed to the corporation, &c.

SEC. 23. The taxes assessed on shares of stock embraced in such list, shall be paid by the corporations respectively, and they may recover from the owners of such shares, the amount so paid by them, or deduct the same from the dividends accruing on such shares; and the amount so paid shall be a lien on such shares respectively, and shall be paid before a transfer thereof can be made.

Penalty on president for failing to give list.

SEC. 24. If the president, or other chief officer of any such corporation, fail to comply with the provisions of the twenty-second section of this article, he shall forfeit to the state the sum of one thousand dollars, to be recovered by indictment in any court of competent jurisdiction.

County recorder to make out abstract of lands.

SEC. 25. The recorder of each county, shall, in the month of January of every year, make out an abstract, in alphabetical order, of all deeds and other conveyances of land recorded in his office during the preceding year, showing the names of the acquirers, and from whom acquired, the quantity and description of the land, and shall deliver such abstract to the clerk of the county court, and take his receipt therefor.

Abstract, &c., to be delivered to the assessor.

SEC. 26. The clerk of the county court shall deliver to the assessor, on or before the first day of February, in every year, the tax book of the preceding year, the abstract of conveyances furnished by the recorder of the county, and the list of taxable lands furnished by the register of lands, 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 such papers and documents to the clerk.

Penalty on assessor for not returning his list.

SEC. 27. If the assessor shall fail to return such papers and documents to the clerk, or shall return them in a defaced or mutilated condition, the county court shall withhold so much of his compensation as will be sufficient to pay for the procurement of new copies thereof.

SEC. 28. The assessor, on examination and comparison of

Digitized by Google

CHAP. 147.

From such list, abstract, &c., the assessor to make his tax book.

the list of property delivered by individuals, the abstract of conveyances furnished by the recorder, and the list of lands furnished by the register of lands, shall make a complete list of all the taxable property in his county, to be called the "tax book."

What the tax book shall contain.

SEC. 29. The tax book shall contain the names, in alphabetical order, of all persons to whom property has been assessed therein; it shall be in 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 and convenient in practice.

How tax book shall be arranged.

SEC. 30. Such "tax book" shall be so made as to show the aggregate amount of state revenue derived from taxes imposed on brokers and exchange dealers, steamboats, money, bonds, notes, bills of exchange, and other securities, and from property owned by corporate companies.

Property to be assessed at its cash value, manner of valuing real and personal property.

SEC. 31. The assessor shall value and assess all the property on the tax book, according to its marketable value in cash, at the time of the assessment; each tract of land, and town lot, shall be assessed, valued and listed separately, and each kind of property shall be assessed separately from every other kind; and all leasehold interests in land for the term of ten years or more, shall be classed and assessed as lands; but horses, mules, jacks, jennies, cattle, clocks, watches, carriages, and household furniture, shall be entered in one column, under the head of other personal property.

Lands omitted by mistake, when discovered to be assessed with arrearages of tax also.

SEC. 32. 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.

Assessor shall deliver list of property assessed, to owner, when.

SEC. 33. 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, and such list shall, in all cases, be left with some member of the family, when the assessment is made in the absence of the head of the family.

SEC. 34. The assessor shall make out and return to the

Digitized by Google

county court, on or before the first day of June in every year, a fair copy of the tax book.

Assessment, when to be returned.

SEC. 35. 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 next preceding 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.

County court, at what time and manner to determine appeals from valuation of assessor.

SEC. 36. 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.

Tax book to remain in the clerk's office ten days for inspection.

SEC. 37. 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.

Appeal allowed to county court from assessor.

SEC. 38. 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 of the county, and hold a court of appeals, giving notice thereof, as provided in the thirty-fifth section of this article.

Clerk and two justices may hold a court of appeals, when.

SEC. 39. The court shall hear and determine all appeals, in a summary way, and shall correct and adjust the tax book accordingly.

Appeals, how determined.

SEC. 40. As soon as the tax book shall be corrected, and adjusted, and the county tax stated thereon, the clerk of the county court shall make out a fair copy thereof, authenticated by the seal of the court, for the use of the collector.

When clerk to make out collector's book.

SEC. 41. The clerk shall, at the same time, make out, certify, and authenticate by the seal of the court, an aggregate abstract of the tax book, placing each kind of property taxed under its appropriate head, with the aggregate value thereof, and the aggregate amount of taxes. (*b*)

Clerk to make out an abstract of tax book.

SEC. 42. When any fact, matter or thing, is required by this article to be verified by oath or affirmation, any assessor may administer the same.

Assessor may administer oath.

(*b*) See section 30, of this article.

Digitized by Google

CHAP. 147.

If assessor fails to perform his duties, proceedings.

SEC. 43. 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.

Compensation allowed assessor.

SEC. 44. The compensation of each assessor shall be twelve and a half cents each name, for the first six hundred names listed; eight cents each name, for the second six hundred names; for each additional name over twelve hundred, four cents; all the property assessed to one individual to be counted as one name; one-half of which shall be paid out of the county treasury, and the other half out of the treasury of the state.

His account to be sworn to, certified to auditor, &c.

SEC. 45. The county court shall cause the assessor to verify his account by oath or affirmation, and under the seal of the court, cause to be certified to the auditor the amount to be paid by the state, who shall draw his warrant on the treasury of the state for the same.

ARTICLE III.

Of the collection of the revenue; and miscellaneous provisions.

SEC. 1. Sheriffs to be ex officio collectors, except in St. Louis county.
2. Sheriff to give bond as collector; condition thereof.
3. Number of securities to bond, and sheriff not to enter on duties of office till bond given.
4. On neglect or refusal to give such bond, office to become vacant.
5. Duplicates of such bonds, one for county, the other for state.
6. Before tax book delivered to sheriff, his bond to be examined; if insufficient, must enter into an additional bond.
7. On refusal to give additional bond, his office as collector to be vacant.
8. County court of St. Louis county to appoint a collector.
9. Such collector to have a certificate of his appointment.
10. If such county court refuse or neglect to appoint collector, clerk to do the same.
11. In case of vacancy in vacation of county court, clerk to appoint collector.
12. Collectors, appointed according to 8th, 10th or 11th sections of this article, to give bond; condition thereof.
13. If such collector refuse to give such bond, new collector to be appointed.
14. The 5th section of this article to apply to collector of St. Louis county.
15. When amount of bond not double the revenue, the auditor shall require additional bond; if additional bond not entered into, office vacant.
16. When auditor finds securities insufficient, county court to proceed as in last section.
17. Collector may appoint deputy.
18. Every such deputation to be in writing, and may be revoked at pleasure in writing.
19. Notice of deputation and revocation to be given.
20. When tax book made out, it shall be delivered to collector, who shall be charged therewith.
21. Collector to subscribe receipt, and receipt and abstract of tax book to be transmitted to auditor of public accounts.
22. Penalty on clerk for neglecting or refusing to transmit such abstract to auditor.
23. Power given to collector to levy on and sell personal property for taxes.
24. No such levy and sale to be made, until demand of taxes.
25. Collector shall also collect necessary costs of such levy and sale.

Digitized by Google

SEC. 26. Chief officers of corporations to give certificate of taxable shares therein; and in default of paying taxes, proceeding therein.
27. Penalty on corporation for failing to give such certificate.
28. Collector to give receipt for taxes; its contents.
29. Sheriffs to collect all fines, &c.
30. Clerks to keep accounts of such fines, &c.
31. The courts, at each term, to make settlement with the sheriff concerning such fines, &c.
32. Certain other officers to settle with the courts for such fines.
33. Proceedings when court makes such settlement.
34. Duplicates of the records of such settlement; one given to the collector, the other to county court.
35. On failure of officer to pay the amount settled for, how collector shall proceed.
36. Duty of collector on receiving such amount.
37. Every officer failing to settle, may be attached and imprisoned.
38. Delinquent to pay five per cent. per month, till paid; collector to be credited with delinquency.
39. County court shall, at each term, make collector account for all moneys received by him.
40. Collector unable to collect taxes from any one, to return such as delinquent, and being unable to collect from officers, to return such officers delinquent.
SEC. 41. Copy of such delinquent list to be set up.
42. When delinquent list to be returned, and collector to be credited.
43. If there be no regular term soon enough, special term.
44. Court to cause settlement with collector to be recorded.
45. If collector fail to make settlement, may be attached.
46. Such settlement to be transmitted to auditor.
47. Provisions of 22d section of this article apply to failing clerks.
48. Delinquent list to be delivered to successor.
49. When collectors, (except St. Louis collector,) to pay revenue into state treasury.
50. St. Louis collectors to deposite in state bank.
51. Certificate of such deposite to be sent to auditor.
52. Nothing in the last two sections to affect fees of such collector.
53. Penalty on collectors for failing to deposite revenue as in 48th and 49th sections of this article.
54. Compensation of collector.
55. Compensation of officer required to pay certain moneys to collector.
56. Lien allowed collector in certain cases.
57. Amount of property returned delinquent, to be refunded to collector, in certain cases.
58. Indictment against collector for improper conduct in certain cases.

SECTION 1. Every sheriff hereafter elected, except the sheriff of St. Louis county, shall be ex officio collector of the revenue within his county, for two years, commencing on the first day of September next ensuing his election. Sheriffs, ex officio collectors, except in St. Louis county.

SEC. 2. Every sheriff shall, at the time of executing his bond as sheriff, and before entering upon the duties of that office, give bond and security to the state, to the satisfaction of the county court, in a sum at least double the amount of all the revenue to be collected by him, conditioned that he will faithfully and punctually collect and pay over all the state and county revenue for the two years next ensuing the first day of September thereafter; and that he will in all things faithfully perform all duties of the office of collector according to law. Sheriffs to give bond as collectors. Condition thereof.

SEC. 3. The official bond of the sheriff, as collector, shall

Digitized by Google

CHAP. 147.

Number of sureties; not to enter on duties till bond be given.

be signed by at least five solvent securities; and he shall not enter upon the discharge of the duties of his office as sheriff, until he shall have executed his bond as collector.

Failing to give bond, office to become vacant.

SEC. 4. If any sheriff shall neglect or refuse to give bond as required by the two next preceding sections, his office of sheriff shall, immediately upon such neglect or refusal, be vacant; and the county court shall thereupon immediately notify the governor of that fact, who shall forthwith appoint some person to fill such vacancy, who will give such bond.

Duplicates of such bonds; one for the county, one for the state.

SEC. 5. Such 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 transmitted by the clerk to the auditor of public accounts.

Before tax book delivered to sheriff, his bond to be examined; if insufficient, must enter into additional bond.

SEC. 6. The county court shall, at the end of the first year, carefully examine the bond given by the sheriff as collector, and may again examine the same at any time before the tax book of the second year of his term shall be delivered to him, and by such examination ascertain if the bond be sufficient, and the securities thereto still solvent and sufficient; and upon such examination, if found to be necessary, the court shall require such sheriff to give an additional bond, as collector, with good security, to be approved by the court, as in the taking of the original bond.

Effect of failure to give additional bond.

SEC. 7. If such sheriff shall fail to give such additional bond and security, for ten days after he shall be required so to do, his office of sheriff and collector shall be vacant.

County court of St. Louis county to appoint a collector.

SEC. 8. The county court for the county of St. Louis, at its first session in each year, shall appoint a collector of the revenue of the county, who shall be a respectable householder, resident within the same, and shall hold his office for one year, and *for the purpose of collecting the taxes on licenses* until his successor shall be appointed and qualified.

Certificate of appointment to be given.

SEC. 9. Such county court shall give to the person appointed, a certificate of his appointment, authenticated by the seal of the court.

If county court fail, clerk to appoint collector.

SEC. 10. If such county court shall neglect or refuse to appoint a collector, at its first session in the year, the clerk thereof shall make the appointment, and give a certificate thereof, as provided in the next preceding section.

Vacancies filled by clerk.

SEC. 11. In case a vacancy shall occur in such office, in the vacation of the county court, the clerk shall, in like manner, appoint some suitable person to supply such vacancy.

Digitized by Google

Such collector to give bond.

SEC. 12. A collector, appointed according to the provisions of the eighth, tenth, or eleventh sections of this article, and before he shall receive the certificate of his appointment, or enter upon the discharge of the duties of his office, shall give bond to the state, signed by himself, and at least five solvent securities, in a sum at least double the amount of all the revenue to be collected by him, conditioned, that he will faithfully and punctually collect and pay over all the state and county revenue, for the year next ensuing his appointment; and that he will, in all things, faithfully perform all the duties of the office of collector, according to law.

Condition thereof.

Failing to give bond, new collector to be appointed.

SEC. 13. If such collector shall neglect, or refuse, to give such bond, for ten days after his appointment, his office shall be vacant, and the county court, or clerk, as the case may require, shall appoint some suitable person to fill such vacancy, who will give such bond.

Application of 5th section.

SEC. 14. The provisions of the fifth section of this article, shall apply to bonds to be executed by the collectors of St. Louis county.

Auditor shall require an additional bond, when; if additional bond be not given, office vacant.

SEC. 15. Whenever the amount of the bond given by any collector of the revenue, shall not be equal to double the amount of the revenue with which his immediate predecessor, in the same county, was charged, the auditor of public accounts shall require the county court of the proper county, to take additional bond and security; and if any collector shall neglect, or refuse, to give such additional bond and security, in ten days after he shall be notified so to do, his office of collector, and if he be the sheriff, his office of sheriff shall be declared vacant by the county court; and such court shall either notify the governor of such vacancy, in case of a sheriff, or appoint a successor, in the case of the collector of St. Louis county.

County court to proceed as in last section, when.

SEC. 16. Whenever it shall appear to the satisfaction of the auditor, that the security given by any collector is insufficient, he, and the county court, shall proceed in the manner provided in the next preceding section.

Collector may appoint a deputy.

SEC. 17. The collectors of the revenue may perform their duties by deputy, and every deputy shall have the same legal qualifications as the principal.

Deputation to be in writing; may be revoked, how.

SEC. 18. 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.

Digitized by Google

CHAP. 147.

Notice to be given of deputation, &c.

SEC. 19. The collectors shall give public notice of every deputation and revocation, by putting up a notice at the court house door of their county.

Tax book to be delivered to collector, who shall be charged therewith.

SEC. 20. 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.

Collector to subscribe receipt and receipt, and abstract of tax book to be transmitted to auditor of public acc'ts.

SEC. 21. The collector shall also subscribe a receipt for the tax book, endorsed on the aggregate abstract thereof, as required to be made out by the clerk by the provisions of the forty-first section of the second article of this act; which abstract, with such receipt endorsed thereon, certified and authenticated, as required by the forty-first section aforesaid, shall be transmitted by the clerk, to the auditor of public accounts, on or before the first Monday of October next after such abstract shall be made out.

Penalty on clerk for failing to transmit such abstract to auditor.

SEC. 22. If the clerk shall neglect or refuse to transmit such abstract, as required by the provisions of the preceding section, he shall forfeit to the state the sum of one hundred dollars, to be recovered in her name, by action of debt; and the certificate of the auditor of public accounts, authenticated by the seal of his office, setting forth the failure of the clerk to comply with the provisions of the preceding section, shall be prima facie evidence of the facts certified on the trial of such action.

Power of collector to levy on and sell personal property.

SEC. 23. The collectors shall diligently endeavor, and use all lawful means, to collect 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 as goods and chattels are or may be required to be seized and sold under execution issued on judgments at law, and no property shall be exempt from seizure or sale for taxes.

No such levy and sale to be made until demand of taxes.

SEC. 24. 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.

Digitized by Google

Necessary costs of levy and sale to be collected.

SEC. 25. Whenever taxes shall be levied by the sale of goods, in addition to the amount of the tax, the collector shall levy the necessary costs of the proceeding, and ten per centum on the amount of the tax for his trouble.

Chief officer of corporation to give certificate of taxable shares therein; and in default of paying taxes, proceedings.

SEC. 26. The cashier, secretary, or chief clerk of any corporation, the shares of which are taxable by law, at the request of the collector shall give him a certificate under his hand, showing the number and amount of shares held in the stock of such corporation, the names of the holders, and the incumbrances thereon, and such collector, in default of the payment by the corporation of the taxes due thereon, as required by the twenty-third section of the second article of this act, shall seize and sell the same, in the manner prescribed in the twenty-third section of this article, and the purchaser thereof shall be admitted to all the rights, powers and privileges, that the holders of such shares had at the time of seizing the same, and shall be entered by such corporation on their books, as the owners of such shares.

Penalty on corporation for failing to give such certificate.

SEC. 27. If any corporation, or any officer thereof, shall fail to comply with the provisions of the preceding section, such corporation shall forfeit to the state the sum of one thousand dollars, to be recovered by action of debt, in the name of the state, in any court of competent jurisdiction.

Collector to give receipt for taxes; its contents.

SEC. 28. When a collector shall receive taxes on lands, he shall designate in his receipt for the same, the particular tracts on which the taxes are paid, naming the range, township, section, quarter section, or quarter quarter section, as the case may require, or, if paid on town lots, then he shall designate the lots on which the taxes are paid, giving the number of the lots, the square or block, and the street or alley on which they are situate.

Sheriffs to collect all fines, &c.

SEC. 29. The sheriffs of the several counties, shall collect and account for 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.

Clerks to keep accounts of fines, &c.

SEC. 30. 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

Digitized by Google

shall keep the same open for the inspection of the judges of the respective courts, and the collector of the revenue.

The courts, at each term, to make settlement with the sheriff concerning such fines, &c.

SEC. 31. 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 fines, penalties, forfeitures and judgments, received by them, and not before accounted for and paid over.

Certain other officers to settle with the courts for such fines, &c.

SEC. 32. Whenever money shall come to the hands of any officer, except only the state treasurer and collector of the revenue, on account of fines, penalties, forfeitures and 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.

Proceedings when court makes such settlement.

SEC. 33. 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.

Duplicates of the records of settlement; one given to collector, the other to county court.

SEC. 34. 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.

Officer failing to pay amount charged, on settlement, proceedings.

SEC. 35. All officers who shall have made settlements with the courts, 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 twenty-third, twenty-fourth, and twenty-fifth sections of this article, in regard to taxes.

Duty of collector on receiving such amount.

SEC. 36. Whenever the collector shall receive the amount due from any such officer by voluntary payment, or by sale of goods, he shall give such officer duplicate receipts for the same, stating therein the whole amount received, how much

Digitized by Google

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, deposite one of them with the clerk of the county court.

Officer failing to settle, may be attached and imprisoned.

SEC. 37. Every officer required by this act 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.

Delinquent to pay 5 per cent. per month, till paid; collector to be credited with delinquency.

SEC. 38. 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 recovered by suit upon his official bond, or otherwise, according to law.

County court shall make collector account at each term.

SEC. 39. The several county courts shall, at each regular term, cause the collector to settle his account of all money received by him from clerks, sheriffs, recorders, and other officers, on account of fines, penalties, and judgments; and the settlement shall be entered of record, so as to show what is due to the state and to the county, respectively, from what officer received, from what branch of the revenue, and the particular fund, if any, to which the same belongs.

Collector unable to collect taxes, proceedings.

SEC. 40. 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 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 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.

Copy of delinquent list to be set up.

SEC. 41. On or before the first day of November in each year, each collector shall set up a copy of such delinquent lists at the court house door of his county, and also at one of the most public places in each township in the county; and on failure to put up such copies, such collector, so failing, shall be liable for the amount of such delinquent lists.

Digitized by Google

When delinquent list to be returned and collector to be credited.

SEC. 42. At the term of the county courts, to be held on the second Monday in November, the collector shall return the delinquent lists, under oath or affirmation, to such court, and settle his account of all moneys received by him, on account of taxes and other sources of revenue; and the amount of such delinquent list, or so much thereof as the court shall find properly returned delinquent, shall be allowed and credited to the collector in his settlement.

Special term shall be called, when.

SEC. 43. If there be no regular term of the county court, in any county, on the second Monday in November, a special term of such court shall be called by any two justices thereof, to be held on that day in each year, for the purpose of making the settlement required by the preceding section.

Settlement with collector to be recorded.

SEC. 44. The court shall cause such settlement to be entered of record, so as to show the amounts due to the state and county respectively.

Collector failing to settle, may be attached.

SEC. 45. 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.

Such settlement to be transmitted to auditor.

SEC. 46. Immediately after every settlement made by any collector with the county court, a copy of the record thereof shall be certified and transmitted by the clerk to the auditor of public accounts.

Application of 22d section of this article.

SEC. 47. The provisions of the twenty-second section of this article, shall be applicable to the case of a clerk failing to comply with the provisions of the next preceding section.

Delinquent list to be delivered to successor.

SEC. 48. The delinquent lists allowed to any collector shall be delivered to his successor, who shall collect the same, and account therefor, as for other moneys collected by him, and shall return such list to the clerk of the court, to be delivered to his successor, and so on, until the whole shall be collected.

When collectors (except St. Louis collector,) to pay revenue into the state treasury.

SEC. 49. Every collector, except the collector of St. Louis county, shall, annually, on or before the first Monday in December, pay into the state treasury the whole amount of the revenue with which he may stand charged, deducting his commission, 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.

St. Louis collector to deposite in state bank.

SEC. 50. The collector for the county of St. Louis shall, on the first Monday in each month, deposite in the bank of the state of Missouri, to the credit of the treasurer of the state, all moneys received by him for the state, first deducting

Digitized by Google

the amount of his commission, and take from the cashier a certificate of every such deposite, which shall be received by the treasurer of the state in payment of the revenue.

Certificate of deposite to be sent to auditor.

SEC. 51. Such collector, when he shall make such deposite, shall transmit to the auditor of public accounts, an affidavit, setting forth the amount of revenue which he has received since the last deposite, and the amount retained by him for his commission.

Two last sections not to affect fees of collector.

SEC. 52. Nothing contained in the two preceding sections shall be so construed, as to affect, in any wise, the rate or amount of commission which such collector would be entitled to on his final settlement.

Penalty on collectors for failing to deposite the revenue.

SEC. 53. For every failure of the collector to deposite the revenue, as required by the forty-ninth and fiftieth sections of this article, he shall forfeit to the state the sum of five hundred dollars, to be recovered of him and his securities, by suit on his official bond, and the auditor shall direct the prosecution of such suit, immediately on the occurrence of such failure.

Compensation of collector.

SEC. 54. Every collector shall receive, as full compensation for his services in collecting the state and county revenue, commission, as follows: *First*, Upon all revenue collected upon licenses, two per centum; *Second*, Upon all revenue collected from clerks, recorders and other officers, two per centum; and upon all other revenue, as follows: *First*, Upon all sums not exceeding one thousand dollars, seven per centum; *Second*, Upon all additional sums above one thousand dollars, and not exceeding two thousand dollars, five per centum; *Third*, Upon all additional sums above two thousand dollars, and not exceeding three thousand dollars, four per centum; *Fourth*, Upon all additional sums above three thousand dollars, three per centum; and the collectors shall be allowed five cents for every mile they may necessarily travel in going to the seat of government, and returning to their place of residence, for the purpose of paying the revenue into the state treasury: *Provided*, Such compensation shall not be allowed for mileage more than once in each year.

Compensation of officer for paying over certain money to collector.

SEC. 55. 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 full compensation, commission on the amount received, at the rate of two per centum.

SEC. 56. Every collector who shall pay into the treasury

Digitized by Google

Lien allowed to collector in certain cases.

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 collected, notwithstanding the appointment of another collector.

Am't returned delinquent, to be refunded to collector in certain cases.

SEC. 57. 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 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.

Indictment against collector for improper conduct, &c.

SEC. 58. If any collector shall collect taxes when none are due, or shall wilfully exact or demand more than is due, he shall be indicted and fined in any sum not less than fifty dollars, and may also be removed from office.

ARTICLE IV.

Of the county revenue.

SEC. 1. County courts have power to levy taxes for county purposes.
2. When tax book is made out, rate of such taxes to be fixed.
SEC. 3. Same to be entered of record.
4. Collector to pay amount collected into the county treasury.
5. Penalty on collector for not paying over such revenue.

Power of county court to levy taxes for county purposes.

SECTION 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 subject of taxation, more than one hundred per centum for the same time; but the county court of St. Louis county is empowered to impose an additional tax, not exceeding one-twentieth of one per centum, if they deem it necessary, in order to pay jurors summoned in the several courts of said county; which tax, if imposed, shall be applied to the payment of jurors only.

When tax book is made out, rate of such taxes to be fixed.

SEC. 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 in the tax book.

Digitized by Google

Same to be entered of record.

SEC. 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 show the whole amount to be raised, and the proportion which the rates of the county tax bear to the rates of State tax, upon the same subject of taxation.

Collector to pay amount collected into the county treasury.

SEC. 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.

Penalty on collector for not paying over such revenue.

SEC. 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 centum a month on the amount wrongfully withheld, to be computed from the time the amount ought to have been paid, until actual payment.

ARTICLE V.

Of the sale of land for taxes.

SEC. 1. Delinquent list of lands and lots to be examined by the county courts and certified to register.
2. Collectors to return said lists to register.
3. When such lands and lots may be redeemed.
4. Duplicate receipts therefor to be given; to whom given.
5. For non-payment, land to be sold; proceedings therein.
6. In what manner the list of lands advertised for sale to be arranged.
7. When lands and lots to be advertised for sale.
8. When lands and lots may be redeemed.
9. When sale is to be made, &c.
10. Duty of collector in making out copies of lands exposed for sale.
11. "Register of lands sold for taxes" to be kept; what shall be entered therein.
12. Collectors to pay into the state treasury the proceeds of such sale.
13. If collector find that taxes are paid on advertised tract, shall reserve the same.
SEC. 14. After sale, lands may be redeemed in two years; provision as to minors.
15. When land is redeemed as in last section, a quietus to be granted.
16. When redemption money is paid into treasury for use of purchaser, the person entitled thereto paid out of state treasury.
17. If lands not redeemed in two years after sale, register to make deed for same.
18. Such deed to be prima facie evidence on showing certain facts.
19. Provision where minor heirs apply to redeem.
20. Duty of printer relating to the advertisements of such lands.
21. Lands on which arrearages of taxes are due, to be sold after first Monday of June, 1845.
22. Compensation to printers and officer for services under this act.
23. All fees received by register under this act, to be paid into state treasury.
24. Collector to describe what part of the tract to be sold, and do the same in the deed.

Digitized by Google

CHAP. 147.

Delinquent list of lands and lots to be examined by county court and certified to register.

SECTION 1. At the term of the county court at which the delinquent lists are annually to be certified, as provided in the forty-second section of the third article of this act, the said courts shall examine and compare the lists of lands and town lots, on which the tax remains due and unpaid; and if any such lands or town lots have been assessed to more persons than one, or more than once to the same person, or if the legal sub-division be incorrectly described, in all such cases the said courts shall correct such errors, by the best means in their power, and shall cause the lists so corrected to be certified to the register of lands, under the seal of the court.

Collectors to return said list to register.

SEC. 2. The several collectors shall return the said lists to the register of lands, immediately after the first Monday in December of each year, which shall be filed by said register in his office, to be disposed of as is hereinafter provided.

When such lands and lots may be redeemed.

SEC. 3. The lands and town lots so returned, may be redeemed at any time prior to the first day of June next succeeding the date of the return, by paying into the state treasury the amount of taxes and costs due thereon, with interest at the rate of fifteen per centum per annum; and upon full payment of the amount of tax, costs and interest, the register shall grant the party a quietus, and shall mark the same paid on the lists in his office.

Duplicate receipts therefor to be given, to whom.

SEC. 4. Upon the payment of money into the treasury, as provided in the next preceding section, the treasurer shall issue duplicate receipts for the amount, which shall be delivered to the register, one of which he shall file in his office, and deliver the other to the auditor of public accounts, who shall charge the treasurer with the amount.

For non-payment, land to be sold; proceedings therein.

SEC. 5. On the first Monday of June, annually, next succeeding the returns required to be made by the second section of this article, the register of lands shall cause all the lands and town lots remaining unredeemed in his office, or which may have been bought in for the state or forfeited to the state, to be advertised in some newspaper published in the city of Jefferson, to be sold on the first Monday in October next thereafter, at the place of holding courts in the respective counties; and the register shall immediately transmit three copies of said advertisement to the collector of each county, in which any of the said lands lie; one of which the collector shall set up at the court house door of his county, one shall be placed in the county court clerk's office, subject to the

Digitized by Google

inspection of all persons, without fee, and the other shall be safely preserved in the office of the county clerk; and he shall also file two copies with the auditor of public accounts, to be by him preserved in his office; and the auditor shall thereupon charge the several collectors with the amount appearing to be due on the lands and town lots advertised to be sold in their respective counties.

In what manner the list of lands advertised for sale to be arranged.

SEC. 6. The lists of lands and town lots to be advertised as required in the next preceding section, shall be arranged by the register, in regular numerical order, beginning at the lowest number of range and township in each county, and in each township commencing with section one, and running to thirty-six, and in like manner with town lots; and each and every name in which any tract of land or town lot may have been returned, shall be set opposite such tract of land or town lot.

When land and lots to be advertised for sale.

SEC. 7. On the first Monday in July, annually, or as soon thereafter as the advertisements mentioned in the fifth section are received by the several collectors, they shall cause the lands and town lots lying in their respective counties to be advertised for sale for the taxes, interest, and costs, on the first Monday in October next thereafter, in some newspaper published in the county where the lands lie; or if there be no paper published in the county, then by three written or printed advertisements, put up at the most public places in each township in the county.

When land and lots may be redeemed.

SEC. 8. Said lands and town lots may be redeemed at any time after the lists are received by the collector, prior to the sale, by the party paying to the proper collector the full amount of taxes, costs, and interest, at the rate of fifteen per centum per annum; and the collector shall thereupon issue his receipt therefor, as provided in the twenty-eighth section of the third article of this act.

When sale is to be made, &c.

SEC. 9. All of said lands and town lots remaining unredeemed on the first Monday in October, annually, shall be publicly exposed to sale by the collectors, for the taxes, interest and costs due thereon, before the court house door of the county, and shall sell so much of each and every tract as will be sufficient to pay the taxes, interest and costs; the sales to be continued from day to day (Sundays excepted,) until all the lands and town lots are offered; and if no person will pay the taxes, interest and costs due on any tract of land or town

Digitized by Google

lot, when offered for sale, the collectors shall bid the same in for the state; and if the bidder who is declared the purchaser of any tract of land, does not pay for the same, the land shall be considered as bid in for the state, and shall not again be offered for sale by the collector, at that sale; and upon full payment of the amount for which any tract of land or town lot is sold, the collector shall grant the party a certificate therefor.

Duty of collector in making out copies of lands exposed for sale.

SEC. 10. The collectors shall make out two fair copies of all lands and town lots by them exposed to sale, annually; stating therein the name of the owner, the legal sub-division by parts of sections, number of township and range; or if it be a New Madrid or Spanish claim, then by the number of the same; or, if a town lot, the name of the town and the number of the lot and block, and to whom sold, whether to an individual or the state; the precise quantity and part of each tract of land or town lot sold, and the amount of taxes, interest and costs for which it was sold; and shall file one of said lists with the clerk of the county court, and shall return the other immediately after the first Monday in December next after such sale, to the register of lands, to be by him filed in his office; the said lists to be verified by the affidavit of the collector annexed thereto, stating that the same is a true and correct account of the sales by him made at the time and place therein mentioned, to be sworn to and subscribed before the clerk of the county court, and attested by said clerk, with his seal of office affixed thereto.

Register of land sold for taxes to be kept; what shall be entered therein.

SEC. 11. The register of lands shall provide a book, to be called "Register of lands sold for taxes," in which the register shall enter all lands and town lots returned to him as having been sold for taxes, which entry shall be a transcript of the list returned by the collectors as directed in the next preceding section, leaving at the end of each line, three columns in blank, of sufficient space to insert the names of persons who may redeem such lands or town lots, the date of the redemption, and the amount of the redemption money.

Collectors to pay into state treasury, proceeds of such sales.

SEC. 12. The collectors shall, at the time of making their annual settlement with the auditor of public accounts, on the first Monday in December, pay into the state treasury the whole amount of the proceeds of the sales made under the provisions of this act, with the exception of such charges and fees as they may be allowed by law, for advertising and sel-

Digitized by Google

ling; and upon such payment, the auditor shall credit such collectors with the amount by them paid into the treasury.

If taxes are found to be paid on advertised tract, collector to reserve the same.

SEC. 13. Whenever it shall appear to the satisfaction of the collector that the tax has been paid on any tract of land, or any town lots, which he may have advertised for sale, he may reserve the same from sale, and shall so state on the list of sales furnished by him to the register of lands, as required by the tenth section of this article, to enable the said register to correct the same on his books.

After sale, lands may be redeemed in two years; provision as to minors.

SEC. 14. Any lands or town lots which may be sold under the provisions of this act for taxes, interest and costs due thereon, and unpaid, may be redeemed at any time within two years from the date of such sale, by the claimant or any other person for him, paying to the state treasurer, for the use of the purchaser or purchasers, double the amount of taxes, interest and costs, for which the same may have been sold; lands that may belong, in whole or in part, at the time of such sale, to a minor or minors, may be redeemed at any time before the expiration of one year from the time the youngest of such minors shall become of full age. No person shall be permitted to redeem any lands sold, unless he shall at the time pay all taxes which may have become due, subsequent to the sale, with interest thereon from the time they become due, at the rate of ten per cent. per annum, if the person redeeming was at the time of the sale a minor, and in all other cases at the rate of fifty per cent. per annum; and if any purchaser of lands sold for taxes shall suffer the same to be sold before the expiration of two years allowed for the redemption of the same, the persons whose lands have been thus sold, may redeem the same from both sales by paying to the treasurer, for the use of the first purchaser, the taxes, interest and costs of the first sale, and for the use of the second purchaser, double the amount of the taxes, interest and costs, for which the same may have been sold at such second sale.

A quietus to be granted, when.

SEC. 15. When any lands shall be redeemed as provided in the next preceding section, the register of lands shall grant the party a quietus therefor, and the auditor shall charge the treasurer with the amount paid him, and shall credit the proper collector's account in his office with the same.

Redemption money to be refunded, when.

SEC. 16. When any redemption money is paid into the treasury for the use of purchasers of lands, or town lots, under the provisions of this act, the auditor shall draw his warrant

Digitized by Google

on the treasurer for the amount, in favor of the person entitled thereto, which shall be paid out of any money in the treasury not otherwise appropriated.

If lands not redeemed within two years, register to make deed for the same.

SEC. 17. Where lands or town lots have been sold under the provisions of this act, and shall not be redeemed within two years, as provided in the fourteenth section of this article, the register of lands shall execute good and sufficient deeds of conveyance to all persons entitled thereto, conveying the lands or town lots in such deeds.

Such deed to be prima facie evidence, when.

SEC. 18. Such deed, so executed, shall, without any further proof, be received as evidence in all courts in which the title to any land or town lots, purporting to be conveyed by the same, shall be brought in question, and shall be considered prima facie evidence of title in the purchaser, upon his showing that the foregoing provisions of this article, which authorize the execution of such deed, have been complied with.

Provision when minor heirs apply to redeem.

SEC. 19. When any person or persons shall apply to the register to redeem any lands or town lots, sold for taxes under the provisions of this act, alleged to have belonged to minor heirs, it shall be incumbent on the person or persons so applying, to produce to said register, a certificate of the clerk of the county court of the proper county, under his seal of office, setting forth, that it appears from the records of said court, that such person or persons are the legal heir or heirs of the former owner of said tract or tracts of land, or town lots, and that such former owner died before the said tract of land or town lots was sold for taxes, and, also, the true age of the youngest of said heirs; and in cases where there has been no will, nor any settlement of such intestate estate, before the county court to which such jurisdiction belongs, such heir or heirs shall go before some court of record and exhibit proof of his, her or their heirship, minority and age; and on producing the certificate of the clerk of such court, under his seal of office, to the above facts, such heir or heirs shall be entitled to all the rights of redemption as are hereinbefore allowed, and in all cases when such certificate shall be made without this state, it shall be authenticated according to the laws of the United States, and the certificate containing the evidence on which the right to redeem is predicated, shall, in every case, be delivered to the register of lands, and by him filed and preserved in his office.

SEC. 20. The printer or printers of the newspapers in which

Digitized by Google

Duty of printer relating to the advertisement of such lands.

the advertisements required by the fifth section of this article are inserted, are hereby required, immediately after the same shall have been published, to deposite two copies of the paper with the auditor of public accounts, two copies with the state treasurer, two copies with the secretary of state, and shall transmit by mail, two copies to the clerks of the county courts of the several counties in the state, to be by the said auditor, treasurer, secretary of state and clerks, safely preserved in their offices: the said printer or printers shall annex a certificate to each of said copies, with the signature or signatures of such printer or printers, stating that such advertisement was duly published, giving the time, place and name of the newspaper, in which the same was published, and certified copies of such advertisements, authenticated as aforesaid, shall be prima facie evidence of the facts they contain, in all courts of justice in this state.

Lands on which arrearages of taxes are due, to be sold after first Monday of June, 1845.

SEC. 21. All lands and town lots which may have been returned to the register of lands, for the non-payment of taxes for the years one thousand eight hundred and forty-three, and one thousand eight hundred and forty-four, or any former year, and which shall remain unredeemed on the first Monday in June next, shall immediately thereafter be advertised for sale by the register of lands, to be sold on the first Monday in October next, and shall be proceeded on in all respects, and subject to all the liabilities and privileges as other lands hereafter to be returned, as provided in the preceding part of this article.

Compensation to printers and officers for services under this act.

SEC. 22. The following charges and fees shall be allowed to the printers and officers, for services rendered under the provisions of this act, viz: To the register of lands for each tract advertised ten cents; for granting a quietus when any tract of land or town lot is redeemed, twenty-five cents; for entering each tract in the "Register of lands sold for taxes," five cents; for each deed, duly executed and acknowledged, fifty cents; the printer at the city of Jefferson, for each tract contained in the advertisement, six cents; the printer in each county for advertising lands in the county, for each tract, ten cents; collectors, for advertising, when advertised in newspapers, for each tract, five cents; when by putting up advertisements in townships, ten cents on each tract, and also twenty-five cents for each tract of land, or town lot, that may

Digitized by Google

be redeemed; and the sum of twenty-five cents on any piece of land, or town lot, sold by him.

Fees received by register to be paid into state treasury.

SEC. 23. All fees received by the register of lands, under the provisions of this act, shall be paid into the state treasury, and the register shall render to the auditor of public accounts a statement verified by oath, of all fees received.

Collector to designate the land sold, &c.

SEC. 24. The collector, at the time of exposing the land for sale, under the ninth section of the fourth article, shall designate from what part of the tract, or lot, the portion sold is to be taken, and the deed when made, shall designate the said portion accordingly.

ARTICLE VI.

Of the duties of collectors when their terms of service expire.

SEC. 1. Collector to pay over all moneys to his successor, and take duplicate receipts therefor.
2. Duty of clerk and auditor relating to such receipts.
3. Such successor to pay said money into state treasury.
4. What such receipts shall specify.
5. What acts repealed by this act.

Collector to pay over all moneys to his successor, and take duplicate receipts therefor.

SECTION 1. At the expiration of the term for which the several collectors are elected, (or as soon thereafter as their successors shall have qualified,) they shall pay over all moneys which may be in their hands, due the state, to their successors in office, and take duplicate receipts therefor, one of which receipts they shall file with the clerk of the county court, of their respective counties, and retain the other for their own benefit.

Duty of clerk and auditor relating to such receipts.

SEC. 2. It shall be the duty of the county clerks, as soon as they receive the receipts above mentioned, to certify the same to the auditor of public accounts, stating the amount of such receipts, and it shall be the duty of the auditor, upon the receipt of the same, to place the amount thus certified to the credit of the collector, whose term of service has expired, and charge the same to his successor in office.

Successor to pay said money into state treasury.

SEC. 3. It shall be the duty of the collectors, charged with the moneys mentioned in the next preceding section, to pay the same into the state treasury, on the first Monday in December, next thereafter.

What such receipts shall specify.

SEC. 4. In the receipts mentioned in the first section of this article, shall be specified, particularly, on what account the moneys mentioned were received, whether from taxes on

Digitized by Google

lands, or from merchants, grocers, or peddlers licenses, or from other sources.

SEC. 5. All acts, or parts of acts, inconsistent with this act, are repealed, after the taking effect of this act, except the assessment for the year eighteen hundred and forty-five, which shall be made by virtue of the act now in force. What acts repealed by this act.

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

Approved March 27, 1845.

CHAPTER 148.

REVENUE.

AN ACT to authorize the correction of erroneous assessments of lands for taxes.

SEC. 1. County court to correct assessment, and certify same to register.

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

SECTION 1. The several county courts, are hereby authorized and empowered to hear and determine, all allegations of erroneous assessments of lands for taxes, made prior to, or which may be made after the passage of this act; and in all cases where it shall appear that lands have been erroneously taxed, either by having been assessed to more persons than one, or more than once for the same year, to the same person, or, if the land was not subject to taxation, in all such cases the said courts shall order the same to be corrected on the books of the proper assessor, and shall cause the clerk to certify the same to the register of lands, whose duty it shall be to make the corrections on the books in his office: *Provided*, That no money shall be drawn out of the state treasury by virtue of the above provisions of this act. County court to correct assessment and certify same to register.

This act to take effect, and be in force, from and after its passage.

Approved March 27, 1845.

Digitized by Google

CHAPTER 149.

REVENUE.

AN ACT to authorize the repayment of taxes improperly paid.

SEC. 1. When the register shall refund taxes improperly paid.

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

When the register shall refund taxes improperly paid.

SEC. 1. Whenever it shall appear to the satisfaction of the register of lands, that the taxes have been paid more than once, upon the same tract of land, for the same year, by the same person, it shall be his duty to certify that fact, together with the amount improperly paid, to the auditor of public accounts, who shall draw his warrant against the state treasury, for the same, in favour of the person entitled thereto; and that the auditor report to the next legislature the amount paid out of the state treasury under this act.

This act shall take effect from and after its passage.

Approved March 28, 1845.

CHAPTER 150.

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 the 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 the amount and time of receipt.
4. Until otherwise provided, the road and canal fund shall be equally divided among the counties.
5. To be divided half yearly, if amount exceed two hundred dollars.
6. Apportionment and division to be made by treasurer and auditor; notice, &c., to be given each clerk of the county court.
7. County court has power to draw for such money, which shall be placed in the county treasury and kept seperate.
8. Treasurer may give check on bank or other place of deposite, and transmit the check by mail to county court.
9. What disposition county court may make of the check to get the cash.
10. Such fund shall be applied by the court to constructing or improving roads, bridges or canals.
11. Liability of each member of the county court for mis-application of the fund.
12. County court of St. Louis county may apply their share to grading and macadamizing of roads.

Digitized by Google

SEC. 13. Two or more counties may unite their funds, to construct or improve roads, bridges or canals; when.
14. Fund may be appropriated to the objects prescribed, or loaned out at interest; how managed in such case.
SEC. 15. Court to make biennial report to auditor; its contents.
16. Treasurer to open separate account with each county; what he shall state in his biennial report in respect to said fund.
17. No compensation allowed to the county treasurer under this act.

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

State treasurer to draw the 3 per cent. fund accruing to this state from the United States.—1835.

SECTION 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 net proceeds of the sales of the public lands of the United States, lying within the state of Missouri, according to the laws of the United States, and deposite the same in the state treasury, subject to the disposition of the general assembly for the improvement of the country by roads and canals.

Such money to constitute a separate fund, &c.

SEC. 2. The money 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.

Amount received to be reported to auditor.

SEC. 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.

Shall be divided among the counties. 1843, p. 113.

SEC. 4. Until otherwise provided by law, the road and canal fund shall be equally divided among the several counties in this state.

To be divided half yearly, when.—1837, pp. 108–9.

SEC. 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 a county equal to two hundred dollars, and if not, then it shall be made annually.

Apportionment and division to be made by treasurer and auditor, &c.

SEC. 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.

County court has power to draw for such money, &c.

SEC. 7. Each county court shall have power to draw on the auditor of public accounts for a warrant on the state treasurer for the amount of the share to which such county is entitled,

Digitized by Google

CHAP. 150.

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.

Treasurer may give check, &c.—Act Jan. 17, 1837, sec. 6, p. 109; act Jan. 27, 1837, sec. 2, p. 109.

SEC. 8. Whenever any part of the road and canal fund shall have been paid by a draft drawn by the treasurer of the United States on any bank or other place of deposite, and an apportionment thereof shall have been made, the treasurer, on the presentation of the auditor's warrant for the share of any county under such apportionment, shall draw a check on the said bank or other place of deposite, in favor of the county court entitled to such share, or their order, and shall transmit the same to the said court by mail.

What disposition court may make to cash the draft. *Ib.*, sec. 7.

SEC. 9. It shall be the duty of the said county court to sell such draft, or to draw the money due thereon, in such manner as shall seem most to the interest of the county, but no draft shall be sold for less than its par value, nor for any thing else than ready money.

Such fund, how applied by the court.

SEC. 10. The county court of each county, shall have control of the county road and canal fund, and shall cause the same to be applied to the construction and improvement of roads, bridges or canals, and to no other object.

Liability of each member of the county court for a misapplication of the fund.

SEC. 11. If, by any 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 said fund.

County court of St. Louis county may apply it, how. 1843, p. 113.

SEC. 12. The county court of St. Louis county may, in their discretion, appropriate the whole, or any part of the road and canal fund, to which said county may be entitled, for the purpose of grading and macadamizing any road or parts of roads.

Two or more counties may unite their funds to construct and improve roads, &c.

SEC. 13. 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 authorized 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.

SEC. 14. The several county courts may either appropriate

Digitized by Google

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.

May be appropriated as above, or loaned but at interest; how managed in such case.

SEC. 15. 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, what improvements have been made, 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.

Court to make biennial report to auditor; its contents.

SEC. 16. 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, showing how much has been received into the treasury since the last biennial report, how much has been apportioned to and paid to each county, what counties, if any, have failed to draw their share, and how much remains for distribution.

Treasurer to open separate account with each county; what he shall state in his biennial report.

SEC. 17. 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. (*a*)

No compensation allowed county treasurer under this act.

Approved February 20, 1845.

(*a*) *Vide*, "County treasuries," chapter 41, ante page 306.

Digitized by Google

CHAPTER 151.

ROADS AND HIGHWAYS.

AN ACT for opening and repairing public roads and highways.

ARTICLE I. Of county roads.
II. Of state roads.

ARTICLE I.

Of county roads.

SEC. 1. All county roads to be opened and repaired according to this act.
2. Power given to county court to establish or alter roads.
3. Width of such roads.
4. In what condition roads to be kept.
5. Bridge worth more than fifty dollars, not to be built by overseer.
6. In what manner a new road to be petitioned for.
7. Notice of intended application to be given.
8. On hearing the cause, the court may grant the prayer of such petition, and appoint commissioners.
9. Copy of the order to be given to the sheriff.
10. Sheriff to deliver to commissioners a copy of such order.
11. Sheriff shall return the original order.
12. Commissioners to take oath and proceed to view the route, &c.
13. Report and proceedings of the commissioners.
14. When the inhabitants remonstrate, commissioners appointed, and to proceed as in first instance.
15. If report is against the road, same shall not be opened; otherwise, if favorable.
16. Any person injured by opening such road, how he shall proceed; viewers to be appointed.
17. Viewers shall meet and take an oath.
18. When they shall assess damages of injured person.
SEC. 19. If damages be for injured person, county to pay costs; if none are given, he pays costs.
20. Application, how and to whom made for permission to turn road, for the purpose of cultivating land.
21. Three commissioners to be appointed in such cases; report of their proceedings, how and when to be made.
22. Upon report being made, in what cases court to vacate that part of road, &c.; commissioners' report to be recorded.
23. Twelve-house holders may petition to vacate a road.
24. Petition to be publicly read on first day of court to which it is presented, and matter continued.
25. At next term, shall again be read, and if no remonstrance of twelve house holders, same to be vacated.
26. If remonstrance, how court to proceed.
27. Judgment on the report to be conclusive.
28. Justices of the peace to be appointed to lay off their townships into road districts.
29. Such justices to allot the hands.
30. Clerk to make out copy of order of appointment of justice.
31. Sheriff shall deliver a copy of such order to the justice, and make return.
32. When county court to appoint overseer.
33. Clerk to make out such order of appointment.

Digitized by Google

SEC. 34. Sheriff to serve such order.
35. Overseer to apply to allotting justice for list of hands.
36. Justice to return a list of allotted hands to county court.
37. No person to work on more than one road division at a time.
38. Justice may alter road division, and re-allot hands to open new road.
39. Certificate of such re-allotment or alteration to be transmitted to the court.
40. How long an allotting justice to act as such.
41. Who shall work on roads.
42. How often overseer to call out the hands.
43. How notice is to be given to the hands to work.
44. Penalty on hand not working.
45. List of delinquent hands to be given to justice.
46. Justice to bring suit in name of overseer to use of road district against delinquent.
47. Provision as to payment of costs.
48. What tools and sort of team entitle a hand to credit of three day's work.
49. Privilege given overseer to enter adjacent lands for certain purposes.
50. When the owner of such land feels agrieved, how to get redress.
51. When new road established, county court to appoint an overseer thereof.
52. Such overseer to have notice of appointment.
53. The allotting justice to give such overseer a list of hands.
54. Such hands to have notice, and to be subject to all the duties of other hands.
55. Discretionary power given justice in making such allotment.
SEC. 56. New road being opened, to be kept in repair like other roads.
57. Finger board kept at forks of roads.
58. Compensation for erecting finger board.
59. Penalty for obstructing road.
60. Additional penalty for continuing such obstruction.
61. Penalty for injuring sign board.
62. Penalty on overseer for neglect of duty, &c.
63. No person required to act as overseer more than one year.
64. The paying a fine for failing to accept, shall excuse him for one year.
65. Penalty on sheriff, clerk and justice, for neglect of duty.
66. Such penalties to be recovered by indictment, and paid into county treasury.
67. Such fine to go to credit of road and canal fund.
68. The fines imposed on other persons to be recovered by action of debt
69. Fines against minors, apprentices and slaves, to be recovered of guardian or master.
70. When constable shall collect any fine, &c., to pay same to justice of the peace.
71. Such justice to pay same over to road division.
72. Such justice to report receipt of money to county court.
73. Overseer to apply fines received by him to repairing roads.
74. Such overseer to settle with county court.
75. List of overseers to be laid before grand jury by clerk.
76. What facts shall be necessary to be proven against overseer, on an indictment.
77. This act to be given in special charge to the grand jury by circuit court.

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

SECTION 1. All county roads shall be opened and repaired, according to the provisions of this act. County roads, how opened and repaired.

SEC. 2. The county courts shall have power to make and enforce all orders necessary, as well for establishing and opening new roads, as to change or vacate any public road, or any part thereof in their respective counties. Power of the county court to establish or alter roads.

SEC. 3. All county roads shall be cut out not less than twenty feet, nor more than forty feet wide, to be determined, from time to time, by the county court ordering the opening Width of county roads.

Digitized by Google

CHAP. 151.

of the same, according to the supposed utility of such road.

In what condition roads to be kept.

SEC. 4. All county roads shall be cleared of trees, and limbs of trees, which may incommode horsemen or carriages, and no stump, in any county road, shall exceed eight inches in height, and wet grounds and small water courses shall be causewayed or bridged in such manner as to enable horsemen and carriages to pass with safety.

Bridge not to be built, when, &c.

SEC. 5. No bridge shall be built by the overseer and hands, the building of which shall be worth more than fifty dollars.

In what manner new road to be petitioned for.

SEC. 6. Applications for new county 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, with not more than two points, named in such petition, on the direction of said road.

Notice of intended application to be given.

SEC. 7. Notice of such intended application, shall be given by advertisements, put up in two or more of the most public places in such township, or townships, at least twenty days prior thereto.

Court may grant prayer of petitioner, when.

SEC. 8. The court, when such petition is presented, and publicly read, and upon proof of notice, as required by the next preceding section, shall appoint three disinterested householders of the county as commissioners.

Copy of the order to be given to the sheriff.

SEC. 9. The clerk of such court shall, within ten days after the appointment of such commissioners, deliver to the sheriff of the county, a copy of the order of such appointment, with an endorsement thereon of the time of delivery.

Sheriff to deliver to commissioner a copy of such order.

SEC. 10. The sheriff shall, within ten days thereafter, notify the persons appointed, by delivering to each of them a copy of such order, or by leaving such copy at the usual place of abode of such commissioner, with some [white] member of his family over the age of fifteen years.

Shall return the original order.

SEC. 11. The sheriff shall return the original order of appointment, to the clerk who delivered it to him, with his certificate thereon, showing how he executed the same, before the next regular term of the county court.

Commissioners to take an oath, &c.

SEC. 12. The commissioners, 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 to lay out and mark such road on the best ground that can be obtained, not running through any persons inclosure,

Digitized by Google

without the consent of the owner, unless a good way cannot otherwise be had.

Report and proceedings of commissioners.

SEC. 13. The commissioners, or a majority of them, shall make and certify a copy of their proceedings, to the ensuing regular session of the court, specifying through whose lands said road will pass, and whether the owner and tenant of said land gave his, her, or their consent, to the location of said road. If the consent of the owners and tenants of said land shall not be certified by the commissioners, the court shall order summons to be issued to the owners and tenants of the land through which the same is proposed to be conducted, if to be found within the county, if not, then to their agents therein, if any they have, to show cause why such road shall not be opened. It shall be the duty of the clerk of said court, within ten days, to put all summons hereby authorized to be issued, into the hands of the sheriff of his county, who shall execute the same in the manner prescribed in the tenth section of this act; upon the return of such summons *or summonses* executed, if no objection be made, such road shall be established and opened, in pursuance of the provisions of this act.

Commissioners to be appointed on remonstrance.

SEC. 14. If any ten householders of any township or townships through which the proposed road may run, shall object at such time, by way of remonstrance, to the utility of such road, other commissioners shall be appointed, who shall proceed in like manner as the commissioners appointed in the first instance.

Shall proceed, how.

If report is against the road, it shall not be opened; otherwise, if favorable.

SEC. 15. If a majority of such commissioners report against the utility of such road, the same shall not be established, and the petitioners shall pay the costs; but if they report favorably thereto, the objectors shall pay the costs, and the road shall be ordered to be opened, and the proceedings recorded.

Any person injured by opening such road, how he shall proceed.

SEC. 16. If any person through whose land such road may run, shall, on the day of the return of the summons *or summonses* executed, which are authorized to be issued by the thirteenth section of this act, present a remonstrance to the court, setting forth his grievances, the court shall appoint three disinterested householders, and a day and place for them to meet.

Viewers to be appointed.

Viewers shall meet and take an oath, when.

SEC. 17. Such householders, having had five days notice from any person interested, shall meet and take an oath or affirmation faithfully and impartially to discharge the duties assigned them.

SEC. 18. They shall then, or on any other day, prior to the

Digitized by Google

When they shall assess damages for objector.

next session of the county court, to which the majority may adjourn, proceed to review the proposed road, and assess the damages, if any, which such objector will sustain by reason of such road being opened and continued through his land; and shall report their proceedings to the next county court.

Costs, how regulated and by whom paid.

SEC. 19. If a majority of such reviewers shall assess damages in favor of the objector, such damages and costs shall be paid out of the county treasury; but if the majority report that the objector will sustain no damages, such objector shall pay the costs.

Application for permission to turn road, how and by whom made.

SEC. 20. Any person wishing to cultivate lands 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 own land, or on the land of any other person consenting thereto, at his own expense.

Commissioners to be appointed; their report, how and when to be made.

SEC. 21. The court or justice shall thereupon appoint three commissioners, disinterested householders, who shall, after taking an oath or affirmation to discharge the duty faithfully and impartially, proceed to view the same, and report the respective distances and situation of the ground of the established and proposed road, at the first term of the court thereafter.

Upon report being made, in what cases court to vacate that part of road, &c.

SEC. 22. If upon the report, the county court be satisfied that the public will not be materially injured by such change, it shall order the same; and upon satisfactory proof of such road being opened in such manner, or to be equally convenient to travelers, the court shall make an order vacating so much of the former road as lies between the different points of intersection, and record the report of the commissioners:

Commissioners' report to be recorded.

Proviso.

Provided, however, That before any application to the county court for any change in any established road, in whole or in part, shall be heard, said court shall be satisfied that notice of such application has been given at least twenty days before the making thereof, by not less than three advertisements set up in the neighborhood of the road proposed to be changed.

Twelve householders may petition to vacate a road.

SEC. 23. Any twelve householders of the township or townships, may make application, by petition, to the county court, for the vacation of any county road as useless, and the repairing thereof an unreasonable burthen to such township or townships.

Petition to be read on first day of term and continued.

SEC. 24. 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, until the next term.

Digitized by Google

Proceedings at next term, if no remonstrance.

SEC. 25. At the next succeeding regular session, 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 costs shall be paid by the petitioners.

If remonstrance, how court to proceed.

SEC. 26. If such remonstrance be made, the court shall appoint three commissioners, who shall be governed in all respects by the provisions of this act regulating the proceedings of commissioners appointed upon applications for new roads.

Judgment on report, to be conclusive.

SEC. 27. The judgment of the court upon the report of the commissioners, in such cases shall be conclusive in the premises.

Justices of the peace to be appointed to lay off their townships into road districts.

SEC. 28. The county court of each county shall, as often as it may become necessary, appoint one or more justices of the peace in each township in the county, whose duty it shall be to lay off the several roads therein into road districts of convenient lengths, numbering them, and make returns of such divisions with their numbers, to the county court to be held next after their appointment.

Justices to allot the lands.

SEC. 29. It shall be the further duty of such justices to allot the hands, subject to work on roads, among the overseers of the several road districts.

Clerk to make out copy of order of appointment.

SEC. 30. The clerk of the county court shall, within five days after the appointment of any justice of the peace to lay off road districts and allot hands, make out and deliver to the sheriff of the county, a copy of the order of appointment, with an endorsement thereon of the time of delivery.

Sheriff shall deliver a copy of such order to justice and make return.

SEC. 31. The sheriff shall, within ten days after receiving such copy of the order of appointment, notify the person appointed, by delivering him a copy of such order, and make return thereof, with his official endorsement, to the clerk, to be filed in his office.

When county court to appoint overseer.

SEC. 32. The county court shall, at their first term after the return of the justices appointed to make road divisions and districts, appoint some suitable person, being a householder, and living on or near such road division, to oversee the opening and repairing of the same, who shall hold his office one year, and until he informs such court of his intention to serve no longer, and satisfy such court that his road is in good order.

Clerk to make out order of appointment.

SEC. 33. The clerk of such court shall, within five days thereafter, make out a copy of such order of appointment, and

Digitized by Google

place the same in the hands of the sheriff of his county, with an endorsement thereon of the time of delivery.

Sheriff to serve such order, when and how.

SEC. 34. The sheriff shall, within ten days after receiving such copy of the order of appointment, serve such overseer with a notice thereof, by giving him a copy, or by leaving such copy at the usual place of abode of such overseer, with some white person of his family above the age of fourteen years, and the sheriff shall, within six days thereafter, return such copy of the order of appointment, with the service thereon endorsed, to the clerk, to be filed in his office.

Overseer to apply to allotting justice for list of hands.

SEC. 35. Such overseer shall, immediately on receiving his appointment, apply to the allotting justice of the township for a list of hands to work his road division: such justice shall, at all times, have due regard to the length of the road division, the probable amount of labor necessary on the same, and the right and justice in the whole matter.

Justice's to return list of hands to county court.

SEC. 36. Such justice or justices shall, immediately thereafter, make out and return a certified list of all such allotments, by him or them made, to the clerk of the county court, who shall file the same in his office.

No person to work on more than one road division.

SEC. 37. No person shall be required to work on more than one road division at the same time, except in cutting out new roads.

Justice may alter road division and re-allot hands to open new roads.

SEC. 38. Such justice or justices, as may have been appointed to lay off road divisions and allot hands, may, whenever to them it shall seem just and expedient, alter any road division in their township, and re-allot the hands, so as to equalize the labor of opening and repairing the same.

Certificate of such re-allotment or alteration to be transmitted to the court.

SEC. 39. Whenever any alteration in any road division, or re-allotment of hands shall be made, the justice or justices making the same, shall immediately transmit a certificate of such alteration or re-allotment, to the clerk of the county court of the proper county, who shall file the same in his office.

How long an allotting justice to act as such.

SEC. 40. The justice or justices, who may be appointed to lay off road divisions and allot hands, shall continue to discharge their duties for one year, and until he or they inform the proper county court of their intention to serve no longer; in which case the court shall appoint some other justice or justices to discharge such duties, unless it appear that there are no justices in such township who have not served within the preceding year, in which event he or they shall not be discharged.

Digitized by Google

Who shall work on roads.

SEC. 41. All able bodied male inhabitants, between the ages of sixteen and forty-five years, having resided in the state sixty days, and in the road district one month, shall be subject to work on county roads.

How often overseer to call out hands.

SEC. 42. As often as any road division shall need opening and repairing, the overseer shall call out the hands allotted to him, and oversee, open and repair the same.

How notice is to be given to the hands to work.

SEC. 43. A verbal notice to any hand, or, if a son, residing with his father, ward, slave or apprentice to his father, guardian or master, by such overseer himself, or by any white person having written authority from such overseer, or a written notice left at the place of abode of the party, with some white person of the family over the age of fourteen years, shall be sufficient.

Penalty on a hand for not working.

SEC. 44. Every person made liable to work on a road, who fails, without reasonable excuse, to attend, either in person or by satisfactory substitute, with proper tools or instruments, having had two days previous notice thereof, or, having attended, shall disobey the reasonable orders of such overseer, shall forfeit and pay one dollar for each day he may fail to attend, or two dollars for each day he may attend and fail to work with due diligence.

List of delinquent hands to be given to justice.

SEC. 45. Each overseer shall place a list of all such delinquents as have failed to attend, or, having attended, failed or refused to obey the reasonable orders of the overseer, in the hands of some justice of the peace of the township.

Suit against delinquent, how brought.

SEC. 46. Such justice shall immediately issue a summons, in the name of the overseer, to the use of his road district, against each delinquent, and proceed therein to judgment and execution, as in ordinary cases.

Costs, how paid.

SEC. 47. If judgment be given against such delinquent, he shall pay the costs; if against the overseer, the costs shall be paid out of the funds of the road district.

What entitles a hand to credit of three days work.

SEC. 48. Every person who shall, at the request of the overseer of his road district, furnish a plough, cart, or wagon, with a pair of oxen or horses, and driver, shall, for each day's work of such team and driver, receive a credit of three day's work, on his liability to work on such road, or such reasonable compensation in money as such overseer may agree to pay him.

Privilege of overseer to enter upon adjacent lands.

SEC. 49. Every overseer of a road district, or other person by his order, may enter upon any lands adjoining or near his road, and open such ditches as may be necessary, and cut and

Digitized by Google

carry off from the nearest unimproved lands, such wood or trees as may be necessary for making and repairing his road, or any bridge or causeway over any water course or wet land, doing as little damage as may be to the owner of such land.

If owner of such land be agrieved, how to obtain redress.

SEC. 50. If any person feel himself aggrieved by the cutting of such timber, such person may apply to the county court of the proper county, who shall appoint three disinterested householders of the county, who, after taking the proper oath or affirmation, shall proceed to assess the damages, if any, which shall be paid out of the county treasury.

When a new road is established, county court to appoint an overseer thereof.

SEC. 51. Whenever a new road shall be laid out and established, according to the provisions of this act, the county court shall appoint an overseer in each township through which, or a part of which, such road may run, having the qualifications of an overseer of a road district, to cut out and open the same. (*b*)

Such overseer to have notice of appointment.

SEC. 52. Such overseer, and the alloting justice or justices of the township, shall be notified of the appointment, in the time and manner in this act required, in cases of overseers of road districts. (*c*)

Allotting justice to give such overseer a list of hands.

SEC. 53. The allotting justice or justices of the township, or townships, through which such new road may run, shall make out, and deliver to such overseer, a list of hands for the particular purpose of cutting out and opening such new road.

Such hands to have notice and be subject to the duties of other hands.

SEC. 54. The hands thus allotted, shall be notified, and subject to the same penalties for a failure or refusal to work, in the same manner and to the same extent, as hands allotted to [work] on road districts. (*f*)

Discretionary power of justice in making such allotment.

SEC. 55. The justice, or justices, in making such allotment, shall have power to allot such number of hands residing in their township, subject to work on roads, as they may deem necessary, having due regard to the amount and kind of labor to be performed in opening such road.

New road, how kept in repair.

SEC. 56. When a new road shall be opened, it shall be districted and kept in repair, in the same manner as other county roads.

Finger board kept at forks of road.

SEC. 57. Every overseer shall erect and keep a post at every fork of the road, or cross road, in his road district, unless a suitable tree be found at the proper place, to which

(*b*) *Vide*, section thirty-two of this article.
(*c*) *Vide*, sections thirty-three and thirty-four of this article.
(*f*) *Vide*, sections thirty-seven, thirty-eight, forty-four, forty-five, forty-six and forty-seven of this article.

Digitized by Google

shall be affixed a finger board, containing a legible inscription, directing the way, and noting the distance to the next remarkable place on the road.

Compensation for erecting finger board.

SEC. 58. Every such road overseer shall be entitled to the sum of one dollar for every such post or sign so erected, to be paid out of any money in hand belonging to his road district, or out of any money in the county treasury arising under this act.

Penalty for obstructing road.

SEC. 59. If any person shall obstruct any road unnecessarily, and to the hindrance of any passenger, such person shall forfeit and pay a sum not exceeding ten dollars.

Additional penalty for continuing such obstruction.

SEC. 60. The person making such obstruction shall, in addition to the penalty mentioned in the preceding section, forfeit and pay the further sum of one dollar for every day he shall suffer such obstruction to remain in or across such road.

Penalty for injuring sign-board.

SEC. 61. If any person shall demolish or deface any sign-board, or remove the same, he shall forfeit and pay the sum of ten dollars.

Penalty on overseer for neglect of duty, &c.

SEC. 62. If any road overseer shall wilfully fail or neglect to keep his road in good repair, or to put up a finger board, or faithfully appropriate any moneys in his hands for the use of his road division, or in any manner fail to comply with the requirements of this act, or refuse to serve when appointed road overseer, he shall forfeit and pay the sum of ten dollars.

No person required to act as overseer for more than one year.

SEC. 63. No road overseer shall be required to serve more than twelve months at any one time, if, at the end of that period, he shall discharge himself in the manner pointed out in the thirty-second section of this article.

The paying of a fine for failing to accept, shall excuse him for one year.

SEC. 64. The forfeiture for failing to accept his appointment, shall exempt such overseer from re-appointment for the term of twelve months from and after the date of its payment.

Penalty on sheriff, clerk and justice for neglect of duty.

SEC. 65. If any clerk of a county court, sheriff, or justice of the peace, shall fail to perform the duties required of him by this act, he shall forfeit and pay not less than ten, nor more than fifty dollars, for each offence.

Such penalties, how recovered.

SEC. 66. The fines and forfeitures, imposed by this act, upon any road overseer, clerk, sheriff, or justice of the peace, shall be recoverable by indictment, and, when collected, shall be paid into the county treasury.

Fines to go to credit of road and canal fund.

SEC. 67. The county treasurer, upon the reception of any such fines and forfeitures, shall place the same to the credit

Digitized by Google

of the road and canal fund of his county, and thereafter they shall become a part of such fund, for the uses and purposes of the same.

Fines imposed on other persons, how recovered.

SEC. 68. The fines and forfeitures imposed by this act, upon persons other than a road overseer, clerk, sheriff, or justice of the peace, shall be recoverable by action of debt, in the name of the overseer, to the use of his road district, before any justice of the peace of the proper township.

Fines against minors, apprentices, &c., of whom recovered.

SEC. 69. When any minor, apprentice, or slave, shall become subject to a fine or forfeiture under this act, for trespass or delinquency, such fine or forfeiture shall be paid by the father, master, or guardian, as the case may be, and the suit for the recovery thereof shall be instituted against such father, master, or guardian.

Fine to be paid by constable to justice, when.

SEC. 70. Whenever any constable shall collect any fines or forfeitures imposed by this act, he shall pay the same into the hands of the justice of the peace by whom the judgment was rendered.

Justice to pay it over, to whom.

SEC. 71. Such justice shall receive the same and pay it over to the overseer of the proper road division, and take his receipt therefor.

Justice to report receipt of such money to county court.

SEC. 72. Such justice shall, moreover, immediately make his report of the amount of money received, and file the same, together with the receipts, in the county court clerk's office of his county.

Fines, how to be applied by overseer.

SEC. 73. Every overseer receiving fines and forfeitures, shall appropriate the same to repairing and keeping in good order the road under his superintendence, and to the other purposes allowed by this act.

Overseer to settle with county court.

SEC. 74. Such overseer shall settle with the county court, once in every year, for the proper appropriation of the fines and forfeitures received by him, and shall expend the same in the manner allowed by this act, before again calling out the the hands to work on his road.

List of overseers to be laid before grand jury by clerk.

SEC. 75. The clerks of the several county courts shall lay before each grand jury that may be impannelled, and sit for and in their respective counties, a complete schedule of overseers of roads therein.

What facts shall be necessary to be proven against overseer on an indictment.

SEC. 76. Hereafter, when a bill of indictment shall have been preferred against the overseer of a road, for a failure to perform his duty as such, it shall only be necessary to prove on the part of the state, in order to sustain such indictment:

Digitized by Google

First, That prior to the time when the offence, in the indictment charged, is alleged to have been committed, the person indicted had assumed to act as such road overseer; *Second*, That the road division, over which such person had assumed to act as overseer, was not kept in repair according to law.

SEC. 77. The judges of the several circuit courts shall give this act in special charge to the grand jury, at each regular term of such courts. This act to be given in charge to grand jury.

ARTICLE II.

Of state roads.

SEC. 1. All state roads to be marked out and opened according to this act.
2. How commissioners to view and mark out road, to be appointed.
3. Where commissioners to meet, on failure, &c.
4. On second failure, first commissioner to give notice to the others where to meet.
5. Commissioners to meet and organize, procure surveyors, &c.
6. Commissioners to proceed to view and mark out road.
7. Commissioners and others to take oath.
8. Surveyor to survey and measure the route.
9. He shall note the courses and distances, &c.
10. To make plat of the route for each county.
11. Plat to be made for the use of the state.
12. To be sent to the governor.
13. Commissioners to take a grant of the right of way from owners of land.
14. Such grant shall vest in the public the right of way.
15. Such grants to be taken in the name of the state.
16. Commissioners to assess the damages of persons injured by the road.
17. The advantages of the road to be taken into consideration in assessing damages.
18. Report of commissioners relating to such damages.
19. When land lies in several counties, commissioners to report to all counties concerned.
20. Any person aggrieved by report of commissioners to file in the county court objections to same.
SEC. 21. Jury to be summoned to reassess damages.
22. If amount less than assessed by commissioners, objector pays costs.
23. If more, county pays the damages and costs.
24. If vacancy occur in office of commissioner, how same to be filled.
25. Compensation to commissioners, surveyors, &c.
26. Same to be paid by several counties, or out of the three per cent. fund.
27. County courts to pay their proportion of all other expenses.
28. All state roads to be sixty feet wide.
29. The several counties to cause new state roads to be opened through each county.
30. When road is on flat marsh land to be opened fifty feet on each side.
31. Such additional ground shall not be considered a part of the road.
32. Courts and officers proceeding under the twenty-ninth section of this article, to be governed by provisions of first article.
33. When a state road is cut out, the same shall be districted, and kept in repair as roads mentioned in the first article.
34. When county road declared a state road, same to be cut as a state road.
35. County courts to appoint commissioners to proceed as in case of state roads.
36. Plats, grants and field notes to be filed as in case of state roads.
37. When twelve householders petition county court for a change of a state road, court may order review and survey.

Digitized by Google

SEC. 38. How county court to proceed in such cases.
39. No person to be a commissioner who is a petitioner, or interested in any land on the route.
40. Duty of the surveyor.
41. Duty of commissioners in examining route; to make report thereof.
42. Where such report, plat and papers to be filed.
43. If any person aggrieved, how to proceed.
44. On receipt of the report, court to determine between the two routes.
45. If court decide against the new route, petitioners to pay costs.
46. Both costs and damages of persons injured, paid by petitioners, if decided in their favor.
47. When court is satisfied that such damages and costs are paid, to make order for opening new road.
SEC. 48. When the new route is already opened, court can confirm the new route and vacate the old one.
49. New road not to be opened if petitioners do not first pay up all damages.
50. When new route is confirmed, who pays the expenses.
51. When petitioners to pay the expenses, they shall be jointly and severally liable for the same.
52. When new route is established, the original grants of right of way to be forwarded to governor.
53. When any state road is changed, the right of way over the old road is extinguished.
54. All expenses incurred by county court, to be paid out of the county treasury, or three per cent. fund.

State roads, how marked out and opened.

SECTION 1. All state roads hereafter established by law, shall be marked out and opened according to the provisions of this act.

Commissioners, how appointed.

SEC. 2. Commissioners to view and mark out state roads, shall be appointed according to the provisions of the act establishing the road.

When commisssioners to meet; on failure, &c.

SEC. 3. They shall meet for that purpose at such time and place as shall be designated in such act, but a failure so to meet shall not be construed as a refusal to act, but such commissioners may meet at such other time and place, within one month thereafter, as a majority of them shall agree upon.

On second failure, duty of first commissioner.

SEC. 4. In case of a second failure to meet, the first named commissioner shall call a meeting within one month after such second failure, by giving notice, in writing, to the other commissioners.

Commissioners to meet and organize, procure surveyors, &c.

SEC. 5. The commissioners shall organize by the selection of a chairman from among themselves, and may appoint a surveyor, chain carriers, and such other assistants as shall be necessary to effect the survey, who shall perform such duties, in addition to those prescribed by this act, as the commissioners shall deem expedient.

Commissioners to proceed to view and mark out road.

SEC. 6. They shall, thereupon, proceed to survey and mark out the road in contemplation, between the points named in the law, and shall locate the same on the most direct and practicable route between such points, having due regard to the ground over which the road shall pass, to the advantage to be

Digitized by Google

derived to the public, and as little as may be to the detriment of individuals.

Commissioners, &c., to take oath.

SEC. 7. The commissioners, surveyors and chain carriers, before entering upon the duties assigned them, shall each take an oath or affirmation before some judge or justice of the peace, faithfully and diligently to perform, without favor or partiality, the duties herein prescribed.

Surveyor shall survey route.

SEC. 8. The surveyor shall cause the route fixed upon by the commissioners, to be faithfully surveyed and measured.

Shall note the courses, distances, &c.

SEC. 9. He shall note in a suitable field-book, the courses and distances of the route surveyed, the direction, breadth and average depth of water courses, and such other prominent features of the country, and prominent objects and places near, or over which such road shall pass, as may be conveniently obtained, together with such other topographical information as the commissioners may deem expedient.

Shall make a plat of the route for each county.

SEC. 10. He shall make out, for the use of the county court of each county, through which such road shall be located, one correct plat of so much of the line of the route as shall lay within the limits of such county, together with so much of the route in the adjoining county as may be necessary fully to show the connection therewith; and he shall designate thereon the direction and point of crossing of the county lines of such county.

Shall make a plat for the use of the state.

SEC. 11. The commissioners shall cause to be made out, for the use of the state, a complete and accurate connected map of the whole route of such road, embodying thereon the several plats directed to be made out by the surveyor for the use of the several county courts, with such topographical information as may have been obtained during the survey.

Plat to be sent to the governor.

SEC. 12. Such map, with a copy of the field notes of the survey, and all grants of the right of way, taken as hereinafter provided, shall be forwarded by such commissioners, together with a full report of their proceedings, to the governor, to be by him deposited in the office of the secretary of state.

Commissioners to take a grant of the right of way.

SEC. 13. The commissioners shall take a grant of the right of way from every owner through whose land the route of such road may be located.

Effect of such grant.

SEC. 14. Such grants shall be attested by two disinterested witnesses, and shall vest in the public a right of way over a

Digitized by Google

quantity of land, on each side of the centre of the route of such road, at least thirty feet in width.

Such grants to be to the state.

SEC. 15. All such grants shall be taken in the name and in behalf of the state of Missouri.

Commissioners to assess damages, when.

SEC. 16. The commissioners shall assess the damages which will be sustained by those persons, by reason of the road passing over the land, who shall refuse to grant the right of way, or who shall be non-resident of the county.

What taken into consideration in such assessment.

SEC. 17. In assessing such damages, the commissioners shall take into consideration the advantages, as well as the disadvantages of the road, to such persons.

Report of commissioners relating to such damages.

SEC. 18. The commissioners shall report to the county courts of the several counties in which such land may be, the quantity and situation of the land over which the right of way is granted, and the amount of such damages as may be assessed.

When land lies in several counties, how commissioners shall report.

SEC. 19. Whenever such land shall be part in one county and part in another, they shall report their proceedings in regard to the same, to the county courts of the counties in which the several parts of such land shall be.

Persons aggrieved may file objections to report.

SEC. 20. Any person owning lands, through which the route of such road is located, who shall consider himself aggrieved by the assessment of the commissioners, may, by himself, or agent, at the next term of the county court after, and to which the report of the commissioners may be made, file his objections to such assessment.

Jury to be summoned for re-assessment of damages.

SEC. 21. Such county court shall, thereupon, order the sheriff of the county to summon a jury of six disinterested householders of the county, who, being first duly sworn, shall proceed to examine the ground and re-assess such damages; and shall make report of their proceedings at the next term of such court, or as soon thereafter as practicable.

Objector to pay costs, when.

SEC. 22. If the amount assessed by such jury shall be the same, or less than that assessed by the commissioners, the person so objecting shall be adjudged to pay the costs.

County to pay damages, when.

SEC. 23. If the amount of such assessment be more, the county court shall issue a warrant on the county treasury for the amount of damages and costs.

Vacancy in the office of commissioner, how filled.

SEC. 24. If, from any cause, a vacancy occur in the commission to lay out and mark a state road, a majority of those remaining, may fill such vacancy, by the appointment of some

Digitized by Google

suitable person from the same county in which the commissioner resided who occasioned the vacancy.

Compensation of commissioners, &c.

SEC. 25. The commissioners, surveyor, chain carriers and others, employed in laying out and marking a state road, shall each receive such per diem allowance as may be provided in the act establishing the road.

To be paid by several county courts, out of what fund.

SEC. 26. Such allowance shall be paid by the several county courts out of the county treasury, or out of the three per cent. fund, at the discretion of the county court, in proportion to the extent of such road within the limits of such county.

County courts to pay their proportion of other expenses.

SEC. 27. The county courts shall, in like manner and in like proportion, pay their respective parts of the expenses of the survey, correct accounts of which shall be made out separately for each county court, and laid before them by the commissioners, who shall verify the same by oath or affirmation.

State roads to be sixty feet wide.

SEC. 28. All state roads shall be marked out sixty feet wide.

New state roads to be opened by county courts, when and how.

SEC. 29. The county courts of the several counties through which any portion of a state road shall pass, and as soon as practicable after the receipt of the plat herein directed to be furnished them, shall cause the route thereon laid down and marked out, within the limits of the county, to be opened at least thirty, and not more than sixty feet wide, whenever such road shall be located on undulating or firm ground.

When road is on flat marsh land, to be opened 50 feet wide on each side.

SEC. 30. If such route shall pass over flat, marshy, and timbered bottom lands, and such ground as may be subject to inundation, the county court may cause fifty feet on each side of the centre of such road to be cleared of timber.

Such additional ground shall not be considered a part of the road.

SEC. 31. Such additional grounds shall not be considered a part of such road, nor included in the grant of the right of way, but shall remain subject to be fenced in and used by the owner.

Courts and officers proceeding under 29th section of this article, to be governed by provisions of 1st article.

SEC. 32. The several county courts, in proceeding to discharge the duties imposed by the twenty-ninth section of this article, and all clerks, sheriffs, allotting justices and other persons, in all things in relation thereto, shall be governed by the provisions of the first article of this act in relation to the cutting out and opening county roads. (*g*)

(*g*) *Vide*, sections 52, 53, 54, 55 and 56, of the 1st article of this act, and notes (*b*,) (*c*) and (*f*,) to sections 51, 52 and 54.

Digitized by Google

State road, when cut out, to be districted, &c.

SEC. 33. Whenever a state road shall be cut out and opened, it shall be districted and kept in repair, according to the provisions of the first article of this act in relation to districting and repairing county roads. (*h*)

When a county road is declared a state road, same to be cut out as a state road.

SEC. 34. The county courts of the several counties wherein any county road may have been, or shall hereafter be declared by law a state road, shall cause the same to be cut out and opened of the same width, and in the same manner as is provided in case of state roads. (*j*)

County courts to appoint commissioners, how they shall proceed.

SEC. 35. Such county courts may appoint commissioners, who shall proceed to take grants of the right of way, and to assess damages, and who shall proceed in all things agreeably to the provisions of this act, in relation to the same matters in case of state roads. (*k*)

Plat, &c., to be filed, as in case of state roads.

SEC. 36. Such courts shall cause such grants of the right of way, together with a correct plat of any county road declared a state road, with the field notes of the same, to be forwarded to the governor, to be by him deposited in the office of the secretary of state.

Court may order a review and survey to change a state road, when.

SEC. 37. Whenever twelve householders of any county shall petition the county court of their county for a change of the route of any state road therein, describing the part proposed to be abolished, and the new route as near as may be, setting forth the advantages and disadvantages to the public, of both routes, such court may, if in their opinion the prayer of the petitioners is reasonable, order a review and survey of both routes.

How county court shall proceed in such cases.

SEC. 38. In such case, the county court, and all other officers and persons, shall proceed according to the provisions of this act in relation to state roads, except as hereinafter otherwise provided.

Who shall not be commissioner.

SEC. 39. No person shall be a commissioner who is a petitioner, or who resides, or has any interest in lands within one mile of the established route, or proposed new route.

Duty of the surveyor.

SEC. 40. The surveyor, in the plat, shall represent truly the established route and its connection with the new route, and the distances between the points of intersection, according to both routes, measured along the surface of the ground.

(*h*) *Vide*, sections from 29 to 51 of the 1st article of this act, both inclusive.
(*j*) *Vide*, sections twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, and thirty-three, and notes (*g*) and (*h*) to section thirty-two and thirty-three.
(*k*) *Vide*, sections from three to nineteen of this article, both inclusive.

Digitized by Google

SEC. 41. The commissioners shall examine so much of the established route as is proposed to be abolished, as well as the new route, noting the advantages and disadvantages of each, and make a full report of their proceedings to the county court of their county. Duty of commissioners in examining route, &c. To make report.

SEC. 42. Such report, with the plat and field notes of the surveyor, the grants of the right of way, and an account of the assessment of damages, shall be filed in the office of the clerk of the county court without delay. Where such report, plat and papers to be filed.

SEC. 43. If any person deem himself aggrieved by the assessment of damages, he may have a re-assessment thereof, in the manner herein directed in cases of re-assessment of damages in opening state roads. (*l*) Persons aggrieved, how to proceed.

SEC. 44. The county court shall, as soon as practicable after the report of the commissioners is returned, proceed to determine between the two routes, having due regard to the advantages and disadvantages to the public and individuals. Court to determine between the routes, when.

SEC. 45. If such court decide in favor of the established route, the petitioners shall pay all costs and expenses of the proceeding, including the pay of all persons concerned therein. Petitioners to pay costs, when.

SEC. 46. If the court shall determine in favor of the new route, it shall ascertain the amount of damages assessed, and costs of assessment, and make an order that the same be paid by the petitioners. Costs and damages to be paid by petitioners, when.

SEC. 47. Whenever the court shall be satisfied that damages, and the cost of assessment have been paid, it shall make an order for opening the road, which order shall be executed by the petitioners without expense to the county. Court to make an order for opening new road, when.

SEC. 48. Upon the production of satisfactory evidence that such new route has been opened and cleared, according to the order of the court, and that it is in at least as good condition for public use as the old route, and not before, the court shall confirm such new route, and annul so much of the old road as lies between the points of intersection. If already opened, court shall confirm the new route and vacate the old one.

SEC. 49. If the petitioners shall not, within three months after making the order for the payment of the damages and costs of assessment, produce evidence of the payment thereof, or shall not, within three months after an order for opening the road is made, produce the evidence required by the pre- New road not to be opened if petitioners do not first pay up all damages.

(*l*) *Vide*, sections twenty, twenty-one and twenty-two of this article.

Digitized by Google

ceding section, all further proceedings shall be stayed, and the petitioners shall pay all the costs and expenses of the proceeding.

Expenses, by whom paid on confirmation of new route.

SEC. 50. Whenever the new route shall be confirmed, and the former annulled, the expenses (except the damages and costs of assessment,) shall be paid out of the county treasury.

Petitioners jointly and severally liable for the expenses, when.

SEC. 51. Whenever the petitioners shall be adjudged to pay expenses incurred in reviewing and surveying, they shall be jointly and severally liable therefor, and the court shall ascertain and settle the amount; and the settlement thereof, duly certified under the seal of the court, shall have the force and effect of a fieri facias issued by the circuit court, and the amount thereof shall be levied and collected accordingly.

Original grants of right of way, to be forwarded to the governor.

SEC. 52. Whenever the route of any state road is changed, the county court shall cause the original grants of the right of way to be forwarded, with certified copies of the plat and field notes of the survey, to the governor, to be by him deposited in the office of the secretary of state.

Right of way extinguished in old road, when.

SEC. 53. Whenever any state road, or any part thereof, shall be abolished or changed, the right of way of the public over so much of the same as shall be abolished or changed, shall be ipso facto extinguished.

Expenses incurred by county, how and out of what fund to be paid.

SEC. 54. All expenses incurred by the county court, in complying with the provisions of this act, shall be paid out of the county treasury, or the three per cent. fund, in the discretion of such court.

Approved March 26, 1845.

CHAPTER 152.

SALARIES.

AN ACT fixing the salary of civil officers.

SEC. 1. Compensation of the several officers of state.
SEC. 2. Accounts to be presented to auditor, and drawn for quarterly.

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

SECTION 1. The officers of state shall receive for their services, annually, the following sums: *First, The governor,*

Digitized by Google

Compensation of the several officers of state.

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.

Accounts to be presented to the auditor, and drawn for quarterly.

SEC. 2. The above salaries shall be paid out of the treasury, in four equal instalments, 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 17, 1835.

CHAPTER 153.

SALARIES.

AN ACT to regulate the governor's salary.

SEC. 1. Repealing clause. | SEC. 2. Salary of governor.

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

Repealing clause.

SECTION 1. The first clause of the first section of an act, entitled "An act fixing the salary of civil officers," shall be, and the same is hereby repealed.

Salary of governor.

SEC. 2. The governor shall receive, as an annual salary for his services, the sum of two thousand dollars.

This act shall be in force from and after its passage.

Approved November 23, 1836.

Digitized by Google

CHAPTER 154.

SALARIES.

AN ACT to amend an act, entitled "An act fixing the salary of civil officers."

SEC. 1. Salary of state treasurer.

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

Salary of state treasurer.

SECTION 1. The state treasurer shall receive, as a salary for his services, the sum of twelve hundred and fifty dollars, annually, to include all demands against the state for clerk hire.

This act shall be in force from and after its passage.

Approved February 3, 1837.

CHAPTER 155.

SALINE LANDS.

AN ACT respecting saline lands.

SEC. 1. In what manner all saline lands may be sold.
2. At what price to be sold; certificates given.
3. To whom certificates to be delivered.
4. When a patent is to be issued.
5. Manner of authenticating the patent.
6. When two persons apply for the same land, it shall be sold to the highest bidder.
7. Penalty for trespassing on saline land.
8. Duty of certain judicial officers relating to such offence.
9. This act to be given in special charge to the grand jury.

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

In what manner saline lands may be sold.—1835.

SECTION 1. All the saline lands remaining unsold, may be disposed of at private sale in sections, half sections, quarter sections, half quarter sections, and quarter quarter sections.

At what price to be sold: certificate given.

SEC. 2. The person wishing to purchase saline lands, shall pay into the treasury of the 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, duplicate certificates, stating the amount of money received, from whom received, the section or subdivision of the section sold, the township and range, and number of acres.

Digitized by Google

SEC. 3. One of such certificates shall be delivered by the purchaser to the auditor, who shall file the same in his office, and charge the treasurer with the amount thereof, and the other shall be delivered by the purchaser to the register of lands, who shall file such certificate in his office, and record the same in a book kept for that purpose. To whom certificates to be delivered.

SEC. 4. When such duplicate certificate shall be filed in the office of the register, the register shall make out a patent for the land mentioned in the same, granting to the purchaser on the part of the state the fee simple therein. When a patent is to be issued.

SEC. 5. The patent shall be under the great seal of the state, signed by the governor, and countersigned by the secretary of state, and shall be recorded by the register of lands in a book kept for the purpose of registering the patents for saline and seminary lands. Manner of authenticating the patent.

SEC. 6. If two or more persons 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. When two persons apply for same land, it may be sold to highest bidder.

SEC. 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, or shall cut, carry away, or destroy any timber, or shall carry away or destroy, or cause to be carried away or destroyed, any buildings or other property belonging to the state, found, or being on any of the lands belonging to the state, shall, on conviction thereof, be fined in a sum not less than twenty, nor more than three hundred dollars. Penalty for trespassing on saline land.

SEC. 8. Judges and justices of the peace, upon information to them on oath, or upon their own knowledge, shall cause all offenders against the provisions of the preceding section, to be brought before them, by the like process and proceedings as in other criminal cases, and cause them to enter into a recognizance for their appearance at the next term of the circuit court for the county, on the first day thereof, and on failure to give such recognizance, shall commit such offenders to jail. Duty of certain judicial officers relating to such offence.

SEC. 9. The judge of each circuit court shall give this act in special charge to the grand jury, at each term thereof, and the grand jury shall make diligent inquiry, and indict all offenders against the provisions of the seventh section. This act to be given in special charge to grand jury.

Approved February 4, 1845.

Digitized by Google

CHAPTER 156.

SALINE LANDS.

AN ACT for the relief of certain purchasers of saline lands.

SEC. 1. When reserved lands have been twice or oftener sold by state, the money to be refunded to purchaser.
2. Before receiving the money the purchaser shall execute a release.
SEC. 3. When any portion of reserved land has been sold to a company, any member may apply for the funds, on giving bond, with security, to state, conditioned to pay each member his share.

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

Money may be refunded to purchaser, when.

SECTION 1. That whenever it shall satisfactorily appear to the auditor of public accounts, that any portion of the reserved lands of this state has been twice, or oftener, sold for the benefit of the state, he shall issue his warrant on the treasurer in favor of the individual, or individuals, or their legal representatives, making such second purchase, on his, her, or their application, for the amount of money paid into the treasury by such purchaser or purchasers.

Second purchaser before money is refunded, to execute deed of release.

SEC. 2. That the person or persons, making such second purchase, before the amount thereof shall be refunded to them, shall execute and file with the register of public lands a deed of release in favor of the first purchaser or purchasers.

When such lands have been sold to a company, any member may apply for and receive the funds.

SEC. 3. That when any portion of the reserved lands aforesaid, shall have been purchased by a company, or companies, of individuals, any member of said company, or companies, who have made the second purchase, shall be entitled to apply for and receive the amount which may have been paid into the state treasury for said second purchase: *Provided*, That the individual applying for and receiving the same, shall first execute a bond to the state of Missouri, with good and sufficient security, conditioned to pay to the other members of said company, or companies, or their legal representatives, such portion thereof as they may be legally entitled to.

Provided he execute bond.

Condition thereof.

This act shall take effect from the passage thereof.

Approved January 31, 1845.

Digitized by Google

CHAPTER 157.

SALTPETRE WORKS.

AN ACT concerning saltpetre works.

SEC. 1. Works to be inclosed by the owners or occupiers.
SEC. 2. Penalty for failing to comply with this act.

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

SECTION 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.

To be inclosed by the owners or occupiers. 1835.

SEC. 2. 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.

Penalty for failing to comply with this act.

Approved January 8, 1845.

CHAPTER 158.

SALVAGE.

AN ACT respecting salvage.

SEC. 1. Boats, rafts, &c., in a perishable condition, may be saved.
2. Property to be restored on proof of ownership, and paying salvage.
3. Salvage, how obtained from the owner; property may be detained.
4. Taker up to make oath 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.
SEC. 8. Salvage of lumber, staves, or shingles.
9. Salvage of logs, rails, firewood or timber.
10. Property less than ten dollars, how disposed of, &c.
11. Proceeds, how disposed of, and salvage paid.
12. Before sale, how owner may have restitution.
13. After sale, return of proceeds of sale.
14. The taker up allowed his share, remainder retained by justice for six months after return of warrant.

Digitized by Google

CHAP. 158.

SEC. 15. If no owner in six months, to be paid into county treasury.
16. If property above the value of $100, proceedings.
17. Notice of such sale to be given.
18. Sheriff to keep the net proceeds of such sale subject to order of court.
19. Compensation to sheriff.
20. Penalty for detaining, embezzling or injuring such property by third persons.
21. Penalty on justice of the peace for embezzling such property.
SEC. 22. Value of such property to be ascertained by three householders of the neighborhood.
23. Valuation to be returned into the circuit court.
24. When property is secreted by other persons, justice may issue search warrant.
25. When claimant shall prove title, property to be delivered to him.
26. When wrecked property found adrift, taker up allowed certain price therefor.

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

Boats, rafts, &c., wrecked and in perishable condition, may be taken up and secured.—1835.

SECTION 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.

Property to be restored on proof of ownership and paying salvage.

SEC. 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 twenty per centum, upon the value of all such property.

Salvage, how obtained from the owner; property may be detained.

SEC. 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.

Taker up to make oath before a justice of the peace, when and how.

SEC. 4. Whenever any of 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, as he believed, and was in a perishable condition, and that he was not directly or indirectly instrumental in causing the property to be wrecked, lost, set adrift, or placed in a perishable condition; and shall also state, under oath, an exact account of the quality and quantity 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.

Notice to be given, how.

SEC. 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 prop-

Digitized by Google

erty was taken up, and the description and value 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.

Failure to give notice, a forfeiture of salvage and damages to owner, &c.

SEC. 6. If the taker up shall fail to give public notice, as required, he shall forfeit all his right to salvage, and shall forfeit to the owner of such property all such damages as the owner may sustain in consequence thereof, to be recovered, with costs, before any court having competent jurisdiction.

Not necessary to cause notice to be given in a newspaper, when.

SEC. 7. If the amount of property taken up shall [not] exceed one hundred dollars, it shall not be necessary for the taker up to cause notice to be given in any newspaper.

Salvage of lumber, staves and shingles.

SEC. 8. Any person taking up any raft, when the same shall consist of lumber, staves or shingles, the person taking up and securing the same shall be entitled to receive the same salvage as is by this act allowed to persons for taking up and securing any boats, vessels or other property.

Salvage of logs, rails, fire-wood or timber.

SEC. 9. Rafts taken up that shall consist of logs, rails, fire-wood 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.

Property less than ten dollars, how disposed of.

SEC. 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.

Proceeds, how disposed of, and salvage paid.

SEC. 11. 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 sale.

Before sale, how owner may have restitution.

SEC. 12. 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 payment of the salvage and costs.

After sale, return of proceeds.

SEC. 13. After sale, the constable shall return the warrant to said justice, with the proceeds of such sale.

Taker up allowed his share, remainder how disposed of.

SEC. 14. 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 apply for the same, and prove his right, within six months after the return of the warrant.

Digitized by Google

If no owner in six months, to be paid into county treasury.

SEC. 15. 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.

If property above the value of $100, judge of supreme or circuit court may order sale.

SEC. 16. 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.

Notice of sale. How sale conducted.

SEC. 17. 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.

Sheriff to retain net proceeds of sale, subject to order of court.

SEC. 18. 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 owners.

Compensation to sheriff.

SEC. 19. The sheriff, for his services, shall be entitled to the same fees as he is entitled to in other cases.

Penalty for detaining, embezzling or injuring such property by third persons.

SEC. 20. If any person unlawfully detain or embezzle 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.

Penalty on justice of the peace for embezzling, &c., such property.

SEC. 21. If any justice of the peace shall fraudulently secrete, embezzle or dispose of any money or property which may come to his hands 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 to the use of the state, in any court having jurisdiction thereof.

How value of such property to be ascertained.

SEC. 22. 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 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 to such justice.

Digitized by Google

Valuation to be returned into circuit court.

SEC. 23. The justice shall return such valuation, and the warrant, to the clerk of the circuit court of the proper county, to remain in his office as a matter of record, which valuation, as between the parties litigant, shall be final and conclusive.

When property is secreted by other persons, justice may issue search warrant.

SEC. 24. When any person shall make oath before any justice of the peace, that he has lost any property by wreck, the rising of 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, it shall be lawful for such justice of the peace, by warrant under his hand, to direct the constable of his township to search for, and take into his possession and charge, the property so secreted.

When claimant shall prove title, property to be delivered to him.

SEC. 25. If the claimant shall prove his title to the same, in the 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.

When wrecked property found adrift, taker up allowed certain price therefor.

SEC. 26. 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 twenty-five per centum, to be paid out of the 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 February 14, 1845.

CHAPTER 159.

SCHOOL LANDS.

AN ACT to regulate the sale of the sixteenth sections.

SEC. 1. Sixteenth sections, how, in what manner, and by whom they shall be sold.
2. Notice of such sale, how given.
3. Not sold for less than one dollar and a quarter per acre.
4. If not all sold, same may be again offered for sale, once in each year.
SEC. 5. To be sold in forty acre lots; how divided.
6. Bond and security for the purchase money to be given.
7. Certificate of purchase to be given; when full payment, entitled to a patent.
8. Abstract of lands sold to be furnished to the register.

Digitized by Google

SEC. 9. Patent to issue on paying purchase money.
10. How such patents to be signed and attested.
11. If purchaser pays the money at the time of sale, may have patent immediately.
12. Additional security may be required for the purchase money, when; failing to give it, proceedings.
13. Compensation to sheriff.
14. Compensation of the clerk and treasurer.
15. When court may sell lands on petition of less than fifteen inhabitants.
16. A majority may petition to lease sixteenth section.
17. Notice of such intended petition to be given.
18. On proof of such notice, and being satisfied that a majority wish it, order of lease to be made.
19. Contents and stipulations of such lease.
20. Lease to be approved before taking effect.
21. Violations of covenants in lease, notice to quit; how suit to be brought against tenant.
22. Rents to be paid into county treasury.
SEC. 23. Before half of purchase money is paid, and on application of purchaser, how sale to be annulled.
24. Purchase money to be refunded without interest.
25. In what manner, and how other lands may be selected in lieu of the sixteenth section.
26. Governor to appoint a person to make such selection.
27. Duty of such person in making selection.
28. The governor to certify such selection to the proper county.
29. Sheriff may sell such selected lands, subject to the provisions of this act.
30. Penalty for trespassing on school lands.
31. In what manner trespassers to be arrested.
32. The thirtieth section of this act to be given in special charge to the grand jury.
33. All fines under this act to be paid into the county treasury.
34. Attorney general and circuit attorneys to prosecute for all penalties and contracts under this act.
35. Sheriff may, on leave of the county court, bid in any school land.

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

Sixteenth sections, how, in what manner and by whom sold.—1835.

SECTION 1. In all congressional townships in this state, in which there are fifteen free white householders, they shall have the right to sell their sixteenth sections (*a*) or such lands as have [been,] or shall be selected in lieu thereof; and, upon the petition of a majority of such householders, the county court shall make an order, a copy of which shall be furnished to the sheriff, directing him to expose such lands to sale at the court-house door, and while the circuit court of the county is in session, after giving sixty days notice thereof.

Notice of sale, how given.

SEC. 2. Such notice shall be given in the same manner as shall be required by law in selling lands by virtue of a writ of fieri facias.

Not sold for less than $1.25 per acre.

SEC. 3. Such lands shall not be sold for less than one dollar and twenty-five cents per acre.

SEC. 4. If, after such sale, any part of such lands shall

(*a*) The legislature has power to pass laws, providing for the sale of the sixteenth sections; Maupin vs. Parker, 3 Missouri Rep., 310, Wash. J., dissenting; Payne & Riggin vs. St. Louis County, 8 Missouri Rep., 473.

Digitized by Google

remain unsold, the sheriff of each county, if the county court shall deem it necessary, shall, once in each year, again offer such lands for sale, by giving the same notice, and in the same manner, as is hereinbefore provided. If not all sold, may again be offered for sale, once a year.

SEC. 5. Such lands shall be sold in lots of forty acres, and shall be divided in the same manner that the public lands of the federal government are divided, when sold in lots of forty acres: *Provided*, That, if a sixteenth section be in the vicinity of a city or village, it shall be lawful, on the petition of two-thirds of the inhabitants of the township in which the same is situated, for the county court to make an order authorizing the inhabitants of such township, to cause such sixteenth section to be laid [out] and sold in lots of a less size than forty acres, and to lay out such streets, alleys and roads, and to appropriate such portion thereof as they may deem necessary, for sites for school houses, churches, and for pleasure grounds. To be sold in forty acre lots; how divided.

SEC. 6. The purchasers shall give bond with good and sufficient security, payable one year after date, to the county, for the use 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, and shall be returned by the sheriff to the county court of the county to which the land belongs, and by the court deposited in the office of the county clerk. Bond and security for the purchase money to be given.

SEC. 7. A certificate 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 payment shall have been made, shall entitle the purchaser to a patent for the land so purchased. Certificate of purchase to be given. Shall entitle purchaser to patent, when.

SEC. 8. The county court shall make out and forward to the register of lands, an abstract of all lands sold under the provisions of this act, and when the purchase money shall be fully paid, together with the interest which may have accrued thereon, the court shall make, and forward to the register of lands, a statement, showing the tract or tracts for which payment has been made. Abstract of lands sold to be furnished to the register.

SEC. 9. Upon the receipt of such statement, the register of lands shall make out, in the name of the state, patents for the lands paid for, and, after having recorded the same, in a well bound book to be provided for that purpose, shall forward the Patent to issue on paying purchase money.

Digitized by Google

same to the county court of the proper county, to be by it delivered to the person entitled thereto, on presentation and surrender of the original certificates given to such persons, which certificates shall be filed and forever preserved by the county court.

Such patents, how signed and attested.

SEC. 10. Patents, issued in virtue of the provisions of this act, shall be signed by the governor, countersigned by the secretary of state, and attested by the great seal of the state of Missouri.

If purchase money paid at time of sale, patent may be issued immediately.

SEC. 11. A purchaser of land, under the provisions of this act, may pay the purchase money at the time of sale, and entitle himself to a patent therefor as soon as the same can be issued.

Additional security may be required for the purchase money, when.

SEC. 12. Whenever the county court may deem the security, for the payment of any bond for the purchase money of township school lands, insufficient, it may require other and additional security; and upon failure to give such other and additional security, the contract shall be considered as violated, and the court shall forthwith proceed to collect the amount due on account of such sale, as if no time had been given for the payment thereof.

Compensation to sheriff.

SEC. 13. The sheriff shall be allowed, as a compensation for advertising, selling and taking bond, one per centum on the amount of sales made in pursuance of this act, to be paid out of the school fund to which the money, arising from such sales, belongs.

Compensation of clerk and treasurer.

SEC. 14. 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 county court may deem proper, not to exceed (to the treasurer of the county) one half of one per centum on all money received and paid out by him.

When court may sell lands on petition of less than fifteen inhabitants.

SEC. 15. Whenever it shall appear to the satisfaction of the county court, by petition, that so much of the first section of this act as provides that the sixteenth sections in the several congressional townships, shall be sold on the petition of a majority of fifteen free white householders of such township, cannot be carried into effect on account of extensive prairies, or other local causes, such court may, in its discretion, order the sale of such lands, on the petition of a majority, if there shall be as many as seven such householders resident in the township.

Digitized by Google

A majority may petition to lease, &c.

SEC. 16. A majority of the free white householders in any congressional township may petition the county court to lease their sixteenth section, or the lands selected in lieu thereof.

Notice of such intended petition to be given.

SEC. 17. Notice of such intended petition shall be given by at least four written or printed handbills, signed by a free white householder, and put up in public places in the township, or by advertisement in a newspaper published in the county, at least twenty days before the petition is to be presented to the court, and ten days before such petition shall be presented to such householders for signature.

Court shall make an order of lease, when.

SEC. 18. The court, when such petition is presented and publicly read, and upon proof of notice having been given, as required by the preceding section, if it is satisfied that a majority of the free white householders of the township are in favor of leasing such lands, shall make an order, a copy of which shall be furnished to the trustees of such township, directing them to lease the same for a period, if unimproved, not exceeding ten years, and if improved, not exceeding three years.

Contents and stipulations of leases under this act.

SEC. 19. Leases made in pursuance of this act, shall set forth the lands let, by metes and bounds, the time and duration of the lease, the rents reserved, and shall specify particularly, the improvements (if any) to be made, and contain proper covenants for the payment of the rent reserved, making the specified improvements, and that such lessee shall not cut down, injure or destroy, any timber upon the premises let, other than what shall be necessary for fire wood, making the specified improvements, and repairing the buildings, fences, and other improvements, or, (if the premises let contain mineral,) carrying on the mining and smelting business; that such lessee will not commit, or suffer to be committed, any waste, spoliation, or destruction of the buildings or fences, which may at any time be erected on such premises, and that he will at the end of his term, or other sooner determination thereof, yield up the premises in good repair, with such other covenants as the nature of the contract may require, and reserving to the trustees the right to re-enter at any time, for a breach of any covenant contained in such lease.

Lease to be approved before taking effect.

SEC. 20. No lease shall take effect until it shall be approved by the county court, or a majority of the justices thereof in vacation, and when approved, shall be deposited in the office of the treasurer of the county.

SEC. 21. The county court, upon a breach by the lessee, of

Digitized by Google

CHAP. 159.

Violation of covenants in lease, notice to quit; suit against tenant, how brought.

any covenant contained in the lease, shall notify the lessee to yield up the possession of the demised premises; and if such lessee shall neglect or refuse to do so for the period of ten days, after he shall be notified, the trustees shall proceed against him, and obtain restitution in the same manner and with like effect as in other cases of tenants holding over.

Rents to be paid into county treasury.

SEC. 22. All rents reserved upon leases of township school lands, shall be paid into the treasury of the county in which the township to which the fund belongs is situated; and the county treasurer shall give the lessee duplicate receipts therefor, stating therein the amount paid, and on what account; one of which shall be delivered by the lessee to the clerk of the county court, who shall charge the amount thereof to the county treasurer, on account of the township school fund to which it belongs.

Before half of purchase money is paid, and on application of purchaser, how sale to be annulled.

SEC. 23. Whenever the purchaser of any school land, or any person claiming under him, shall petition the county court to have the sale of such land annulled, and such petition shall also be signed by three-fifths of the free white householders of the school township in which such land lies, the county court may, by an order of such court, direct such sale to be annulled; upon such order being made, the certificate of purchase shall be given up, and the same, with all securities and obligations for the payment of the purchase money and interest thereon, shall be cancelled by such court, and the land shall thereafter be disposed of by such court as if the same had never been exposed to sale: *Provided, however,* That no such order shall be made in any case after one-half of the purchase money has been paid, nor until all the interest due on such purchase shall be paid, or secured for payment.

Purchase money to be refunded without interest.

SEC. 24. Whenever any sale shall be annulled by any court, by virtue of the preceding section, and any part of the purchase money has been paid, the county court shall draw a warrant, to be paid out of the moneys belonging to the township in the treasury of the county, for the amount paid, in favor of the person entitled to the same; but no warrant shall be issued for any interest, nor shall any interest be refunded which may, before the annulling such contract, have been paid on the purchase. The two preceding sections shall not apply to the county of St. Louis.

SEC. 25. When the inhabitants of any congressional township may, by any law of Congress, acquire a right to relinquish

Digitized by Google

their sixteenth section, and select 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, such court shall, if good land can be selected in the same county, appoint some disinterested 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 lands so selected, shall, in all respects, be sold or managed as hereinbefore provided for the sale or management of sixteenth sections; and if a majority of such 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 governor; particularly describing the land relinquished by stating the number of acres, section, township and range.

In what manner, and how other lands may be selected in lieu of 16th section.

SEC. 26. It shall be the duty of the governor to appoint (when, in his opinion, it shall 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.

Governor to appoint a person to make such selection.

SEC. 27. The person appointed by the governor shall make selection of lands, in lieu of those relinquished, in accordance with such law as congress may pass on the subject, taking care to choose the most valuable, and shall make report of his proceedings to the governor, describing the quantity selected, and its location, by its 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.

Duty of such person in making selection.

SEC. 28. The governor shall cause the secretary of state to certify such selections to the county court of the proper county, which certificate shall set forth a particular description of the land, by its section, township, range, and number of acres; 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 selected may be situate, the number of the section therein selected, township and range, and the county for which they are selected; which certificate shall be recorded by such clerk in the office of the recorder of such county, and a certified copy thereof shall be evidence.

Governor to certify such selection to the proper county.

SEC. 29. The sheriffs of the respective counties, when any lands may be selected in lieu of any relinquished sixteenth sections, shall sell such lands under the regulations required

Sheriff may sell such selected lands, subject to the

Digitized by Google

provisions of this act.

by this act in selling the sixteenth sections [illegible] and when he shall take a bond of the purchaser, transmit the same to the county court of the county to which it properly belongs.

Penalty for trespassing on school lands.

SEC. 30. If any person shall commit waste, trespass, or other injury upon any school lands in the state, or upon any improvements thereon, the person so offending shall, upon conviction thereof, be fined in a sum not exceeding five hundred dollars.

In what manner trespassers to be arrested.

SEC. 31. All civil officers, upon information on oath, or of their own knowledge, shall cause any person committing any of the offences mentioned in the preceding section, to be brought before them by the like process as in criminal cases, and to enter into recognizance for his appearance at the circuit court of the county, on the first day of next term thereof; and in default of such recognizance, commit such person to the jail of the county.

The 30th section of this act to be given in charge to grand jury.

SEC. 32. The judges of the circuit courts shall give the thirtieth section of this act in special charge to the grand jury at each term, who are required specially to inquire into, and make presentments of, all offences committed against its provisions.

Fines under this act to be paid into county treasury.

SEC. 33. All fines, penalties, and forfeitures, accruing under the provisions of this act, shall be paid into the treasury of the county, for the use of the inhabitants of the township to which the land injured belonged.

Attorney general, &c., to prosecute for penalties, &c.

SEC. 34. The attorney general, and circuit attorneys, within their respective circuits, shall prosecute all suits for the recovery of moneys, upon contracts made in pursuance of the provisions of this act.

Sheriff may, on leave of the court, bid in any school land.

SEC. 35. The county courts are hereby authorized, whenever they may deem it expedient so to do, to appoint the sheriff an agent to purchase, for the benefit of the township in which said lands may lie, any school lands for sale: *Provided*, That said sheriff shall not bid an amount exceeding the debt for which said lands are offered for sale.

Approved March 27, 1845.

Digitized by Google

CHAPTER 160.

SECRETARY OF STATE.

AN ACT to regulate the office of secretary of state.

SEC. 1. Secretary of state, before entering on the duties of his office, to take oath and give bond.
2. To be keeper of seal and public records, rolls, &c., belonging to the state; keep register of official acts of governor, &c.
3. Postage of letters and documents, how paid; letters and documents to be filed.
4. Shall make report of all matters referred to him; who shall have free access to his office.
5. Original rolls, and 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; such copies received as evidence.
SEC. 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 memoranda thereof.
10. Secretary pro tem. may be appointed; in what cases; his compensation and duties.
11. To procure stationery for the general assembly; how paid for.
12. To make report to each session of the general assembly of the amount expended under the 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:

SECTION 1. The secretary of state, before entering upon the duties of his office, shall take the oath of office prescribed by the constitution, (a) which shall be endorsed upon his commission, and, within thirty days after his appointment, enter into bond, with security, to be approved by the governor, to the state of Missouri, 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.

Secretary of state to take an oath and give bond.

Condition of the bond. 1835.

SEC. 2. He shall reside and keep his office at the seat of government, have the safe keeping of the seal of state, and of all public records, rolls, documents, acts, resolutions and orders of the general assembly; keep a register of all commissions issued, the official acts of the governor, and, when necessary, attest the same.

Where he shall keep his office; his duties.

SEC. 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

Postage on letters and documents, how paid.

(a) See section thirty-two, article three, of the constitution of this state.

Digitized by Google

To be filed.

office of secretary of state, which letters and documents he shall file and safely keep in his office.

Shall make report, when.

SEC. 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, or either house of the general assembly, when required; and the governor, or a committee of either or both houses of the general assembly, shall have free access to his office for the inspection and examination of all books, papers, records and proceedings.

Who shall have access to his office.

Original rolls or documents, not to be taken out of his office, unless, &c.

SEC. 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 or both houses of the general assembly, or for the examination of the executive.

To affix seal of state to executive acts.

SEC. 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.

To make out and authenticate copies of public acts, &c.

SEC. 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 or 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 all the courts of this state.

Such copies evidence.

To keep an abstract of commissions; what he shall register therein.

SEC. 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.

Shall note vacancies, &c.

To keep an abstract of military commissions, &c.

SEC. 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, regiment, battallion, brigade and division, for the which the appointment is made.

SEC. 10. In case of absence from the state, sickness, or impeachment of the secretary of state, the governor shall

Digitized by Google

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. Secretary pro tem. may be appointed, in what cases; his compensation and duties.

SEC. 11. He shall procure stationery for the use of the general assembly, previous to its sitting, to be paid 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, at any time within four months previous to the meeting of the general assembly. To procure stationery for general assembly; how paid for.

SEC. 12. He shall make report to each session of the general assembly, of the amount of money that has been expended in carrying into effect the provisions of the next preceding section. To make report of expenses to each session of general assembly.

SEC. 13. The expenses of procuring books, stationery, furniture, printing, and other things necessary to be obtained for the use of the office of secretary of state, shall be paid out of the state treasury, out of any money appropriated for the contingent expenses of secretary of state. Contingent expenses, how paid.

SEC. 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 vouchers of all expenditures, to the auditor of public accounts, who shall settle and adjust the same as other accounts against the state. Contingent expenses to be settled quarterly.

SEC. 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 when he is not entitled thereto, 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. Neglect of duty, taking illegal fees, &c., penalty.

Approved March 8, 1845.

Digitized by Google

CHAPTER 161.

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. Manner of serving notice by security, to bring suit.
4. To what cases the first two sections shall not extend.
5. Money paid by security to be refunded by the principal debtor.
6. Remedy against principal, by suit, for money or property paid.
7. Security paying more than his due portion, may recover the excess from his co-security; how.
8. No such security compelled to pay more than his proportion of the original demand.
9. When judgment is against principal and security, and security pays same, he can have judgment against principal for the amount, on motion.
10. Notice of such motion to be given, when; limitation of time to make such motion.
11. Securities of officers may be relieved by petition addressed to the circuit court.
12. What the petition shall state; to be verified by affidavit.
13. Notice, with copy of petition, to be served on the principal; how and when.
14. If principal be absent from the state six months, publication to be made; how.
15. Court or officer to hear application, may require new bond and security to be given; when.
16. Such new bond and security, how taken and filed.
17. When such new bond is taken, &c., securities in former bond to be discharged; effect and extent of.
18. On principal failing to give new bond, his office to be vacated.
19. Remedy of securities who pay money for officers.
20. Remedies under this act may be maintained by and against executors and administrators; when.
21. Securities of county officers to be residents thereof.
22. When security becomes nonresident of the county, or insolvent, or dies, the officer ordered to show cause why he should not give new bond.
23. If security found insufficient, officer may be required to give additional security.
24. When new bond is given, former securities are discharged.

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

Securities may require person having right of action to bring suit. 1835.

SECTION 1. Any person bound as 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, in writing, the person having such right of action forthwith to commence suit against the principal debtor and other parties liable. (*a*)

(*a*) Parol evidence is admissible to show that a party to a bond executed it merely as surety; Foster vs. Wallace, 2 Missouri Rep., 231; see Davidson vs. Peck, 4 Missouri Rep., 438. A security cannot maintain an action against a constable, on his official bond, for neglect in serving process against his principal, in consequence of which the principal becomes insolvent and the surety compelled to pay the money; State vs. Reynolds, 3 Missouri Rep., 95. If a security notifies a creditor to sue, any indulgence thereafter to the principal, to the injury of the security, will discharge the surety; *ibid.* Neglect on the part of the state to bring suit on an official bond, will not discharge the sureties; Parks vs. State, 7 Missouri Rep.,

Digitized by Google

Security exonerated, if suit not brought in thirty days after notice.

SEC. 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 person so notified.

Notice, how served. 1839, sec. 1, p. 152, 153.

SEC. 3. The notice required above shall be served by delivering a copy thereof to the person having the right of action on the instrument, or leaving a copy at his usual place of abode, with some white person of the family over the age of fifteen years.

To what cases the two first sections shall not extend.

SEC. 4. The first two sections shall not extend 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 to any bond with a collateral condition, except bonds with conditions exclusively for the payment of money or the delivery of property, or for the performance of covenant, or agreement, for the payment of money, or delivery of property.

Money paid by security, to be refunded by principal debtor.

SEC. 5. When 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 thereto, 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.

Remedy against principal, by suit for money, or property paid.

SEC. 6. 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.

Security paying more than his due portion, may recover the excess, how.

SEC. 7. 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 [as] herein provided for a security against the principal debtor.

194. In a suit against securities on a bond, the principal debtor is not a competent witness for the sureties; although indemnified against the costs of suit, he is interested under the act concerning sureties; Shelton vs. Ford, 7 Missouri Rep., 209. The payee of a note and the surety thereto reside in the same county, the note is within the jurisdiction of a justices' court; on notice to sue by the surety, the payee is bound to follow the principal in a distant county, but may sue the surety alone; Hughes vs. Gordon, 7 Missouri Rep., 297. Mere neglect to sue will not discharge the surety; but if a debt is secured by a lien, and the lien is abandoned, this will release the security; Ferguson vs. Turner, 7 Mo. Rep., 497.

Digitized by Google

No such security compelled to pay more than his proportion of the original demand.

SEC. 8. 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 portion 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.

Security can have judgment against principal, on motion, when.

SEC. 9. In all cases where judgment is given in any court, whether of record or not, 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 has paid, with ten per cent. interest thereon from the time of payment, together with costs.

Notice of such motion to be given, when; limitation of time to make such motion.

SEC. 10. No judgment shall be rendered, as is 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 of the original judgment.

Securities of officers may be relieved by petition.

SEC. 11. 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, addressed to the court authorized by law for the time being to take and approve such official bonds, be discharged from all future liability on such official bond.

What petition shall set forth, &c.

SEC. 12. 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.

Notice and copy of petition to be served on principal, how and when.

SEC. 13. 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 fifteen days before the making of the application.

Publication to be made, when.

SEC. 14. 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 four weeks successively, shall be sufficient service of the notice.

New bond and security may be ordered to be given.

SEC. 15. The court, 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

Digitized by Google

bond to give new bond and security for the performance of his official duties.

Such new bond and security, how taken and filed.

SEC. 16. 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.

When such new bond is taken, securities in former bond to be discharged, &c.

Effect and extent of.

SEC. 17. 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 next bond.

On principal failing to give new bond, his office to be vacated.—1825, p. 736.

SEC. 18. If such principal shall neglect or refuse to give such new bond and security within sixty days after making such order, his office, trust, power and authority, shall thenceforth be vacated, cease and determine, and the court making such order, or having the power to take such new bond, shall forthwith certify such vacancy to the court or officer having power to appoint a successor, and such vacancy shall be immediately supplied according to law.

Remedy of securities who pay money for officers.

SEC. 19. Any person bound as security in any bond given by any 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 principals and co-securities in bonds, bills and notes for the payment of money or delivery of property.

Remedies by and against executors and administrators.

SEC. 20. 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.

Securities of county officers to be residents thereof. 1841, p. 31-2.

SEC. 21. The securities of all clerks, sheriffs, constables, collectors and other county officers, shall be residents of the county in which the bonds, to which they become parties by reason of being securities for any of the said officers, shall be executed.

If security becomes non-resident, or insolvent, or dies, officer to show cause

SEC. 22. When it shall come to the knowledge of any court, whose duty it is to approve the official bonds of any of the officers named in the preceding section, that a surety of any of the said officers has become non-resident of the county

Digitized by Google

CHAP. 162.

why he should not give a new bond.—*Ib.*

in which his official bond was executed and required to be filed, or has died, become insolvent, or otherwise insufficient, the said court shall make an order requiring the officer for whom any such security executed the bond, on a day therein named, to appear and show cause why he should not give additional security.

Officer may be required to give additional security, when.—*Ib.*

SEC. 23. If, upon an investigation of the matter, it shall appear that any surety has become non-resident of the county in which the bond is filed, has died, become insolvent, or in any otherwise insufficient, the court shall require the officer for whom such surety executed the bond, to give additional security by a day named, and, in default thereof, the said office shall be forfeited and the same shall become vacant, and the facts shall be certified to the court or officer whose duty it is to fill such vacancy.

When new bond is given, former securities discharged.—*Ib.*

SEC. 24. When the additional bond is given and approved, the former sureties shall thereby be discharged from any misconduct of the principal, after the approval of said bond.

Approved January 31, 1845.

CHAPTER 162.

SEMINARY LANDS.

AN ACT respecting seminary lands.

SEC. 1. Commissioner in Cape Girardeau district abolished.
2. Return to be made by commissioner.
3. To make final settlement; when and how.
4. Seminary lands subject to entry; how and where made.

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

Office of commissioner in Cape Girardeau abolished.

SECTION 1. The office of commissioner for the purpose of superintending the sale of the seminary lands in the Cape Girardeau land district, is abolished.

Return to be made by commissioner.

SEC. 2. The commissioner shall make immediate return to the state treasurer, at the city of Jefferson, of all books and papers in his possession relating to, or connected with, such office.

SEC. 3. Within three months after this act takes effect, such

Digitized by Google

commissioner shall make final settlement of his accounts, and pay into the treasury all moneys that may be in his hands arising from the sales of seminary lands. To make final settlement, when and how.

SEC. 4. The seminary lands, in the several land districts, remaining unsold when this act takes effect, shall thereafter be subject to entry with the treasurer of the state, at the city of Jefferson, in the same manner and on the same terms as is provided with regard to the entry of saline lands. (a) Seminary lands subject to entry; how and where made.

Approved January 24, 1845.

(a) *Vide*, the act respecting saline lands.

CHAPTER 163.

SENATORS—U. S.

An act prescribing the manner of electing United States senators.

SEC. 1. United States senators elected by joint ballot of both houses of the legislature, at such time and place as may be agreed upon by both houses.
2. A majority of all the votes given necessary for a choice.
SEC. 3. President of the senate and speaker of the house to certify the election to the governor.
4. Governor to make out credentials; form thereof.
5. Form of credentials of temporary appointment.

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

SECTION 1. Whenever an election is to be made of a senator for this state, in pursuance of the constitution of the United States, (a) the two houses of the general assembly shall assemble together at such time and place as may be agreed to by both houses, and by joint vote proceed to the election. United States senators, how elected. 1835.

SEC. 2. A majority of all the votes given shall be necessary to elect a senator. What necessary to a choice.

SEC. 3. 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. Election to be certified to governor, by whom.

SEC. 4. The governor shall cause a credential to be made out, with the great seal of the state affixed thereto, and cause Governor to make out credential.

(a) *Vide*, article one, section three, first clause, of the constitution of the United States.

Digitized by Google

CHAP. 164.

Form thereof.

it be delivered to such senator, which credential shall be in the form following: 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 power of governor, as the case may be,) of the state of Missouri, do, by these presents, 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 ———.

Form of credential of temporary appointment.

SEC. 5. Whenever the executive shall, by virtue of the constitution of the United States, make a temporary appointment of a senator, (*b*) he shall deliver to such senator a credential, in form following: State of Missouri, to wit: A. B., who was chosen United States senator from 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 powers of governor, as the case may be,) of said state, have, therefor, thought fit to appoint C. D., to fill the vacancy. Given under my hand and the seal of the state of Missouri, this —— day of ———, one thousand eight hundred and ——.

Approved February 4, 1845.

(*b*) *Vide*, article one, section three, second clause, of the constitution of the United States.

CHAPTER 164.

SET-OFF.

AN ACT respecting set-off.

SEC. 1. Mutual debts may be set-off.
2. When debts may be set-off in suits brought by executors, &c.
3. When allowed in suits against joint obligors.
4. May be pleaded or given in evidence; notice required.
5. If equal, or less than plaintiff's demand, judgment, how rendered.
6. If balance due defendant, judgment may be rendered for him.
7. Judgment may be set-off; when and how.
8. Executions may be set-off.
9. Officer, how to proceed upon delivery of execution to him.
10. Instances enumerated when set-offs shall not be allowed.

Digitized by Google

CHAP. 164.

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

Mutual debts may be set-off. 1835.

SECTION 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. (*a*)

When debts may be set-off in suits brought by executors and administrators.

SEC. 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; (*b*) but no demand against an executor or administrator, in his own individual capacity, shall be allowed as a set-off against any debt or damages sued for by such executor or administrator, upon a contract made by him in his representative capacity, whether the contract shows the representative capacity in which he contracted or not.

When allowed in suits against joint obligors.

SEC. 3. In all actions brought against one or more joint obligors or promissors, any debt or demand due from the plaintiff to the defendants in the action, or to all the obligors or promissors in the contract sued upon, may be set off against the demand of the plaintiff.

May be pleaded or given in evidence; notice required.

SEC. 4. 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 (*c*) shall be given, at the

(*a*) *Vide*, Cowden vs. Elliot, 2 Missouri Rep., 60; Johnson vs. Strader and Thompson, 3 Missouri Rep., 359; Whaley and Blackwell vs. Cape, 4 Missouri Rep., 233. The provisions of the statute concerning set-off do not apply to a note which expresses to be payable "without defalcation;" Collins vs. Waddle, 4 Missouri Rep., 452. The statute is not restricted to mutual persons, but extends to corporations; City of St. Louis vs. Rogers, 7 Missouri Rep., 19. A note transferred by delivery, for a valuable consideration, may be the subject of set-off; the assignment need not be in writing; Frazier et al. vs. Gibson, 7 Missouri Rep., 271. A note given for a certain sum, payable in work, cannot be set-off in an action founded on a debt due in money, although the debt accrued for the same kind of work stipulated for in the note; Prather vs. McEvoy, 7 Missouri Rep., 598; *vide*, Chase vs. Chase, 8 Missouri Rep., 103. Petition in debt against A, B, and C, on a note assigned to plaintiff by one W, the defendants pleaded jointly nil debet; A and B pleaded also, by way of set-off, that W, the assignee of the plaintiff, was, before and at the commencement of the suit, indebted to said A by note in a certain sum, and that said W was also indebted to said B in a certain sum, to be paid in notes and accounts: held, that the plea was good for reasons assigned in the opinion; Austin vs. Feland et al., 8 Missouri Rep., 309.

(*b*) In a suit brought by administrators or executors, on a cause of action accruing to them as such, since the death of their intestate or testator, the defendant cannot set-off a debt due him from such intestate or testator; Woodward and Thornton vs. McGaugh and Brown, 8 Missouri Rep., 161.

(*c*) A notice of set-off should contain the substance of a declaration; Brady vs. Hill & Keese, 1 Missouri Rep., 315.

Digitized by Google

time of pleading the general issue, of the demand so intended to be insisted upon, and upon what account it became due. (*d*)

If amount of set-off be equal or less than plaintiff's demand, judgment how rendered.

SEC. 5. 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. (*e*)

Judgment rendered for balance due defendant.

SEC. 6. 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.

Judgment may be set-off, when and how. 1 Johns., C. Reps., 91.

SEC. 7. Whenever any circuit court, or the court of common pleas of St. Louis county, shall render final judgment in causes in which the parties shall be reversed, and shall sue and be sued in the same right and capacity, such court may, whether such judgment be rendered in the same court or not, if required by either party, set-off such judgments, the one against the other, and issue execution in favor of the party to whom the balance may be due, and credit such execution with the amount of such set-off.

Executions may be set-off.

SEC. 8. Executions between the same parties may be set-off, one against another, if required by either party, in the manner prescribed in the following sections.

Officer, how to proceed on delivery of execution to him.

SEC. 9. When any one of the executions is delivered to an officer to be served, the person who is the debtor therein, may deliver his execution to the same officer, whether the second execution is directed to the same or to any other officer, and the officer shall apply it, as far as it will extend, to the satisfaction of the first execution; or, if such first execution shall be the smallest in amount, then to its entire satisfaction, and endorse on such executions the fact of such application, and the balance due on the larger execution may be collected and paid in the same manner as if there had been no set-off.

When set-offs shall not be allowed.

SEC. 10. Such set-off shall not be allowed in the following cases: *First*, When the creditor in one of the executions is not in the same capacity and trust [as] the debtor in the other;

(*d*) *Vide*, Barton vs. Wilkins, 1 Missouri Rep., 74; Scogin vs. Hudspeth, 3 Missouri Rep., 123; Burton vs. Martin, 4 Missouri Rep., 200; Oldham vs. Henderson, *ibid*, 295. In a suit by the assignee of a note payable "without defalcation," but not negotiable like an inland bill of exchange, for want of the words "negotiable and payable," the payor cannot plead a set-off, though he may plead a total failure of consideration; Maupin & Jamison vs. Smith, 7 Missouri Rep., 402.

(*e*) In the second and third editions of the Rev. C. of 1835, the words "the plaintiff shall recover nothing by his action, if it be less than the plaintiff's demand," are entirely left out of the fourth section, rendering it nonsensical.

Digitized by Google

Second, When the sum due on the first execution shall have been lawfully and in good faith assigned to another person, before the creditor in the second execution became entitled to the sum due thereon; *Third*, When there are several creditors in one execution, and the sum due on the other is due from a part of them only; *Fourth*, When there are several debtors in one execution, and the sum due on the other is due to a part of them only.

Approved March 7, 1845.

CHAPTER 165.

SHERIFF AND MARSHAL.

AN ACT regulating the offices of sheriff and marshal.

SEC. 1. To receive certificate of election from clerk.
2. Appointed, certificate to issue; re-elected, to give new security, when.
3. To give bond within fifteen days, penalty and condition thereof.
4. Failing, office vacant.
5. How bond may be taken in vacation.
6. Bond binding until disapproved.
7. Certificate of election, oath and bond to be recorded.
8. May appoint deputies; how.
9. Powers of deputy.
10. Conservator of the peace in the county, may take recognizances, when.
11. Recognizance to be certified to circuit court.
12. Duty in quelling riots, &c., executing process, &c.
13. Vacancy occurring, to be certified to governor.
14. When summary proceedings may be had against securities.
15. Marshal of St. Louis county established.
SEC. 16. How and when elected.
17. Term of office.
18. Bond to be given, how and when.
19. By whom bond may be taken; how approved.
20. Failing to give bond, office vacant.
21. Vacancy to be certified to governor; how filled, effect of.
22. Certificate of appointment, how transmitted.
23. Sections of this act made applicable to Marshal.
24. When coroner shall perform duties of Marshal.
25. Offices of marshal and coroner vacant, elizor may be appointed, how.
26. Powers and liabilities of, in serving process.
27. Fees of.
28. Tie in elections of, how decided; contested elections, how determined.
29. What courts sheriff of St. Louis shall attend, execute the process of; what the marshal.

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

SECTION 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. (*a*)

Clerk to deliver certificate of election to sheriff.—1835.

(*a*) *Vide*, Section 23, article 4, of the constitution of this state, and the act to regulate elections.

Digitized by Google

CHAP. 165.

When appointed, certificate to be issued, &c.

SEC. 2. Whenever 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 proper county, who shall immediately deliver it to such sheriff; should any sheriff be re-elected, he shall give a new bond and security within fifteen days from his election, and should he fail to do so, his former securities shall not be held liable for any business done by him after the fifteen days expire. (*b*)

If re-elected, to give a new bond, when.

Liability of former securities.

To give bond within fifteen days; penalty and condition thereof.

SEC. 3. Every sheriff shall, within fifteen days after he receives the certificate of his election or appointment, give bond to the state in a sum not less than five thousand dollars, nor more than fifty thousand dollars, with sureties, approved by 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.

Failing, office deemed vacant,

SEC. 4. If any sheriff fail to give such bond within the time prescribed, the office shall be deemed vacant.

How bond may be taken in vacation.

SEC. 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 circuit court, at the next term.

Bond binding until disapproved.

SEC. 6. Such bond shall be valid until disapproved, nor shall its obligations be impaired by the disapproval of the circuit court.

Certificate of election, oath and bond to be recorded.

SEC. 7. Every sheriff shall, before he enters upon the duties of his office, cause his certificate of election or appointment, with the oath of office endorsed thereon, and his official bond, with the approval endorsed thereon, to be recorded at his own expense, in the office of the recorder of the county.

May appoint deputies, how.

SEC. 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.

Powers of deputy.

SEC. 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.

Sheriff a conservator of the peace in the county; may take recognizances, when.

SEC. 10. Every sheriff shall be a conservator of the peace within his county, and shall cause all offenders against law in his view, to enter into recognizance, with surety, to keep the

(*b*) *Vide*, section 24, article 4, of the constitution of this state.

Digitized by Google

peace, and to appear at the next term of the circuit court of the county, and to commit to jail in case of failure to give such recognizance.

Recognizance to be certified to cir. court.

SEC. 11. The sheriff shall certify such recognizance to the clerk of the circuit court.

Duty in quelling riots, &c., executing process, &c.

SEC. 12. Every sheriff shall quell and suppress assaults and batteries, riots, routs, affrays, and insurrections; 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. (*d*)

Vacancy to be certified to governor.

SEC. 13. If any vacancy occur in the office of sheriff, the clerk of the county court shall immediately certify the same to the governor.

When summary proceedings may be had against securities.

SEC. 14. Whenever summary proceedings are given against a sheriff, his sureties, jointly and severally, shall be liable to the same, and may or may not be joined with him; and such recovery may be had against them as is given against the sheriff: *Provided*, That upon such recovery against the securities of any sheriff in a summary mode of proceeding, the extent of said recovery shall not exceed the amount of money withheld by the sheriff and ten per centum per annum on the same, from and after the return day of the execution.

Proviso.

Marshal of St. Louis county established.

SEC. 15. There is established for the county of St. Louis, the office of marshal.

How and when elected.

SEC. 16. The marshal shall be elected by the qualified voters of the county, on the first Monday in August, in the year one thousand eight hundred and forty-six, and on the same day every two years thereafter; and such election shall be governed by the laws governing the election of sheriffs.

Term of office.

SEC. 17. He shall hold his office for two years, and until his successor is elected and qualified, and shall be ineligible four years in every period of eight years.

Bond to be given, how and when.

SEC. 18. He shall give bond to the state within the time, in the like sum, with sureties to be approved by the judge of the criminal court of St. Louis county, and with a like condition as prescribed by law in the case of sheriff; and such bond shall be filed in the office of the clerk of the criminal court of St. Louis county.

SEC. 19. Such bond may be taken by the clerk of the crim-

(*d*) *Vide*, Brown vs. Henderson, 1 Missouri Rep., 136; Brown vs. Ward, *ibid*, 209; Berry and Smith vs. Burckhartt, *ibid*, 418; Burton vs. Sweaney, 4 Missouri Rep., 2; Davis vs. Cooper, 6 Missouri Rep., 148.

Digitized by Google

inal court in vacation, and if so taken, shall be approved or disapproved by the judge thereof at the next term, and shall be valid until disapproved; and its obligations shall not be impaired by such disapproval.

By whom bond may be taken, how approved.

Failing to give bond, office vacant.

SEC. 20. If the marshal fail to give bond within the time prescribed, the office shall be considered vacant.

Vacancy to be certified to governor, how filled, &c.

SEC. 21. If any vacancy occur in the office of marshal, the clerk of the county court of St. Louis, shall immediately certify the same to the governor, who shall fill such vacancy by the appointment of some suitable and competent person, who shall continue in office until his successor is elected and qualified, and shall not thereby be rendered ineligible to the next succeeding term.

Certificate of appointment, how transmitted.

SEC. 22. When any person shall be appointed marshal by the governor, the secretary of state shall transmit an official certificate of his appointment to the clerk of the county court of St. Louis county, who shall immediately deliver it to such marshal.

Sections of this act made applicable to marshal.

SEC. 23. The seventh, eighth, ninth, tenth, and twelfth sections of this act shall apply to the marshal and his deputies; and he shall certify and return recognizances taken by him to the clerk of the criminal court of St. Louis county.

When coroner shall perform the duties of marshal.

SEC. 24. The coroner shall discharge all the duties pertaining to the office of Marshal, in like cases wherein he is required to perform the duties pertaining to the office of Sheriff.

Office of marshal and coroner vacant, an elizor may be appointed, how.

SEC. 25. If the office of marshal and coroner be vacant, an elizor shall be appointed by the clerk of the county court of St. Louis county, who shall perform all the duties of marshal, until a marshal shall be appointed, or elected, and qualified, and shall give bond and security, and make oath as the marshal is required to do.

Powers and liabilities of marshal in serving process.

SEC. 26. The marshal shall have the same power, be subject to the like proceedings, and incur the same liabilities, on all process placed in his hands, as the sheriff of any county has, or is subject to, in similar cases.

Fees of marshal.

SEC. 27. He shall be allowed the same fees for his services as are now, or may be, allowed to any sheriff in like cases.

Tie in election of marshal, how decided; contested elections, how determined.

SEC. 28. In all elections of marshal, when two or more persons have an equal number of votes, and a higher number than any other person, the criminal court of St. Louis county shall give the casting vote; and all contested elections for such office shall be decided in the manner prescribed in the case of contested elections for the office of sheriff.

Digitized by Google

What courts sheriff of St. Louis shall attend and execute process of; what the marshal.

SEC. 29. The sheriff of the county of St. Louis shall attend the circuit court, and the court of common pleas of the county of St. Louis; and the marshal shall attend the criminal court, the county court, and the probate court of the county of St. Louis; and all process issued by the circuit court of the county, or judge or clerk of the same, and by the court of common pleas, or the judge or clerk of the same, shall be served and executed by the sheriff of St. Louis county; and all process issued by the criminal court, or the judge or clerk thereof, and by the county court of the county of St. Louis, or by any justice or clerk thereof, and by the court of probate of St. Louis county, or the judge thereof, shall be served and executed by the marshal of St. Louis county.

Approved February 15, 1845.

CHAPTER 166.

SLANDER.

AN ACT declaring certain words actionable.

SEC. 1. Certain words declared actionable.

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

Certain words declared actionable.

SECTION 1. It is actionable to publish maliciously and falsely, in any manner whatsoever, that any person has been guilty of fornication and adultery.

Approved January 8, 1845.

Digitized by Google

CHAPTER 167.

SLAVES.

AN ACT concerning slaves.

ARTICLE I. Of the introduction of slaves, and police regulations concerning them.
II. Of the emancipation of slaves.
III. Of runaway slaves.

ARTICLE I.

Of the introduction of slaves, and police regulations concerning them.

SEC. 1. Introduction of certain slaves into the state prohibited.
2. Penalty for violating preceding section.
3. Penalty for bringing into this state slaves of non-residents.
4. Last section, how construed.
5. Further construction of four last sections.
6. Penalty for hiring or harboring, contrary to the foregoing provisions.
7. Penalty on owner for hiring one slave to another; permitting to go at large, or hiring out of his county.
8. Duties of sheriff, coroner, or constable, in reference to the third and seventh sections.
9. Justice to issue his warrant to apprehend slave at large or hiring his own time; when.
10. On hearing of the case, may commit him to county jail.
11. Owner not appearing and complying with terms of this act, sheriff to advertise; how.
12. Upon what condition may be delivered to owners; recognizance to be given.
13. Recognizance, how taken; condition of.
14. Owner not appearing, slave may be sold; how.
15. Proceeds of sale, how appropriated.
16. Construction of last section.
17. Penalty on master permitting slave to sell spirituous liquors to another slave.
18. Slave harboring or concealing other slaves, how punished.
SEC. 19. Slaves leaving home without a pass, &c., punished.
20. Coming on plantation of another without leave, may be punished.
21. Gun or other weapon found in possession of, how disposed of.
22. How punished for riots, &c., seditious speeches.
23. Penalty on master or owner permitting slave of another to remain on the place without leave.
24. Penalty for permitting more than five slaves to be on the place at one time, with or without leave.
25. Penalty on white person, free negro or mulatto, if found at an unlawful assembly of, or harboring slaves.
26. Duty of justices of the peace in such cases.
27. Duty of sheriff, coroner, or constable in such case.
28. Penalty for neglect.
29. How punished for disturbing religious congregations.
30. Penalty on ferrymen, &c., who shall cross a slave without a permit, over the Mississippi river.
31. Penalty on owner or master of boats, &c., for carrying slaves out of the state, or from one place to another, without permit.
32. Boat or vessel made liable, how proceeded against.
33. Penalty for trading with slaves, without permit.

Digitized by Google

Sec. 34. Penalty for removing slaves without the state, by persons not having absolute right to.
35. Construction of the term "master," as used in this article.
Sec. 36. Court to give this act in charge to grand jury; their duty.
37. Presentments cognizable by justice of the peace, how proceeded in.

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

Introduction of certain slaves into the state prohibited. 1835.

SECTION 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 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.

Penalty for violating preceding section.

SEC. 2. Every person who shall knowingly violate any of the provisions of the last section, shall be punished by fine, not exceeding five hundred dollars, to be recovered by indictment.

Penalty for bringing into this state slaves of non-residents.

SEC. 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.

Last section, how to be construed.

SEC. 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; nor to any citizen of this state who shall hire a slave or slaves for his own use, and not to be hired to others.

SEC. 5. Nothing in the four last sections shall be construed

Digitized by Google

CHAP. 167.

Construction of four last sections.

to prevent any person from bringing into this state any slave, for the purpose 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 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.

Penalty for hiring or harboring contrary to the foregoing provisions.

SEC. 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, harbored or employed by him, to be recovered by action of debt, in the name and to the use of the county.

Penalty on owner for hiring one slave to another, &c.

SEC. 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 the 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, to the use of the county.

Duties of sheriff, coroner or constable, in reference to the third and seventh sections.

SEC. 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.

Justice to issue his warrant to apprehend slave at large or hiring his own time.

SEC. 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.

On hearing of the case, may commit such slave to the jail of the county.

SEC. 10. Whenever any slave shall be arrested and brought before any magistrate, under the foregoing provisions, such magistrate shall inquire 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.

Owner not appearing and complying with the terms of this act, sheriff to advertise; how.

SEC. 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 descrip-

Digitized by Google

tion of such slave, the cause of commitment, and the name of the owner, if known.

Slave may be delivered to owner, on what condition; recognizance to be given.

SEC. 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 the 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.

Recognizance, how taken, condition thereof.

SEC. 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 of the state without delay, and not return thereto within three years.

Owner not appearing; slave may be sold; how.

SEC. 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 therein, as in sales of personal property under execution.

Proceeds of sale, how appropriated.

SEC. 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, and the other three-fourths shall be paid to the owner of the slave, on his application to the court therefor.

Construction of last section.

SEC. 16. Nothing contained in either of the eight last sections, shall be construed to discharge or exempt any person from any fine or forfeiture, hereinbefore declared, for a violation of the provisions of this act.

Penalty on master permitting slave to sell spirituous liquors to another slave.

SEC. 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 any slave, or any other person, shall be punished by fine, not exceeding three hundred dollars, to be recovered by indictment.

Slave harboring or concealing others, how punished.

SEC. 18. 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,

Digitized by Google

CHAP. 167.

not exceeding thirty-nine, upon a trial and conviction before a justice of the peace.

Slaves leaving home without a pass, &c., punished.

SEC. 19. 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 of 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.

Coming on plantation of another without leave, may be punished.

SEC. 20. If any slave shall come, and be upon the plantation of any person, without permission in writing from his 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.

Gun or other weapon found in possession of slave, how disposed of.

SEC. 21. 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 seizer, for his own use; and such slave shall receive, by order of the justice, any number of lashes not exceeding thirty.

How punished for riots, routs, seditious speeches, &c.

SEC. 22. All riots, routs, and assemblies, and seditious speeches of slaves, and insolent and insulting language of slaves to white persons, 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.

Penalty on master or owner permitting slave of another to remain on the place without leave.

SEC. 23. 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 slave, such master, mistress or overseer, so permitting the same, 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.

Penalty for permitting more than five slaves to be on the place at one time, with or without leave.

SEC. 24. Any owner or overseer of a plantation or tenement, who shall permit or suffer more than five slaves, other than his own, to be and remain upon his plantation or tenement at any one time, with or without the consent of the owner or overseer of such slave, shall forfeit and pay one dollar for each slave above that number, to the informer, to be recov-

Digitized by Google

ered 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 other lawful purposes.

Penalty on white person, free negro, or mulatto, if found at an unlawful assembly of, or harboring slaves.

SEC. 25. If any white person, or 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 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.

Duty of justices of the peace in such cases.

SEC. 26. Every justice of the peace, upon his own knowledge of any unlawful meeting of slaves, or of slaves and free negroes or mulattoes, or information thereof, within ten days thereafter, shall issue his warrant to apprehend such 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.

What officers shall bring offenders before justice without warrant.

SEC. 27. Sheriffs, coroners or constables, upon a knowledge or information of any unlawful meeting of slaves, or free negroes and mulattoes, in 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.

Penalty for failing to comply with last section.

SEC. 28. Any sheriff, coroner or constable, who, upon knowledge or information, shall neglect or refuse to comply with the requisitions of the foregoing section, shall forfeit, for every such offence, to the informer, ten dollars, to be recovered by action of debt.

How punished for disturbing religious congregations.

SEC. 29. 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 with the truth thereof, shall cause such slave to be whipped, not exceeding thirty-nine lashes.

Penalty on ferryman, &c., for crossing slave without a permit over the Mississippi river.

SEC. 30. Any ferryman, or other person, who shall cross any slave from this state across the Mississippi river, unless such slave has 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

Digitized by Google

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.

Penalty on owner or master of boats, &c., for carrying slaves out of the state, &c., without a permit. 1840–1, p. 146.

SEC. 31. Any master, commander or owner of any boat or other vessel, who shall transport any slave out of this state, in such vessel, or from one point or place in this state to any other point or place in the same, in such vessel, without the consent or permission of the person to whom such slave does of right belong, or who has authority to grant such consent or permission, shall forfeit and pay the value of such slave to his owner, to be recovered by action of debt, without prejudice to the right of such owner to his action at common law.

Boat or vessel made liable, how proceeded against. *Ib.*, p. 146–7.

SEC. 32. Every boat or vessel, used in navigating the waters of this state, whose master, owner or commander, shall violate the preceding section, shall be liable to the same extent that such master, owner or commander is, and such boat or vessel may be proceeded against for the recovery of such liability, according to the provisions of the act entitled "An act concerning boats and vessels," without prejudice to any right of action at common law.

Penalty for trading with slaves without permit.

SEC. 33. Any person who shall buy of, sell to, or receive from any slave, any commodity whatsoever, without the consent in writing of the master, owner, or overseer of such slave, first had and obtained, or who shall deal with any slave without such consent, shall forfeit to the master, owner, or overseer of such slave, four times the value of the commodity so bought, sold, or received; to be recovered by action of debt, with costs, and shall also forfeit to the county in which the offence was committed, twenty dollars, to be recovered by indictment.

Penalty for removing slaves without the state, by persons not having the absolute right to such slaves.

SEC. 34. Any person migrating beyond the limits of this state, with an intention there to reside, who shall convey away with him any slave, 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 right, title and interest, in such slave, or other personal property; which forfeited right, title and interest, shall immediately vest in the person entitled in remainder or reversion absolutely.

SEC. 35. The term "master," as used in this article, shall

Digitized by Google

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. Construction of the term "master," as used in this article.

SEC. 36. The circuit courts, at each term, shall give this article in special charge to the grand jury, whose duty it shall be to make diligent enquiry and presentment of all violations of the provisions of this article. Court to give this act in charge to grand jury.

SEC. 37. Whenever a grand jury shall make presentment of any violations of this article, cognizable before a justice of the peace, such presentment shall be certified to some justice of the proper township, who shall immediately proceed thereon, according to the foregoing provisions. Presentment cognizable by justice of the peace, how proceeded in.

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, by whom paid.

SECTION 1. Any person may emancipate his or her slave, by last will or any other instrument in writing, under the 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. How slaves may be emancipated.

SEC. 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. Effect of such emancipation.

SEC. 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. Slaves emancipated liable to be taken in execution, when.

SEC. 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, Person emancipating slave, liable for his support, in what cases.

Digitized by Google

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 slaves 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.

To give slave attested copy of the act of emancipation.

SEC. 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.

Emancipation by will, copy how and by whom delivered.

SEC. 6. When 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.

Fees of clerks for making out such copies, and by whom paid.

SEC. 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.

Taxes or levies imposed on slaves emancipated, how and by whom paid.

SEC. 8. When any slave, emancipated by virtue of this act, 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 will be sufficient to pay such tax or levy, as if the same had been assessed to such person himself.*

* The third article of the act, entitled "An act concerning slaves," approved March 19, 1835, was not re-enacted. See the act concerning fraudulent conveyances.

ARTICLE III.

Of runaway slaves.

SEC. 1. Slave suspected of being a runaway may be taken before a 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. When and in what cases justice to issue his warrant to apprehend runaway slave.
5. Person committed to jail as a runaway, sheriff to advertise, and how.
SEC. 6. Sheriff to advertise such runaway in newspaper, when.
7. If owner do not appear in 12 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.

Digitized by Google

SEC. 11. When runaway is sold, duplicate statements to be made out by sheriff; their contents.
12. Statement to be examined by county court, and amount ascertained to be certified by clerk, under seal, to the auditor of public accounts.
13. When the money is paid into the treasury, sheriff to take treasurer's receipt and present it to the auditor, &c.
14. Person claiming such runaway, to petition circuit court; proceedings.
15. If issue found for claimant, court to grant a certificate; auditor, on presentation thereof, to draw his warrant, &c.
16. Reward to person apprehending runaway, how paid.
17. Such fees to be paid to 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 jailor's fees to be paid by the state.

Negro, &c., may be taken before a justice, when.

SECTION 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.

Justice shall grant apprehender a warrant to deliver the slave to the owner, when.

SEC. 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 person apprehending such slave, 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 person a warrant to convey and deliver such runaway to the owner, or person entitled to possession.

To grant a warrant to deliver such runaway to the county jail, when.

SEC. 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 keeper of the common jail of the county in which such justice resides.

Justice to issue his warrant to apprehend runaway slave, when and in what cases.

SEC. 4. When any justice of the peace shall have cause to suspect, from information, or upon his own knowledge, that any runaway slave is laying 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.

Person committed to jail as a runaway, sheriff to advertise and how.

SEC. 5. When any slave 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.

Digitized by Google

CHAP. 167.

Sheriff to advertise such runaway in a newspaper, when.

SEC. 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.

Slave shall be sold, if owner do not appear within a year.

SEC. 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.

Notice of sale.

Net proceeds of sale to be paid into state treasury.

SEC. 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.

Owner, on proof of property in the slave, may draw the money from treasury, when.

SEC. 9. If the owner prove his property in such runaway at any time within five years after the day of sale, such owner shall be entitled to draw from the treasury the amount of proceeds paid over by the sheriff.

What shall be required of a claimant, before runaway slave shall be delivered up to him.

SEC. 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 the like manner as the owner is herein enabled to.

When runaway is sold, duplicate statements to be made out by sheriff, &c.

SEC. 11. When any runaway slave shall be sold, as hereinbefore 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

Digitized by Google

apprehending, keeping, advertising, and selling such slave together with a copy of the advertisement.

Amount to be paid into the treasury, to be certified to the auditor, &c.

SEC. 12. The county court shall examine and audit 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.

Sheriff to take treasurer's receipt and present it to auditor.

SEC. 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.

Person claiming such money, to petition circuit court.

SEC. 14. Any person claiming any money paid into the state treasury, by virtue of this act, 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 such petition, on the part 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.

Proceedings.

If issue found for claimant, court shall grant a certificate.

SEC. 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 money 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.

Auditor, on presentation thereof, to draw his warrant, &c.

Reward to person apprehending runaway, how paid.

1843, p. 183.

SEC. 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 in this state, shall be entitled to receive, if such slave were apprehended within this state, the sum of five dollars, and if without this state, the sum of fifty dollars, and in either case, ten cents for every mile of such distance as he shall necessarily convey such slave, or such, 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 such slave, or by the sheriff, out of the proceeds of the sale.

Digitized by Google

CHAP. 168.

Such fees to be paid to sheriff, when; sheriff liable to pay them, when.

SEC. 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.

Who declared to be a runaway.

SEC. 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 pass or permission to that effect, from such owner, overseer, or employer, is declared to be a runaway slave.

Court or judge may discharge person apprehended, when.

SEC. 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 a writ of habeas corpus.

In what cases and when expenses and jailer's fees to be paid by the state.

SEC. 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 5, 1845.

CHAPTER 168.

SLAVES.

AN ACT supplementary to "An act concerning slaves," approved March 19, 1835.

SEC. 1. Reward for arresting a runaway slave.
2. Owner refusing to pay reward, how to proceed.
3. Taker up of a runaway slave may deliver slave to sheriff.
4. How sheriff shall proceed upon receiving runaway slave.
5. Bill of sale to be executed; purchase money, how applied.
6. Owner may prove his title before circuit judge; balance of purchase money to be paid him.
7. Forging a pass, &c.; abducting or enticing away, &c., a slave, how punished.
8. Free negro giving a pass, or abducting a slave, &c., how punished.
9. This act to be published in two papers in Illinois, annually; pay therefor.
10. Sheriff liable on his official bond for money received on sale of slaves.
11. Repealing clause.

Digitized by Google

CHAP. 168.

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

Reward for arresting a runaway slave.

SECTION 1. That any person who shall arrest a runaway slave, belonging to any inhabitant of this state, shall be rewarded as follows: For every such slave as shall be arrested out of this state, and delivered to the master, or sheriff, (as the case may be,) as herein provided, the taker up shall be entitled to receive the sum of one hundred dollars, if such runaway be above the age of twenty, and fifty dollars if under twenty years of age, and any larger amount that may have been offered as a reward, by the owner of such slave. For every such slave as shall be arrested within this state, and delivered as herein provided, the taker up shall be entitled to receive the sum of twenty-five dollars, and any larger amount that may have been offered as a reward, by the owner of such slave.

Owner refusing to pay, how to proceed.

SEC. 2. If any master of such runaway slave, shall, on the offer of any taker up thereof to deliver to him such runaway, refuse to pay in a way satisfactory to the taker up, any amount offered by said master as a reward, or the amount provided for in the preceding section, (as the case may be,) then and in that case, the taker up is hereby authorized to take such runaway slave to the sheriff of any county in the state, who shall receive and dispose of the same as is provided in this act.

Taker up may deliver slave to sheriff.

SEC. 3. The taker up of any runaway slave, may deliver said slave to the sheriff of any county in this state, and said sheriff is hereby authorized and required to receive said slave.

How sheriff shall proceed upon receiving runaway slave; notice to be given, how.

SEC. 4. On the reception of any runaway slave, by any sheriff in this state, under the provisions of this act, he shall provide for the safe-keeping of said slave, in any way he may deem best, and shall, for three months, give notice by advertisement in three newspapers in different portions of the state, that such slave is in his possession, describing him as fully as he can do it, and requiring the owner to make application to him for said slave, within the said three months, and pay all charges incurred on account of said slave, or otherwise the said slave will be sold at public auction, for cash, on a certain day, and at a place to be fixed in said advertisement.

Bill of sale to be executed; purchase money, how applied.

SEC. 5. On the sale of any such runaway, the sheriff shall execute to the purchaser a bill of sale, which shall convey a good title to the same; and out of the money received for said purchase, the sheriff shall retain the amount paid by him

Digitized by Google

to the taker up, and all other expenses necessarily incurred in the safe-keeping and clothing of said runaway, together with a fee of ten dollars to himself, and the balance of the purchase money shall be retained by such sheriff for the owner of said slave.

Owner may prove his title before circuit judge; balance of purchase money to be paid him.

SEC. 6. If, at any time after the sale of any runaway, by the sheriff, as aforesaid, the owner may appear and prove, by competent legal testimony, before a judge of any circuit court in this state, that the slave so sold was his property, the sheriff, on the presentation of the certificate of such judge, by the owner, shall pay to him the amount of the purchase money, after deducting the reward, and all costs and expenses incurred.

Forging a pass, &c., abducting or enticing away, &c., a slave, how punished.

SEC. 7. If any person shall forge for any slave a free pass, or place in the possession of any slave, any paper or thing whatever, by which such slave may the more readily escape from his master, and any person [who] may abduct or entice, or attempt to abduct or entice any slave away from his master, such person shall, for every such offence, be subject to an indictment in any court in the state having criminal jurisdiction; and on conviction thereof, shall be confined in the penitentiary of the state for a term of years not less than five, nor more than ten.

Free negro giving a pass or abducting a slave, &c., how punished.

SEC. 8. If any free negro shall furnish to any slave any papers of any kind, or any other thing which may the better enable such slave to escape; or, if any free negro abduct or entice, or attempt to abduct or entice, any slave from his master, such free negro, for every such offence, shall be subject to indictment in any court in the state, having criminal jurisdiction, and, on conviction thereof, shall be confined in the penitentiary of the state, for a term of years, not less than five nor more than ten.

This act to be published in two papers in Illinois; how paid for.

SEC. 9. It shall be the duty of the governor of the state, immediately after the passage of this law, to select two newspapers, in different sections of the state of Illinois, in which he shall cause this act to be published for three months; and said publication shall be made annually, and the expenses thereof paid by the treasurer, out of any money in the treasury not otherwise appropriated.

Sheriff liable, &c., for money for sale of slaves.

SEC. 10. The sheriff and his securities shall be liable on his official bond for all moneys by him received for the sale of runaway slaves.

Digitized by Google

SEC. 11. All acts or parts of acts with which this conflicts, are hereby repealed. Repealing clause.

This act to take effect from its passage.

Approved March 27, 1845.

CHAPTER 169.

SLAVES.

AN ACT explanatory of an act entitled "An act supplementary to an act concerning slaves," approved March 27, 1845.

SEC. 1. Reward for apprehending runaway slave in the county.

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

SECTION 1. Nothing in the act of which this is explanatory, shall be construed to extend to a slave taken in the county in which he may run away, or in any adjoining county; but in case such slave be taken in the county, the person apprehending such runaway shall receive five dolllars reward, and when apprehended in an adjoining county, ten dollars reward, if the distance exceed twenty miles from the residence of the owner, or person in possession of said negro, and five dollars if under that distance. Reward for apprehending runaway slave in the county.

This act to take effect from its passage.

Approved March 27, 1845.

CHAPTER 170.

STATE LIBRARY.

AN ACT for the regulation and management of the state library.

SEC. 1. Clerk of the supreme court to be librarian.
2. To have custody of books, maps, &c.
3. Secretary of state to deliver certain books to librarian to have them bound.
4. Duties of librarian, where to keep the library.
5. Duty of librarian where there is not a continuity of any work.
6. Librarian to receive money from secretary of state; to apply it in purchasing books, &c., how.
7. To keep catalogue of books, &c., report to general assembly.

Digitized by Google

SEC. 8. Expenses of binding, fuel, &c., how paid.
9. Accounts of, to be audited.
10. Library to be kept open; when and by whom works may be taken out.
11. Books taken from library to be receipted for.
12. Librarian to report members to auditor who have failed to return books, when; duty of auditor in relation thereto.
SEC. 13. Auditor to draw his warrant in favor of librarian, when.
14. Penalty on any person violating this act, how recovered.
15. Secretary of state to sell certain books, proceeds to be paid to librarian.
16. Compensation of the librarian; shall provide assistant; other duties.
17. Library to be kept open during certain hours, when.

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

Clerk of supreme court to be librarian. 1843, sec. 5, p. 49.

SECTION 1. The clerk of the supreme court shall be, ex officio, librarian of the state library, and shall have the custody of all books belonging to the same, and take special care that none of them be lost or injured.

To have custody of books, maps, &c.

SEC. 2. The librarian shall have the custody, charge, and safe-keeping of all 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.

Secretary of state to deliver certain books to librarian, to have them bound.

SEC. 3. The secretary of state shall deliver to the librarian, so soon as received by him, three copies of the following books, viz: The acts of each session of congress; the acts of the general assembly of this state; the acts of the several states and territories; the journals of each house of the general assembly of this state; and the decisions of the supreme court; also, one copy of the journals of each house of congress, and of all books, reports, state papers and documents ordered by congress, or either house thereof, to be distributed among the states, which the librarian shall cause to be bound, if the same be not already done, and placed in the library.

Duties of librarian, where to keep the library.

SEC. 4. The librarian shall cause all books now owned by the state, and such as may be hereafter acquired, to be arranged and kept in the semi-circular room on the second floor of the capitol, and shall have the sole and entire control of said room, keep the key of the same, and see that it is kept clear of all other books and things, than those which properly belong to the library.

Duty of librarian, when there is a want of continuity of any acts, books, &c.

SEC. 5. When there shall be a want of continuity in any of the series of acts, journals, or other books required to be placed in the library, it shall be the duty of the librarian to open a correspondence with the proper person, in order to

Digitized by Google

obtain those which are wanting, and if they cannot otherwise be procured, he shall purchase the same, and place them in the library.

Librarian to receive money from secretary of state and apply it to purchase books, &c., how.

SEC. 6. When there shall be any money in the hands of the secretary of state, appropriated to the purchase of books for the state library, he shall pay over the same to the librarian, who shall give a receipt therefor, and, under the directions of the governor, shall apply the same to the purchase of all such books, maps or charts, as he shall deem necessary and expedient, and shall provide presses for their safe-keeping.

To keep a catalogue of books, &c., and report to general assembly.

SEC. 7. 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 general assembly, at the commencement of each session thereof, together with the manner, and for what books, the appropriations have been expended.

Expenses of binding, fuel, &c., how paid.

SEC. 8. All expenses for procuring and binding such copies of acts and journals, as are mentioned in this act, and the necessary expenses for stationery, candles and fuel, shall be paid out of the contingent fund of the general assembly.

Accounts of, to be audited.

SEC. 9. The auditor of public accounts shall audit the accounts of the librarian, under this act, and draw warrants on the treasury for the payment of the same.

Library to be kept open, &c. 1843, sec. 5, p. 59.

SEC. 10. The library shall, at suitable hours, be open for the reception of all persons who may wish to use the books therein; but no book shall be taken from the room, unless by members of the general assembly, or when they are required to be used in the supreme court.

Books taken from library, to be receipted for.—*Ib.*

SEC. 11. No officer, or person, except members of the general assembly, during the session thereof, shall take any book from the library room, under any pretence whatever; and no member of the general assembly shall take a book therefrom, without first giving a receipt for the same to the librarian.

Librarian to report members to auditor who have failed to return books; duty of auditor in relation thereto.

SEC. 12. It shall be the duty of the librarian, at least six days before the close of each session of the general assembly, to deliver, in writing, to the auditor of public accounts, the name of each member who has taken a book from the library and has not returned the same, together with the title of the book and the value thereof, as nearly as he can ascertain the same, and it shall be the duty of the auditor to deduct from the wages of such member, treble the value of said book, to

Digitized by Google

be applied, first, to replace the book not returned, and the balance to the use of the library.

Auditor to draw his warrant in favor of librarian, when.

SEC. 13. The auditor shall draw his warrant on the treasury in favor of the librarian, for the amount of wages deducted under the preceding section, and shall charge him with the same.

Penalties for violating this act, how recovered.

SEC. 14. If any person shall violate the provisions of this act, he shall forfeit and pay to the librarian, for the benefit of the library, three times the value of any book taken from the library, or of the set to which it belongs, to be recovered by an action of debt, in the name of the librarian, for the use of the library, in any court having jurisdiction thereof.

Secretary of state to sell certain books. 1843, p. 58–9. Proceeds to be paid to librarian.

SEC. 15. The secretary of state shall sell five hundred copies of the fourth, fifth, sixth and seventh volumes of the decisions of the supreme court, including the number that has already been sold, and five hundred copies of each subsequent volume, as it is published, at two dollars per volume; he shall also sell one hundred and fifty copies of the territorial laws, including what has already been sold, at five dollars per copy, and two hundred copies of the late re-publication of the first three volumes of the decisions of the supreme court, including the number that has already been sold, at five dollars per copy, and the moneys arising from such sales shall, from time to time, be paid over to the librarian, to be applied according to the provisions of this act.

Ib. p. 59–60. Act Feb. 6, 1841, p. 70. Act Feb. 14, 1839, sec. 9, p. 39.

Compensation of librarian; shall provide assistant; other duties.

SEC. 16. The librarian shall receive, as a compensation for his services as such, the sum of one hundred dollars, to be paid quarter-annually, and shall procure, when necessary, a suitable person to perform the duties of assistant librarian during the sitting of the legislature, and see that the library room is at all times properly warmed, lighted and prepared for the accommodation of the members of the legislature, and of such other persons as are permitted to use the same.

Library to be kept open during certain hours, when.

SEC. 17. The librarian, during the session of each general assembly, shall keep the library open each day, from nine o'clock in the morning until five o'clock in the evening.

Approved March 8, 1845.

Digitized by Google

CHAPTER 171.

STATE UNIVERSITY.

AN ACT to provide for the institution and support of a state university.

ARTICLE I. Of the "seminary fund," and care and management thereof.

II. Of the university, its organization and powers.

ARTICLE I.

Of the "seminary fund," and care and management thereof.

SEC. 1. "Seminary fund" created; of what to consist.
2. To remain a permanent fund; income thereof to be added to the fund.
3. How much of the income to be appropriated annually; balance how applied.
4. Duty of auditor in keeping books of seminary fund; what to be entered.
5. To enter sales with description.
6. Duties of auditor and treasurer in relation to seminary lands, funds and moneys.
7. Governor, secretary of state and attorney general, to be commissioners of seminary fund.
8. Funds in the treasury to be invested; how and by whom.
9. Certificates of investment, how taken; to specify the trust.
10. Stock in bank of Missouri declared to be held in trust for the fund.
11. Bonds and certificates of stock to be held by the auditor; may deposit them in the bank.
12. Dividends on stock in the bank, to be reported to the auditor, and amount passed to the credit of the treasurer.
13. Interest and profits to be paid to the state treasurer; to be charged by the auditor therewith.

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

"Seminary fund" created; of what to consist. 1838-9.

SECTION 1. There is hereby created and established, a fund to support a state university, for the promotion of literature and of the arts and sciences, to be denominated "The seminary fund," which shall consist of: *First*, The proceeds of the lands now held by the state and known as seminary lands; *Second*, All moneys derived from the sale of "seminary lands," heretofore made, and the interest thereof; *Third*, The interest, dividends, proceeds and profits of such moneys and lands, except such distribution as shall be by law authorized.

To remain a permanent fund, &c.

SEC. 2. The seminary fund shall be and remain a permanent fund for the promotion of literature and of the arts and sciences, and so much of the income thereof shall be added

Digitized by Google

to, and become a part of, the fund, as shall not be appropriated as hereinafter provided for.

How much of the income to be appropriated annually; balance how applied.

SEC. 3. So much only, of the income of the seminary fund, shall be appropriated in any year, as shall be necessary for the purposes to which the application thereof shall be authorized by law, and the residue shall be added to, and become part of, the permanent fund, which shall never be lessened or impaired.

Duty of auditor in keeping books of seminary fund; what to be entered.

SEC. 4. It shall be the duty of the auditor of public accounts to provide, and keep in his office, a book, to be called "The register of seminary lands," in which shall be entered a description of all seminary lands heretofore or now held by the state, showing the county wherein situate, the range, township and legal sub-division, arranged with suitable columns, in which shall be noted all sales, by the date, number of acres, price per acre, and total amount, of each tract.

To enter sales with description.

SEC. 5. The auditor shall also enter, in such book, a list of sales hereafter made, showing the particulars of description of the lands, and the sales thereof, specified in the last preceding section.

Duties of auditor in relation to seminary lands, funds and moneys.

SEC. 6. The auditor of public accounts, and state treasurer, shall, respectively, perform like duties and possess the same powers in relation to the seminary lands, fund and income, as they respectively are, or may be, required to perform or exercise in relation to common school lands, funds and moneys, and shall account themselves, and shall require others to account to them, in the same manner as in relation to common school lands, funds and moneys; except in cases otherwise provided.

Who shall be commissioners of seminary fund.

SEC. 7. The governor, secretary of state, and attorney general, shall, by virtue of their respective offices, be commissioners of the seminary fund.

Funds in the treasury to be invested; how and by whom.

SEC. 8. Whenever there shall be in the treasury, or elsewhere, subject to the order of the treasurer, any moneys belonging to the capital of the seminary fund, the auditor shall make report to the commissioners, who shall direct the same to be invested in such of the public stocks of this state as they shall deem most advantageous to the fund, and the auditor, as soon as it may be advantageously done, shall make the investment accordingly.

Certificates of investment, how taken, &c.

SEC. 9. Certificates of stock, or bonds, shall be taken for such investment, in the name of office of the auditor, in

Digitized by Google

trust for the seminary fund, which trust shall be specially expressed in every such bond or certificate.

Stock in bank of Missouri declared to be held in trust for the fund.

SEC. 10. The stock now held by the state, on account of investments of the seminary fund, in the capital of the bank of the state of Missouri, is hereby declared to be held in trust for the seminary, and certificates of stock shall be issued for such investments, as specified in the preceding section.

Bonds and certificates of stock, to be held by auditor and deposited, &c.

SEC. 11. All bonds and certificates of stock, in trust for the seminary fund, shall be in charge of the auditor of public accounts, who may deposit them for safe-keeping in the bank of the state of Missouri, or any branch thereof.

Dividends declared on stock in bank, to be reported to auditor, &c.

SEC. 12. Whenever a dividend shall be declared by the bank of the state of Missouri, the amount accruing in the stock in trust for the seminary fund, shall be reported by the proper officer of the bank to the auditor, and paid to the state treasurer, or passed to his credit as such.

Interest and profits to be paid to the state treasurer; how charged.

SEC. 13. All interest and profits of such stock held in trust for the seminary fund, shall be paid to the state treasurer, who shall be charged by the auditor therewith, and with the amount of all dividends paid to him, or passed to his credit, as in the preceding section specified.

ARTICLE II.

Of the university, its organization and powers.

SEC. 1. University established; government vested in curators.
2. Of the incorporation of, name and style.
3. Twenty curators; how chosen and removed; term of office; certain officers ex officio curators.
4. Who not qualified to be a curator.
5. Vacancy in, how to be filled.
6. Oath of office.
7. Annual meeting of curators, when and where to be held.
8. Officers of the board prescribed; how chosen.
9. Who to preside in the absence of the president of the board.
10. Special meetings, how and by whom called.
11. Adjourned meetings, how appointed.
12. What number shall constitute a quorum; less number may adjourn.
13. Secretary to keep a journal; ayes and nays, when to be entered.
SEC. 14. Duties of the secretary.
15. Any curator shall have access to books, &c., may take copies.
16. Duties of the treasurer.
17. Power of the curators to make by-laws, &c.
18. Power to confer degrees.
19. Specific grants not to be applied to other purposes.
20. Duties of curators in relation to the university grounds and buildings.
21. Power to appoint president of the university, prescribe his duties, fix the compensation of, &c.
22. Duties of the president of the university.
23. Professors and tutors, how to be appointed; not to exercise a profession; compensation of.
24. Auditor to report semi-annually the amount of money applicable to support of university.
25. Amount may be drawn and deposited with treasurer of the board; how.

Digitized by Google

CHAP. 171.

SEC. 26. Salaries payable semi-annually; president to draw warrant on the treasurer; when to bear interest.
SEC. 27. Balance, after paying salaries, how to be applied.
28. Curators authorized to sell lands conveyed to the university.

University established.

SECTION 1. An university is hereby instituted in this state, the government whereof shall be vested in a board of curators.

Incorporation of university, name and style.

SEC. 2. The university is hereby incorporated and created a body politic, and shall be known by the name of "The curators of the university of the state of Missouri," and by that name shall have perpetual succession, power to sue and be sued, complain and defend in all courts of law and equity, to make and use a common seal, and to alter the same at pleasure, to take, purchase and hold, to sell, convey and otherwise dispose of, lands and chattels.

Twenty curators; how chosen and removed; term of office; certain officers ex officio curators.

SEC. 3. The number of curators shall be twenty; five of whom shall be chosen biennially, by joint vote of the senate and house of representatives, and may be removed by concurrent resolution of the two houses of the general assembly; they shall hold their offices for six years, and until their successors are duly elected and qualified. The governor, the secretary of state, the auditor of public accounts, the state treasurer, and the president of the university, shall be curators by virtue of their several offices.

Who not qualified to be curator.

SEC. 4. No person shall be chosen a curator, who shall not have attained the age of twenty-five years, and who shall not be a free white citizen of the United States, and a resident of this state for two years next preceding his election or appointment.

Vacancy in, how to be filled.

SEC. 5. Every vacancy happening in the office of a curator, chosen by the general assembly, shall be supplied by appointment by the governor, until the next meeting of the general assembly, and until a successor is duly elected and qualified.

Oath of office.

SEC. 6. The curators shall, severally, take an oath to support the constitution of the United States, and of this state, and faithfully demean themselves in office.

Annual meeting of curators, when and where to be held.

SEC. 7. There shall be an annual meeting of the board, on the Wednesday preceding the last Thursday in July, to be holden in the university edifice, or within one mile from the site thereof.

Officers of the board prescribed; how chosen.

SEC. 8. There shall be a president and vice president of the board, who shall be chosen by the board, from the members thereof; a secretary, treasurer, and such other officers of the board, as they shall deem necessary, who shall be

Digitized by Google

[appointed] by the board, and hold their offices during the pleasure of the board.

Who to preside in the absence of the president of the board.

SEC. 9. The president, and, if he be absent, the vice-president, and, if both be absent, a curator, chosen for the occasion, shall preside at the meeting of the board, and have a casting vote in case of equal division.

Special meetings, how and by whom called.

SEC. 10. The president of the board, and until his election, or in case of his absence or disability, any three curators shall have power to call a special meeting of the board, at the place of holding the annual meetings: *Provided*, They give timely notice thereof, in such form as the board at its annual meeting shall, by resolution, prescribe, or by printed notice published in some public newspaper of the county, at least ten days before the day of meeting.

Adjourned meetings, how appointed.

SEC. 11. Adjourned meetings may be ordered and held by the board, at such time and place as shall be agreed upon by them.

What number shall constitute a quorum; less number may adjourn.

SEC. 12. At the annual meetings of the board, eight curators shall constitute a quorum to do business, but five curators attending any special meeting, shall constitute a quorum, and, at any meeting, a less number than a quorum may adjourn, from time to time, not exceeding eighteen days.

Secretary to keep journal; ayes and noes when be to entered.

SEC. 13. The secretary shall keep a journal of the proceedings of the curators, in which the ayes and noes, on all questions, shall be entered, if requested by any one of the curators present.

Duties of the secretary.

SEC. 14. It shall be the duty of the secretary to keep and preserve all records, books and papers, belonging to the board; to prepare, under the direction of the board, all their reports, estimates, &c., and record the same in a book to be kept for that purpose, and generally to do and execute all such matters and things as belong to his office, and may be required of him by the curators.

Any curator shall have access to books, &c., may take copies.

SEC. 15. Each curator shall, at all times, have access to, and be permitted to take copies of any or all the records, books and papers of the board.

Duties of the treasurer.

SEC. 16. It shall be the duty of the treasurer to receive, keep and disburse, all moneys belonging to the board, and to perform all customary acts pertaining to his office, under direction of the curators, and to make report of the same at the annual meeting of the board.

SEC. 17. The curators shall have power to make such by-

Digitized by Google

CHAP. 171.

Power of curators to make by-laws, &c.

laws, or ordinances, rules and regulations, as they may judge most expedient for the accomplishment of the trust reposed in them, and for the government of their officers, and to secure their accountability.

Power to confer degrees.

SEC. 18. The curators shall have authority to confer, by diploma, under their common seal, on any person whom they may judge worthy thereof, such degrees as are known to and usually granted by any college or university.

Specific grants not to be applied to other purposes.

SEC. 19. Grants made to the curators for specified purposes and uses, shall not be applied, either wholly or in part, to any other uses.

Duties of curators in relation to university grounds and buildings.

SEC. 20. It shall be the duty of the curators to provide for the protection and improvement of the site of the state university, as selected and established by law, to erect and continue thereon all edifices, designed for the use and accommodation of the officers and students of the university, and to furnish and adapt the same to the uses of the several departments of instruction.

Power to appoint president of the university, &c.

SEC. 21. The curators shall have power, whenever they shall deem it expedient, to appoint a president of the university, and to prescribe, by ordinance, his term of office, and the powers and duties thereof, in cases not herein provided for, and to fix his compensation, to be paid out of the income of the seminary fund.

Duties of the president of the university.

SEC. 22. It shall be the duty of the president of the university, among other things, to superintend and direct the care and management of the institution, its grounds, library, philosophical and chemical apparatus, mathematical, and other scientific instruments; and to make and transmit to the curators, on or before the twenty-first day of July, in every year, a report of the state and condition thereof, containing such particulars as the curators shall require.

Professors and tutors, how to be appointed, &c.

SEC. 23. The curators are authorized to appoint the necessary professors and tutors of the university, no one of whom shall exercise the functions of any other profession, during his continuance in office, and to fix their compensation and tenure of office.

Auditor to report semi-annually the am't of money applicable to support of university.

SEC. 24. The auditor of public accounts shall, semi-annually, to wit: on or before the fifteenth of July and the fifteenth of January, prepare and transmit to the curators, a statement, showing the increase of the seminary fund in the treasury, subject to be applied to the support of the university.

Digitized by Google

Amount may be drawn and deposited with the treasurer of the board, how.

SEC. 25. The curators are authorized to cause such semi-annual increase of the seminary fund, in the state treasury, to be deposited in the treasury of the board, by a resolution requiring the auditor to draw his warrant on the state treasury, in favor of the person named in such resolution, for the amount in the treasury.

Salaries payable semi-annually; how drawn; when to bear interest.

SEC. 26. The salary of each officer of the university, shall be payable semi-annually; and it shall be the duty of the president of the board of curators, to draw his warrant accordingly, on the treasurer of the board, payable to the order of the officer therein named, and bearing interest at the rate of six per centum per annum, from the time it is presented to the treasurer of the board for payment, till paid.

Balance after paying salaries, how to be applied.

SEC. 27. The balance of the increase of the seminary fund, after payment of salaries for each current year, shall be applied as follows: *First*, To payment of arrears of salary; *Second*, To provide for library, apparatus, cabinet, &c.; *Third*, To improvement of buildings, grounds, &c.; *Fourth*, Surplus to be invested as provided for in the first article of this act.

Curators authorized to sell lands conveyed to the university.

SEC. 28. The curators are authorized to sell all lands conveyed to the state for the benefit of the university, except twenty acres for the university site, to convey the same to purchasers, by deed, under their common seal, and to apply the proceeds to the uses of the institution.

Approved March 3, 1845.

CHAPTER 172.

STRAYS.

AN ACT concerning strays.

SEC. 1. When and where strays may be taken up.
2. Who authorized to take up strays; who required to give security.
3. When and how a stray may be taken up, though not on the plantation of the taker up.
4. Taker up to give notice to justice of the peace; oath to be taken.
5. Justice may summon appraisers,
SEC. 6. Oath of appraisers; what appraisement to embrace; how entered by justice.
7. Justice to deliver duplicate copies of entries; one copy to be delivered to clerk of county court.
8. Justice to give taker up a statement of his duties.
9. Taker up to set up notices in the township; what to contain.

Digitized by Google

CHAP. 172.

SEC. 10. Clerk of county court to record justice's certificate.
11. Secretary of state to contract with two printers to publish advertisements of strays.
12. Secretary to notify clerks, of the printer contracted with.
13. Duty of printer of advertisements of strays.
14. Clerk shall file and preserve the advertisements.
15. Compensation of printer.
16. Contracts with printers to commence and end on 1st January.
17. Vacancy in office of printer, how filled.
18. Copies of appraisement to be transmitted to printer, when; fees, &c., by whom paid.
19. Appraisement of neat cattle, sheep, hogs and goats, not to be transmitted to printer.
20. Taker up may use stray, how.
21. How owner may prove his property; when entitled to receive it.
SEC. 22. Allowance to taker up, how settled.
23. Title of taker up to stray, complete; when.
24. Proceedings if owner appear and prove the stray after one year from the time of taking up.
25. When taker up not liable for escape or death.
26. Reward for taking up a stray.
27. Fees of clerks.
28. Fees of justice; all animals to be included in one certificate.
29. Penalty for selling, swapping or taking a stray out of the state, before title is vested in taker up.
30. Penalty on taking up, using or working strays contrary to this act.
31. Penalty for failing to comply with this act, or for abusing a stray.
32. Penalty for printer, clerk, or justice, neglecting or refusing to perform his duties.

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

When and where strays may be taken up.—1835.

SECTION 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 inclosure; (*a*) nor shall any person, at any time, take up any stray, unless it be found on his plantation.

Who authorized to take up strays; who required to give security.

SEC. 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, with sufficient sureties, to 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 such stray beast.

When and how a stray may be taken up, though not on the plantation of the taker up.

SEC. 3. If any horse, mule, or ass, liable to be taken up, come to any persons 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 on 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.

(*a*) *Vide*, the act regulating inclosures.

Digitized by Google

Taker up to give notice to justice of the peace; oath to be taken.

SEC. 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.

Justice may summon appraisers.

SEC. 5. If necessary, the justice shall issue a summons to three disinterested householders, to appear and appraise the stray.

Oath of appraisers; what appraisement shall embrace; how entered by justice.

SEC. 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, sex, age, marks, and brands of the stray, shall be entered by the justice in a book to be kept by him for that purpose.

Justice to deliver duplicate copies of entries, &c.

SEC. 7. The justices shall deliver to such taker up, two certified copies of the entry upon his stray book, one of which he shall, within fifteen days after such appraisement, cause to be delivered to the clerk of the county court.

Justice to give taker up a statement of his duties.

SEC. 8. Such justice shall give to the taker up, a written statement of the duties required by law to be performed by such taker up.

Taker up to set up notices in the township; what to contain.

SEC. 9. The taker up, shall, immediately after the appraisement, cause a notice to be set up at three of the most public places in the township in which the stray is posted, which shall contain a copy of the entry on the justice's stray book.

Clerk of county court to record justice's certificate.

SEC. 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.

Secretary of state to contract for printing advertisements of strays.

SEC. 11. 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 on the south side of that river. (*b*)

To notify clerks of the printer contracted with.

SEC. 12. 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.

(*b*) The legislature declared the true construction of this section, and section 17 and 18, of the Rev. C. of 1835, (the 15th and 16th of this,) to be that the secretary should not advertise annually for proposals to publish stray notices, but that he should contract without such advertisements; session acts, 1842-3, p. 135.

Digitized by Google

Duty of printer of advertisements of strays.

SEC. 13. 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 sheet to the clerk of each county court on his side of the river.

Clerk shall file and preserve advertisements.

SEC. 14. Such clerk shall receive, file, and preserve in his office, all such papers sent him, for the inspection of all persons who desire to examine them.

Compensation of printer.

SEC. 15. Such printer shall receive, for each stray mentioned in the advertisement, a sum, agreed by the secretary of state to be paid, in the contract, not to exceed twenty-five cents.

Contracts with printers to commence and end on the first of January.

SEC. 16. The secretary shall contract with printers on the first day of January, after this act takes effect, and such contracts shall terminate and be renewed on the first day of January, annually.

Vacancies in office of printer, how filled.

SEC. 17. 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.

Copies of appraisement to be transmitted to printer, when; fees, &c., by whom paid.

SEC. 18. If the owner of any stray horse, mule or ass, do not prove it, 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 by him.

Appraisement of neat cattle, &c., not to be sent to printer.

SEC. 19. The clerk shall not transmit to such printer, a copy of the appraisement of any neat cattle, sheep, hog or goat.

Taker up may use stray, how.

SEC. 20. 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.

How owner may prove his property, when entitled to receive it.

SEC. 21. 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.

Allowance to taker up, how settled.

SEC. 22. 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

Digitized by Google

and expense of the taker up, and whatever use or service he may have had of such stray.

Title of taker up to the stray complete, when.

SEC. 23. If the owner fail to comply with the two preceding sections, 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. (c)

Proceedings, if owner appear and prove the stray after one year from the time of taking up.

SEC. 24. 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.

When taker up not liable for escape or death.

SEC. 25. 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.

Reward for taking up a stray.

SEC. 26. There shall be allowed the following reward for taking up strays: *First*, For every horse, mule or ass, fifty cents; *Second*, For every head of neat cattle, twenty-five cents; *Third*, For all other kinds of animals, twelve and one half cents each.

Fees of clerks.

SEC. 27. The clerk shall receive the following fees for his services in relation to strays: *First*, For recording each certificate of a stray, twenty-five cents; *Second*, For recording each certificate of appraisement, twenty-five cents, whether such certificate contain a greater or less number of animals.

Fees of justice; all animals included in one certificate.

SEC. 28. The justice of the peace shall receive the sum of twenty-five cents for each certificate of strays taken up and appraised before him, and shall put in one certificate all the animals taken up by any one person.

Penalty for disposing of stray, or taking it out of the state before title vested in taker up.

SEC. 29. If any person shall 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.

SEC. 30. If any person unlawfully take up any stray, or take up any stray and fail to comply with this act, or use or work

(c) A party who wishes to detain property as a stray, must show an exact compliance with the law on the subject of taking up strays, both on his own part and on that of the justice before whom the appraisement is made; Harryman vs Titus, 3 Missouri Rep., 302; Crook & Thruston vs. Peebly, 8 Missouri Rep., 344. A person claiming an estray, as taken up, must show that all the prerequisites of the law have been complied with; he must show the performance of all those acts which the law requires to be performed, in order to vest the property of the estray in him; Crook & Thruston vs. Peebly, 8 Missouri Rep., 344.

Digitized by Google

Penalty for taking up, using or working strays contrary to this act.

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.

Penalty for failing to comply with this act, &c.

SEC. 31. 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.

Penalty on printer or clerk failing to perform his duties.

SEC. 32. 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 February 22, 1845.

CHAPTER 173.

SURVEYORS.

AN ACT concerning the office of county surveyor.

SEC. 1. County surveyor, how elected, tenure of office.
2. Election to be certified by clerk; vacancy how filled.
3. Oath of office, bond, &c., when to be executed, condition of the bond.
4. Neglecting to execute bond, office vacated.
5. Bond may be taken by clerk of county court in vacation.
6. Bond binding until rejected by the court.
7. Bond rejected, new one to be executed; failure, office vacant.
8. Approval of bond to be endorsed, recorded, how.
9. Duty of surveyor in executing orders of court.
10. Duty when required by an individual.
11. What surveys shall be legal evidence.
12. When county surveyor is interested, how survey to be made.
13. Duties of, in keeping records, &c.
14. Lands divided by county lines, may be surveyed by surveyor of county in which any part lies.
15. Title in dispute of lands divided by county line, how surveyed.
16. Chainmen and markers to take oath, when.
17. Compensation of chainmen and markers.
18. Chainmen and markers may be provided by party, when.
19. Deputies, how to be appointed.
20. County court may obtain field notes from surveyor general, to be filed in office of county surveyor.
21. Surveyor furnished with field notes, not to charge for copies.
22. Copies of certified copy of field notes, evidence.
23. Penalty on surveyor failing to perform duties.

Digitized by Google

Be it enacted by the General Assembly of the State of Missouri, as follows: CHAP. 173.

SECTION 1. That at the August election in eighteen hundred and forty-seven, 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, commissioned and qualified. County surveyor, how elected; tenure of office. 1835.

SEC. 2. The clerk of the county court shall certify the election of county surveyor, in the same manner as other elections of state officers, (*a*) and the person elected shall be commissioned by the governor; and in case of a vacancy by death, resignation, or otherwise, it shall be filled as in case of a vacancy in the office of sheriff. (*b*) Election, how certified, how commissioned; vacancy, how filled.

SEC. 3. Every county surveyor shall, within sixty days after receiving his commission, and before entering upon the duties of his office, take the oath prescribed by the constitution, (*c*) and enter into bond to the state of Missouri, in a sum not less than one thousand, nor more than five thousand dollars, to be determined by the county court, conditioned that he will faithfully perform all the duties of the office of county surveyor; and that at the expiration of his term of service, he, his executors or administrators, will immediately deliver to the clerk of the county court all the records, books, and papers appertaining to his office. Oath of office; bond, &c., when to be executed. Condition thereof.

SEC. 4. If any county surveyor fail to give such bond, in the time prescribed in the preceding section, his office shall be vacant. Failing to give bond, office vacated.

SEC. 5. Such bond may be taken by the clerk of the county court in vacation; and if so taken, shall be approved or rejected by the county court, at the next term thereof. Bond may be taken by clerk in vacation.

SEC. 6. Such bond shall be valid until it is rejected; and its rejection shall not release the principal and securities from any liability incurred previous to its rejection. Bond binding till rejected by the court.

SEC. 7. If such bond be rejected, the county court shall order the county surveyor to enter into a new bond, within such time as they may think reasonable, not exceeding twenty days; and in default of giving such new bond, the office shall be vacant. Bond rejected, new one to be executed; failure, office vacated.

(*a*) *Vide*, the act to regulate elections.
(*b*) *Vide*, the act to regulate the office of sheriff, and section twenty-four, article four, of the constitution of the United States.
(*c*) *Vide*, section thirty-two of article three, of the constitution of the state.

Digitized by Google

Bond to be recorded.

SEC. 8. If such bond be approved, it shall, with the approval endorsed thereon, be recorded at the expense of the county surveyor, in the recorder's office of the county.

Duty of surveyor in executing orders of court.

SEC. 9. The county surveyor shall 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 before such court, and all orders of survey for the partition of real estate.

Duty, when required by an individual.

SEC. 10. The county surveyor shall, within ten days, when called upon, survey any tract of land, or town lot, lying in his county, at the expense of the person demanding the same, provided that his legal fees are first tendered.

What surveys shall be legal evidence.

SEC. 11. No survey, or re-survey, hereafter made by any person, except the county surveyor, or his deputy, shall be considered legal evidence in any court within this state, except such surveys as are made by the authority of the United States, or by mutual consent of the parties.

When county surveyor is interested, how survey to be made.

SEC. 12. When it shall appear that the county surveyor is interested in any tract of land, the title of which is in dispute before the court, the court shall direct the survey or re-survey to 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 such survey, or re-survey, on oath or affirmation; and shall receive for his services, the same fees that the county surveyor would do for similar services.

Duties of county surveyor in keeping records, &c.

SEC. 13. The surveyor of each county shall: *First*, Keep a fair and correct record of all surveys made by himself and deputies, in a book to be by him procured for that purpose; *Second*, Number his surveys progressively; *Third*, File and preserve a copy of the calculation of each survey, endorsing thereon its respective number; and, *Fourth*, Deliver a copy of any survey to any person requiring the same, on payment of the fees allowed by law.

Lands divided by county line, may be surveyed by surveyor of county in which any part lies.

SEC. 14. Any person owning or claiming lands, where the same are divided by a county line, the person owning or claiming such lands, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situate, 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 situate entirely in one county.

Digitized by Google

SEC. 15. When lands, the title of which is in dispute before any court, shall be divided by a county line, the court making an order of survey, may direct such order to the surveyor of any county in which any part of such lands is situate. Title in dispute of lands divided by county line, how surveyed.

SEC. 16. Each chainman and marker, employed by the county surveyor, or his deputy, shall, before he commences the duty assigned him, take an oath or affirmation faithfully and impartially to execute the duties of chainman or marker, (as the case may be) which oath or affirmation, the county surveyor, or his deputy, is authorized and required to administer. Chainmen and markers to take oath, when.

SEC. 17. Each chainman and marker shall be allowed seventy-five cents for each day he is actually employed, which shall be paid by the party at whose request the survey is made. Compensation of chainmen and markers.

SEC. 18. The chainmen and markers may be provided by the party requesting the survey, if approved by the surveyor. By whom provided.

SEC. 19. 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 surveyors. Deputies, how to be appointed.

SEC. 20. The county courts shall have power, in their discretion, to procure from the surveyor general of the United States, at St. Louis, a certified copy of the field notes of surveys lying within their county, relating to a description of the township and legal sub-division corners, the variation at which the east and west township and range lines were run, the length of the several lines of the several sections, and the fallings of all east and west township and section lines, and file the same in the office of the county surveyor. County court may obtain field notes, &c. 1840–1.

SEC. 21. No county surveyor, thus furnished with field notes, shall, when called upon to execute any survey, make any charge for furnishing field notes. Surveyor not to charge for field notes, when furnished by county.

SEC. 22. When such copies of field notes are filed in the office of the county surveyor, by the county court, copies of such copies, certified by the county surveyor, shall be evidence. Copies of field notes, evidence.

SEC. 23. Any county surveyor who shall fail to perform the duties required of him by this act, shall be fined in a sum not exceeding ninety dollars, to be recovered by action of debt at the suit of the injured party. Penalty on surveyor failing to perform duties.

Approved February 13, 1845.

Digitized by Google

CHAPTER 174.

SURVEYS.

AN ACT amendatory of "An Act concerning field notes of public surveys," approved February 15, 1841.

SEC. 1. County court may obtain certified copy of field notes of public surveys, from the surveyor general, &c.
SEC. 2. County surveyor having obtained copy, expenses how paid.
3. Copy of such copy, certified by surveyor, made evidence.

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

County courts authorized to obtain from the surveyor general's office field notes of public surveys, in their county. 1840-1, p. 147.

SECTION 1. The several county courts in this state, are hereby authorized, in all cases wherein they shall consider it to be the interest of their counties, to obtain from the surveyor general of the United States, at St. Louis, or from the register of any land office in the land district in which such courts are held, a certified copy of so much of the field notes of all surveys lying within their counties, respectively, which have been, and may be, made by the United States, as relates to the description of the township, section, fractional section, quarter section, and legal subdivisional corners, the variation of the needle at which the east and west boundaries of township, or range lines, were run, the length of the north and south, as well as east and west sectional lines, also, the fallings of all east and west township and sectional lines; the same to be filed in the office of the county surveyor of their counties respectively.

County surveyors to be allowed a reasonable compensation, when they have furnished themselves with said copies.

SEC. 2. In all cases where the county surveyor shall have, at his own expense, obtained a certified copy, as provided for in the preceding section, the county court may make a reasonable allowance to said surveyor for said copy, which shall thereafter become the property of the county, and be filed as provided in the first section of this act: *Provided, however*, That no county surveyor, thus furnished with the field notes, shall, when called upon to execute any survey, make any additional charge therefor.

Proviso.

Certified copies of such copies, evidence.

SEC. 3. In all cases where such copies are filed, a copy of such copies, certified by the county surveyor, shall be evidence in all cases where the same is drawn in question in any judicial proceedings.

This act to take effect from and after its passage.

Approved March 25, 1845.

Digitized by Google

CHAPTER 175.

TOWNS—INCORPORATION OF.

AN ACT for the incorporation of towns, and to prevent the circulation of town and city scrip.

ARTICLE I. Of the election, power, &c., of the trustees.
II. Of the drawing and paying warrants.

ARTICLE I.

Of the election, power, &c., of the trustees.

SEC. 1. May be incorporated on petition of inhabitants, boundaries, style of.
2. Corporate powers vested in trustees, how appointed and elected.
3. Qualifications of trustees, term of office.
4. Oath of office, meeting and appointment of officers.
5. Board of trustees, how constituted, quorum may compel attendance, how.
6. Trustees to judge of elections, &c., make their own rules, &c., keep a journal of proceedings, ayes and noes when to be entered, proceedings to be published.
7. What by-laws and ordinances the trustees may pass.
8. Power to appoint certain officers, &c., prescribe their duties.
9. Power to pave streets, sidewalks, &c., proceedings to be had against owner refusing to pave, remedy of tenant.
10. Proceedings against property of non-residents.
11. Taxes, how to be collected.
12. Fines and forfeitures, how recovered; who competent as jurors, witnesses, &c.
13. How and when real estate sold for taxes may be redeemed.
14. Chairman to report amount of moneys received, how and when, how published.
15. Penalty on chairman neglecting to publish report.
16. Chairman to publish and enforce ordinances; in his absence, who may act.
SEC. 17. Vacancies in the board of trustees, how filled.
18. Judges of election, how appointed.
19. Judges of election to give notice of election, how and when.
20. Judge of election not attending, another to be appointed, how.
21. Qualification of electors.
22. Clerk of election to be appointed, duty of.
23. Election, how long to be kept open; how conducted.
24. In case of a tie, judges to decide by lot.
25. Failure to hold an election, a majority of judges may order an election.
26. County court may disincorporate, when.
27. When the court shall not disincorporate.
28. Dissolution not to affect the rights for, or against, the corporation.
29. Court to appoint a trustee to act for the corporation dissolved.
30. Oath and bond of trustee, condition of.
31. Powers and duties of the trustee.
32. Trustee to make a report to the county court.
33. Duty of the trustee when the affairs of the corporation are closed.
34. Compensation of trustee.
35. Revenue, &c., accruing to a town disincorporated to be paid to county court; how to be held.

Digitized by Google

CHAP. 175. *Be it enacted by the General Assembly of the State of Missouri, as follows:*

May be incorporated on petition of inhabitants; boundaries; style of. 1835.

SECTION 1. Whenever two-thirds of the inhabitants of any town or village, within this state, shall present a petition to the county court of the county, setting forth the metes and bounds of their village and commons, and praying that they may be incorporated, and a police established, for their local government, and 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, unless disincorporated, sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity, and in all actions, pleas and matters whatsoever; may grant, purchase, hold and receive property, real and personal, within such town, and no other, (burial grounds and cemeteries excepted,) and may lease, sell and dispose of the same, for the benefit of the town, and may have a common seal, and break and alter the same at pleasure.

Corporate powers vested in trustees, how appointed and elected.

SEC. 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 board of trustees shall be appointed by the county court, at the time of declaring such town incorporated, who shall continue in office until their successors are elected and qualified, and such successors shall be chosen by the qualified electors, residing in such town, on the first Monday of April in every year, in the manner hereinafter provided.

Qualifications of trustees, term of office.

SEC. 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.

Digitized by Google

Oath of office, meeting and appointment of officers.

SEC. 4. Every trustee, before entering upon the duties of his office, shall take an oath 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 clerk: the board of trustees shall, by ordinance, fix the time and place of holding their stated meetings, and may be convened by the chairman at any time.

Board of trustees, how constituted, &c.

SEC. 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 previously, by ordinance, may have prescribed.

Trustees to judge of elections; make their own rules; keep a journal of their proceedings, &c.

SEC. 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 journal, on any question, resolution or ordinance, and their proceedings shall be public.

What by-laws and ordinances the trustees may pass.

SEC. 7. Such board of trustees shall have power to pass by-laws and ordinances, to prevent and remove nuisances, to prevent, restrain and suppress bawdy houses, gambling houses, and other disorderly houses, within the limits of such town, or any commons thereto attached, to restrain and prohibit gambling, to provide for licensing and regulating dram shops and tippling houses, theatrical and other amusements, within such town, to restrain or prevent the meeting of slaves, to prohibit the firing of fire arms, to prevent furious and unnecessary riding or driving of any horse, or other animal, within such town, or such part thereof as they may think proper, to establish night watches and patrols, to erect and maintain poor houses and hospitals, to prevent the introduction or spreading of contagious diseases, to prevent and extinguish fires, to establish and regulate markets, to erect and repair bridges, to erect, repair, and regulate wharves, and the rates of wharfage,

Digitized by Google

to regulate the landing and stationing of steamboats, rafts, and other water craft, to provide for the inspection of lumber, building materials, and provisions, to be used or offered for sale in such town, or to be exported therefrom, to borrow money for the improvement of such town, or, to supply the same with water, to open and form public squares, avenues, drains and sewers, and to keep the same clean and in order, to open, clear, regulate, graduate, pave, or improve the streets and alleys of such town, to impose and appropriate fines, forfeitures, and penalties for breaches of their ordinances, to levy and collect taxes, to regulate the inclosure of any common-field belonging to, or within the limits of, such town; and to pass such other by-laws and ordinances for the regulation and police of such town and commons thereto appertaining, as they shall deem necessary, not repugnant and contradictory to the laws of the land.

Power to appoint certain officers, &c.

SEC. 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.

Power to pave streets, side-walks, &c.

SEC. 9. Such board of trustees shall have power to have the streets and alleys opened and repaired, and the foot-ways and side-walks of the streets paved, at the expense of the owners or occupiers of the adjacent lots; and if any such owner or occupier fail to open, repair, or pave the same as required by ordinance, such board of trustees shall cause the same to be done, and may recover the full expense thereof from such owner or occupier, by action of debt, in the name of the corporation, before any court of competent jurisdiction; and if any tenant be required to open, repair, or pave in front of the property occupied by him, the expense thereof shall be a good set-off against so much of the rent due the owner; but no tenant shall be required to expend more than the rent for the term for which he occupied the property.

Proceedings against owner refusing to pave.

Remedy of tenant.

Proceedings against property of non-residents.

SEC. 10. If any person who is a non-resident of such town, fail to open, repair, or pave, when required as aforesaid, such board of trustees may cause such lot, or lots, to be sold to defray the expenses of such improvement, in such manner as the board may, by ordinance, provide.

Taxes, how to be collected.

SEC. 11. If any person fail to pay any tax levied on his real or personal property, the town collector may recover the same by action of debt, in the name of the corporation, before any

Digitized by Google

court of competent jurisdiction; and such collector may, in like manner, collect the amount of taxes, due from any non-resident, from any tenant or debtor of such non-resident; but no tenant shall be compelled to pay more than the rent of such property, and the amount thus paid by him, shall be a good set-off against the owner of the property; and if such non-resident's taxes be not otherwise paid, the property may be sold to pay the same, at public sale, in such manner as the board of trustees shall, by ordinance, provide.

Fines and forfeitures, how recovered; who competent as witnesses, jurors, &c.

SEC. 12. All fines, forfeitures and penalties, accruing to such town, may be recovered by action of debt, in the name of the corporation, before any justice of the peace, subject to an appeal to the circuit court of the county, and persons living in said town shall be competent jurors and witnesses, if in other respects competent and qualified.

How and when real estate sold for taxes may be redeemed.

SEC. 13. If any real estate be sold by virtue of any ordinance of such town, the owner thereof may redeem the same at any time within two years from the day of sale, by paying the purchase money, and all costs and penalties incurred, together with the interest thereon, at the rate of fifteen per centum per annum until paid.

Chairman to report amount of moneys received; how and when; how published.

SEC. 14. 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 moneys 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 of the most public places in such town, within ten days.

Penalty on chairman neglecting to publish report.

SEC. 15. If the chairman of the board of trustees of any town shall, at any time, neglect to make and cause such statement to be published, as required by 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 the use of such town, and the other half to the use of any person who will sue for the same.

Chairman to publish and enforce ordinances; in his absence, who may act.

SEC. 16. The chairman of the board shall cause to be printed and published 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 appointed or elected a trustee, but in case of

Digitized by Google

his absence at any meeting of the board, the board may appoint a chairman pro tempore.

Vacancies in the board of trustees, how filled.

SEC. 17. 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.

Judges of election, how appointed.

SEC. 18. 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 township officers required to be elected, and such trustees shall supply all vacancies which may happen in the office of judges of elections.

To give notice of election, how and when.

SEC. 19. 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 handbills put up in six public places in such town, not less than ten nor more than twenty days previous to the election.

Judge of election, not attending, proceedings.

SEC. 20. If, on any 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.

Qualification of electors. 1840–41, p. 28.

SEC. 21. All free white male persons, citizens of the United States, of the age of twenty-one years, residing within the limits of any incorporated town or city, and who shall have resided within the same for six months next preceding an election, shall be entitled to vote at all elections of town officers, and no property qualification shall be required of any person to render him eligible to any office in any city or incorporated town.

Clerk of election to be appointed; his duties.

SEC. 22. The judges of elections 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.

Election, how long to be kept open; how conducted.

SEC. 23. 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.

In case of a tie, judges to decide by lot.

SEC. 24. In cases 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.

Digitized by Google

On failure to hold election, proceedings.

SEC. 25. In case of the failure of any election of trustees, or other officers, a majority of the trustees then in office may cause the election to be held on any other day.

County court may disincorporate, when.

SEC. 26. The county court of each county shall have power to disincorporate any town which they may have incorporated, upon petition of three-fourths of the legal voters of such town.

When the court shall not disincorporate.

SEC. 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 the town prayed to be disincorporated, for at least eight weeks successively, prior to such application; nor until all their liabilities have either been paid, or secured to the satisfaction of the county court of the proper county.

Dissolution not to affect the rights for or against the corporation.

SEC. 28. No dissolution of any corporation under this act, shall invalidate or affect any right, forfeiture, or penalty, accruing to such corporation, or invalidate, or affect any contract entered into or imposed upon such corporation.

Court to appoint a trustee.

SEC. 29. Whenever the county court shall dissolve any corporation, they shall appoint some competent person to act as trustee for the corporation so dissolved.

Oath and bond of trustee.

SEC. 30. The trustee, before entering upon the discharge of his duties, shall take and subscribe an oath before some judge or justice of the peace, 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 such disincorporated town, conditioned for the faithful discharge of the duties of his office.

Condition of bond.

Powers and duties of the trustee.

SEC. 31. The trustee shall, as soon as possible, prosecute or defend, to final judgment, all suits instituted by or against the corporation, collect all money due to the same, liquidate all lawful demands against the same, and for that purpose shall sell any property belonging to such corporation, or so much thereof as may be necessary, and, generally, do all acts requisite to bring to a speedy close all the affairs of the corporation.

Trustee to make report.

SEC. 32. The trustee shall make a report of his proceedings to the county court, at each term thereof.

Duty of trustee when the affairs are closed.

SEC. 33. When the trustee shall have closed the affairs of the corporation, he shall pay over, to the county court, all moneys remaining in his hands, and deliver to the clerk of

Digitized by Google

such court, all books, papers, records, and deeds, belonging to the dissolved corporation.

Compensation of trustee.

SEC. 34. The trustee shall receive for his services, such compensation as the court shall think reasonable.

Revenue, &c., accruing to town disincorporated, to be paid to county court, &c.

SEC. 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 moneys thus paid, as well as all moneys 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.

ARTICLE II.

Of the drawing and paying warrants.

SEC. 1. Warrants upon the town treasury, how to be drawn, printed, &c.
2. To be drawn in favor of the person to whom the debt is due.
3. Payment not to be made except to the person in whose favor the warrant is drawn, or his assignee, &c.
4. Warrants may be assigned, form of assignment.
5. Penalty on treasurer or other officer of any city or town, for paying to improper person.
6. Twenty-first section of first article, extended to all cities and towns.

Warrants upon the town treasury, how to be drawn, printed, &c.

SECTION 1. In all cases where any city or town in this state shall be indebted to any person, on any account whatever, a warrant shall be drawn on the treasurer, or other officer having the legal custody of the moneys of such city or town, for the whole amount found due to such person, by the tribunal or officer having the power to audit and allow claims against such city or town, and to draw warrants therefor; and such tribunal or officer shall not, in any case, draw more than one warrant for the amount allowed to the same individual, at the same time, and all such warrants shall be written, or printed in roman letters, without ornament.

To be drawn in favor of the person to whom the debt is due.

SEC. 2. All warrants drawn on the treasurer, or other proper officer of any city or town, shall be drawn in favor of the person to whom the amount thereof shall be allowed, and of no other person, and such warrants may be in the form now used.

Not to be paid unless presented by person in whose fa-

SEC. 3. No treasurer, or other officer of any city or town in this state, shall pay any warrant drawn on him, unless such warrant be presented for payment by the person in whose

Digitized by Google

favor such warrant is drawn, or by his assignee, executor or administrator. vor it is drawn. &c.

SEC. 4. All such warrants shall be assignable, and every assignment of any such warrant shall be in the following form: "For value received, I, ——, do hereby assign all my right in the within warrant to ——, and I do hereby authorize the said —— to present the same to ——, treasurer (or other proper officer, as the case may be,) of ——, for payment, and to receive the amount thereof, and to deliver up the same to said treasurer (or other officer). Given this —— day of ——, 18—." (Signature of assignor.) Warrants may be assigned. Form of assignment.

SEC. 5. No treasurer, or other officer of any city or town in this state, shall pay any warrant drawn on him, out of the funds belonging to such city or town, to any other person than the person in whose favor the same is drawn, or to his executor or administrator, or the person to whom the same has been assigned, in the manner required by the preceding section, and any such treasurer, or other officer, who shall violate the provisions of this act, shall be deemed guilty of a misdemeanor in office, and for every such violation shall be fined in any sum not less than fifty dollars, nor more than five hundred dollars. Penalty on treasurer for paying to improper person.

SEC. 6. The provisions of the twenty-first section of the first article of this act shall be applicable to all towns incorporated under this act, and to all towns and cities incorporated in any other manner. Twenty-first section of first article extended to all cities and towns.

Approved March 7, 1845.

CHAPTER 176.

TOWN PLATS.

AN ACT concerning the plats of towns and villages.

SEC. 1. Map of every town or addition to be made; what it shall set forth and describe.
2. How to be acknowledged.
3. Map to be deposited in the recorders office.
4. Recorder to preserve the same.
5. Penalty for selling or offering for sale, before map is recorded.
6. What such map shall convey.
7. Penalty if the map does not set forth the facts truly.
8. Forfeitures, how recovered.
9. Property of person incurring forfeiture, may be attached.
10. When a town is thrown into a new county, plat to be transmitted to the new county.

Digitized by Google

CHAP. 176.

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

Map of every town or addition to be made; what it shall set forth, and describe. 1835.

SECTION 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: *First*, 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, *Second*, All lots intended for sale, by numbers, and their precise length and width.

How to be acknowledged.

SEC. 2. Such map or plat shall be acknowledged by the proprietor, before some court or officer authorized by law to take the acknowledgment of conveyances of real estate.

Map to be deposited in the recorder's office.

SEC. 3. 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.

Recorder shall preserve the same.

SEC. 4. The recorder shall preserve such map or plat in his office, among the records thereof.

Penalty for selling or offering for sale before map is recorded.

SEC. 5. 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. (*a*)

What such map shall convey.

SEC. 6. 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.

Penalty, if the map does not set forth the facts truly.

SEC. 7. If any person, his agent or attorney, shall cause a map or plat of any such town, or village, or addition, to be deposited with the recorder, which does not set forth and describe all parcels of ground, *and* which have 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,

(*a*) When a person sold a town lot, before the plat of the town was made out, acknowledged and deposited in the recorder's office, the contract was held absolutely void; Downing vs. Ringer, 7 Missouri Rep., 585.

Digitized by Google

or pretended to have been set apart for public uses, and not set forth on the map or plat.

Forfeitures, how recovered.

SEC. 8. 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.

Property of person incurring forfeiture, may be attached.

SEC. 9. The property and effects of the person incurring such forfeiture, may be proceeded against by attachment, or otherwise, in like manner, and for the like causes, as in ordinary cases of debt.

When a town is thrown into a new county, plat to be transmitted to the new county.

SEC. 10. When any town plat shall be deposited with the recorder of the 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 12, 1845.

CHAPTER 177.

TOWNSHIPS.

AN ACT respecting townships.

SEC. 1. How laid off and sub-divided.
2. Name and description to be recorded and transmitted to the secretary of state.
3. No town, or common-field thereto belonging, shall be divided by township line, but shall be included in one township.

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

How laid off and sub-divided.—1835.

SECTION 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.

Name and description to be recorded and transmitted to secretary of state.

SEC. 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.

No township line to pass through any town or common field, &c.

SEC. 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 February 6, 1845.

Digitized by Google

CHAPTER 178.

TREASURY DEPARTMENT.

AN ACT to establish and regulate the treasury department.

ARTICLE I. Of the organization of the department.
II. Of the auditor and his general duties.
III. Of the settlement of claims and accounts.
IV. Of the treasurer.
V. Of miscellaneous provisions.

ARTICLE I.

Organization of the department.

SEC. 1. Treasury department established, to embrace treasurer and auditor.
2. Shall reside at the seat of government.
3. To be commissioned, take oath and give bond.
4. Penalty for performing official duties before qualifying.
SEC. 5. Treasurer's bond, conditions of, securities to.
6. Securities to write down and swear to what they are worth.
7. Approval and record of bond.
8. No commission to issue until bond and security be given.
9. Auditor and treasurer each to keep a seal of office.

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

Treasury department to to consist of treasurer and auditor—1835.

SECTION 1. A separate department is established, to be called the treasury department, which shall embrace the offices of the state treasurer and the auditor of public accounts. (*a*)

Where they shall reside.

SEC. 2. The treasurer and auditor shall reside and keep their respective offices at the seat of government.

To be commissioned, take oath and give bond.

SEC. 3. They shall be commissioned by the governor, and before entering upon their respective duties, shall take the oath of office prescribed by the constitution, (*b*) and shall cause the same to be endorsed on their respective commissions; and shall, respectively, give the official bonds required by law.

Penalty for performing duties before qualifying.

SEC. 4. If either of them shall perform any official act, before complying with the requirements of the preceding section, the party offending shall forfeit five hundred dollars for the use of the state.

(*a*) *Vide*, article three, section thirty-one; and article four, section twelve, of the state constitution.

(*b*) *Vide*, article three, section thirty-two, of the state constitution.

Digitized by Google

Treasurer's and auditor's bond; conditions thereof; securities to.

SEC. 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 a bond in a sum not less than fifty thousand dollars.

Securities to write down and swear to what they are worth.

SEC. 6. Each security, when he shall sign such bond, shall write down in words, at length, opposite his name, on the left, the amount he is willing to swear he is worth, and shall make oath, either before the governor, or before some judge or justice of the peace, in writing, to be laid before the governor, that he believes himself to be worth the sum written opposite his name, after the payment of all the debts for which he is in any wise liable.

Approval to be recorded, &c.

SEC. 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.

No commission to issue until bond be given.

SEC. 8. No commission shall issue to an auditor or treasurer, until he shall have given bond and security, as required by law.

Auditor and treasurer each to keep a seal of office.

SEC. 9. The treasurer and auditor shall each keep a seal of office, which shall be used to authenticate all writings, papers, and documents, certified from either of such offices, respectively.

ARTICLE II.

Of the auditor and his general duties.

SEC. 1. Auditor of public accounts declared to be the general accountant of the state, and keeper of all public account books, contracts, &c.
SEC. 2. What the auditor shall report to the general assembly at the commencement of the session.
3. Certain other duties prescribed.

Auditor declared to be the general accountant of the state.

SECTION 1. The auditor of public accounts is 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.

SEC. 2. He shall digest, prepare, and report to the general

Digitized by Google

CHAP. 178.

What the auditor shall report to the general assembly at the commencement of each session.

assembly, at the commencement of each regular session: *First*, A full and detailed statement of the condition of the revenue, 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 revenue 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 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, showing 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, showing the amount of revenue chargeable to each county, for the two preceding fiscal years, the aggregate amount of each object of taxation, together with the tax due on the same.

Certain other duties prescribed.

SEC. 3. He shall: *First*, 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 and persons; *Second*, Draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law; *Third*, 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*, Audit, settle, and adjust the accounts of the collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury; *Fifth*, Keep an account between the state and state treasurer; *Sixth*, Keep an account of all debts and credits between the state and the United States, and between the state and every other state, sovereignty, community, officer or person with whom the state may have dealings, and of every separate fund in the treasury authorized by law; *Seventh*, Direct prosecution, 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*, 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

Digitized by Google

of his office; *Ninth*, Perform all such other duties as may be required by law.

ARTICLE III.

Of the settlement of claims and accounts.

SEC. 1. Collectors and others to exhibit their accounts to the auditor, when; his duties thereon.
2. Balances due the state to be paid within ten days after settlement; damages for failing to pay.
3. Auditor to issue warrant of distress against delinquent, to whom to be directed.
4. Warrant of distress, how and upon whom to be executed.
5. Property distrained, how advertised and sold; proceeds, when to be paid into the treasury.
6. Compensation of officer collecting money on distress warrant.
7. Claims against the state to be audited within two years.
8. What claims may be set-off against the state.
9. Auditor may examine parties and witnesses under oath.
10. Vouchers and documents to be preserved in auditor's office; copies may be given.
11. Auditor to draw warrants, for what; form.
12. No warrant to be drawn or paid unless there is an appropriation, nor from another appropriation.
13. Persons dissatisfied with auditor's decision, may have the claim certified to the general assembly.
14. When the auditor shall audit claims and give a certificate.
15. To report to general assembly all collectors whose accounts have remained six months unsettled.
16. Auditor to publish list of defaulting collectors, how.

Collectors and others to exhibit their accounts to the auditor, when; his duties thereon.

SECTION 1. All collectors of the revenue, and others bound by law to pay money directly into the state 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 unnecessary delay, to audit, adjust, and settle the same, and report to the treasurer the balance found due.

Balances due the state to be paid within ten days; damages for failing to pay.

SEC. 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 the commission allowed him by law, and also two and a half per centum 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.

Auditor to issue warrant of distress against delinquent.

SEC. 3. The auditor shall, immediately after such delinquency shall occur, issue a warrant of distress, against such delinquent and his securities, directed to the sheriff or coroner, as the case may require, of the proper county, or if there be no sheriff or coroner, or they shall be disqualified to act, then

Digitized by Google

CHAP. 178.

to the sheriff of some adjoining county, (who is authorized and required to execute the same, and who, together with his securities, shall be liable on his official bond, in the same manner and to the same extent, as if the writ were to be executed in his own county,) stating therein the amount due, and the penalties and forfeitures.

Warrant of distress, how and upon whom to be executed.

SEC. 4. Such sheriff or coroner, shall levy and collect the same, together with the penalties and forfeitures stated in the writ, by the distress and sale of the goods and chattels and real estate of such delinquent; and for want of sufficient goods and chattels and real estate of the delinquent to satisfy such warrant, then by the distress and the sale of the goods and chattels and real estate of the securities of such delinquent.

Property distrained, how advertised and sold.

SEC. 5. Property distrained shall be advertised and sold in such manner, and at such time and place, as is prescribed by law for advertising and selling property by virtue of a writ of fieri facias; and the sum collected shall be accounted for, and paid into the treasury, within sixty days after its collection, unless the first Monday of December shall intervene, and in that event, then on or before that day.

Proceeds, when to be paid into the treasury.

Compensation of officer collecting money on distress warrant.

SEC. 6. The officer collecting money, by virtue of a distress warrant, shall receive the same mileage for paying the same into the treasury, as is allowed by law to collectors for the same service; but if such officer shall be the collector of the revenue, he shall not receive such mileage, if such money be paid at the time of paying the revenue.

Claims against the state to be audited within two years.

SEC. 7. 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.

What claims may be set-off against the state.

SEC. 8. 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 the 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 accidents.

Auditor may examine parties and witnesses, how.

SEC. 9. 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 mat-

Digitized by Google

ter, material to be known in the settlement of such account, and for that purpose may issue subpœnas, 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, (c)

Vouchers and documents to be preserved in auditor's office, &c.

SEC. 10. 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 may require the same.

Auditor to draw warrants, for what.

SEC. 11. 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 a warrant on the treasurer for the amount due, in the form now used in the treasury department.

No warrant to be drawn or paid unless there is an appropriation, &c.

SEC. 12. No 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.

Persons dissatisfied with auditor's decisions, may have claim certified to general assembly.

SEC. 13. If any person interested, shall be dissatisfied with the decision of the auditor on any claim, account, or credit, the auditor shall, at the request of such person, certify his decision, with his reasons therefor, specifying the items rejected, if less than the whole, under the seal of his office, and refer the same to the general assembly. (d)

When the auditor shall audit claims and give a certificate.

SEC. 14. 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 adjust the same, and give the claimant a certificate of the amount thereof, under his official seal, if demanded; and shall report the same to the general assembly, with as little delay as possible.

To report to general assembly all collectors in default.

SEC. 15. 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 have remained unsettled for the space of six months, after they ought to have been settled according to law, and the reasons therefor.

SEC. 16. When the collectors of the revenue, or other

(c) *Vide*, the act concerning witnesses, sections three and four.
(d) The supreme court has held that it would grant relief by mandamus; Heard vs. Baber, 8 Missouri Rep., 142; Hutchins vs. state, *ibid*, 288.

Digitized by Google

CHAP. 178.

To publish list of defaulting collectors, how.

holders of the public money, shall fail to pay the amount due by them into the treasury, within the time prescribed by law, the auditor shall, within thirty days after such default, publish, for one week, in four newspapers printed at four of the most public places in the state, a list of all such defaulters, with the amounts respectively due from each.

ARTICLE IV.

Of the treasurer.

SEC. 1. Duties of the treasurer. | SEC. 2. To give duplicate receipts, &c.

Duties of the treasurer.

SECTION 1. The treasurer shall: *First*, Receive and keep all the moneys of the state, not expressly required by law to be received and kept by some other person; *Second*, Disburse the public moneys upon warrants drawn upon the treasury, according to law, and not otherwise; *Third*, Keep a just, true and comprehensive account of all moneys received and disbursed; *Fourth*, Keep a just and true account of each head of appropriation made by law, and the disbursements made under the same; *Fifth*, Render his accounts to the auditor, for settlement, quarterly, or oftener if required; *Sixth*, 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*, 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; and, *Eighth*, Perform all such other duties as may be required by law.

To give duplicate receipts; one to be deposited with the auditor.

SEC. 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 deposit one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

Digitized by Google

ARTICLE V.

Miscellaneous provisions.

SEC. 1. Auditor and treasurer to have free access to each other's office, books, &c.
2. Shall keep letter book, what to enter therein.
3. Penalty on auditor for issuing a warrant without authority.
4. Penalty on treasurer refusing to pay a warrant.
5. Penalty on auditor and treasurer for neglect of duty, oppression, extortion, &c.
6. Accounts audited and found due, declared to be a lien.
7. Governor to select members of the general assembly to settle with the auditor and treasurer, when.
8. Oath to be taken by members.
9. Members appointed, to settle, make report and other duties.
10. Vacancy in the office of auditor or treasurer, how filled.
11. Governor to cause settlement to be made with auditor or treasurer in certain cases.
12. Statement of settlement to be delivered to the party entitled to the same, when.
13. When duplicate statements of settlement shall be made.
14. Settlement approved by the legislature, entries to be made; if disapproved, another settlement to be made.
15. Compensation of the person appointed by the governor to act as auditor or treasurer.
16. Compensation of the person appointed to make settlement.
17. Power of auditor and treasurer to administer oaths.

SECTION 1. 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 such books, accounts and papers, as concern any of their duties.

Auditor and treasurer to have free access to each others offices, books, &c.

SEC. 2. The auditor and treasurer shall each keep a letter book, in which shall be recorded all official letters which they may write.

To keep letter book; entries therein.

SEC. 3. If the auditor shall, knowingly, issue any warrant upon the treasury, not authorized by law, he shall, upon conviction thereof, be fined in a sum not exceeding fourfold 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.

Penalty on auditor for issuing a warrant without authority.

SEC. 4. 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 fourfold the amount of such warrant, to be recovered by action of debt 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.

Penalty on treasurer refusing to pay a warrant.

SEC. 5. 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

Penalty on auditor and treasurer for neglect of duty

Digitized by Google

CHAP. 178.

any legal duty, or 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.

Accounts audited and found due, declared to be a lien.

SEC. 6. The amount of every account audited, adjusted and found due to the state, according to this act, with the penalties and interest thereon, is declared to be a lien upon the real estate of the person charged with the same, from the time that suit shall be commenced for the recovery thereof.

Governor to select members of the general assembly to settle with the auditor and treasurer, when.

SEC. 7. On or before the first day of September preceding the regular session of the general assembly, 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.

Oath to be taken by members.

SEC. 8. The members thus selected, before entering on such duties, shall take the oath required by the constitution of members of the general assembly, (*e*) which shall be endorsed and certified on their certificates of election.

Members selected, to settle, make report and other duties.

SEC. 9. The members selected, or a majority of them, shall make such settlement, and make to each house of the general assembly a report thereof, and, if they approve the same, shall cause proper entries to be made in the books of the auditor and treasurer's offices, showing the result of such settlement, and immediately thereupon shall cause all the vouchers which shall have been examined and allowed in such settlement, to be defaced, by writing, in large letters on the face thereof, the word "cancelled."

Vacancy in the office of auditor and treasurer, how filled.

SEC. 10. In case of the death, sickness, absence from the state, removal from office, or impeachment, of any auditor or treasurer, the governor may 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.

Governor to cause settlement to be made with au-

SEC. 11. Immediately after the appointment and qualification of any auditor or treasurer, or the resumption of his duties by either officer, if, in the meantime, an auditor or treasurer

(*e*) *Vide*, Article three, section thirty-two, of the state constitution.

Digitized by Google

pro tempore shall have been appointed, the general assembly, if in session, or, if not, the governor, shall cause a settlement to be made of the accounts of the former auditor or treasurer, or auditor or treasurer pro tempore, remaining unsettled, in the manner provided in the seventh, eighth and ninth sections of this article.

Auditor and treasurer in certain cases.

SEC. 12. If the general assembly shall be in session when such settlement is made, it shall cause to be made out and delivered to the person entitled thereto, a certificate of such settlement, showing the balance of moneys, securities and effects, for which he is accountable, and what has been delivered to his successor.

Statement of settlement to be given to the party entitled to the same, when.

SEC. 13. If the general assembly shall not be in session when such settlement is made, the persons appointed by the governor to make such settlement, shall make out duplicate certificates of such settlement, showing what is required to be shown in the certificate to be made out according to the provisions of the preceding section, one of which shall be delivered to the person entitled thereto, and the other to the governor, to be laid before the general assembly at its next session.

When duplicate statements of settlement shall be made.

SEC. 14. When the certificate mentioned in the next preceding section shall be laid before the general assembly, if it approve the same, it shall cause the proper entries to be made in the books of the auditor and treasurer, and if it disapprove thereof, it shall cause another settlement to be made.

Proceedings, if settlement approved by the legislature; proceedings, if disapproved.

SEC. 15. Any person appointed by the governor, in virtue of the tenth section of this act, 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.

Compensation of person appointed by governor to act as auditor or treasurer.

SEC. 16. The persons appointed by the governor to make settlement with the auditor and treasurer, shall receive the same compensation as is allowed by law to members of the general assembly, during the time they may be engaged in such service.

Compensation of person appointed to make settlement.

SEC. 17. 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.

Power of auditor and treasurer to administer oaths.

Approved February 25, 1845.

Digitized by Google

CHAPTER 179.

TREASURY DEPARTMENT.

AN ACT to amend the law regulating the treasury department.

SEC. 1. Securities on bond of treasurer, to take an oath.
SEC. 2. All acts conflicting with this act repealed.

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

Securities offered on bond of treasurer, to take an oath, &c.

SECTION 1. Each security, offered on the bond of the treasurer of the state, 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 the amount set opposite his name, after the payment of all debts for which he is in any wise bound or liable.

Repealing clause.

SEC. 2. All acts or parts of acts, conflicting with the above law, are hereby repealed.

This act to take effect from and after its passage.

Approved March 24, 1845.

CHAPTER 180.

TRESPASS.

AN ACT to prevent certain trespasses.

SEC. 1. Treble damages recoverable for certain trespasses.
2. Throwing down or leaving open doors, bars, gates or fences, forfeiture of five dollars, and double damages.
3. Penalties and damages, how recovered; when to be paid to the county.
4. When single damages only recoverable.
5. Slave committing certain trespasses, owner liable for single damages.
6. Employer or hirer of a slave responsible, when.
7. Defendants may plead the general issue, &c.

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

Treble damages recovered for certain trespasses. 1835.

SECTION 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

Digitized by Google

clay, or mould, roots, fruits, or plants, or cut down or carry away, grass, grain, corn, flax, or hemp, in which he has no interest or right, standing, lying, or being on 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 injured, broken, destroyed, or carried away, with costs. (a)

Throwing down or leaving open gates, &c., forfeiture of five dollars, and double damages.

SEC. 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 that lead into his own inclosure, he 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 and fences having been thrown down or opened, with costs.

Penalties and damages, how recovered, when to be paid to the county.

SEC. 3. All penalties contained in the preceding section, may be recovered by action of trespass or debt, founded on this statute, or by indictment, at the option of the party injured, in any court having jurisdiction of the same; and when the proceeding is by indictment, such penalties shall be paid into the county treasury.

When single damages only recoverable.

SEC. 4. On the trial of any action or prosecution, brought upon 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 or prosecution, shall receive single damages only, with costs.

Slave committing certain trespasses, owner liable for single damages.

SEC. 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 the slave, under the same regulations and restrictions as are in this act heretofore provided.

Employer or hirer of a slave responsible, when.

SEC. 6. If such slave, at the time of committing such trespass, shall be in the employment or hire of another person, other than the owner, such person shall be accountable for all

(a) In an action of trespass, under the statute, a general verdict shall be decreed for single damages, unless the contrary appears; George vs. Rooks, 7 Missouri Rep., 149; Withington vs. Young, 4 Missouri Rep., 564; Cooper vs. Maupin, 6 Missouri Rep., 624. In an action of trespass, when the declaration contains counts upon the statute, and at common law, and entire damages are assessed, the damages will not be trebled, it not appearing from the verdict that the damages were assessed upon the statutory counts only; Lowe and Forsythe vs. Morrison, 8 Missouri Rep., 350. Should not a declaration of trespass, under the statute, in order to bring the offence within its terms, aver that the defendant had no interest or right in the property taken away, and that it was on land not his own? *Quere.* *Ibid.*

Digitized by Google

CHAP. 181.

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.

Defendants may plead the general issue, &c.

SEC. 7. In all actions and prosecutions, founded on this statute, the defendant may 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 intends to give in evidence.

Approved February 10, 1845.

CHAPTER 181.

VAGRANTS.

AN ACT respecting vagrants.

SEC. 1. Who deemed vagrants.
2. Keepers of gaming tables and itinerant gamblers deemed vagrants.
3. Justice of the peace to issue his warrant to apprehend vagrant.
4. Vagrancy to be established by verdict; proceedings to hire out such vagrant.
5. Minor to be committed or give recognizance; 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:

Who deemed vagrants. 1835.

SECTION 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 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.

Keepers of gaming tables and itinerant gamblers deemed vagrants.

SEC. 2. All keepers or exhibiters of any gaming table or gambling device, and all persons who travel or remain in steamboats, or go from place to place, for the purpose of gaming, shall be deemed and treated as vagrants.

Justice to issue warrant to apprehend vagrant.

SEC. 3. When 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.

Digitized by Google

Vagrancy to be established by verdict; proceedings to hire out such vagrant.

SEC. 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 inquire 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 advertisement 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.

Minor to be committed or give recognizance, &c. Court to direct sheriff to bind him out, &c.

SEC. 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.

Hire of vagrants, how disposed of.

SEC. 6. The moneys 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 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.

Duty of sheriffs and constables to give information of vagrants.

SEC. 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.

Grand juries to make presentment of vagrants; proceedings thereon.

SEC. 8. Grand jurors, impanneled for a county, shall make presentments 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 February 28, 1845.

Digitized by Google

CHAPTER 182.

VENUE.

AN ACT providing for the change of venue in civil cases.

SEC. 1. In what cases a change of venue in civil cases may be awarded.
2. Petition and affidavit for change of venue in civil cases may be presented in vacation.
3. Notice having been given, court to hear and determine.
4. When the court may award a change without application by either party.
5. Change awarded in vacation, order to be transmitted to the clerk where the cause is pending.
6. What copies and papers clerk shall make out and transmit to clerk where cause is removed.
7. The clerk of the court to which the cause is removed, to file papers and docket the cause.
8. Costs of change of venue to be paid by petitioner.
9. Failing to pay costs for fifteen days, how proceeded against.
10. What the clerk shall recover.
11. Failure to send, or loss of papers, not to operate as a discontinuance of the case; how supplied.

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

In what cases a change of venue in a civil suit may be awarded. 1835.

SECTION 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 of 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.

Petition and affidavit for change of venue may be presented in vacation.

SEC. 2. Any party in such cause may present to the court, or 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 have a fair trial on account of the causes alleged.

Notice having been given, court to hear and determine.

SEC. 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.

When the court may award a change without application.

SEC. 4. If the judge is interested, or related to, or shall have been of 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.

Digitized by Google

Proceedings when change is awarded in vacation.

SEC. 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 writtten order for the change of venue.

What copies and papers clerk shall make out and transmit to clerk, where cause is removed. 1838-9, p. 187.

SEC. 6. When any such order shall be made by the court or judge, the clerk shall immediately make out a full transcript of the record and proceedings in the cause, including the petition and affidavit, and order of removal, and transmit the same, duly certified, together with all the original papers filed in the cause, and not forming a part of the record, to the clerk of the court to which the removal is ordered; and for failure to do so, shall forfeit one hundred dollars to the party aggrieved, to be recovered by action of debt.

Penalty for neglect.

Clerk of court, when cause is removed, to file the papers, &c.

SEC. 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.

Costs, to be paid by petitioner.

SEC. 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 the suit.

Failing to pay costs for fifteen days, how proceeded against.

SEC. 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, (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.

What the clerk shall recover.

SEC. 10. Such clerk may recover the amount of such fee-bills, and fifty per cent. thereon, by action of debt.

Failure to send or loss of papers, not to operate as a discontinuance of the cause; how supplied.

SEC. 11. If any clerk fail 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 said court, may be filed; or, if lost, copies of the originals may be furnished and filed, and the cause shall proceed as if no such failure or loss had happened.

Approved March 8, 1845.

Digitized by Google

CHAPTER 183.

WAY.

AN ACT to enable persons to secure the right of way in certain cases.

SEC. 1. County court to appoint commissioners to mark out a private road; when.
2. Applicant for a private road to give notice to the person over whose land the road is to pass; how.
3. Commissioners to take oath; to be filed.
4. Commissioners to make report to the next county court.
5. Objections to report to be filed at the return of the report; proceedings thereon.
6. Report rejected, other commissioners may be appointed, or the application may be dismissed.
7. Report approved, road to be opened; width thereof; penalty for obstructing it; applicant may be required to put up gates; when.
8. Right of way vested forever in applicant; when.
9. Right of way to a public mill, and to separate tracts of land, how established.

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

County court to appoint commissioners to mark out a private road; when.

SECTION 1. That when the lands of any person shall be surrounded, or inclosed, or be shut out and cut off from a public highway, by the lands of any other person or persons, who refuse to allow to such person a private road, to pass to or from his or her said land, it shall be the duty of the county court, on petition of any person whose land is so surrounded or shut out, to appoint three disinterested householders of the township in which the land lies, as commissioners to view and mark out a road from the lands of the petitioners, to the nearest public highway; and to assess the damages the person will sustain through whose land the road will pass.

Applicant for a private road to give notice, to whom.

SEC. 2. The person desiring to secure the right of way, shall give the person or persons through whose lands the road will run, at least two day's notice of such intended application, by leaving (or causing to be left,) a written notice at his or their usual place of abode; and satisfactory evidence that such notice has been given, shall be presented to the court before commissioners shall be appointed.

Commissioners to take an oath.

SEC. 3. The commissioners shall, before entering upon the discharge of their duties, take and subscribe an oath, before some judge or justice of the peace, that they are not interested, nor of kin to either of the parties interested, in the proposed road, and that they will faithfully and impartially view and mark out said road, to the greatest ease and convenience of the parties, and as little as may be to the injury of either; and

Digitized by Google

assess the damages which will be sustained by the party through whose lands the road will run.

To make report to next county court.

SEC. 4. Said commissioners shall make out a report of their proceedings, stating particularly the course and distance of said road, and the amount of damages assessed, which report, together with a certificate of the oath, shall be returned to the court issuing such order, at the next term thereafter, to be filed by the clerk of said court.

Objections to report, when to be filed.

Proceedings thereon.

SEC. 5. If the person through whose land the road shall run, object to the report of the commissioners, he shall file his objections in writing, at the term of the court at which the report is made, and the court shall proceed to hear, try and determine the same, upon the evidence brought before them at such term, unless the same be continued for good cause; if the objections be found good by the court, the report shall be rejected, and the court may proceed to appoint other commissioners, who shall proceed to act in all respects as if originally appointed, and the petitioner shall pay all costs attending the first report; if the objections are overruled, the report shall be confirmed, and the objector shall pay all costs attending the trial of his objections.

Proceedings when report is rejected.

SEC. 6. Upon the rejection of the report of any commissioners, the court may dismiss the petition or appoint commissioners, as set forth in the preceding section.

Proceedings when report is approved.

SEC. 7. If the report be approved by the court, and the petitioner shall produce satisfactory evidence that he has paid the damages assessed, (or tendered payment, if the party refuse to receive it,) and all costs attending the proceeding, the court shall grant an order to said petitioner to open a road not exceeding fifteen feet in width, and if any person, or persons, obstruct said road, such person, or persons, shall be liable to all the penalties for obstructing a public road: *Provided, however*, If such road shall pass through any inclosure, and it shall be required by the owner thereof, the person applying for such road shall put up and keep at each entrance into such inclosure, a good and substantial swinging gate.

Right of way vested forever in applicant, when.

SEC. 8. Upon the establishment of the right of way, as is in this act provided, the same shall vest in the party and his or her heirs or assigns, forever.

Right of way to a mill, how established.

SEC. 9. Any person desiring to secure the right of way to a public mill, or any person owning separate tracts of land, may

Digitized by Google

CHAP. 184.

secure the right of way, by proceeding as is in this act provided for securing the right of way to a public highway.

New act.

This act to take effect and be in force from and after its passage.

Approved March 24, 1845.

CHAPTER 184.

WEIGHTS AND MEASURES.

AN ACT to regulate weights and measures.

SEC. 1. County court to procure standards of weights and measures.
2. When weights procured, notice to be given; penalty for using weights, &c., not corresponding to the standard.
3. Duty of clerk in sealing weights and measures.
4. What shall constitute the "100 weight" and the "ton."
5. What weight shall constitute a bushel of wheat, &c.

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

County court to procure standards of weights and measures to be kept by clerk. 1835.

SECTION 1. The clerk of each county court shall provide, at the expense of the county, 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.

When procured, notice to be given; penalty for using weights, &c., not corresponding to the standard.

SEC. 2. So 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,

Digitized by Google

forfeit and pay to the party injured, ten dollars, to be recovered by action of debt, before any justice of the peace of the county.

Duty of clerk in sealing weights and measures.

SEC. 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.

What shall constitute the "100 weight" and the "ton."

SEC. 4. The hundred weight shall consist of one hundred pounds, avoirdupois, and twenty such hundreds shall constitute a ton.

What weight shall constitute a bushel of wheat, &c.

SEC. 5. Whenever wheat, rye, or indian corn shall be sold by the bushel, and no special agreement as to the measurement or weight thereof shall be made by the parties, the bushel shall consist of sixty pounds of wheat, and fifty-six pounds of rye, and fifty-two pounds of indian corn.

Approved March 17, 1845.

CHAPTER 185.

WILLS.

AN ACT respecting wills.

SEC. 1. Who may make a will.
2. Who may make a will of personal estate.
3. No married woman to make a will except in certain cases.
4. Wills to be in writing; how signed by the testator, and how attested.
5. How witnessed when not signed by the testator.
6. Revocation of wills, what will be, and how effected.
7. Revocation of wills by the marriage of testator and his leaving issue.
8. Will of an unmarried woman revoked by her subsequent marriage.
9. A bond to convey property previously devised by will, and described therein, not to effect a revocation of the devise, and what effect it shall have.
10. A charge, or incumbrance, not deemed a revocation, when.
11. A testator shall be deemed to have died intestate as to children not named in the will.
12. Advancement to children in life-time of testator, effect thereof.
13. Descendants of a devisee to take the property of the testator in same way as if devisee had survived the testator.
14. Revocation, &c., of second will, not to revive the first, unless, &c.
15. County court to take proof of last wills.
16. In what counties wills to be proved.
17. Certificate of probate or rejection, by whom granted.
18. Attestation of a witness, sick, absent or non-resident, &c., how procured.
19. Effect of such attestation.
20. When a witness is dead, insane, or residence unknown, what proof shall be sufficient.
21. When all witnesses are dead, insane, or their residence unknown, what proof shall be sufficient.
22. All testimony to be reduced to writing, signed and certified.
23. Nuncupative wills, what shall be considered good, how proved, and to be made at the time of last sickness, where, &c.

Digitized by Google

CHAP. 185.

SEC. 24. Wills of mariners and soldiers, how made, and when to be deemed good.
25. Proof of nuncupative will, when refused, and when and how to be offered.
26. Probate of nuncupative will not to be granted, except under certain conditions and proceedings.
27. Wills, by whom to be recorded.
28. Wills, when may be read as evidence.
29. Records of wills, when may be received as evidence, and when repelled by contrary proof.
30. Lands devised by will, to be recorded; where and when, and in what county.
31. Proceedings by a person interested to contest the validity of a will, how had.
32. Verdict of the jury, or judgment of the court, how final.
33. Wills not contested within five years, to be binding, except upon persons absent from the United States, &c..
34. What weight the oath of a subscribing absent witness shall have at the trial.
35. Any person owning real or personal estate in this state, may devise the real according to the laws of this state, and the personal property according to the laws of the state where he may reside.
36. Authenticated copies of wills, and the probate thereof, how recorded.
37. Such wills may be contested, &c., in same way as if made in this state.
38. Legacies, bequests, &c., to witnesses of a will, how far to be considered void, and the witnesses to be admitted as competent.
39. When a will is not established, witness, who is devisee, can take, and how; can recover from the devisees, &c., named in the will.
SEC. 40. When will can be attested by a sufficient number of other competent witnesses, devise, &c., shall be valid.
41. Creditor to be admitted as a witness to a will, notwithstanding the estate be charged with debt by will.
42. Legatees, &c., may be competent witnesses in case of their having discharged or refused to receive any bequest, gift or otherwise.
43. The credit of such witnesses to be left to the court or jury.
44. In case of death of legatee, before probate, &c., and on tender made, &c., he is a competent witness.
45. Witnesses examined to prove a will, not to take any legacy, bequest or compensation for same.
46. What devise shall operate as an estate for life, and remainder in fee simple.
47. What devise, and how made, &c., and omitting words of inheritance, &c., shall convey an estate in fee simple, and such shall be presumed the intention of the testator.
48. Other devisees and legatees to refund, when a bequest, &c., made to one shall be taken in execution for payment of the testator's debts.
49. The circuit court required to order such contribution by the legatees, &c., and with same power and effect as in decrees of equity.
50. The term "will," shall be construed to include all codicils.
51. All courts shall pay due regard to the directions of wills, and the true intent, &c., of the testator.
52. The county court, on being informed, has the power to summon and compel, by attachment, the production of any will, where a person has the same and refuses to produce it.

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

Who may make a will. 1835.

SECTION 1. Every person of twenty-one years of age, 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.

Who may make a will of personalty.

SEC. 2. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of his goods and chattels.

Digitized by Google

Capacity of married woman to make a will.

SEC. 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 her husband before marriage.

Will to be in writing.

SEC. 4. Every will shall be in writing, signed by the testator, 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. (*a*)

Person signing testator's name, to subscribe his own as a witness.

SEC. 5. Every person who shall sign the testator's name to any will, by his direction, shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request.

Will not revoked except by subsequent will, &c.

SEC. 6. No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked, except by a subsequent will in writing, or by burning, cancelling, tearing, or obliterating the same, by the testator, or in his presence, and by his consent and direction.

Marriage of testator leaving issue, to revoke will, unless, &c.

SEC. 7. If, after making a will, disposing of the whole estate of the testator, such testator shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage, born to him after his death, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

Will of femme sole revoked by marriage.

SEC. 8. A will, executed by an unmarried woman, shall be deemed revoked by her subsequent marriage.

Bond to convey property previously devised, not a revocation of devise.

SEC. 9. A bond, covenant, or agreement, made for a valuable consideration, by a testator, to convey any property devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, either in law or equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for the specific performance or otherwise, against the devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

A charge or incumbrance when not deemed a revocation.

SEC. 10. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant, or agreement, shall not be

(*a*) *Vide*, Withinton vs. Withinton, 7 Missouri Rep., 589, as to what witnesses must attest.

Digitized by Google

deemed a revocation of any will relating to the same estate, previously executed; but the devises and legacies therein contained, shall pass and take effect, subject to such charge or incumbrance.

A testator shall be deemed to have died intestate as to children not named in the will.

SEC. 11. If any person make his last will and die, leaving a child, or children, or descendants of such child or children, (in case of their death,) not named or provided for in such will, although born after the making of such will, or 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 heirs, devisees and legatees shall refund their proportional part. (*b*)

Advancement to children in life time of testator, effect thereof.

SEC. 12. If such child, or children, or their descendants, shall have had an equal proportion of the testator's estate bestowed on them, in the testator's life time, by way of advancement, they shall take nothing in virtue of the provisions of the preceding section.

Descendants of devisee shall take the property of the testator.

SEC. 13. When any estate shall be devised to any child, grand child, or other relative 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.

Revocation, &c., of second will, not to revive the first, except, &c.

SEC. 14. If, after making any will, the testator shall duly make and execute a second will, the destruction, cancelling, or revocation of such second will, shall not revive the first will, unless it appear by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

County court shall take proof of last wills.

SEC. 15. The county court, or clerk thereof in vacation, subject to the confirmation or rejection by the court, shall take proof of last wills. (*c*)

SEC. 16. If the testator have a mansion house, or known

(*b*) Stokes vs. O'Fallon, 2 Missouri Rep., 32; Block and wife vs. Block, et. al., 3 Missouri Rep., 594.

(*c*) A will being lost or destroyed, probate may be granted of a copy; where there is no copy, the contents of the will may be proven, and the will established by parol proof; Graham vs. O'Fallon, 3 Missouri Rep., 507. One witness is sufficient to establish the contents of a last will, *ibid*, 4 Missouri Rep., 601; Dickey vs. Malechi, 6 Missouri Rep., 177. Probate may be granted of so much of a will as can be proved; Jackson vs. Jackson, 4 Missouri Rep., 210; Dickey vs. Malechi, 6 Missouri Rep., 177.

Digitized by Google

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.

In what counties wills to be proved.

SEC. 17. When any will is exhibited to be proven, 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.

Certificate of probate or rejection, by whom granted.

SEC. 18. If any witness shall be prevented by sickness from attending at the time when any will may be produced for probate, or reside 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.

Attestation of a witness, sick, absent or non-resident, &c., how procured.

SEC. 19. If such witness appear before such officers, 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, and in his presence, that he was of sound mind, (*d*) that the witness subscribed his name thereto, in the presence of the testator; the testimony so taken shall have the same force as if taken before the court or clerk.

Effect of such attestation.

SEC. 20. When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residences unknown, then such proof shall be taken of the hand-writing of the testator, and of the witnesses dead, insane, or residences unknown, and of such other circumstances as would be sufficient to prove such will on a trial at common law. (*e*)

Witness dead, insane, or residence unknown, what proof shall be sufficient.

SEC. 21. If it shall appear to the satisfaction of the court, or clerk, that all the subscribing witnesses to the will are dead, insane, or their residences unknown, the court, or clerk, shall take and receive such proof of the hand-writing of the testator and subscribing witnesses to the will, and of such other facts

When all the witnesses are dead, &c., what proof shall be sufficient.

(*d*) *Vide*, Withinton vs. Withinton, 7 Missouri Rep., 589.

(*e*) *Vide*, 1 Phillips on Evidence, from 494 to 503, both inclusive, and the learned notes of Cowen and Hill, appended thereto.

Digitized by Google

and circumstances as would be sufficient to prove such will in a trial at law. (e)

Testimony shall be written, signed and certified.

SEC. 22. All the testimony adduced in support of any will, shall be reduced to writing, signed by the witnesses, and certified by the clerk.

Nuncupative wills good; how made and proved.

SEC. 23. No nuncupative will shall be good when 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 house of the deceased, or where he had been residing for the space of ten days, or more, except were such person was taken sick from home and died before his return. (e)

Wills of mariners and soldiers.

SEC. 24. 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.

No proof of a nuncupative will to be received, unless, &c.

SEC. 25. 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.

No probate of nuncupative wills shall be granted, unless, &c.

SEC. 26. 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 testamentary words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased, that they may contest the probate of such will, if they think proper.

All wills shall be recorded.

SEC. 27. 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 the originals shall be carefully filed in his office.

SEC. 28. Every will, proved according to the provisions of

(e) *Vide*, 1 Phillips on Evidence, from 494 to 503, both inclusive, and the learned notes of Cowen and Hill, appended thereto.

Digitized by Google

this act, recorded and certified by the clerk of the county court, and attested by his seal of office, may be read as evidence, without any further proof thereof. Wills proved may be read in evidence.

SEC. 29. The record of any will, made, proved and recorded, as aforesaid, and the exemplification of such record, by the clerk of the county court in whose custody the same may be, shall be received as evidence, and shall be as effectual, in all cases, as the original would be, if produced and proved, and may, in like manner, be repelled by contrary proof. Records of wills proved &c., shall be evidence, &c

SEC. 30. In all cases where lands devised by last will are situate in different counties, a copy of such will shall be recorded in the recorder's office, in each county, within six months after probate. Wills by which lands are devised shall be recorded, when

SEC. 31. If any person, interested in the probate of any will, shall appear within five years after the probate or rejection thereof, 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 a jury, or, if neither party require a jury, by the court. (*g*) Who may contest the validity of a will.

SEC. 32. The verdict of the jury, or the finding and 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. (*h*) Effect of verdict of a jury and judgment of the court.

SEC. 33. If no person shall 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 or of unsound mind, a like period of five years after their respective disabilities are removed. If no person appears within five years, probate to be binding.

SEC. 34. 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, shall be admitted as evidence, and have such weight as the court or jury think it deserves. Oath of witness examined at probate, shall have weight, when

(*g*) A court of equity will not interfere to set aside a will on the ground of fraud in making it; the party is left to his remedy at law; Lyne vs. Guardian et al., 1 Missouri Rep., 410; Trotters vs. Winchester et al., *ibid*, 413; Swain vs. Gilbert et al., 3 Missouri Rep., 347; *vide* Dickey vs. Malechi, 6 Missouri Rep., 177. As to the mode of proceeding under the act of 1825, (Rev. C. of 1825, p. 792,) which is like the present act, *vide* Davis vs. Davis, 5 Missouri Rep., 183.

(*h*) This section precludes the supreme court from inquiring into the sufficiency of the evidence to sustain the verdict of the jury, but, as in other cases, if the court permit illegal testimony to go to the jury, the supreme court has power to correct such error; Dickey vs. Malechi, 6 Missouri Rep., 177.

Digitized by Google

CHAP. 185.

Any person owning real or personal estate in this state, may bequeath, &c.

SEC. 35. Any person owning real or personal estate in this state, may devise or bequeath such property, by last will, executed and proved (if real estate be devised,) according to the laws of this state, or (if personal estate be bequeathed,) according to the laws of this state, or of the country, state or territory, in which the will shall be made. (*i*)

Authenticated copies of such wills shall be recorded.

SEC. 36. Authenticated copies of such wills, and the probate thereof, shall be recorded in the same manner as wills executed and proved in this state, and shall be admitted in evidence in the same manner and with like effect. (*ii*)

Such wills may be contested.

SEC. 37. Any such will may be contested and annulled, within the same time and in the same manner, as wills executed and proved in this state.

A beneficial devise to attesting witness, void: he shall be received as a witness.

SEC. 38. If any person has attested, or shall attest, the execution of any will, to whom any beneficial devise, legacy, estate, interest, gift or appointment of, or affecting, any real or personal estate, (other than and except charges in lands, tenements or hereditaments, for the payment of any debt or debts,) shall be thereby given or made, such devise, legacy, estate, gift or appointment, shall, so far only as concerns such person attesting the execution of such will, or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will. (*j*)

Witness entitled to share of testator's estate, may take by devise the extent of his share.

SEC. 39. If such witness would be entitled to any share of the testator's estate, in case the will should not be established, then so much of the estate as would have descended, or would have been distributed to such witness, shall be saved to him as will not exceed the value of the devise or bequest, made to him in the will; and he may recover the same from the devisees or legatees named in the will, in proportion to, and out of, the parts devised and bequeathed to them.

When a devise to attesting witness shall be void.

SEC. 40. If the execution of such will 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.

Creditor shall not be a witness.

SEC. 41. If by any will, any real estate be charged with any debt, and any creditor, whose debt is so charged, has

(*i*) *Vide*, Section nineteen, article seven, of the act respecting executors and administrators.

(*ii*) Bright et al. vs. White, 8 Missouri Rep., 421.

(*j*) *Vide*, Trotters vs. Winchester et al., 1 Missouri Rep., 413; Graham et al. vs. O'Fallon, 4 Missouri Rep., 338, and *ibid*, 601; *vide*, also, Dickey vs. Malechi, 6 Missouri Rep., 177.

Digitized by Google

attested the execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

Legatees may be competent witnesses in case of, &c.

SEC. 42. If any person has attested, or shall attest the execution of any will, to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will, 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.

The credit left to court or jury.

SEC. 43. The credit of such witness shall be subject to the consideration of the court or jury.

Death, &c., of legatee, shall not affect his competency as a witness.

SEC. 44. If any legatee or devisee, who has attested or shall attest the execution of any will, shall have died, or die in the life-time of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest, on tender made thereof, such legatee or devisee shall be deemed a legal witness to the execution of such will.

No person to whom any bequest has been made and has been examined as a witness, shall have any compensation.

SEC. 45. No person to whom any estate, interest, gift, or appointment shall be given or made, which is hereby declared to be void, or who shall have refused to receive such legacy or bequest, on tender made, and who shall have been examined as a witness concerning the execution of such will, shall, after he shall have been so examined, demand or receive (except as provided in the thirty-ninth section,) 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 demand, receive or accept from any person, any such legacy or bequest, or any satisfaction or compensation for the same.

What devise shall be an estate for life and remainder in fee simple.

SEC. 46. 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.

When a devise shall be considered in fee simple.

SEC. 47. In all devises 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 such devise was intended to convey an estate for life only, and no further devise be made of the devised premises, to take effect after the death of the devisee to whom the same shall be given, it shall be understood to be the intention of the testator thereby to de-

Digitized by Google

vise an absolute estate in the same, and shall convey an estate in fee simple to the devisee, for all such devised premises.

Legatees and devisees shall refund, when.

SEC. 48. 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.

Circuit court shall order contribution, &c., as in equity.

SEC. 49. 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 orders with like effect as decrees of courts of equity. (*k*)

The term "will" construed.

SEC. 50. The term "will," as used in this act, shall be so construed as to include all codicils as well as wills.

Courts shall have due regard to the directions of the will, &c.

SEC. 51. All courts, and others concerned in the execution of last wills, shall have due regard to the directions of the will, and the true intent and meaning of the testator, in all matters brought before them. (*l*)

County court shall compel production of a will.

SEC. 52. If the county court shall be satisfactorily informed that any person has in his possession the will of any testator, and refuses to produce the same for probate, such court shall have power to summon such person, and to compel him, by attachment, to produce the same.

Approved March 10, 1845.

(*k*) *Vide*, Levins, et. al., vs. Stevens, et. al., 7 Missouri Rep., 90.
(*l*) *Vide*, Erwin vs. Henry, 5 Missouri Rep., 469.

Digitized by Google

CHAPTER 186.

WITNESSES.

AN ACT concerning witnesses.

SEC. 1. Witnesses, how summoned to attend courts of record.
2. Summons to contain the names of all witnesses; where may be served.
3. Witness summoned and failing to attend, may be attached in any county.
4. Cause continued by absence of witness, court may order an attachment; how and when.
5. Witness taken upon attachment, may be discharged upon entering into recognizance.
6. Power of court to fine witness failing to attend.
7. Fees paid or tendered, witness liable to party for damages for failing to obey the summons.
8. Witness refusing to give evidence, may be committed to jail and detained until he give such evidence.
9. How far a witness is privileged from arrest.
10. Suit against a witness to abate, if arrested whilst attending under a subpœna; penalty for arresting.
11. Subpœna, how directed; by whom to be served.
12. Subpœna, how to be served; effect of the return.
13. Writ of habeas corpus may be issued to bring a witness up to testify who is confined in prison; when.
14. How the writ may be issued for witness confined in prison, to testify before justice of the peace.
15. Affidavit to be filed; what to contain.
16. When the affidavit shall not be required.
17. Prisoner, after testifying, to be remanded to prison.
18. Witness not excused from answering on the ground that it may subject him to a civil suit.
19. Minister of the gospel not compelled to disclose confessions made to him in his professional character.
20. Physicians and surgeons not compelled to disclose confessions; when.
21. Witness not incompetent on account of religious opinions.
22. Negroes and mulattoes incompetent witnesses except in certain cases.

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

SECTION 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 matter is pending, stating the day and place when and where the witnesses are to appear.

Witnesses how summoned to attend courts of record.—1835.

SEC. 2. Such summons shall contain the names of all witnesses for whom a summons is required, by the same party in the same cause, at the same time, who reside in the same county, and may be served in any county in the state.

Summons to contain the names of all witnesses; may be served, where.

SEC. 3. A person summoned as a witness in any cause pending in any court of record, and failing to attend, may be compelled, by writ of attachment against his body, to appear, which may be served in any county in the state.

Witness summoned and failing to attend, may be attached.

SEC. 4. When a cause shall be continued on account of the absence of a witness, duly summoned, and the party for whom

Digitized by Google

Cause continued by absence of witness, court may order an attachment; how and when.

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 of attachment, directed to the sheriff or other proper officer 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 is set for trial, as the day of his appearance.

Witness taken by attachment may be discharged by entering into recognizance.

SEC. 5. When a writ of attachment, authorized by the preceding section, shall be executed, the sheriff, or other officer, shall discharge such witness, on his entering into a recognizance, to the state of Missouri, with sufficient security, in the sum of one hundred dollars, (which the officer executing the writ is authorized to take,) conditioned for the appearance and due attendance of such witness, according to the exigency of the writ.

Power of court to fine witnesses failing to attend.

SEC. 6. 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 shown, at the term to which he is summoned, or the next term thereafter.

Fees paid or tendered, witness liable to party for damages, if he fail to obey the summons.

SEC. 7. When a party, causing a 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 witness, if he fail to attend, shall be liable to the action of the party for all damages sustained by the non-attendance, unless he show sufficient cause to justify such absence.

Witness refusing to give evidence may be committed to jail.

SEC. 8. A person, summoned as a witness, 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.

How far a witness is privileged from arrest.

SEC. 9. Witnesses shall be privileged from arrest in all cases, except treason, felony and 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.

Suit against a witness to abate, when.

SEC. 10. The suit of any person shall be abated who shall cause a witness to be arrested, knowing him to be attending as such, upon a subpœna, and such person shall be fined, at

Digitized by Google

the discretion of the court from which the subpœna issued, in a sum not exceeding twenty dollars, upon ten days previous notice thereof. Penalty for arresting.

SEC. 11. 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 witnesses, to be summoned, reside, or may be found, or by any free white person, above the age of twenty-one years, who would be a competent witness in the cause. Subpœna how directed; by whom served.

SEC. 12. 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. How to be served; effect of the return.

SEC. 13. Courts of record, and every judge of the supreme or circuit court, shall have power, upon the application of any party to a 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. Writ of habeas corpus to bring prisoner up to testify, may issue, when.

SEC. 14. 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 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. How the writ may be issued for witnesses confined in prison to testify before justice of the peace.

SEC. 15. An application for such 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 on the trial or hearing of such suit or proceeding, as he is advised by counsel and verily believes. Affidavit to be filed; what to contain.

SEC. 16. When such application shall be made by the attorney general, circuit attorney, or other public prosecutor, it shall not be necessary to swear to the truth of the facts set forth in the application. When the affidavit shall not be required.

Digitized by Google

CHAP. 187.

Prisoner, after testifying, to be remanded to prison.

SEC. 17. A prisoner, who shall be brought before any court, public body, or officer, upon a writ of habeas corpus, to testify, shall be remanded, after having testified, to the prison from which he was taken.

Witness not excused from answering on the ground that it might subject him to a civil suit.

SEC. 18. 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.

Minister not compelled to disclose confessions.

SEC. 19. No minister of the gospel, or priest of any denomination, shall be required or allowed to disclose any confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination.

Physicians and surgeons not compelled to disclose confessions, when.

SEC. 20. 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.

Witness not incompetent on account of religious opinions.

SEC. 21. No person, on account of his opinions in relation to the Supreme Being, or a future state of rewards and punishments, shall be incompetent to testify as a witness.

Negroes and mulattoes incompetent as witnesses, except, &c.

SEC. 22. 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 or mulattoes alone are parties.

Approved February 4, 1845.

CHAPTER 187.

WOODS, MARSHES AND PRAIRIES.

AN ACT to prevent the firing of woods, marshes and prairies.

SEC. 1. Penalty for firing woods, marshes, &c., if it occasion damage, &c.
2. Penalty for wilfully setting fire to 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.

Digitized by Google

CHAP. 188.

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

Penalty for firing woods, marshes or prairies, if it occasion damage.—1835.

SECTION 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.

Penalty for wilful firing

SEC. 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.

Firing woods, &c., liable for damages to the party injured.

SEC. 3. 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 make satisfaction for such damage to the party injured, to be recovered in an action on the case.

Masters liable for offences of slaves.

SEC. 4. When 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.

Person permitted to fire any thing on his own farm.

SEC. 5. This act shall not extend to any person setting on fire 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 27, 1845.

CHAPTER 188.

WRITS AND PROCESS.

AN ACT regulating writs and process.

SEC. 1. Writs issued by the courts to run in the name of the "State of Missouri;" how tested.
2. Writs issued by judge or officer, to run in the name of the "State of Missouri;" how subscribed.
SEC. 3. Writs not to be served on Sunday, or 4th of July, except in certain cases.
4. Writ not served, alias may be issued; in case of death, proper writ may issue in vacation.

Digitized by Google

CHAP. 188.

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

Writs issued by courts to run in the name of the "State of Missouri;" how tested.—1835.

SECTION 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, (*a*) and sealed with the judicial seal of such court.

Writs issued by judge or officer to run in the name of the "State of Missouri," &c.

SEC. 2. 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.

Writs not to be served on Sunday, or Fourth of July, except in certain cases.

SEC. 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, or for a breach of the peace, or when the defendant is about leaving the county, or the cases provided for in the sixtieth section of the act to establish courts of record; 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.

Writ not served, alias may be issued; in case of death, proper writ may issue in vacation.

SEC. 4. When any writ or process, issued out of any court of this state, shall not be executed, the clerk of such court, on the application of the party suing out such writ or process, shall issue other like process; and if any party to any suit pending 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 the application of the other party in such action.

Approved February 19, 1845.

(*a*) *Vide*, nineteenth section of the fifth article of the constitution of the state.

Digitized by Google

APPENDIX.

NATURALIZATION OF ALIENS.

Abstract of the laws of the United States in relation to the naturalization of aliens.

SECTION 1. Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

SEC. 2. *First*, That he shall have declared on oath, or affirmation, before the supreme, superior, district, or circuit court of some one of the states, or of the territorial districts, of the United States, or a circuit, or district court of the United States, or before the clerk of either of such courts, (*b*) two (*c*) years at least before his admission, that it was bona fide his intention to become a citizen of the United States, and to renounce forever, all allegiance and fidelity, to any foreign prince, potentate, state, or sovereignty, whereof such alien may, at the time, be a citizen or subject. (*d*)

SEC. 3. From this condition is exempted any alien, being a free white person, who was residing within the limits, and under the jurisdiction, of the United States, at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same. (*e*)

SEC. 4. Any alien, being a free white person and a minor under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted to be a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States without having made the declaration required in the second section, two years previous to his admission; but such alien shall make the declaration required therein at the time of his or her admission, and shall further declare on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the bona fide intention of such alien to become a citizen of the United States, and shall in all other respects comply with the laws in regard to naturalization. (*f*)

SEC. 5. When any alien, who shall have complied with the condition in section second, and who shall have pursued the directions prescribed in the second section of the act of April fourteenth, one thousand eight hundred and two, (*g*) may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law. (*h*)

SEC. 6. An alien shall, at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth entirely and absolutely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly, (by name,) the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. (*i*)

(*b*) Act May 26, 1824, section 3; Story, 1793; Gordon's Digest, 312.

(*c*) *Ibid*, section 4.

(*d*) Act April 14, 1802; Story, 850; Gordon's Digest, 312; and *vide*, section 14 of this abstract.

(*e*) Act March 26, 1804, section 1; Story, 942; Gordon's Digest, 313.

(*f*) Act May 26, 1824, section 1; Story, 1973; Gordon's Digest, 314.

(*g*) The second section of the act of April 14, 1802, required the alien, when he arrived in the United States, to have his name registered, &c., with the clerk of the proper court, &c. This section was repealed by the act of May 24, 1828; Story, 850, 2145, section 4; Peters' Rep., 393; Spratt vs. Spratt.

(*h*) Act March 26, 1804, section 2; Story, 942, Gordon's Digest, 313.

(*i*) Act April 14, 1802, section 1; Story, 850; Gordon's Digest, 314. The oath of naturalization, when taken, confers the rights of a citizen. It is not necessary that there should be an

Digitized by Google

SEC. 7. The court, admitting such alien, shall be satisfied that he has resided within the United tates five years at least, and within the state, or territory, where such court is at the time held, ne year at least; and it shall further appear to their satisfaction, that, during that time, he has ehaved as a man of good moral character, attached to the principles of the constitution of the 'nited States, and well disposed to the good order and happiness of the same: the oath of such pplicant shall, in no case, be allowed to prove his residence. (*j*)

SEC. 8. In case the alien, applying to be admitted to citizenship, shall have borne any hereditary tle, or been of any of the orders of nobility in the kingdom, or state, from which he came, he ıall, in addition to the above requsites, make an express renunciation of his title, or order of obility, in the court to which his application shall be made, which renunciation shall be recorded ı the said court: *Provided*, That no alien who shall be a native, citizen, denizen, or subject of ny country, state or sovereignty, with whom the United States shall be at war, at the time of his pplication, shall be then admitted to be a citizen of the United States. (*k*)

SEC. 9. But persons resident within the United States, or the territories thereof, on the eighenth day of June, in the year of our Lord one thousand eight hundred and twelve, who had, before ıat day, made a declaration, according to law, of their intention to become citizens of the United tates, or who, by the existing laws of the United States, were, on that day, entitled to become itizens without making such declaration, may be admitted to become citizens thereof, notwithtanding they shall be alien enemies at the time, and in the manner prescribed by the laws eretofore passed on that subject: *Provided*, Nothing herein contained shall be taken or construed) interfere with, or prevent, the apprehension, or removal, agreeably to law, of any alien enemy t any time previous to the actual naturalization of such alien. (*l*)

SEC. 10. Any alien, being a free white person, who was a resident within the limits, and under he jurisdiction, of the United States, between the fourteenth day of April, one thousand eight hunred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who as continued to reside within the same, may be admitted to become a citizen of the United tates, without having made any previous declaration of his intention to become a citizen: *Proided*, That when any person without a certificate of such declaration of intention, shall make pplication to be admitted a citizen of the United States, it shall be proved to the satisfaction of he court, that the applicant was residing within the limits, and under the jurisdiction, of the Jnited States before the eighteenth day of June, one thousand eight hundred and twelve, and has ontinued to reside within the same, or he shall not be so admitted, and the residence of the pplicant within the limits, and under the jurisdiction, of the United States for at least five years mmediately preceding the time of such application, shall be proved by the oath or affirmation of itizens of the United States, which citizens shall be named in the record as witnesses, and such ontinued residence within the limits, and under the jurisdiction, of the United States, when atisfactorily proved, and the place or places where the applicant has resided for at least five ears as aforesaid, shall be stated and set forth, together with the names of such citizens in the ecord of the court, admitting the applicant, otherwise the same shall not entitle him to be onsidered and deemed a citizen of the United States. (*m*)

SEC. 11. Nothing in the foregoing section ten, contained, shall be construed to exclude, from dmission to citizenship, any free white person who was residing within the limits, and under the urisdiction, of the United States, at any time between the eighteenth day of June, one thousand even hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred nd two, and who, having continued to reside therein without having made any declaration of ntention before a court of record, as aforesaid, may be entitled to become a citizen of the United States, according to section three: whenever any person, without a certificate of such declaration

---

rder of court admitting the alien to become a citizen; Campbell vs. Gordon, et. al.; 6 Cranch, 76; nor that it should appear by the record of naturalization that all the requisites presented by he law for the admission of aliens, shall have been complied with; Stark vs. Ches. Ins. Com.; Cranch, 420, section 8; Cranch, 335; 2 Galli. Rep., 111; Peters' C. C. Rep., 457. The citiens of each state shall be entitled to all the privileges and immunities of citizens in the several tates; constitution of the United States, article 4, section 2. Citizens of the United States have right to expatriate themselves in time of war, as well as of peace, until restrained by congress. Such right is subject to the control of the legislature, and to render the exercise of it valid, there nust be an entire departure from the United States, for a purpose which is not illegal, nor in fraud f the duties at home of the emigrant; Talbot vs. Jansen, 3 Dallas, 133; Santissima Trinidad, 7 Wheat., 283; *vide*, U. S. vs. Williams, Halls and Jour., 461; U. S. vs. Gillies, 1 Peters, 161. A itizen of the United States, by becoming a citizen of another country, does not thereby cease to e a citizen of the United States, nor is he absolved from his original allegiance; *Ibid*, *ibid*. He nay acquire, in a foreign country, the commercial privileges attached to his domicil, and be xempted from the operation of commercial acts, embracing only persons resident in the United States, or under its protection; Murray vs. The Charming Betsey, 2 Cranch, 139.

(*j*) Act April 14, 1802, section 1; Story, 850; Gordon's Digest, 314.
(*k*) Act April 14, 1802, section 1; Story, 850; Gordon's Digest, 314.
(*l*) Act July 30, 1813; Story, 1354.
(*m*) Act May 24, 1828; Story, 2145, and Gordon's Digest, 313; and see Story, 1354.

Digitized by Google

of intention, as aforesaid, shall make application to be admitted as a citizen of the United States, it shall be proved, to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction, of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same, or he shall not be so admitted, and the residence of the applicant within the limits, and under the jurisdiction, of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States, which citizens shall be named in the record as witnesses, and such continued residence within the limits, and under the jurisdiction, of the United States, when satisfactorily proved, and the place or places where the applicant has resided, for at least five years as aforesaid, shall be stated and set forth, together with the names of such citizens, on the record of the court admitting the applicant, otherwise the same shall not entitle him to be considered a citizen of the United States. (*n*)

SEC. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized, or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been, citizens of the United States, shall, although born out of the limits and jurisdiction of the United States, be considered as citizens of the United States. The right of citizenship shall not descend to persons whose fathers have never resided within the United States; and no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen, without the consent of the legislature of the state in which such person was proscribed. (*o*) Children of persons naturalized before the fourteenth day of April, one thousand eight hundred and two, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth day of April, one thousand eight hundred and two, to be considered as citizens of the United States. (*p*)

SEC. 13. Any alien who was residing within the limits and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof, made to some of the courts aforesaid, that he has resided two years at least within and under the jurisdiction of the United States, and one year at least immediately preceding his application, within the state, or territory, where such court is at the time held; and on his declaring, on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court, that, during the said term of two years, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; and when the alien applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom, or state, from which he came, on his moreover making in court an express renunciation of his title, or order of nobility, before he shall be entitled to such admission, all of which proceedings, required by this proviso, to be performed in the court, shall be recorded by the clerk thereof. (*q*)

SEC. 14. Every court of record, in any individual state, having common law jurisdiction, and a seal and clerk, or prothonotary, shall be considered as a district court within the meaning of the naturalization act, and every alien who may have been naturalized in any such court, shall enjoy the same rights and privileges as if he had been naturalized in a district or circuit court of the United States. (*r*)

SEC. 15. No person who shall arrive in the United States after February the seventeenth, one thousand eight hundred and fifteen, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission, have resided within the United States, without being at any time during the said five years, out of the territory of the United States. (*s*)

(*n*) Act March 22, 1816, section 2; Story, 1539; Gordon's Digest, 313.
(*o*) Act April 14, 1802, section 4; Story, 850; Gordon's Digest, 315; Campbell vs. Gordon, 6 Cranch, 176. (*p*) *Ibid*, *ibid*.
(*q*) Act April 14, 1802; Story, 850; Gordon's Digest, 315; Campbell vs. Gordon, 6 Cranch, 176.
(*r*) Act April 14, 1802; Story, 850; Gordon's Digest, 315.
(*s*) Act March 3, 1813, section 12; Story, 1304; Gordon's Digest, 315.

Digitized by Google

AUTHENTICATION OF RECORDS.

Abstract of the laws of the United States, in relation to the authentication of public acts, records, and judicial proceedings. (a)

SECTION 1. The acts of the legislatures of the several states, shall be authenticated by having the seal of their respective states affixed thereto; the records and judicial proceedings of the courts of any state shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form; and the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them, in every court within the United States, as they have by law, or usage, in the courts of the state from whence the said records are, or shall be taken. (b)

SEC. 2. All records and exemplifications of office books, which are, or may be, kept in any public office of any state, not appertaining to a court, shall be proved, or admitted, in any other court, or office, in any other state, by the attestation of the keeper of the said records, or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, or district, as the case may be, in which such office is, or may be, kept, or of the governor, the secretary of state, the chancellor, or the keeper of the great seal of the state, that the said attestation is in due form, and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonatory of the said court, who shall certify under his hand, and the seal of his office, that the said presiding justice is duly commissioned and qualified; (c) or, if the said certificate be given by the governor, the secretary of state, the chancellor, or the keeper of the great seal, it shall be under the great seal of the state, in which the said certificate is made; and the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have, by law, or usage, in the courts, or offices, of the state from whence the same are, or may be, taken. (d)

SEC. 3. All the provisions of the two preceding sections, shall apply as well to the public acts, records, office books, judicial proceedings, courts and offices, of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts, and officers, of the several states. (e)

BOUNDARY.

An act concerning the northern boundary line of this state.

WHEREAS, Difficulties have arisen in relation to the northern boundary line of this state; and, whereas, the speedy and amicable settlement of such difficulty is of deep interest to the people of this state, and of the state of Iowa; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* The governor of this state is hereby authorized and empowered to agree with the governor of the state of Iowa, for the commencement and speedy determination of such suit as may be necessary to procure a final decision by the supreme court of the United States, upon the true location of the northern boundary line of this state.

SEC. 2. The governor is authorized, and required, to cause all evidence to be procured which may be necessary to the legal and proper decision of such suit, while the same may be in progress, and to employ counsel to conduct the same on the part of this state, and to do whatever may be necessary to maintain the rights of the state in such suit.

(a) Article 4, section 1, constitution of the United States.

(b) Act May 26, 1790; Story, 93; Gordon's Digest, 172. In authenticating records, the certificate of a presiding judge of a court, that he himself is the presiding judge, is good evidence of the fact; Hutchison vs. Patrick, 3 Missouri Rep., 65. A certificate by a judge of another state in these words, "I certify that the certificate of the clerk is in due form of law," is sufficient; Blair vs. Caldwell, 3 Missouri Rep., 353; *vide*, Bright vs. Woods, 8 Missouri Rep., 428.

(c) *Vide*, Paca vs. Dutton, 4 Missouri Rep., 371.

(d) Act March 27, 1804; Story, 947; Gordon's Digest, 173.

(e) Act March 27, 1804; Story, 948; Gordon's Digest, 173.

Digitized by Google

SEC. 3. The sum of two thousand dollars is hereby appropriated, out of any money in the treasury, to carry this act into effect; which may be drawn, on the certificate of the governor to the auditor of public accounts, in favor of the persons entitled to the same.

This act to take effect from and after its passage.

[Approved March 25, 1845.

CONVENTION.

An act to provide for the call of a convention.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* There shall be, at the general election for the members of the general assembly, in the year eighteen hundred and forty-four, a poll opened, at the several election precincts, for taking the sense of the people of this state upon the expediency of calling a convention to amend, alter or make a new constitution of this state.

SEC. 2. It shall be the duty of the judges at the several election precincts in this state, at the election aforesaid, to cause a poll to be opened, which poll shall contain two columns: one to be headed "convention," the other "no convention;" and they shall cause the vote of each individual voter to be set in the appropriate column.

SEC. 3. All persons qualified, by the constitution and laws of this state, to vote for members of the general assembly, shall be entitled to vote for or against said convention.

SEC. 4. At the close of said election, at the several election precincts in this state, the judges thereof shall cause an abstract of the votes given, for and against a convention, to be made out and certified to the clerks of the several county courts in this state, who shall make out an abstract of the votes given for and against a convention, in their respective counties, and transmit the same to the secretary of state, in the same manner and with the like restrictions that they are required to certify the votes given for governor and lieutenant governor.

SEC. 5. The secretary shall, on or before the first day of December, eighteen hundred and forty-four, make out and deliver to the governor, a full and complete abstract of the votes given for and against a convention, who shall immediately cause the same to be published in at least two newspapers printed in this state.

SEC. 6. If a majority of the votes thus given shall be for a convention, the governor shall, in the month of April, one thousand eight hundred and forty-five, order an election to be held at the several places of voting in this state, on the first Monday in August, one thousand eight hundred and forty-five, to elect delegates to said convention; which election shall, in all respects be governed by the existing laws regulating elections; and the persons elected shall, each, receive a certificate thereof accordingly.

SEC. 7. Each senatorial district shall, and is hereby authorized to elect double the number to serve in said convention, which said district shall be entitled by law to elect to the senate of this state at the time of said election; and any person, eligible to a seat in the house of representatives of this state, shall be eligible to a seat in the convention.

SEC. 8. The persons who shall be elected, according to the provisions of this act, shall, on the third Monday of November, one thousand eight hundred and forty-five, meet and assemble at the city of Jefferson, in general convention, and shall have power to form and propose a new constitution for this state.

SEC. 9. The convention shall judge of its own privileges and elections, and the members thereof shall have all the privileges to which members of the general assembly are entitled, and shall be allowed the same compensation; and said convention shall have power to appoint such officers, and give them such compensation as may be deemed right; and said compensation shall be obtained in the same maaner as the members and officers of the general assembly are allowed and paid.

SEC. 10. In case of contested elections to the convention, the contending candidates shall pursue the same course, and be governed by the same rules as are now prescribed by law in contested elections to the legislature of this state.

SEC. 11. If a vacancy shall occur in the convention, the same shall be filled in the same manner as prescribed by law for filling vacancies in the legislature of this state.

SEC. 12. The constitution formed by the convention shall be deposited in the office of the secretary of state; and a copy of the same shall, by the governor, be caused to be published in such manner as said convention shall direct.

SEC. 13. On the first Monday in August, one thousand eight hundred and forty-six, at the several election precincts in this state, the judges thereof shall cause two columns to be opened headed, one, "for the constitution," the other "against the constitution," and cause the vote of each voter to be set in the appropriate column, and certify the votes so given to the clerks of the

Digitized by Google

everal county courts, who shall certify the same to the secretary of state, in the same manner nd with the like restrictions that they are now required to certify the votes given for governor nd lieutenant governor of this state.

SEC. 14. All qualified voters of this state shall be entitled to vote for or against said constitution.

SEC. 15. It shall be the duty of the governor to lay before the general assembly, at their regular ession, in the year eighteen hundred and forty-six, the vote for ratifying or rejecting said constitution; and if it shall appear to the general assembly, in joint meeting, that a majority of all he votes given have accepted the constitution, they shall, by joint resolution, declare said constitution to be the supreme law of the state, and the former constitution shall be abolished.

SEC. 16. It shall be the duty of the governor, in the month of May, eighteen hundred and forty-hree, to cause this act to be published in three of the principal newspapers in St. Louis, and in all he other papers published in this state outside of St. Louis, which publication shall continue for six uccessive weeks; the expenses of said printing shall be paid out of the general contingent fund.

This act to take effect and be in force from and after its passage.

[Approved February 27, 1843.

JAILS AND JAILORS.

An act to amend an act concerning jails and jailors.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* The wenty-fifth section of "An act concerning jails and jailors," approved February twenty-sixth, ne thousand eight hundred and thirty-five, is hereby repealed; and when any person shall be ommitted to any jail, in conformity to the twenty-fourth section of said act, it shall be the duty f the sheriff of the county in which such jail is situated, without any writ of habeas corpus, to ake or cause to be taken, the person thus committed, together with the day and cause of his aption and detention, before the circuit court of the county appointed for the trial of such prisoner, on the first day of the next term of such court. (a)

[Approved February 6, 1839.

MARKS AND BRANDS.

An act to repeal an act, approved February 24, 1843, entitled "An act amendatory of an act to regulate marks and brands," approved February 26, 1835.

SECTION 1. *Be it enacted by the General Assembly of the state of Missouri, as follows:* That n act, approved February twenty-fourth, eighteen hundred and forty-three, entitled "An act mendatory of an act to regulate marks and brands," approved February twenty-sixth, eighteen undred and thirty-five, be and the same is hereby repealed.

[Approved January 8, 1845.

TAXES.

An act to repeal "An act to provide for the sale of land for the taxes," approved February 27, 1843.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* That the act entitled "An act to provide for the sale of lands for the taxes," approved February twenty-seven, eighteen hundred and forty-three, be and the same is hereby repealed: *Provided*, That all taxes due upon lands, or town lots, for the year eighteen hundred and forty-two, or any preceding year, and which were required by the provisions of said act to be collected in the year eighteen hundred and forty-four, shall be collected and accounted for as if this act had not passed; and

(a) The publication of the twenty-fifth section of the act of eighteen hundred and thirty-five, should have been omitted. It was, however, overlooked when the form went to press.

Digitized by Google

that lands or town lots, returned unsold, shall not, under the provisions of said act, be certified out for sale: *And provided, also,* That nothing herein contained shall be so construed as to prevent the payment of taxes at the treasury, on lands reported as non-resident, in the same manner as though this act had not passed; and all land, sold after the passage of this act, shall be subject to redemption for two years, by paying to the purchaser the amount of purchase money, and all costs, with interest thereon at the rate of twenty-five per centum per annum.

This act shall take effect from and after its passage.

[Approved February 1, 1845.

WOLF SCALPS.

An act to repeal the several acts to encourage the destruction of wolves.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* An act entitled "An act to encourage the destruction of wolves," approved February third, one thousand eight hundred and thirty-seven, and the act amendatory of the same, approved February sixth, one thousand eight hundred and forty-three, be and the same are hereby repealed.

SEC. 2. That all persons who have proved wolf scalps before justices of the peace, after the sixth February, one thousand eight hundred and forty-three, and before the fourth day of July of that year, shall be entitled to the bounty, as though they had proven the same before the clerk of the county court; and the collectors of revenue are required to receive the same in payment of the state revenue.

This act to take effect ninety days after its passage.

[Approved March 17, 1845.

FEES.

An act to repeal a portion of "An act to amend an act entitled an act to regulate fees," approved February 15, 1841.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* That the first, second, and third sections of an act to amend an act entitled "An act to regulate fees," approved February fifteenth, eighteen hundred and forty-one, be and the same are hereby repealed.

SEC. 2. That the clerk of the circuit court of St. Louis, and the clerk of the court of common pleas of St. Louis, shall hereafter receive the same fees that the clerks of other circuit courts receive for similar services, any law to the contrary notwithstanding.

This act shall take effect and be in force from and after its passage.

[Approved January 8, 1845.

GROCERIES.

An act to regulate the licensing of groceries in the city and county of St. Louis.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* That hereafter it shall not be lawful for the county court for the county of St. Louis to grant to any person a license to keep a grocery, tavern, or dram shop in the city or county of St. Louis, unless such person shall have resided in the state for two years, and in the county, three months prior to his application for license.

SEC. 2. Before a license shall be granted to any person to keep a grocery, dram shop, or tavern in the city or county of St. Louis, such person shall get a majority of the householders in the block, if in the city, or township, if in the county, where such grocery, dram shop, or tavern is to be kept, to sign a petition to the county court to license such person for the term of twelve months.

Digitized by Google

SEC. 3. The number of householders of any block, or township in the city and county of St. Louis, to be ascertained by the assessor in his annual assessment.

This act to take effect and be in force from and after its passage.

[Approved February 15, 1843.

JURORS.

An act to provide for the payment of jurors in St. Louis county.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* It shall be the duty of the county court of St. Louis county, to make out, as soon as practicable after the passage of this act, an alphabetical list of all persons in each ward in the city of St. Louis, and in each township of said county separately, subject to serve as petit jurors, which said list shall be corrected and amended by said county court in the month of January of each succeeding year.

SEC. 2. Said list of persons, subject to serve as petit jurors, shall be kept in the office of the clerk of the county court of said county of St. Louis, and it shall be the duty of the said clerk to furnish the names of twenty-four persons, taking the same in alphabetical order from said list, to the sheriff and marshal of said county, as often as they may call for the same; taking care that the name of no person shall be furnished to the sheriff or marshal a second time, until the whole number of persons subject to serve, shall have been gone through.

SEC. 3. It shall be the duty of the sheriff, and of the marshal of the county of St. Louis, to apply to the clerk of the county court of St. Louis county, for a list of twenty-four persons, as above provided, and summon the same to serve as petit jurors accordingly, and at least one week before they shall be bound to appear, and to renew their applications and make their summons as often as occasion may require for the St. Louis circuit court, St. Louis court of common pleas, and St. Louis criminal court, respectively. A copy of list of persons so summoned, shall, in all cases, be returned by the officer making the summons, to the clerk of the court wherein the persons summoned are to serve.

SEC. 4. That all persons so selected and summoned, shall, unless sooner discharged, serve for the term of one week, or so many days as the court may require a jury for said week, and no longer; unless the trial whereon they are sitting as jurors, shall not have been determined.

SEC. 5. If there be a failure to select and summon persons in the manner hereinbefore provided, or, if any juror or jurors selected and summoned as aforesaid, shall be excused by the court, the requisite number of jurors shall be summoned under the order of the court, and in accordance with the general law: *Provided*, That no person who shall have served as a regular juror at any one term of a court, shall be summoned at said time, under the authority of this section; nor shall any person be summoned twice at any one term of court, under the authority of this section.

SEC. 6. A fee of three dollars, as a jury fee, shall be paid by the plaintiff in every suit tried in the circuit court, or court of common pleas of said county, except in suits removed to either of said courts from before justices of the peace, by appeal or otherwise, in which suits, the fee shall be one dollar; such jury fee shall be paid to the sheriff before the trial of any such suits shall proceed, and upon a failure of the plaintiff to pay such fees when the case is called for trial, a judgment of non-suit shall be entered. No submission of the case to the court for a trial of facts shall be allowed until after the payment of the jury fee; and such fee shall be taxed in the bill of costs against the unsuccessful party.

SEC. 7. The clerk of each of said courts, shall certify to the county court of the county of St. Louis, at each term, a list of all causes wherein jury fees are taxed, and the sheriff shall, at each term of the county court, render under oath, an account of all jury fees collected by them respectively, and unaccounted for, and pay the same into the county treasury.

SEC. 8. That all persons serving as jurors, under the provisions of this law, shall be entitled to the sum of one dollar per day, for each day he may serve, and five cents per mile for going to, and returning from, the county seat, which shall be payable only out of the jury fund in the county treasury.

SEC. 9. The clerk of each court, whenever a juror is entitled to fees, shall furnish to him a certificate of the amount to which he is entitled, which shall be presented to the county court, who shall draw their warrant for the same on the county treasurer, payable out of the jury fund. The clerk in giving his certificate, shall, in all cases, require the juror claiming a certificate, to swear to the justness of the amount presented by him. The said clerks shall also keep a register, of persons serving as jurors, in which they shall designate the number of days each person shall serve, and distinguish those selected from the list by the clerk of the county court, and those summoned by order of the court, under the fifth section of this act; and he shall weekly furnish the clerk of the county court with a copy of the list for the current week.

Digitized by Google

SEC. 10. Nothing in this act shall prevent either of the courts mentioned, from ordering a special jury, in cases authorized by the general law.

SEC. 11. The persons hereafter elected, or appointed, to the following named offices, in said St. Louis county, shall not withhold, as compensation for their services respectively, more of the fees received by them in the discharge of the duties of their respective offices, than the following sums, to-wit: The sheriff of said county, seven thousand dollars per annum; the clerk of the circuit court, three thousand five hundred dollars per annum; the clerk of the court of common pleas, three thousand dollars per annum; the clerk of the criminal court, two thousand five hundred dollars per annum; the clerk of the county court and recorder, three thousand dollars per annum; the marshal, two thousand five hundred dollars per annum; the law commissioner, one thousand five hundred dollars per annum; and each justice of the peace within said county, the sum of twelve hundred dollars; and each constable within said county, the sum of fifteen hundred dollars; which said sums shall be in full for all salaries and compensation appertaining to the offices aforesaid. The provisions of this section, shall not take effect until the expiration of the time in office of the present incumbents in the above named offices.

SEC. 12. It shall be the duty of each of the officers aforesaid, from and after the taking effect of the foregoing section, to keep a book, in which they shall enter every fee that may in any wise become due to them respectively, and the same shall be by them collected, if it can be done; and, at the end of each year, from and after the taking effect of the foregoing section, the said officers respectively, shall pay whatever in his office may be received over and above the sums named in the preceding section of this act, to the county treasurer, and take his receipt for the same.

SEC. 13. It shall be the duty of the county court, of St. Louis county, to appoint a supervisor of all the books, papers and accounts of all and every kind, connected with either of the offices named in the eleventh section of this act; and it is hereby made the duty of each of the officers named in said eleventh section, at any and all times when called upon by said supervisor, to exhibit to his inspection and examination, all books, papers, and accounts, connected in any way with his office, such as the said supervisor may deem it necessary to examine, to carry out the duties herein imposed upon him.

SEC. 14. If any of the officers named in the eleventh section of this act, shall, after the taking effect of the eleventh section of this act, wilfully fail or refuse to tax all lawful fees that appertain to their respective offices, and collect them, if possible, or shall wilfully fail or refuse to keep a correct account thereof, or shall embezzle any portion thereof, or shall fail or refuse to pay over any amount to the county treasurer, as herein provided, or shall refuse to exhibit to the supervisor his books, papers or accounts, as herein provided, or shall wilfully fail or neglect to do any act or thing calculated to defeat the provisions of this act, he shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, as is provided in case of any other misdemeanor, shall be removed therefrom.

SEC. 15. The supervisor aforesaid, shall, at the end of each year, from and after the taking effect of the eleventh section of this act, make a full report, in writing, to the county court of said county, of all his acts and doings, touching the duties herein imposed upon him, in which he shall state how often, and in what manner he conducted his investigations, in what condition he found the various offices examined, who of them were derelict of their duties herein imposed, and what amount was paid by each of them to the county treasurer, as required by this act; and, for the duties herein imposed on him, the said supervisor shall have five per centum on the amount received by the county treasurer, by virtue of the provisions of the eleventh section of this act, to be paid by the treasurer of the county out of this fund.

SEC. 16. If a sufficient amount may not be realized from the provisions of the foregoing sections of this act, to pay the whole amount that may accrue to jurors in said county, the residue shall be taken from the county treasury out of any money in the treasury specially collected as a jury fund.

SEC. 17. All acts or parts of acts heretofore enacted, which may be inconsistent with this act, or any part thereof, be and the same are hereby repealed.

This act to take effect from its passage.

[Approved March 27, 1845.

LANDLORDS AND TENANTS.

An act concerning landlords and tenants in the county of St. Louis.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* The act entitled "An act concerning landlords and tenants in the county of St. Louis," approved February twenty-fifth, one thousand eight hundred and forty-three, be and the same is hereby repealed.

SEC. 2. That, in all cases in which lands or tenements in the county of St. Louis, are or shall

Digitized by Google

be rented or leased, and default shall be made in the payment of the rents at the time or times agreed upon by the parties, it shall be lawful for the landlord to dispossess the tenant and all sub-tenants, and recover possession of the premises rented or leased in the manner hereinafter provided.

SEC. 3. Whenever any rent has become due and payable, and payment has been demanded by the landlord or his agent from the lessee or person occupying the premises, and payment thereof has not been made, the landlord or his agent may file an affidavit with any justice of the peace in the township in which the property is situated, or if the same shall be in the city of St. Louis, then with any justice of the peace in the ward in which the property is situated, setting forth the terms upon which the property was rented, and the amount of rent actually due to such landlord, that the same has been demanded from the lessee or person occupying the premises, and that payment has not been made, and particularly describing the property leased, and thereupon such justice shall issue a summons, directed to such lessee, and to all persons occupying the property, by name, requiring them to appear before him upon a day to be therein named, and show cause why possession of the property should not be restored to the plaintiff.

SEC. 4. The summons shall be made returnable within three days, and shall be served upon the lessee or persons occupying the property, two days before its return, the service to be by reading the same to the defendants, or delivering to them a copy.

SEC. 5. Upon the return of the summons executed, the justice shall proceed to hear the cause, and if it shall appear that the rent which is due, has been demanded from the lessee or persons occupying the property, and that payment has not been made, and if the payment of such rent with all cost, shall not be tendered before the justice on the hearing of said cause, the justice shall render judgment, that the landlord be vested to the possession of the premises so rented or leased, and that the persons served with the summons pay all costs; and shall issue an execution upon such judgment, commanding the constable to put the landlord into immediate possession of the property leased or rented, and to make the costs of the goods and chattels of the defendant, upon which execution the constable shall deliver possession of the premises to the landlord within five days from the time of receiving the said execution, and he shall proceed upon the said execution to collect the costs and return the writ as in other executions issued by a justice of the peace.

SEC. 6. When the property is held by a written lease, containing a clause declaring the lease forfeited for the non-payment of rent for a specified time, no process shall issue against the lessee or lessor occupying the premises, until after the expiration of said term.

SEC. 7. Any demand of rent by a landlord or his agent shall be deemed good within the meaning of the third section of this act, when made at any time after the said rent becomes due, according to the time of the agreement, whether by written lease or otherwise.

This act shall take effect from and after its passage.

[Approved February 27, 1845.

ST. LOUIS PROBATE COURT.

An act establishing a probate court in St. Louis county, and for other purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* That the county court of the county of St. Louis shall hereafter consist of seven justices, to be styled the justices of the county court, one of whom shall reside in Bonhomme township, one in Carondelet township, one in Central township, one in Merrimack township, one in Florisant township, and two in St. Louis township, in the county of St. Louis, any four of whom shall be a quorum to do business, but a smaller number may adjourn from day to day, and require the attendance of absent members. They shall be elected by the qualified electors of the county of St. Louis, at such time and manner as is now provided for the election of justices of the county court. The justices of the county court of the county of St. Louis shall hold their offices for the term of four years, and until their successors are duly elected and qualified. The election shall be certified, ties determined, and vacancies filled, in the same manner as is provided by law, in regard to justices of the county court.

SEC. 2. The county court of the county of St. Louis shall have and possess the following powers: *First*, To have the control and management of the property, real and personal, belonging to the county; *Second*, 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; *Third*, To sell, and cause to be conveyed, any real estate, goods and chattels, belonging to the county, appropriating the proceeds of such sale to the use of the same; *Fourth*, To audit and settle all demands against the county.

SEC. 3. All other powers vested in the county court of the county of St. Louis, by and under

Digitized by Google

the act entitled "An act to establish courts of record, and prescribe their powers and duties," shall be, and the same are hereby vested in the probate court hereby established.

SEC. 4. The justices of the county court of the county of St. Louis shall be allowed, as compensation for their services as such, two dollars per day, each, for each day's service, to be paid out of the county treasury.

SEC. 5. All acts, and parts of acts, not repugnant to, nor inconsistent with, the provisions of this act, shall apply to the organization, jurisdiction, and proceedings of the county court of the county of St. Louis, as hereby organized.

SEC. 6. There shall be a probate court in the county of St. Louis, to be held at the court house in said county, at such times as shall be prescribed by law; the same shall be composed of one judge, who shall be styled the judge of probate of the county of St. Louis. He shall be elected by the qualified electors of the county of St. Louis, and shall hold his office for the term of six years, and until his successor is duly elected and qualified, unless sooner removed from office. The election shall be certified, by the judges and clerks of election, to the clerk of the county court of the county of St. Louis, and, in case of a tie between two or more persons, the same shall be determined by the county court. The clerk of the county court shall certify to the governor the name of the person elected, who shall thereupon commission him as judge of the probate court of the county of St. Louis, for the term for which he may have been elected. When a vacancy shall exist in the office of judge of probate of the county of St. Louis, the county court, or a majority of the judges thereof in vacation, may order an election to be advertised, and held, not more than sixty days thereafter, to elect a judge to fill such vacancy, until the expiration of the term for which the judge was formerly elected, and until his successor shall be elected and qualified.

SEC. 7. The judge of probate shall be at least thirty years of age, a citizen of the United States, and shall have resided in the county of St. Louis five years previous to his election or appointment. He shall, before entering upon the duties of his office, take an oath, like as required to be taken by the judges of the circuit courts, and may be removed from office in the same manner, and for the same causes, as any circuit attorney. (*a*)

SEC. 8. The probate court of the county of St. Louis shall have and possess all the powers vested in the county court of the county of St. Louis, by the act entitled "An act to establish courts of record, and prescribe their powers and duties," which are not hereby reserved to, and retained in, the county court of the county of St. Louis.

SEC. 9. That all laws in force and applicable to the county court of the county of St. Louis, or the clerk thereof, exercising the jurisdiction hereby vested in the probate court established by this act, shall be taken and considered as applicable to the said probate court, unless otherwise herein provided. All acts, and parts of acts, not repugnant to, nor inconsistent with, the provisions of this act, so far as the same confer jurisdiction, and regulate proceedings in matters hereby transferred to the probate court of the county of St. Louis, shall apply to the jurisdiction and proceedings of the probate court hereby established.

SEC. 10. An election of judge of probate shall be held on the first Monday in November, eighteen hundred and forty-six, and each subsequent election shall be held on the same day, at the end of every period of six years thereafter. The provisions of an act entitled "An act regulating elections," shall be applicable to the election of judges of probate.

SEC. 11. The probate court hereby established, shall procure and keep a seal, with such emblems and devices as the judge thereof shall think proper. The court of probate shall be a court of record, and shall keep just and faithful records of its proceedings.

SEC. 12. The probate court, and the judge thereof, shall have power to issue all writs, which may be necessary in the exercise of its jurisdiction, according to the principles and usages of law. The judge of probate shall not 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; and such cause or proceeding shall be certified with the original papers, to the circuit court of the county of St. Louis, which shall proceed thereon to final judgment and determination, as the probate court might have done.

SEC. 13. The probate court shall be held on the first Mondays of March, June, September and December. The probate court may alter the time of holding its stated terms, giving notice thereof in such manner as the judge shall deem expedient. The court of probate may hold adjourned terms.

SEC. 14. The judge of the court of probate may, in vacation, do all things in relation to the granting letters testamentary and of administration, which may be done by the clerks of the several county courts of this state. (*b*)

SEC. 15. If the judge of probate shall knowingly and wilfully do any act or thing contrary to the duties of his office, as prescribed by law, or shall knowingly and wilfully omit or refuse to

---

(*a*) Provision for the fees of the judge of Probate is made in the act regulating fees.

(*b*) This section is added because nothing is found in the law conferring such a power on the judge of probate. It was supposed it would be found convenient in St. Louis, as such a power exists in all the county court clerks in the state.

Digitized by Google

perform any act, thing, service or duty, required of him by the laws of this state, he shall be deemed guilty of misdemeanor, and, on conviction thereof, shall be removed from office.

SEC. 16. The judge of probate shall keep his office not more than two hundred yards from the court house, and shall there keep the records, papers, seals and property belonging to his office, and transact his official business, such as may be transacted in vacation. The judge of probate shall be allowed all necessary expenses for office rent, suitable books, stationery, furniture, and other necessaries for his office, to be audited by the county court, and paid by the county.

[Approved March 15, 1845.

SCHOOL LANDS.

An act concerning the school lands in St. Louis county.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* The county court of the county of St. Louis, are hereby authorized in all cases in which they may deem it expedient so to do, to rescind contracts for school lands of said county with purchasers or holders thereof, and also to reduce the rate of interest now paid by the purchasers of school lands of said county, from ten per cent. per annum, to any rate not lower than six per cent. per annum: *Provided*, That in all such cases presented for the consideration of said court, it shall be made satisfactorily to appear to the court, that two-thirds of the free white householders in each congressional township to which said lands purchased may have belonged, are willing to such action of the court.

This act to take effect from its passage.

[Approved March 10, 1845.

COMMISSIONER TO SUPERINTEND THE PRINTING OF THE REVISED STATUTES.

An act to provide for the election and compensation of a commissioner to superintend the printing of the revised laws.

SECTION 1. *Be it enacted by the General Assembly of the State of Missouri, as follows:* There shall be appointed by joint vote of the two houses of the general assembly, at their present session, some competent person as a commissioner to direct and superintend the publication of the revised laws of this State.

SEC. 2. The said commissioner shall be entitled to receive from the state, for his services, the sum of three dollars per day, for each day he may be engaged in performing the duties required of him by law; to be audited and paid as other demands against the state treasury, out of any money in said treasury not otherwise appropriated.

This act to take effect from and after its passage.

[Approved March 26, 1845.

Digitized by Google

INDEX.

ABANDON, exposing child with intent to 352
ABATEMENT, plea in nature of, in attachment suits 139, 150
not occasioned by lapse of term of court, &c. 337
of action for dower, not to take place by death of parties 438
not occasioned under habeas corpus act by death of parties 570
not to take place from failure of justice to hold court 645
not to take place from vacancy in office 645
by death of plaintiff, not to take place, when 650
pleas in, to be on oath 810, 872
when to be determined 811
of suit, not to take place on death of one of several plaintiffs or defendants 822, 823
not to take place on death of sole plaintiff or defendant 823
not to take place on death of executor or administrator 823, 824
not to follow death of officer 824
of suit in chancery, not to take place by death of complainant or defendant 847, 848
ABBREVIATIONS, common in English language, may be used 334
A. B. C. TABLES, setting up, &c. 401
ABDUCTION, of females 349
of child under twelve years of age ... 352
of slaves or servants 351
ABETTING, forgery, counterfeiting, &c., and offences specified in Art. IV of Chapter 47 376
ABORTION, administering medicines or using instruments to procure 351
ABSCONDING DEBTORS, attachment may be issued against 134, 147
operation of statute of limitations against 720
ABSENT DEBTORS, attach'nt against, 134, 147
ABSTAINING, from prosecution of offences 380
ABSTRACT, of demands against estates to be kept 94
of executions 477
of judgments and decrees 625
of mechanics' liens to be kept 734
of licenses to free negroes and mulattoes 756
ABSTRACT, of conveyances to be kept by recorder 917
of school lands to be forwarded to register of lands 989
of commissions and appointments to be kept by secretary of state 996
of acts of congress on authentication of public acts 1096
on the subject of naturalization of aliens 1093
ACADEMY, burning of 355
ACCEPTANCE, of bill of exchange 172
ACCESSORIES, before and after the fact. 409
ACCOUNT. CHAPTER 1. ..... 56 to 57
Action of, may be maintained by and against executors and administrators, in what cases 56
by joint tenants, &c 55
Cause, referred to referees, when and in what manner 56
Duty and power of referees 56
Joint Tenants, tenants in common, &c. when to account 55
may maintain action of, against whom 56
Judgment, on report of referees, when rendered 56, 57
Proceedings against parties refusing to account 56
Process and manner of service in action of 56
Referees, cause referred to, when and how 56
accounts to be exhibited to 56
power and duty of 56
to notify parties and report to the court 56
may imprison parties refusing to be sworn 56
judgment on report of 56, 57
ACCOUNTS, in action of, to be exhibited to referees 56
duty of referees in relation to 56
proceedings against parties refusing to exhibit 56
of executors or administrators, to be rendered, when, and affidavit in relation to 64
how rendered on death or resignation of executor or administrator, or revocation of letters 69, 70
settlement of, how enforced 70
in relation to public sales, how and by whom certified 78

Digitized by Google

ACCOUNTS, of executors, administrators, &c., how affected by establishment of new county, or alteration of county lines 298, 299
for interest due estate, how to be rendered 80
by auctioneers, how and when to be rendered 165
settlement of, by surviving member of copartnership, how enforced 71
of commissioner of county seat of justice, how to be kept, &c 296, 297
of collectors and clerks, &c., for money due county and state 308, 309
of guardians and curators to be settled annually 551, 552
of guardians of insane persons 597
of public printer, how allowed 911
of secretary of state, how kept 997
of auditor, how kept 1059
of collectors, to be exhibited to auditor 1061
of treasurer of state 1064
ACCOUNTANT GENERAL OF THE STATE, auditor declared to be 1059
ACCUSATION of criminal offence, how to be made 44
ACCUSED, right of, in criminal cases .. 44
ACKNOWLEDGMENT of deeds, conveyances, &c., regulated, from 222 to 229
of sheriff's deed 485
of satisfaction of judgment and decree, when and how, and by whom entered, and effect thereof 624
of satisfaction of a mortgage 752
of marriage contracts 728
of town plats 1056
forging certificate of 367, 369
false personation of another in making 375
ACQUITTANCE, by guardian or curator valid 552
by guardian of insane person 595
ACTIONS, of account regulated ..... 55 to 57
against executors and administrators, and their securities, regulated 70
by executors or administrators, what prosecuted and defended 76
by and against executors or administrators 76, 77
against boats and vessels regulated ..... 181 to 189
on contracts, by and against counties, regulated 190
against delinquent purchasers of lots, at the county seat of justice, regulated 295
how affected by establishment of new county, or alteration of county lines 297, 298
ex delicto, damages claimed in, to be determine jurisdiction 243
ex contractu, costs in, how adjudged .. 243
against persons enticing away or harboring apprentices 119
by master against apprentice 120
on bond of assignee for benefit of creditors 129
ACTIONS, against corporations, how instituted 237
costs in, civil, how regulated ... 240 to 247
by and against counties 290
right of, not merged in felony 413
of person injured, against the master or owner of a slave 414
of detinue ..... 423 to 424
of ejectment ..... 439 to 445
of forcible entry and detainer ... 511 to 525
for freedom ..... 531 to 534
for money lost at gaming 539, 540
by and against insane persons, 595, 597, 598
what cognizable before justices of the peace ..... 634 to 636
by landlords against tenants 687, 688
for use and occupation 688
on mechanics' liens 735
limitation of ..... 714 to 722
to foreclose mortgages 749, 750
for partition 766, 767
on penal bonds ..... 781 to 785
by petition in debt ..... 800 to 803
civil, at law, regulated ..... 804 to 835
of replevin ..... 921 to 923
for certain trespasses 1068, 1069
ACTS, private, evidence of 467
of sister states, evidence of 467
authentication of, when governor disapproves, or does not return 694
repealing, how construed 694, 695
authentication of, law of congress in relation to 1093
ADAIR COUNTY, limits defined 253
ADDRESS. CHAPTER 2. ..... 57 to 60
when to be voted and transmitted to the governor 60
duty of governor in relation to 60
entry of removal in pursuance of, to be made 60
Charges against judges and other officers, how, by whom and when preferred 57
to be entered on the journals 58
notice of, to be issued to accused 58
notice of, when, how and by whom served 58
accused shall respond to, in writing. 59
accused failing to respond to, proceedings to be ex parte 59
each house to determine on, separately 59
proceedings on, as in joint resolutions 58
may be withdrawn, when 59
accused found guilty of, address to be voted 60
Commission, vacated and revoked, when 60
Depositions, when to be taken 58
how to be taken 59
Managers, to be appointed 58
Removal, entry of, when to be made ... 60
Replication, to response of accused 59
Trial, two houses to assemble at, in joint meeting 59
proceedings on, regulated 59
questions arising on, how to be determined 59
may be postponed, when 59
Witnesses, how obtained 58
ADDRESS, judges may be removed by .. 59

Digitized by Google

ADJUTANT GENERAL, to be appointed by governor 41
ADMEASUREMENT OF DOWER. See title *Dower*. Proceedings to obtain 433, 434, 435, 436
ADMINISTERING poison 350
medicine to procure abortion 351
substance to woman to obtain carnal knowledge of her 348
ADMINISTRATION. CHAPTER 3. 61 to 107
Abstract of judgments and demands, how kept 94
Account, how made on death, resignation, or surrender of letters 69
of sales, to be made and filed 78, 79
for interest, when to be made by executor or administrator 80
of administration, to be filed with petition for sale of real estate 85, 86
copy of, exhibited against estate, to be served 91
Accounts to be rendered on application for sale of land 86
to be entered and kept by clerk 96
annual settlement of 97
not made, citation to be issued 97
alias citation and publication 97
neglecting to settle, proceedings 97
upon final settlement of, proceedings 99
on settlement of, what claims allowed 98
what charges and expenses allowed 97
final settlement of, what debts charged in inventory allowed 99
Actions, by and against executors and administrators 76
what, shall not be brought by executor or administrator 77
pending at decease, which survive, how considered 91
commenced afterwards, how considered 91
Administrator, failing to settle after citation, proceedings 70
foreign, when to receive estate 104
Affidavits, by applicant for letters 64
by administrator *de bonis non* 64
by administrator with will annexed 64
on complaint of waste, &c 68
on application for new bond 68
annexed to and filed with inventory, 73, 74
on complaint of embezzlement 74
by appraisers of personalty 75
by clerk of sales 78
to petition for sale of real estate 85, 86
by appraisers of real estate 87
to petition for specific performance 88
to demands against estates, by whom made 92
may be made by agent 92, 93
by executor or administrator seeking to set aside allowance of demand made during his absence 95
on appeals, to be made 106, 107
Agent, to be appointed by executor or administrator during his absence 94, 95
appointment to be in writing and filed 94
notice to agent of demands shall be notice to executor or administrator 95

ADMINISTRATION.

Allowance to widow 77
of expenses of repairs of estate 79
of demands against estates ..... 90 to 96
to executor or administrator as compensation 97, 104
for support of minor children 101
Appeal, in what cases allowed 106
when and how to be taken 106, 107
bond to be filed 107
how far a *supersedeas* 107
transcript to be sent to circuit court 107
proceedings in circuit court upon 107
costs upon, how adjudged 242, 243
Apportionment of assets, how made 98
to undecided claims to be reserved 98
of money required to be refunded 101
Appraisement, of personalty, how made 75
to be signed by appraisers 75
to be filed, when and where 75
additional, when to be made 75
made evidence 75
filed in vacation, to be examined by court 79
of personalty bound by lien of execution, to be separate 80
of personalty and slaves not sold or hired out 81
of real estate, when, and how made 87
certificate to be delivered 87
of personalty for distribution 101
Appraisers, of personalty, appointment, and duties 75
qualification and compensation 75
of real estate, qualification, &c 87
Assets to be collected by ex'r or adm'r 76
embezzled or concealed, how recovered 74
debt due by ex'r or adm'r shall be 77
interest collected shall be 80
residue from sale of real estate shall be 84
apportionment of, how made 98
Assignment of bonds and notes by executor or administrator 78
Attachment against persons refusing to deliver property of estate 74
to compel settlement, when 97
orders of court may be enforced by 105
Attorney at Law not to be security in bond under this act 65
Bonds, to be given by ex'r and adm'r 64, 65
condition of 66
by ex'rs and adm'rs with will annexed 65
by administrators *de bonis non* 65
by administrators *pendente lite* 65
who may and may not be security in 65
to be recorded and filed 66
taken in vacation, proceedings 66
by administrator during minority or absence of executor 66
new, when required 68
separate, when taken 72
belonging to estate may be assigned 78
additional security in, may be required 68
limitation to actions on 70
may be sued on for waste 105
on appeals, to be filed 107

Digitized by Google

ADMINISTRATION.
Books, of deceased, to be taken in possession ... 73
embezzlement or concealment of, how recovered ... 74, 75
Chattels, of deceased to be taken in possession ... 73
embezzlement or concealment of, how recovered ... 74, 75
Children, appropriation for support of ... 101
Citation, to parties entitled to administer ... 63
costs of, to be paid by whom ... 70
to compel settlement, when to issue ... 97
costs of, by whom paid ... 70
to surviving partner, when to issue ... 72
to executor or administrator to comply with the law ... 79
alias to issue and be published ... 97
revocation of letters after, when ... 97
Clerk, at sales, to be appointed ... 78
to keep account of sales ... 78
to make affidavit to account ... 78
Clerk of County Court, to grant letters testamentary, &c., in vacation ... 62, 67
to present same to court ... 62
not to be executor or administrator ... 63
nor security in administration bond ... 65
to issue citation to person entitled to administer ... 63
to take bond of administrator in vacation ... 64, 65
to see that securities are solvent ... 65
to record bonds given by executors or administrators ... 65
and letters testamentary and of administration ... 65, 66
not to deliver unrecorded letters, penalty ... 66
may take separate bond where two or more executors ... 72
to make deed to administrator who purchases land at sale of real estate ... 88
to keep abstract of judgments filed, and demands established against estates ... 94
to record settlements of executors or administrators ... 96
to keep docket of executors and administrators, and the terms when they settle ... 97
to put up list in his office ... 97
to issue execution against executor or administrator ... 98
to send transcript to circuit court, on appeal ... 107
Co-executors, when not to act ... 64
Collection of debts, speedy, may be ordered ... 80
Commissioner, to audit and settle demands against estates, when appointed ... 95
his powers, duties, and compensation ... 95
objections to his report, how decided ... 96
Compensation, of witnesses to assist executor or administrator ... 74
of appraisers ... 75
of executor or administrator ... 97, 104

ADMINISTRATION.
Complaint, against executor or administrator, how made ... 68
against securities ... 68
Concealment of effects, complaint of, and proceedings ... 74, 75
Continuance may be granted, when ... 82
Contracts for purchase of land, how disposed of ... 83
may be cancelled, and land relinquished ... 83
may be completed ... 83
for conveyance of land, how enforced ... 88
with executor or administrator, how enforced ... 88, 89
Conveyance of real estate, under will, by whom ... 83
contract for, how enforced ... 88, 89
Co-partnership Property, to be inventoried, &c., by executor or administrator ... 70
how disposed of ... 70
when to pass to executor or administrator ... 71
to be applied to pay partnership debts ... 71
if taken by executor or administrator, additional bond to be given ... 71
Costs, of citation to settle, by whom paid ... 70
of allowing demands against estates ... 94
of suit in circuit court, by whom paid ... 94
in what case to be paid by creditor ... 96
of process against delinquent, by whom paid ... 97
Credit, on sales of personalty ... 77, 78
what shall be given at final settlement ... 99
Creditors, notice to, to exhibit demands ... 91
may apply for sale of real estate ... 86
not prejudiced by failure to present demands before commissioner ... 90
not to be prejudiced by appropriation for support of children ... 101
bonds and notes may be assigned to, in payment of debts ... 78
demands of, against estates, how classed ... 90, 91
regulations touching establishment of ... 90, 96
proceedings, when executors or administrators claim as ... 94
demands of, against estates, how liquidated after settlement ... 98, 100, 101
of estate of non-resident, regulations touching ... 103, 104
may suggest a *devastavit* against executors or administrators, when ... 104
may bring action of waste, or suit on bond, when and how ... 105
proceeds of execution founded on such action, or suit, how distributed among ... 106
De bonis non, affidavit of applicant for letters, nature of ... 64
bond of administrator, nature of, condition of ... 65
letters when granted ... 69
Debts and Demands, due estate, to be collected ... 76

Digitized by Google

ADMINISTRATION.
Debts, due by administrator, assets 77
by executor, not discharged by appointment 77
against estates, classed 90, 91
limitation against 91
against estates, how to be exhibited and established 91
to be listed by executor or administrator 92
not allowed without affidavit 92
notice of, when and by whom served 93
notice of, may be waived by executor or administrator 93
to be heard and determined in a summary way 93
when tried with and without jury 93
not due at trial, how settled 93, 94
due to executor or administrator, how established 94
allowed, estate to pay costs 94
court to determine class 94
allowance to be endorsed 94
how and in what order to be paid 94
notice of, may be given to agent of executor or administrator during his absence 95
allowance of, in such case, how set aside 95
to be presented before commissioner 96
to be credited to executor or administrator on final settlement 99
Debtor, appointed executor, debt not discharged 77
Deeds, to be made by executor or administrator of land; by clerk, if executor or administrator be purchaser 88
Delinquent executor or administrator, proceedings against 70
Depositions, in support of demands may be taken 93
Deputy Clerk of county court not to be executor or administrator 63
nor security in bond 65
Devastavit, may be suggested, when 104
proceedings thereupon 104
action for, when, and effect of judgment 105
proceeds of judgment, how applied 105
bond may be sued on, for 105
letters may be revoked, for 67, 68
Discharges, may be given by executor or administrator; when to be void 80
Distributee, becoming purchaser, his receipt good 101
not appearing, money to be lent out 102
not appearing within one year, money to be paid into state treasury 102
appearing afterwards, how to get his money 102
not claiming slaves, &c., within one year, the same to be sold 102
disposition of the proceeds 103
Distribution of personalty may be ordered 80
not compellable in less than one year unless legacies perishable, &c 100

ADMINISTRATION.
Distribution, when not to be made within three years 100
refunding bond, when required 100
upon final settlement, how made 100
in kind, not practicable, proceedings 100
sale for purpose of 100
claims of distributees to be adjusted 101
distributee not applying, to be notified 100
distributee purchasing property, his receipt good 101
how made when real estate sold and personalty reserved 101
rights of widow in such case 101
apportionment of money required to be refunded 101
how refunding compelled 101
distributee not appearing, money to be lent out 102
not appearing within one year, money to be paid into state treasury 102
receipts for to be taken and credited to executor or administrator 102
of the estate of non-residents regulated 103, 104
Docket, to be kept by clerk 97
Effects, concealed or embezzled, how recovered 74
not to be opened or examined without witnesses 74
Embezzlement, complaint of, proceedings 74
Equitable interest, in land, when sold 83
Equity of redemption, may be sold 84
Estates, assistance in taking care of, may be procured 79
when not to be sold 78
when to be delivered to widow 101, 102
of non-resident decedent, how disposed of 103, 104
Evidence, of debt and title, to be taken in possession 73
embezzlement or concealment of, how recovered 74, 75
letters testamentary and of administration to be 66
inventories and appraisements, how far 75
sale bill of personal property 79
in support of demands against estates, regulated 92, 93
deed by executor or administrator, shall be 88
Execution, on apportionment to creditors 98
returned unsatisfied, *scire facias* to issue 98
against securities 98
upon judgment for waste 105
Executor, failing to settle, proceedings foreign, when to receive estate 70, 104
Failure by executor or administrator to settle, proceedings 70
Femme covert not to be executrix or administratrix 63
Femme sole, marrying, letters revoked 67
Final settlement, when and how made 99

Digitized by Google

ADMINISTRATION.
Foreign executor or administrator, when to receive estate ... 104
Goods, of estate, to be taken in possession ... 73
embezzlement or concealment of ... 74
Hiring, of slaves, when to be made ... 79
when not ... 81
when and how, may be suspended in vacation ... 81
Husband of executrix or administratrix, no authority ... 67
Imprisonment, orders may be enforced by ... 105
Incapacity, of certain persons to act as executor or administrator ... 63
Infant, appropriation for support of ... 101
Insane person, not to be executor or administrator ... 63
Interest, on debts to estate, assets ... 80
when to be paid by executor or administrator ... 80
Inventories, to be made and returned ... 73
additional to be filed ... 74
witnesses to assist in making ... 74
how far evidence ... 75
to be examined by court ... 79
separate, of personalty bound by lien of execution ... 80
of personalty and slaves not sold or hired out ... 81
to be filed on application for sale of land ... 85, 86
of deceased member of co-partnership, how made ... 70
affidavit annexed to, nature of ... 73, 74
of demands against estate, how kept and returned by executor or administrator ... 92
to be filed, when and where ... 74
Judgment, lien of ... 84, 85
junior, sale under, property may be re-sold to satisfy senior ... 85
to be filed in the county court and classed ... 92, 94
against securities, when ... 98
against distributees and legatees, when ... 101
Judgments, if lien of several be even, proceeds how applied ... 85
Judge of probate, not to be executor or administrator ... 63
nor security in bond ... 65
Junior judgment, purchaser of land under, to be notified ... 85
may pay amount of prior judgments, 85
failing to do so, land to be sold ... 85
Jurisdiction, of county court in allowing demands against estates ... 92
of probate court of St. Louis county in matters of administration ... 107
Justice of county court, not to be executor or administrator ... 63
nor security in bond ... 65
Land, lease of, how authorized ... 79
repairs on, when to be made ... 79
power to sell, by whom executed ... 83
contracts for, may be completed ... 83

ADMINISTRATION.
Land, may be relinquished ... 83
school, purchased, may be relinquished ... 83
mortgaged, may be redeemed ... 83, 84
sold for payment of debts, when, how 84
if bound by lien of judgment, fact to be stated ... 84
if bound by lien of several judgments, dates, amount, &c., to be stated ... 84
sold under junior judgment, fact to be stated ... 85
proceedings thereupon ... 85
sold under junior judgment, when to be re-sold ... 85
proceeds of sale, how applied ... 85
to be appraised before sale ... 87
private sale of, not to be made for less than three-fourths of appraised value ... 87
contracts for conveyance, how enforced ... 88
deed for, by executor or administrator ... 88
of non-resident decedent, how disposed of ... 103
Lease of real estate, when made ... 79
to be for not more than three years ... 79
Legacies, when paid within a year ... 100
on payment of, refunding bond to be given ... 100
payment of, how made ... 100
specific, first satisfied ... 100
when property to be sold for payment of ... 101
specific not required to be refunded 101
Legatee, not appearing, money to be loaned out ... 102
not appearing within one year, money to be paid into state treasury ... 102
appearing afterwards, how to get his money ... 102
not claiming slaves, &c., within one year, the same to be sold ... 102
disposition of proceeds of sale ... 102
Letters, by whom and where granted ... 62, 63
granted in vacation, to be presented to court ... 62
who incapable of taking ... 63
who entitled to, and in what order ... 63
testamentary, to whom granted ... 63, 64
with the will annexed and *pendente lite* ... 63, 64
during minority or absence of executor 64
to be recorded and certified ... 65, 66
delivered before recorded, penalty ... 66
copies of, evidence ... 66
testamentary, form of ... 66
of administration, form of ... 66, 67
of administration, revoked by probate of will ... 67
testamentary, revoked if will is set aside ... 67
de bonis non, when granted ... 64
revoked by marriage of ex'x or adm'x 67
revocation of, for what causes ... 67, 68
not to be granted to a non-resident ... 72
surrender of, when, how ... 69

Digitized by Google

ADMINISTRATION.
Letters, notice of grant of 75, 76
may be revoked for failing to settle.. 97
Limitation, of actions against securities on bond 70
of demands against estates 91
to proceedings on part of infants or married women for setting aside order of court for specific execution of certain contracts 88
Lists, to be filed on application for sale of land 85, 86
of demands against estates to be kept 92
of settlements to be made, and put up 97
Maintenance, of widow and children, allowance for, when 101
Majority, of executors or administrators must join, when 80
Marriage, of femme sole executrix or administratrix, effect 67
Married Woman, cannot be executrix or administratrix 63
how long allowed after disability for exhibiting demands against estates 91
limitation to proceedings by, to set aside order for the specific performance of contract 88
Minor, shall not be executor or adm'r.. 63
appropriation for support of 101
Money, concealed or embezzled, how recovered 74, 75
to be collected by administrator 76
loaned by executor or administrator, interest to be accounted for 80
statement of, when to be made by executor or administrator 80
of distributee or legatee not appearing, how disposed of 102
of estate, how apportioned among creditors 98
when to be paid into state treasury.. 102
how recovered from state treasury... 102
to be opened and examined in presence of witnesses 74
if opened and examined without witnesses, penalty for 74
Mortgage, redemption of, when 83, 84
Non-resident, not to be ex'r or adm'r.... 72
legatee or distributee's share to be loaned out 102
decedent's property, how disposed of 103, 104
Notes, may be assigned to pay debts... 78
Notice, of grant of letters 75, 76
to creditors 75, 76
when there are no known heirs 76
of sales of personal estate 78
of intention to resign or surrender letters 69
to purchaser of land under junior judgment 85
to plaintiff in such judgment 85
how given 85
of application by creditor for sale of real estate 86
of application by executor or administrator for order to sell real estate 86
how published 86

ADMINISTRATION.
Notice, of sale of real estate to be published; publication in newspapers may be dispensed with, when 87
of petition for specific performance 88
of demands against estates, how given 93
when and by whom served 93
may be waived by ex'r or adm'r 93
may be given to agent of executor or administrator, when 95
executor or administrator absent, and no agent, to be filed 95
to distributees, when and how given 100
to refund, when and how given 101
Oath, to be taken by ex'r and adm'r... 64
of money on hand 80
to be taken by applicant for letters.. 64
of persons offered as securities 65
by claimant of demand against estates, or agent 92, 93
in such case not required of executor or administrator 93
when may be administered by commissioner 95
Order, where made 63
for speedy collection of debts 80
for suspension of hiring or sale 81
for money to be lent 80
for sale of real estate, when made... 86
for specific performance, when made 88
of allowance of demand to be entered 92
of payment, when made 98
of sale for purpose of distribution... 100
Papers, to be taken in possession 73
not to be opened without witness 74
concealed or embezzled, how recovered 74, 75
Payment, of demands when ordered... 98
failure to make, proceedings 98
Personal Estate, inventory and appraisement of 73
perishable to be sold 77, 78
to be sold to pay debts 78
to be sold when no known heirs 78
sales of, public and private 78
bound by lien of execution to be inventoried 80
proceeds of, so bound, how applied.. 80, 81
when not to be sold 78
when to be kept with widow or family 77
security to be given for 78
may be reserved, and real estate sold, when 86, 87
may be sold for purpose of distribution 100
reserved from sale, how distributed.. 101
not claimed by legatee or distributee, to be sold 102
of non-resident decedent, how disposed of 103, 104
Petition, for sale of real estate 84
for specific performance of contract 88, 89
for same, by executor or administrator 89
Power, by will to sell land, executed by whom 83
of county court and clerk thereof, to grant letters 72
in regard to ex'rs and adm'rs.... 65

Digitized by Google

ADMINISTRATION.
Power, of county court over executors and administrators 68, 70, 72, 80, 86, 97
of county court over surviving member of co-partnership 71
to order sale of personal estate, 78, 89, 81, 82, 86, 100, 102
in relation to real estate, 83, 84, 85, 86, 87, 88, 89
to order specific performance of contract 88, 89
in allowing demands against estates 92, 93
to make appropriations for support of widow and minor children 101
to order estate to be delivered to widow, when 101, 102
in case of disobedience of its orders 105, 106
of probate court of St. Louis county, in probate business 107
of commissioner to audit and settle demands 96
Probate Court of St. Louis, to possess same powers as county courts under this act 107
Purchaser of real estate under junior judgment to be notified 85
may pay senior judgment 85
Real Estate, in course of administration, to be accounted for, and delivered up, when, and to whom 69, 70
ex'r or adm'r to take charge of, and make inventory of, when 73
to be leased by executor or administrator, for what term 79
repairs on, when ordered by court 79
sale of, under a will, by whom executed 83
contracts for purchase of, how carried into effect after decease of contractor 83
interest of testator or intestate in, when and how relinquished 83, 84
when to be sold 83
mortgage on, when and how redeemed 83, 84
equity of redemption of, when ordered to be sold 84
petition for sale of, to pay debts, when and by whom filed 84
bound by lien of a judgment, fact to be stated in petition for sale of 84
proceeds of sale of, how applied 84
bound by lien of several judgments, nature of petition for sale of 84
proceeds of sale of, how applied 84, 85
purchase of, under junior judgment, proceedings 85
privilege of purchaser of, under junior judgment, what and when exercised 85
to be sold free from incumbrance, on failure of purchaser under junior judgment, to exercise privilege 85
petition for sale of, by what accompanied 85, 86
sold, and personal estate reserved, when and how 86, 87

ADMINISTRATION.
Real Estate, order of court for sale of, when made 86
appraised before sale, how 87
notice of sale of, what, and how published 87
sale of, where made, and how conducted 87
private sale of, how restricted 87
purchase of, by executor or administrator, how restricted 87
report of sale of, how made, and how approved 87, 88
contracts of testator or intestate for conveyance of, when and how enforced 88
when sold by order of court, on settlement 89, 90
when sold to pay debts, distribution how made 101
of non-resident, administration on, regulated 103
Receipts, may be given by executor or administrator 80
void, when 80
by widow, for what 77
Refunding bond, when to be given 100
how enforced 101
Redemption of mortg'ed property, when, 83, 84
equity of, may be sold 84
Relinquishment, of lands purchased, when, 83
by whom made 84
Remedy, against persons for embezzling or concealing effects 74
Renunciation, what deemed 63
Repairs, of real estate, when to be made 79
Resignation, of letters, when and how made 69
expenses of, by whom paid 69
Revocation, of letters 67 to 70, 72, 79
Sales, of perishable personalty 77, 78
of other personalty, to pay debts 78
of personalty, when not to be made 78
when there are no known heirs 78
may be ordered by court 80
in vacation, may be suspended 81
of real estate under will, by whom 83
of equitable interest in, on purchase of equity of redemption 83
for payment of debts 84
proceeds of, first applied to judgment lien 84
proceeds of, application where several judgment liens 84
public, of real estate, when, how conducted 87
private, not to be less than three-fourths of appraised value 87
report of, to be made 87
void, if not approved 87
valid, if approved 88
new, may be ordered 87, 88
Sale bill, to be made by clerk of sale and filed 78
filed in vacation, to be examined by court 79
of property bound by lien of execution, separate 80

Digitized by Google

ADMINISTRATION.
Scire facias, against securities 98
how directed and served 98
Securities, who may and who may not be must be solvent 65
insufficient, what proceedings 65
proceedings by, against co-security or principal 68
discharged, when and to what extent 68
limitation of action against 70
Sequestration, orders may be enforced by 105, 106
Settlement, where made 63
to be entered and kept by clerk 96
to be made annually by executor or administrator 97
not made, citation to issue 97
alias citation and publication 97
failure to make, letters may be revoked 97
of accounts, how made 97
what charges and expenses allowed 97
what disbursements allowed 97
disposition of balance on hand 98
when made, proceedings till debts are paid or assets exhausted 98
final, notice of, how published 99
how conducted 99
debts charged in inventory, what to be credited 99
upon final, legacies and shares to be paid 100
Sheriff, not to be security in bond 65
Slaves, when to be hired out 79
when not to be 81
when to remain with widow or family 81
hiring of, in vacation, may be suspended 81
may be sold for purpose of distribution 100
not claimed by legatee or distributee to be sold 102
Specific execution of contract, where and how obtained 88
how enforced by executor or administrator 88
nature of petition for, and affidavit 88
order for, when made by court 88
petition for may be brought in circuit court 89
proceedings for, may be removed from county to circuit court, when 89
proceedings for, in circuit court, how conducted 89
proceedings by executor or administrator for 89
appeals on orders for, allowed 106
Surrender of letters, when ordered, and how made 69
Survivor among executors or administrators, his duties 69, 70
Surviving Partner, when to manage partnership effects 70
bond to be given by 70, 71
may be required to account 71
when his name may be used 71
shall exhibit partnership property 71
and surrender same, when 71, 72

ADMINISTRATION.
Surviving Partner, refusing to surrender, penalty 72
Testimony, as to solvency of securities 65
on application for sale of real estate 86
Waste, may be suggested 104
proceedings thereupon 104
action for, and effect of judgment 105
execution upon judgment 105
proceeds of judgment, how applied 105
bond of executor or administrator may be sued on, for 105
or mismanagement of estate, letters may be revoked 68
costs, on application for inquiry into 104
if wilful and fraudulent, applicant to recover double 105
Widow, allowance to, in addition to dower 77
may take other property not exceeding $200 77
when to apply for same 77
to receipt for same 77
such property not liable for husband's debts 77
property not taken, proceeds to be paid to 77
not deprived of her portion by sections 54 and 55, of Article II 81
when she may retain personalty 81
not required to give refunding bond, when 100
rights of, in distribution 101
when estate to be delivered to 102
Will produced, letters of administration revoked 67
set aside, letters testamentary revoked 67
sales of real estate under, by whom made 83
Witnesses, two appointed to assist in making inventory, &c 74
their compensation 74
when executor or administrator competent 76
ADMINISTRATORS, by what authority, and when appointed 62
who shall not be 63
who preferred to be 63
pendente lite, or during minority or absence of executor 64
oath to be taken by, on application for letters 64
bond to be given by 64, 65
additional security, when required 65
letters to be delivered to 65, 66
form of letters 66, 67
may be revoked 67, 68, 97
may surrender letters 69
becoming insane, or a habitual drunkard, or convicted of felony, proceedings 67, 68
duty, where letters are revoked or surrendered 69, 70
representatives of, their duty in cases of death 69, 70
proceedings against successor, or remaining executor or administrator 70

Digitized by Google

ADMINISTRATORS, *de bonis non*, when appointed 69
failing to settle, proceedings 70
actions by and against, what may be maintained 76
what prohibited 77
of account, may be maintained by and against 56
pending, to be prosecuted or defended by 76
claiming as creditor, how to proceed 94
duties with respect to co-partnership property 70
non-resident shall not be 72
foreign, when to receive estate ... 103, 104
shall collect estate 73
shall make inventory 73
penalty against, for opening and examining papers and money without witnesses 74
proceedings by, in case of concealment or embezzlement 74
to cause appraisement to be made ... 75
to publish notice of administration 75, 76
like notice where there are no known heirs 76
to collect and receipt for debts 76
shall sell perishable personalty 77, 78
shall sell other personalty to pay debts 78
may assign bonds and notes to pay debts 78
shall give notice of sale of personalty 78
shall sell personalty where there are no known heirs 78
may sell personalty at private sale, when 78
shall employ clerk at public sale 78
shall file sale bill 79
shall lease real estate 79
may procure labor to take care of estate 79
shall account for interest received ... 80
shall render statement, on oath, of money on hand 80
majority of, shall join, when 80
duties with reference to personalty bound by lien 80
with will annexed, to sell and convey lands, when 83
proceedings to obtain sale of land to pay debts 84, 85, 86
may obtain specific performance of contract 89
judgments surviving against, how considered 91
shall keep a list of demands 92
may waive notice of demand 93
may establish demand against estate .. 94
absenting himself, to appoint agent in writing 94
may object to allowance, when 95
shall make annual settlement 97
failing to make, proceedings 97
failing to make payment, proceedings 98
final settlement by, how made 99
liability for waste 104, 105
proceedings on judgment for waste .. 105

ADMINISTRATORS, when county divided, where to settle 298
duties in cases of escheat 461, 462
copy of bond, evidence 471, 472
of sheriff, to deliver to his successor executions not executed 485
may sue for penalties under *habeas corpus* act 570
of tenant for life, may recover rent, when 687
may recover rent due to intestate at his death 687
when to be made parties in supreme court 905
to deliver over public records held by intestate 914

ADMINISTRATORS, PUBLIC. CHAPTER 4. ..... 108 to 111
by whom appointed 108
tenure of office 108
to take oath and give bond 108
certificate of appointment, oath and bond, to be filed and recorded 108
copies of bond evidence 108
who may sue on his bond 109
how to be removed from office 109
compensation 109
may be indicted and fined 109
general powers and duties 109
to conform to general law of administration 109
letters granted to another, to account and pay over 109
duty of officers to inform, of estates .. 110
shall sue to recover estates 110
proceedings by, before justices, to recover estates 110
judgment in such cases, how enforced 110
effect of judgment 110
costs in such proceedings regulated .. 110
appeals allowed 110
recognizance, form of 110
proceedings on appeal 111
on judgment 111
court may order, to account and deliver money to heirs, &c 111

AD QUOD DAMNUM, writ to issue in case of mill dam, when 744
new writ of, when 746

ADULTERY, open and notorious, how punished 400
good cause for divorce 426
of wife, bars dower 432

ADVANCEMENT, to children, to be brought into *hotch pot* 422

ADVERSE POSSESSION does not invalidate deed to land 219

ADVERTISEMENTS. CHAP. 5. 111 to 113
publication of, how proved 111
costs of, by whom paid 111
how exhibited and taxed 113
when paid by county 113
public rates allowed for printing of 112
publication of, duty of public officers 113
defacing of, &c., penalty for 113

ADVERTISEMENTS for letting out public bridges, by whom and how published 193, 194

Digitized by Google

ADVERTISEMENTS, concerning meeting of commissioners to select new location of county seat 301
AFFIDAVITS, required of applicants for letters of administration 64
of executor 64
to complaints against executor or administrator 67, 68
on application for additional security in bond of ex'r or adm'r, nature of, 68
annexed to inventory of estates by executor or administrator 73, 74
against persons concealing or embezzling effects of deceased person ... 74
of appraisers of personal estate by ex'r or adm'r, nature of 75
of clerk employed by executor or administrator at public sale, to sale bill 78
of executor or administrator to statement of money on hand, to court ... 79
of superintendent of erection of county buildings 287
of commissioners for selecting county seat of justice 292
of commissioner of seat of justice of county 293
of commissioners for new location of county seat 302
in what manner and by whom taken 762
AFFIRMATION, in what cases and by whom administered 761, 762
AFFRAYS, in the night time 396
cognizable before J. P 672
AGE, lawful, for executor or administrator 63
of apprentice to be stated in indenture 117
of judge, to be stated on oath, and filed 329
within which marriage shall not be contracted without consent of parent or guardian 730
lawful for making will 1078
AGENCIES OF FOREIGN INSURANCE COMPANIES. See title *Insurance Agencies.* CHAPTER 87. 609
AGENCIES OF FOREIGN BANKS. See title *Banking, Illegal—Currency.* CHAPTER 16. 166
AGENT, to be appointed by executor or administrator during his absence ... 94, 95
of foreign insurance company, who, 613
of corporations aggregate, may bind corporations by parol contracts, when 232
may be appointed by county court ... 290
embezzlement by 361
parties may appear by, in justices' courts 642
AGREEMENTS, with boatmen, to be in writing 177
what required to be in writing 530, 531
on gaming consideration, void 540
AIDING commission of crimes, 341, 349, 359, 376
escapes 382, 383
ALE HOUSE, keeping open on Sunday 405
ALIENS. CHAPTER 6. 113
empowered to hold and alienate real estate 113
ALIENS may sue, notwithstanding the statute of limitations 718
ALIENS, not entitled to a jury of part aliens 878
naturalization of 1093
ALIENAGE of ancestor, no bar to inheritance 422
ALIMONY. See title *Divorce and Alimony,* CHAPTER 53. 426
ALLIANCE not to be entered into by states 7
ALLOTMENT of hands to work on road 965, 966
ALLOWANCE to widows 77
for support of children 101
of court or officer, forgery of 372
ALTERING will, deed, &c., bank note, &c. 368, 369
AMENDMENTS, to constitution of U. S., how made 12
of state constitution, how made 42, 43
of return and allegations in proceedings by *habeas corpus* 562
See title *Practice at Law and Practice in Chancery* 804, 835
AMENDMENTS AND JEOFAILS. See title *Practice at Law* 804
AMICABLE ACTIONS, cognizable by justice of the peace 638
ANDREW COUNTY, limits defined 253
ANIMALS, cruelty to 406
trespassing, owner liable for damages 575
may be killed for third offence 575
marks and brands of 726, 727
altering marks and brands of 360
ANNUAL SETTLEMENTS, by executor and administrator 97
by guardians and curators 551
by guardian of insane person 597
by collectors 950
ANSWER, to bill in chancery. See title *Practice in Chancery* 835
APPEAL, in proceedings by public administrator to recover property 110, 111
from order vacating or affirming award 124
by attorneys, on charges against them 160
in cases of boatmen 179
in suits against boats and vessels 186
of felony, abolished 412
in cases of dower 438, 439
in actions of ejectment 444
in cases of escheat 465
in actions of forcible entry and detainer 520, 521
in suits for freedom 533
in cases of breach of the peace 674
in partition cases 776
from decision of auditor and claims against state 1063
See titles *Administration, Justices' Courts, Practice at Law, Practice and proceedings in Criminal Cases, Practice in Chancery, and Revenue.*
APPEARANCE. See titles *Justices' Courts, Practice at Law and Practice in Chancery.*
APPLICATIONS, to the legislature, in what cases, notice to be given 709
for county roads how made 964

Digitized by Google

APPLICATIONS, for vacation of county roads 964
APPOINTMENT, bribing to procure 388
assuming office without 391
APPORTIONMENT. CHAP. 7. 113 to 115
of the House of Representatives 113
of the Senate 113, 114
time of electing senators 115
senatorial districts, state divided into, how 113, 114
APPORTIONMENT, of representatives in congress 2, 3
in the legislature 29
of three per cent. fund 957
APPRAISEMENT, of personal property allowed to widow 77
of lots at county seat, on contemplated removal, for what purpose made 305
of property assigned for benefit of creditors 128
of lost money and goods, ... 722
of lost or wrecked boats, &c 986
of strays 1039
of personal property bound by lien of execution 80
of estates. See title *Administration*.
APPRAISEMENTS, examined by county court, when 79
APPRAISERS, duty of, in relation to the estate of a deceased co-partner 70
surviving partners to exhibit partnership property to, when 71
appointed by executor or adm'r to appraise personal estate, who 75
affidavit required of 75
duty of 75
appraisement of, where to be filed ... 75
compensation of 75
of real estate before executor or adm'r who, and affidavit of 87
of effects assigned for benefit of creditors, how appointed 128
duty of 128
appraisement of, when and how filed 128
compensation of 128
lost money and goods 722
of lost or wrecked boat, &c 986
of strays, their duties 1039
APPRENTICES. CHAPTER 8. ..115 to 120
Affidavit to be made by master 116
Age of apprentice to be inserted in indenture 117
Apprentice, minors may bind themselves as, by consent of father, &c 115
may bind themselves by consent of county 116
may be bound by mother, when 116
poor children may be bound as, by county court 116
orphans or minors may be, by guardian 116, 117
age of, to be inserted in indentures ... 117
complaints of, proceedings on 117, 118
misconduct of, proceedings 118
enticing away, penalty for 119
harboring, penalty for 119

APPRENTICES.
Apprentices, may be bound by executor, 119
removing of, prevented 119
desertion, cause of action against 120
negro or mulatto, not to be educated 117
not to be removed out of this state ... 117
court may discharge, when 118
limitation of actions against 120
proceedings to prevent removal of, out of this state 119
Complaints of Apprentices, how heard and determined 117, 118
Complaint of Master, how heard and determined 118
County Court, may bind poor children 116
to see that indentures and covenants of apprenticeship are fulfilled, &c ... 117
to see that apprentice is not ill used 117
may dissolve contract of apprenticeship 118
Covenants, in indenture, specified 117
court to see that they are fulfilled 117
Damages, may be recovered by master against apprentice 120
Desertion, cause of action against apprentice 120
Enticing away apprentice, penalty 119
Executor may bind infant 119
Father, incapable of consenting to bind apprentice, mother may 116
incapacity of, how established 116
Guardian may bind orphan or minor 116, 117
Harboring apprentice, penalty for 119
Indenture of Apprenticeship, covenants in 117
court to see that they are fulfilled 117
survives to and against survivor 120
Limitation of actions against apprentice 120
Negro or Mulatto apprentice, not to be educated 117
Misconduct, of apprentice, warrant to issue 118
proceedings on warrant 118
Master, not to remove apprentice out of this state 117
complaint of, how heard and determined 118
wishing to remove, may deliver up apprentice 120
cause of action of, against apprentice 120
Removing apprentice out of this state, proceedings to prevent 119
Warrant, to apprehend apprentice for misconduct, when to issue 118
proceedings on return of 118, 119
APPRENTICES, embezzlement by 361
minors, without estate, may be bound 552
harboring of, by inn or tavern keeper 587
negroes and mulattoes to be bound ... 754
ARBITRATIONS AND REFERENCES.
CHAPTER 9. ..... 121 to 127
Arbitration, who may submit to; what may be submitted and how 121
costs of, when and how taxed 124
payment of, may be ordered in award 124

Digitized by Google

ARBITRATIONS AND REFERENCES.
Arbitration, cost of, when award vacated, who to pay 124, 125
revoking submission to, liability of party revoking 125
power of, limited, how 125
proceedings in action on bond for 125
damages for, what recovered 125, 126
Arbitrators, duty of, on submission 121, 122
oath of, nature of 122
powers of 122
cannot be revoked, when, &c. 125
all to meet, when majority may award 122
award of, how to be authenticated ... 122
how and when confirmed 122
notice before confirmation of, what required 122
motion to vacate, upon what ground made 122, 123
motion to modify or correct, in what cases made 123
motions to vacate and modify, when to be made 123
vacated or modified by court, proceedings 123
confirmed or modified, judgment how rendered 123, 124
obedience to, how enforced 124
judgment on, effect and force of ... 124
record of, its contents 124
writ of error or appeal on, regulated 124
vacated, who to pay costs ... 124, 125
writ of error or appeal on, allowed 125
vacation, if reversed, proceedings 125
court of equity, authority of, over, not impaired 125
compensation of 126
Referees, appointed, their powers and duties 126
how to proceed 126
oath and authority of 126
all must meet and hear, a majority may report 126
power of court over 126
compelled to report 126
report of, if confirmed, judgment 126
compensation of 126
Sheriffs and other officers, what fees allowed in relation to arbitration and reference 126, 127
Witnesses fees before arbitrators and referees, what allowed 126, 127
ARBITRATOR, taking bribe, punishment for 379
attempting to bribe, how punished .. 379
ARCHIVES, of French and Spanish governments, conveyances belonging to and recorded, and copies of, evidence 468, 469
ARMS, right of the people to keep and bear 13, 43
furnishing to slaves in rebellion 342
exempt from execution 477
free negro or mulatto not to have without license 754
found in possession of free negro or mulatto, forfeited 754
ARMS, found in possession of slave, forfeited 1016
ARMY, power of congress to raise 6
ARRAIGNING defendant on indictment ... 872
ARREST, exemption from, of senators and representatives 4, 32
exemption from, of electors 30
without legal authority, punishment 397
of judgment, in criminal case, not to bar second trial 411, 412
judges and clerks of election and voters exempt from 452
after discharge under *habeas corpus*, penalty for 569
exemption from, of witnesses 1088
See title *Practice and Proceedings in Criminal Cases.*
ARREST OF JUDGMENT. See title *Practice at Law.*
ARSENIC, selling without label, &c 405
ARSON, definition and punishment 354, 355
ARTS AND SCIENCES, power of congress in promoting 6
ASSAULT, by negro, with intent to commit rape 349
with intent to commit felony 350
upon officer, executing process 381
ASSAULT AND BATTERY, not indictable .. 672
cognizable before justice of the peace, proceedings ..... 672 to 676
ASSEMBLY, GENERAL, legislative power vested in 29
who eligible to 29
how constituted 29
members of, their privileges, election and compensation 30, 31
how chosen, and for what term 30
See title *Legislature.*
ASSESSMENT. See title *Revenue.*
ASSESSORS. See title *Revenue.*
ASSIGNEE, of mortgage, may foreclose in his own name 750
ASSIGNMENT, of bonds and notes by executor or administrator 78
for benefit of creditors. See CHAPTER 10, title *Assignment.* ... 125 to 132
of delivery bond, by constable, in attachment suits 150
to defraud creditors 363
of public securities, forgery of 367
of dower, proceedings 433, 434
of leases to be in writing 529
of trusts to be in writing 529
of notes, &c., given for gaming consideration not to affect defence ... 540
of pre-emption certificates, how 680
of mortgage, assignee may foreclose in his own name 750
of counsel for prisoner, when 872
of error, in criminal cases, not necessary 890
of error, in supreme court 904
ASSIGNMENT OF BONDS AND NOTES, regulated 190
assignee of, may sue in his own name 190
set-off and discount against assignee, when allowed 190, 191

Digitized by Google

ASSIGNMENT OF BONDS AND NOTES, defence in such case not changed 191
assignee in, can get no greater interest than assignor had 191
assignee in, after assignment, not to release 191
assignee may sue assignor, when 191
See *Bonds and Notes*. CHAPTER 21. 189 to 192
ASSIGNMENTS, VOLUNTARY FOR THE BENEFIT OF CREDITORS. CHAPTER 10. .... 127, to 132
Assignment, how made 127
duty of assignee in 127
inventory of effects in, how made and how sworn to 127, 128
duty of circuit court in relation to 128
appraisers appointed, duty of 128
appraisement of, when and how filed 128
compensation of 128
additional inventory of effects, when and by whom made .... 128 to 129
evidence required by assignee in, nature of 130
decision of assignee in, final, unless when 131
cases certified by assignee to circuit court, when 131
creditors in, when precluded from benefit of 131
assignee in, failing to file inventory or bond, proceedings 131
power of the court over assignee, in such cases 131
Assignee, proceedings against, when security is insolvent or absent 131
removed, court empowered to appoint another 131
when ordered to deliver books, papers, &c., to successor 131
estate conveyed by, ordered to be sold, how 131, 132
may administer oaths 130
Bond, by assignee in, when given, nature of conditions 129
how filed and recorded 129
may be sued on, how 129
Citation, of assignee in, when issued, nature of 130
not to issue until, when 130
Notice of exhibiting and filing accounts, when, how and by whom given 130
expense of advertising, by whom paid 130
time and place of adjusting demands to be appointed by assignee 130
notice of, what, and how given 130
Power of assignee in, in adjusting demands 130
ATCHISON COUNTY, limits defined 254
ATTACHMENT. CHAPTER 11. 132 to 155
Attachment in Circuit Court. ART. I.
may be sued out against debtors 133, 134
Abatement, plea in nature of, when filed 139
proceedings upon 139, 140
found for plaintiff, suit to proceed 140
for defendant, to be dismissed at plaintiff's cost 140
Affidavit and declaration to be filed 134

ATTACHMENT.
Affidavit, by whom made, and terms of 134
insufficient, new may be filed 142, 143
or attachment dissolved 142, 143
to obtain attachment in aid 142
that defendant has no personalty, filed, plaintiff may sue in circuit court on demand, under fifty dollars 145, 146
Allegations, may be exhibited against garnishee 140
must be answered on oath 140
answer to be at term of filing allegations 140
Answer of garnishee to be on oath 140
to be filed at term of filing allegations 140
may be compelled by court 140, 141
may be excepted to for insufficiency .. 140
if adjudged insufficient, may be amended 140
may be denied, proceedings 141
not excepted to or denied, taken to be true 141
Avoidance of judgment, on constructive notice, when 144
Bond, to be given by plaintiff 135
to be approved by clerk 135
insufficient, new may be required 135
failure to give, suit dismissed 135
who may sue on 135
by defendant or other person, for return of property 139
shall be returned with writ 139
judgment may be rendered on, when, how 139
officer failing to return sufficient, proceedings 139
Compensation, to garnishee, for answering 141
to officer, for keeping property 145
Costs, of proceedings against garnishee, how settled 141
of interpleader 142
of order of publication 138
Court may prescribe rules for proceeding in 145
Debts, not due may be attached 141
Declaration, to be filed before writ issues 135
Default, judgment by, when entered 138
judgment by, against garnishee, when 140
against plaintiff, when, ... 144
Defendant, may appear and plead, ... 142
Delivery Bond, when taken and how returned 138, 139
proceedings upon 139
Denial of answer of garnishee, when .. 141
proceedings thereupon 141
Disproof of judgment on constructive notice 144
Dissolution, if affidavit be insufficient, when 142, 143
not to take place, if sufficient affidavit filed 142, 143
where defendant appears, pleads, and gives delivery bond 143
where he appears, pleads, and gives bond for payment of debt 143

Digitized by Google

ATTACHMENT.
Exception, to answer of garnishee, when ... 140
Execution, on judgment by constructive notice, when ... 145
against defendant on general judgment 145
against garnishees ... 145
not to issue against, till debt confessed becomes due ... 141
Form, of writ of attachment ... 136
Garnishee, how summoned ... 136, 137
who may be summoned ... 137
may give bond for delivery of property ... 138
allegations and interrogatories may be filed against ... 140
judgment by default against ... 140
how to be made final ... 140
answer of, excepted to, proceedings ... 140, 141
answer denied, proceedings ... 141
answer when taken as true and sufficient ... 141
costs of, how settled ... 141
judgment against, when ... 141
may discharge himself by surrender of property ... 141
compensation to, for answering ... 141
execution against ... 145
debts not due may be attached in his hands ... 141
but execution not to issue till they become due ... 141
judgment against, not to be rendered until interpleader determined ... 141
Interpleader, by persons claiming property attached, how tried ... 141
costs in, how adjudged ... 142
Interrogatories. See Allegations.
Judgment, general, when defendant served ... 136
by default, when entered ... 138
effect of ... 138
by default against garnishee ... 140
how made final ... 140
against garnishee on trial of allegations ... 140
on answer filed ... 141
on constructive notice, when and how disproved ... 144
by default against plaintiff, when ... 144
not to be rendered against garnishee till interpleader determined ... 141
Jurisdiction, concurrent, between, circuit court and justices of the peace, when ... 146
Notice, to be published, when, how, ... 138
expenses of how paid ... 138
of motion for judgment on delivery bond ... 139
of petition to avoid judgment ... 144
Officer, failing to return delivery bond, responsible ... 139
Order, of publication, when made ... 137, 138
how published ... 138
expense of, to be taxed as other costs 138
of sale, when to be made ... 143
Perishable property may be sold ... 143

ATTACHMENT.
Petition, to avoid judgment, how and when filed ... 144
notice of, to be given ... 144
proceedings under ... 144, 145
plaintiff shall answer same ... 144
issues joined under, how tried ... 144, 145
Plea, in nature of abatement, when ... 139
to merits may be filed ... 142
Property, may be attached ... 137
how attached and seized ... 136, 137
bound by judgment ... 138
of part of several defendants attached, proceedings ... 138
of one of several defendants seized, cause not to be delayed ... 138
attached, may be retained when ... 138
exempt from execution, not to be attached ... 145
claimed by third person, right of, how tried ... 141
compensation to officer for keeping ... 145
Real Estate attached, how ... 136, 137
Return, of original writs, how made ... 136
of order of sale of perishable property ... 143, 144
Rules, may be prescribed by court ... 145
Sale, of perishable property, when ... 143
proceeds of, how disposed of ... 143
Schedule, of property attached to be returned ... 139
Sheriff, duty of, in executing and returning writs, ... 136, 137
to return schedule of property attached ... 139
Summons, in attachment, how served ... 136
Tenants, of property attached, to be notified ... 136, 137
Traverse, of answer of garnishee, when proceedings thereupon ... 141
Writs, of attachment, form of ... 136
when separate, may be issued to several counties ... 136
how issued and returned ... 136
how served ... 136, 137
in aid of ordinary process, how obtained ... 142
additional writs of attachment may be granted ... 142
how entitled, and form of ... 142
how served and returned ... 142
Attachment in Justices' Courts. CHAP. 11. ART. II. ... 146 to 155
to be sued out, when ... 147, 148
lies against personalty of defendant ... 149
form of writ ... 148, 149
how served and returned ... 149
where to be brought ... 636
Abatement, plea in nature of, may be made by defendant ... 150
proceedings thereupon ... 150, 151
Account to be filed with justice ... 148
Affidavit, to be filed by plaintiff, form of 148
Answer, of garnishee to be filed ... 152
when taken to be true ... 153
may be denied ... 152
Assignee, of delivery bond may sue thereon ... 150

Digitized by Google

ATTACHMENT.
Avoidance, of judgment, on constructive notice, when 154
Bill of items to be filed 148
Bond sued on, to be filed 148
to be filed by plaintiff 148
form of, prescribed 148
sufficiency of penalty and security to be approved 148
for delivery of property, when taken and how returned 149
sued on may be withdrawn, when ... 155
Compensation to officer for keeping property 154
Constable, duty of, in executing and returning writs 149
failing to return delivery bond, responsible 150
Costs, on issues between plaintiff and garnishee 153
on interpleader 153
Debts, due defendant, may be attached .. 149
Default, judgment by, on constructive notice, when against defendant 151
effect thereof 151
against garnishee 152
how made final 152
Delivery Bond, when taken, and how returned 149
may be assigned 150
proceedings upon 150
if over $150, where to be sued 150
Denial, of answer of garnishee, may be filed, proceedings thereupon ... 152, 153
Disproof of judgment on constructive notice, when 154
Dissolution of attachment, how and when, effect of 153, 154
Execution, on judgment on constructive notice 151
how, and with what effect issued 154
Form of writ of attachment 148, 149
of interrogatories 151, 152
Garnishee, who may be, and how summoned 149
may retain property, on giving bond. 149
shall answer interrogatories, how and when 152
failing to answer, judgment by default against him 152
may be compelled to answer 152
judgment against, not to be rendered, till judgment against defendant 153
judgment against garnishee for value of property in his hands 153
answer of, when taken to be true 153
may be denied 152
judgment against, for amount confessed 153
may discharge himself by delivering property 153
judgment against, not to be given until interpleader is decided 153
Interpleader, by person claiming property attached, how made and tried ... 153
costs of, how adjudged 153
Interrogatories, to be put to garnishee .. 151
form of, and when to be answered ... 152

ATTACHMENT.
Judgment on delivery bond, when given by default on constructive notice, when; effect of 150
by default against garnishee 151
how made final 152
not to be rendered against garnishee till judgment against defendant 152
against garnishee for value of property in his hands, when 153
against garnishee for amount confessed 153
Note, sued on to be filed 148
may be withdrawn, when 155
Notice, of proceedings on delivery bond 150
of publication, how put up 150
of petition to avoid judgment on constructive notice 151
Order, of publication, when made 151
of sale, when made, and how returned 151
Perishable property, may be sold, when 151
proceeds of, how disposed of 154
Petition, to avoid judgment on constructive notice 154
notice of, to plaintiff and proceedings 154
plaintiff to be required to prove his demand 154
failing to do so, effect of 154
petitioner to be required to prove set-off 154
Plea, in nature of plea in abatement, when 150
proceedings thereupon 150
Property, may be attached 149
how attached and seized 149
attached, may be retained 149
perishable may be sold 151
exempt from execution, not to be attached 154
Return of attachment, how made 149
Sale, of perishable property, when made 151
proceeds of, how disposed of 151
Schedule, of property attached, to be returned 149
Statement of cause of action to be filed 148
Summons, in attachment, how served .. 149
Transcript, to be certified to circuit court, when 154
upon being filed, attachment to issue thence 155
in such case not to issue, unless affidavit and bond shall have been filed before justice 155
Writ, of attachment, form of 148
how served and returned 149
ATTACHMENT, to compel attorney to answer charges 159, 160
against corporations, when 238
to compel refunding of costs, when .. 247
to enforce process of courts 335
to compel guardians and curators to settle 552
to compel return to writ of *habeas corpus* 560
to bring up magistrates in cases of *habeas corpus* 560
to compel obedience to discharge under *habeas corpus* 560

Digitized by Google

ATTACHMENT, to compel obedience to citation concerning public records .. 915
against witnesses .. 1088
See titles *Administration, Justices' Courts, Practice at Law, Practice and Proceedings in Criminal Cases, and Practice in Chancery.*
ATTORNEY, power of, to be recorded .. 226
revocation of, to be recorded .. 226, 227
county courts may appoint .. 158
may release mortgage .. 753
certified copy of, how far evidence .. 227
ATTORNEY GENERAL, CIRCUIT AND COUNTY ATTORNEYS. CHAPTER 12. .. 155 to 158
Attorney General, residence of, where required to be .. 156
shall aid circuit attorneys, when .. 156
opinions given without fee, how and to whom .. 156
shall act as circuit attorney, where .. 156
when interested, not to prosecute .. 157
sick or absent, duty of court .. 157
powers and duties of substitute of, in case of sickness or absence .. 157
fine of, on failure to perform duties .. 157
shall appear in supreme court, when 157
Circuit Attorney, elected, how, when .. 156
election of, how governed .. 156
duty of clerk of county court, in relation to .. 156
of secretary of state, in relation to .. 156
commissioned, by whom and how .. 156
residence of, where required .. 156
duties of, what required .. 156, 157
opinions of, without fee, to whom given 157
may be indicted, for what, penalty .. 157
not to prosecute if interested .. 157
if sick or absent, duty of court .. 157
power and duties of his substitute 157
fine of, on failure to perform duties .. 157
when aided by attorney general .. 156
County Attorney, may be appointed, by whom, when and how, proviso .. 158
certificate of appointment, how given 158
duties and compensation of .. 158
Criminal Court of St. Louis County, powers of circuit court conferred upon, under this act .. 157
ATTORNEY GENERAL, shall prosecute charges against clerks of courts .. 204
to prosecute actions for counties .. 295
to examine deeds to counties .. 304
ex officio reporter of supreme court .. 924
duties and compensation as such .. 925, 926
proceedings by, in cases of escheat 462, 463
fees of .. 490
to prosecute ferrymen .. 510
duties in relation to groceries and dram shops .. 545
to prosecute keepers of inns and taverns .. 589
to be *ex officio* inspector of penitentiary .. 786
to have convicts brought out to testify .. 791
to superintend printing of reports of supreme court .. 925
ATTORNEY GENERAL, to exhibit information in nature of *quo warranto* 912
salary of .. 979
to prosecute contracts in reference to school lands .. 994
to approve bond of commissioner of seat of government .. 206
to give counsel, and prosecute suits when required by commissioner of seat of government .. 207
ATTORNEYS AT LAW. CHAPTER 13. .. 158 to 160
not to practice without license .. 159
license, by whom granted .. 159
applicant for license, to produce testimonials of good moral character 159
to be examined .. 159
obtaining license, to take oath .. 159
certificate of oath to be endorsed on license .. 159
roll of, to be kept by clerk .. 159
practicing without license, &c., contempt of court .. 159
may be removed or suspended, for what .. 159
charges to be exhibited, where .. 159
day to be fixed for hearing of .. 159
copy to be served .. 159
citation to issue, how served .. 159
failing to obey citation, may be attached .. 159, 160
having been convicted of indictable offence, record to be produced .. 160
to be removed or suspended .. 160
temporary suspension, when .. 160
suspension may be discontinued .. 160
effect of record of conviction or acquittal .. 160
matter not indictable, when and how tried .. 160
judgment in such case upon conviction .. 160
effect of .. 160
may except to decision of court .. 160
ATTORNEYS AT LAW. CHAPTER 14. .. 161
no clerk, or deputy clerk of court of record, to practice as such .. 161
consequence of clerk, or deputy, practicing in his own court .. 161
ATTORNEYS AT LAW, when liable for costs .. 247
may select books to exempt them from execution .. 477
not compellable to serve on grand jury .. 627
ATTORNMENT to stranger void, unless, &c .. 220, 688
AUCTIONEERS. CHAPTER 15. .. 161 to 166
no person to exercise trade of, without license .. 162
penalty for so doing .. 162
licenses in blank, to be issued .. 162
form of .. 162
to be delivered to collector .. 162
to be accounted for by collector .. 162
to be granted by collector .. 162, 163
rate of charges to be paid for .. 163

Digitized by Google

AUCTIONEERS.
clerk's fee for licenses, how paid 163
before license granted, bond to be given 163
licensed, may sell and retail at store 163, 164
duty upon sales at auction 164
duty same, where auctioneer or owner is the purchaser 164
sale of part shall be sale of whole, when 164
sales at auction, what free of duty 164
duties, to whom to be paid 165
to render accounts, where and when 165
amount of duties to be paid to be ascertained and certified by clerk 165
to be paid to collector within twenty days 165
clerk to charge collector, and certify amount to auditor 165
bond fulfilled, clerk to endorse certificate 165
collectors to collect duties, and prosecute for fines and forfeitures 165
certain officers exempt from license 165, 166
clerk shall prosecute on bond of, when 165
AUCTIONS, sale of lots at, by commissioner of the county seat of justice 295
See *Auctioneers*.
AUDITOR OF PUBLIC ACCOUNTS, appointment, term of office 36
may be removed by impeachment 33
office where kept 36
making false entries in books of 372
duties concerning escheated estates 462, 465
copies of papers in office of, evidence 472
duties in relation to proceeds of the 500,000 acres of land granted by congress 425
amount charged against collector for peddlers' licenses to be certified to 779
to be *ex officio* inspector of the penitentiary 786
duty in relation to revenue 939, 948
duties of, in relation to seminary fund 1032
general powers and duties 1039 to 1064
to audit accounts of secretary of state 997
to audit accounts of librarian 1029
pro tem. appointment of, may be made 1066
AUDRAIN COUNTY, limits defined 254
AUTHENTICATION of laws, where governor does not approve or return 694
of public acts, records, and judicial proceedings 1096
AWARD. See *Arbitrations*.
BAIL, excessive, not to be required 14, 44
accused admitted to, except 44
false personation of another in becoming 375
in actions of detinue 423
in cases of *habeas corpus* 564, 565
insane person not to be held to 597
in prosecutions before J. P. for breach of the peace 673
See titles *Justices' Courts, and Practice and Proceedings in Criminal Cases*.
BAILEE, embezzlement by 362
BALLOT, elections in St. Louis county to be by 449
BANKING, ILLEGAL, CURRENCY.
CHAPTER 16. 166 to 170
Agencies, of foreign banks prohibited 169
every day kept open, a distinct offence 169
Agents, of foreign banks, penalty against 169
Banking business, what constitutes 167, 168
corporation not to exercise 167, 168
Banking house, not to be kept 169
every day kept open, a distinct offence 169
Bank notes, less than $10, not to be passed 167
suspended or non-specie paying, not to be passed 167
Bill or note, unauthorized person, not to put into circulation, as currency 167
penalty for 167
Broker, &c., not to pass or receive note less than $10 167
contracts made with, founded on prohibited currency, void 167
penalty on, for violating this act 169
Circulating Medium, no person to create, or put in circulation bill or note, as 167
Charters, forfeited by violation or evasion of this act 169
Contracts, founded on prohibited currency, void 167
Corporation, not to pass or receive note less than $10 167
not to pass or receive note of suspended or non-specie paying bank 167
contracts made with, on prohibited currency void 167
not to exercise banking privileges 167, 168
penalty on officer of, for violating this act 168
charters forfeited by violating this act 169
courts not to enforce liabilities to, or against, in what cases 168
not to keep a banking house 169
penalty for violating this act 169
every day banking house of, kept open, a distinct offense 169
penalty on officers for offending in their official capacity 168
Courts, not to enforce liability to or against corporations, in certain cases 168
Currency, creating or putting in circulation bill or note as, in lieu of money, prohibited; penalty for so doing 167
Foreign Banking Company, agent of, not to keep banking house 169
penalty for keeping banking house 169
every day banking house kept open a distinct offense 169
bonds to, declared void 169, 170
Forfeiture, for passing, vending or receiving prohibited currency 167
of charter declared, for violating or evading this act 169
Money Broker or Exchange Dealer, penalty on, for evading or violating this act 169

Digitized by Google

BANKING.
Notes, to foreign banking company, void 169, 170
suits brought on, what defendant may give in evidence 170
Penalty, on officer or member of corporation for receiving prohibited notes &c 168
on officers of corporations, for offending in official capacity 168
penalty on broker, &c., for violating this act 169
penalty for violating 12th section 169
Suits on bonds, &c., of foreign banking company, what defendant may show in his defense 170
Venue, change of, may be awarded ... 169
Violations of this act may be pleaded in bar to suits brought by corporations, &c 169
BANKRUPTCY, congress may establish uniform laws of 6
BANK NOTE, using spurious, as false token 363
counterfeiting 369
BANK STOCK, how levied on and sold under execution 479
BAPTISM, register of, when evidence 471
BARN, burning of 355
BARRATRY, punished 385, 386
BARRY COUNTY, limits defined 266, 267
BASTARDS, may inherit from mother 422
legitimated by subsequent marriage of parents 422
BATES COUNTY, limits defined 267
BATTERY. See title *Assault and Battery*.
BAWDY HOUSES, keeping, &c 402, 403
BEGGAR, children of, to be apprenticed ... 116
BENEFIT OF CLERGY, abolished 412
BENTON COUNTY, limits defined 267
BETTING, on games 402
on elections 404, 541
BIGAMY, punishment of 398, 399
BILLIARD TABLES. CHAP. 17. 170 to 171
may be licensed 170
Clerk, to issue blank licenses 170
to deliver them to collector 170, 171
to certify to auditor the amount charged to collector 171
Collectors, to grant licenses 171
to settle and account for moneys 171
Penalty for keeping without license 171
for permitting minors to play 171
Tax on licenses 171
BILL IN CHANCERY. See title *Practice in Chancery*.
BILL OF ATTAINDER, not to be passed by states 7
BILL OF ITEMS, to be filed in attachment suits before justice of the peace ... 148
See title *Justices' Courts*.
BILL OF RIGHTS 43
BILLS OF CREDIT, not to be issued by the states, ... 7
BILLS OF EXCEPTION, to be written out and enrolled 333
See titles *Practice at Law, Practice and Proceedings in Criminal Cases, and Practice in Chancery*.

BILLS OF EXCHANGE. CHAPTER 18. ..... 172 to 176
Acceptance, to be in writing 172
on separate paper, when to bind acceptor 172
unconditional promise of, good 172
may be required to be written on the bill; refusal, effect of 172
Bills, payable in money of U. S. rates of exchange disregarded 173
payable in foreign currency, rate of exchange to govern 174
Damages, promisee, may recover 172, 173
for non-acceptance 173
for non-payment 173
who shall recover 174
when not recoverable 174
what in lieu of 174
Destruction of, or refusal to return bill, deemed an acceptance 173
Notes, for money, when negotiable as inland bills of exchange 175
payable to order of maker or fictitious person, if negotiated, its effects ... 176
Notice, at common law 175
Notarial Protest, evidence of what 176
Payees and Endorsees, may sue makers and endorsers, when 175
Refusal, to write acceptance, dishonor not to affect promise to accept 172
BOATMEN. CHAPTER 19. ..... 176 to 180
Action, against boatmen for neglect or fault 178
boatmen may have, for wages, when 178
Appeal allowed, when; its effect 179
Boatmen, contracts by, how performed 177
may be in writing 177
to be acknowledged 177
original copy of, evidence 177
memorandum to be at foot of 177
violating engagement, warrant to issue 177
action against, for neglect or fault ... 178
complaint by, against master, when .. 178
may be discharged, when 178
may have action for wages, when 178
master or owner not to sell provisions to 178
charge against, for spirituous liquors, limited 178
contracts with, ante-dated, void 179
proceedings by and against, regulated 179
when not to be sent on board 179
contracts by, made out of this state, when enforced 179, 180
Charge against boatmen for spirituous liquors limited 178
Complaint, against boatman, warrant to issue 177
to be heard in a summary manner ... 177
by boatman against master, when 178
where heard, and proceedings 178
boatman may be discharged on, when 178
Contracts, by boatmen, how performed 177
may be in writing 177
to be acknowledged 177
original copy of, evidence 177
memorandum at foot of 177
with boatmen, ante-dated, void 179

Digitized by Google

BOATMEN.
Contracts, by boatmen, made out of the state, when enforced 179, 180
Debts of boatmen, when recoverable ... 179
Harboring or secreting boatmen, penalty 178
Jury, when may be called 179
Master or Owner not to sell provisions to boatmen 178
Proceedings, by and against boatmen, regulated 179
shall be summary 179
jury may be called, when 179
appeal allowed; its effect 179
Spirituous Liquors, charge against boatmen for, limited 178
BOATS AND VESSELS. CHAP. 20. ..... 180 to 189
Appeal, from judgment of justice 186
Boat, who shall not bind, by giving bonds or notes 186
when interested, captain or clerk to have no lien on 186
taking cordwood without consent of owners what damages to pay 187
may institute suit, where 187
Bond, given by captain, &c., effect of .. 182
when given to sheriff, boat to be delivered 182
Claim, priority of, precedence of lien 183
Complaint, what shall set forth 181
Continuance, may be granted, duty of court in case of 182
when not to be granted to plaintiff ... 184
Costs, by whom paid 186
Creditors, court shall fix time when demand shall be exhibited 185
when demands of, exhibited, and proceedings thereon 183
claims of, to be classed, &c 184
claims of, when rejected, distribution, how made 184
Execution, how issued and returned ... 185
Fees, allowed officers 186
Judgment, what it shall specify 185
may be rendered against principal and security, when 185
of justice of the peace 188
Justice of the Peace, jurisdiction of 185
proceedings before, how conducted 185
when majority of owners of boat to apply to 188
may hear cause in a summary manner 188
Joint Owners, may institute suit against boat, when 187
to notify other owners 187
majority of, may appoint and dismiss master 188
may determine in what trade boat shall be employed, &c 189
Master, &c., when to deliver up boat, books and papers, &c 188
proceedings against, when failing to deliver boat, &c., when demanded 188
Master, Owners, Agent or Consignee, liability of 181
for wages due hands 181

BOATS AND VESSELS.
Master, Owners, Agent or Consignee, liable for debts contracted, &c 181
for sums due for wharfage 181
for non-performance, or mal-performance, &c 181
may appear and plead 182
may give bond before sale 183
Notice, of sale, when to be given, and how to be given to creditors in certain cases 183
Pleadings, time of, prescribed by court 184
Sale, when application to be made for .. 182
bill of, to be executed by officer 183
upon such, court to appoint time for creditors to exhibit their demands .. 183
when justice shall not have power to order 184
Suit, may be instituted against boat or vessel, &c 186
when shall be commenced 181
upon liens, except, &c., shall be commenced, when 185
when joint owners may institute 187
Wages, what shall be recovered 187
Warrant, when to issue, and what it shall contain 186
how returnable 187
issued by justice, how returnable 182
how served and returned 182
BOATS AND VESSELS, loading so as to sink or drown a person 183
bursting boiler of, by neglect 346
cutting adrift, sinking, &c 346, 347
BONDS AND NOTES. CHAPTER 21. 365
..... 189 to 192
Assignable 190
Assignee, may sue in his own name 190
has no greater interest in, than assignor had 190
may maintain action against assignor, when 191
Assignor, after assignment, not to release 191
Assignment, nature of defence, not changed by 191
Set-off, or discount, to be allowed, when 191
Signed by the party, shall import a consideration 190
BONDS AND NOTES, when regarded as inland bills of exchange 189
payees and endorsees, may sue makers and endorsers, when 175
payable to order of maker, or fictitious person, if negotiated by maker, its effects 175
to counties, or for their use, &c., how far valid and effectual 175
suits on, how commenced, and prosecuted 289, 290
BOND, of public administrator 290
of assignee for benefit of creditors 108
by plaintiff in attachment 129
for delivery of property attached, 134, 148
of auctioneer 149
of clerks of courts 163
of constable 202
..... 211

Digitized by Google

BOND, of coroner 229
to counties, effect of 289
of indemnification to sheriff for sale of property under execution 480
for delivery by defendant of property levied on under execution 482
second not to be taken 482
to be returned with execution 482
proceedings on 482
of ferrymen 509
given for gaming consideration, void 540
assignment of, not to affect defence .. 540
of guardians and curators 550
for injunctions 580
of inn and tavern keepers 585, 586
of guardian of insane persons 594
made with intent to hinder, delay, or defraud creditors, void 525
of registers and receivers of land offices 679
of free negroes and mulattoes licensed 756
by person hiring free negro or mulatto from sheriff 759
of notaries public 760, 761
of guardian appointed in cases of partition 774
of public printer 907, 908
of recorder 916
of register of lands 920
in action of replevin 922
taxable 927
of assessors 930, 931
of collectors 937
for purchase money of school lands .. 989
of commissioner of seat of government 206
of secretary of state 995
of sheriffs 1008
of marshal of St. Louis county 1009
held in trust for seminary fund, how disposed of 1033
of county surveyor 1043
of inspectors of tobacco 601, 602
of keeper of state tobacco warehouse 605
of trustees of disincorporated town .. 1053
of auditor and treasurer of state 1058
copies of what, evidence 471, 472
See titles *Administration, Attachment, Bonds and Notes, Justices' Courts, Practice at Law and Revenue.*

BOOKS AND PAPERS, of deceased, embezzled, how recovered 74
of officers resigning, dying, or removed from office, delivery of, how compelled 914
See titles *Practice at Law, and Practice in Chancery.*

BOONE COUNTY, limits defined 254, 255

BOUNDARIES, of state established 28, 29
of the several counties ..... 252 to 286
establishing decayed or perished .. 795, 796

BOUNDARY, northern, of this state, decision of, provided for. See *Appendix* 1096

BRANDS. See title *Marks and Brands.*
altering, grand larceny 360

BREACH OF THE PEACE. See title *Justices' Courts in cases of breach of the peace.*

BREWERY, burning of 355

BRIBERY, person convicted of, may be excluded from office and suffrage 31
to procure election or appointment to office, punishment of 31
See title *Crimes and Punishments.*

BRIDGES. CHAPTER 22. ..... 192 to 195
Bridge, when to be built by county 193
Commissioner, to be appointed 193
to take an oath 193
to do nothing towards building, till appropriation is made 193
may be required to make an estimate of cost 193
to report the same 193
shall advertise time and place of letting bridge 194
shall let, by public out-cry, to lowest bidder 194
to take bond from undertaker 194
to employ undertakers, when 195
not to be undertaker, nor security for 195
compensation of 195
may take necessary rock and timber from adjoining lands 195
absent, or failing to act, county court to appoint 195
Compensation, of commissioner 195
for rock and timber for building or repairing road 195
Costs, to be certified to road overseer .. 193
of repairs, if exceeding $50, not to be done by road district 193
estimate of, made by commissioner under direction of court, when ... 193
to be certified to road overseer, when 193
County Court, to determine what bridges shall be built 193
may order bridge built by county to be attached to a road district 193
to determine in what manner, and of what materials, a bridge shall be built 193
shall require commissioner to make an estimate of the cost of building bridge 193
proceedings of, when half the expense is paid by individuals 194
shall make appropriation to repair, when 194
if commissioner fails, to appoint another 195
may allow compensation for rock and timber, when 195
may appoint viewers to assess damages 195
Expense, of building bridge, out of what fund paid 194
of bridge over streams dividing counties, how paid 194
Letting Bridge, to be advertised 193, 194
to be by public outcry 194
Moiety, of expense raised by individual subscription, proceedings 194
of bridge over streams dividing counties, proceedings 194
Overseer, when cost of bridge shall be certified to 193

Digitized by Google

BRIDGES.
Repairs, when court shall make appropriation for ... 194
when bridge requires, proceedings ... 195
if not made by undertaker, other persons may be employed ... 195
cost of, in such case, how collected ... 195
notice of, needed to be given to undertakers ... 195
Viewers, may be appointed to assess damages, when ... 195
Water Course, dividing counties, bridge over, how built ... 194
BRIDGE, burning of, punishment for ... 355
BRINGING, property stolen in other states, into this state ... 408
counterfeit money into this state 370, 371
slave into this state, who is entitled to freedom ... 758
free negro, or mulatto, into this state 758
BROKERS AND EXCHANGE DEALERS. CHAPTER 23. ... 196 to 197
Brokers, defined ... 196
not to do business, without license 196
to make statement, on oath, of amount of business, &c., before getting license ... 196
Collector, how to account ... 197
License, tax to be paid on, before delivered ... 196
rates of tax on ... 196, 197
form of ... 197
who exempt from taking out ... 197
Lottery Tickets, selling of, under broker's license, prohibited ... 197
Penalty, for violating this act ... 197
BROTHEL, keeping, or letting house for ... 402
BROTHERS AND SISTERS, rule of descents to ... 421
marriages between, incestuous and void ... 729
BUCHANAN COUNTY, limits defined ... 255
BUILDINGS, lien of mechanics and others upon ... 733 to 736
for county purposes, how erected 786 to 789
burning of ... 354
BURGLARY, definition and punishment of 356
BURNING, punishment of ... 354, 355, 365, 376
BUSHEL, standard defined ... 1077
BUYING or receiving stolen property ... 362
forged instrument of writing ... 371, 372
and selling offices, &c ... 390
BY-LAWS, corporation may make ... 231
how proved ... 470, 471
towns, how to be made ... 1049
CALDWELL COUNTY, limits defined ... 255
CALLAWAY COUNTY, limits defined ... 255, 256
CAMDEN COUNTY, limits defined ... 267
CAMP MEETING, erecting booth, &c., for sale of liquors, within one mile of 404
CANALS. See title *Road and Canal Fund.*
CANOE, cutting adrift, &c ... 365
CAPE GIRARDEAU COUNTY, limits defined 268
CAPIAS, in detinue, how issued ... 423
CAPITAL CRIMES, slaves convicted of, to be punished as white persons ... 33
prosecutions for, to be by indictment 14, 44
CARGOES, burning, to defraud insurer ... 355
CARRIAGES, kept for pleasure, taxed ... 927
CARRIERS, embezzlement by ... 362
CARROLL COUNTY, limits defined ... 256
CASE, actions on, limitation of ... 717
CASTRATION, of negro, for rape ... 349
of seed horse, &c., found running at large ... 571
CATTLE, poisoning, maiming ... 364
altering marks and brands, of ... 360
cruelty to ... 406
trespassing, owner liable for damages for third offence, may be killed ... 575
made taxable ... 927
See title *Marks and Brands.*
CAUSE-WAYS. See title *Roads and Highways.*
CEDAR COUNTY, limits defined ... 268
CENSUS. CHAPTER 24. ... 198 to 200
Abstract, to be made out, by sheriff 199
to be laid before general assembly ... 199
Blank Forms, to be prepared ... 198
what they shall show ... 198
to be forwarded to sheriffs ... 198
Compensation, of sheriff, for taking census ... 199
when audited, and allowed ... 199
Original Books, where deposited ... 199
Penalty, on sheriff, for failing to perform duty ... 199
for listing non-residents ... 199, 200
Secretary of State, his duties ... 198, 199
Sheriff, shall take the census of his county; how and when ... 198, 199
shall make return, when and how 198, 199
CENSUS, of U. S., when taken ... 3
of state, when taken ... 29, 30
CERTIFICATE, forgery of ... 367, 371
falsely making ... 367
in cases of taking depositions ... 418
granted by recorder of land titles, copy of, when evidence ... 468
of French and Spanish surveys, evidence ... 468, 469
New Madrid, evidence ... 442, 468
of election of a J. P. to be delivered 631
of pre-emption of state lands, to be given ... 683
of consent of parent or guardian to marriage ... 739
of marriage to be recorded ... 781
of redemption of mortgaged property, effect of ... 753
of registry of license of free negroes and mulattoes ... 756
of survey for re-establishment of decayed corners of land ... 796
of election of public printer ... 907
of election of assessor ... 930
of purchase of land at tax sale ... 950
of purchase of saline lands ... 980, 981
of purchase of school lands ... 989
CERTIORARI, costs of, in superior court ... 243
in cases of forcible entry and detainer ... 519, 520
CHALLENGE, to fight a duel ... 393
of jurors, regulated ... 628
See title *Practice and Proceedings in Criminal Cases.*

Digitized by Google

CHANCERY COURTS, jurisdiction of, vested in circuit and supreme courts 50
costs in suits in, regulated 244
See titles *Injunctions, and Practice in Chancery.*
CHANGE OF VENUE, in civil cases. See title *Venue.*
in criminal cases. See title *Practice and Proceedings in Criminal Cases.*
CHARITON COUNTY, limits defined 256
CHARGES, against attorney at law, to be exhibited, 159
against clerks, to be exhibited 204
CHATTELS. See titles *Administration, Crimes and Punishments, Goods and Chattels, and Revenue.*
CHEATING, by false pretences 363
by false personation 363
CHECK, forgery of 369
CHILD, unborn, quick, killing by assault, &c., on mother 345
under ten years of age, rape upon 348
abortion of, procuring 351
under twelve years of age, kidnapping or enticing away 352
under six years of age, abandoning 352
CHILDREN, posthumous to inherit as others 421
advancement to, to be brought into *hotchpot* 422
bastard, to inherit from mother 422
legitimated by intermarriage of parents 422
legitimacy not affected by nullity of marriage or by divorce 422
education of, provided for 551
of poor persons, drunkards, &c., to be apprenticed 116
vagrants, to be bound out 1071
See titles *Administration, and Guardians and Curators.*
CIRCUIT ATTORNEY, shall be elected 156
when election shall be held, and how 156
abstract of votes, to whom returned 156
votes to be certified to governor 156
commission and term of office 156
residence and duties 156
may be indicted, for what 157
substitute appointed, when 157
powers and compensation of substitute 157
penalty against, for failure to attend court 157
to examine fee-bills in criminal cases 251
to prosecute actions for counties 295
to examine deeds to counties 304
proceedings by, in cases of escheat 462, 463
fees of 490
to prosecute ferrymen 510
duties in relation to groceries and dram shops 545
to prosecute keepers of inns and taverns 589
to exhibit information in nature of *quo warranto* 912
salary of 979
CIRCUIT ATTORNEY, to prosecute suits in reference to school lands 989
See title *Practice and Proceedings in Criminal Cases.*
CIRCUIT COURTS, established 38
their general jurisdiction 38, 330
chancery jurisdiction vested in 50
powers and duties, in cases of assignments for benefit of creditors 130, 131
jurisdiction, in attachment suits 133
to try charges against attorneys 159
jurisdiction of suits against boats and vessels 182 to 184
to approve title of land for county seats 293, 302
in new counties, to appoint clerks 299
jurisdiction, in criminal cases 414
terms of, when and where to be held 320 to 327
to call over execution docket 334
special terms of, when 336
costs in, regulated 240 to 252
jurisdiction of, in cases of divorce 426
of dower 433
of partition 766
of *quo warranto* 912
of salvage 986
clerks of. See title *Clerks of Courts.*
practice in. See *Practice at Law, Practice and Proceedings in Criminal Cases, and Practice in Chancery.*
CIRCUIT JUDGES, to be appointed 38, 39
qualifications of 39
salary of 979
CIRCUITS, judicial, established 38, 321
CITATION, to next of kin to administer 63
to ex'r or adm'r to make settlement 97
to assignee for benefit of creditors 130
in cases of persons aggrieved by warrant to recover public records, 914, 915
See title *Justices' Courts.*
CITIZENS, of the several states, privilege in each 11
CIVIL ACTIONS, right of, not merged in felony 413
limitation of 714, 722
See titles *Actions, Costs, Justices' Courts, and Practice at Law.*
CIVILITER MORTUUS, when person is 412
CIVIL OR MILITARY OFFICERS, compensation for services performed under illegal orders of, how recovered 764
dying, resigning, or removed, proceedings to recover records, &c., from, 914, 915
CLARK COUNTY, limits defined 256, 257
CLAY COUNTY, limits defined 257
CLERGY, benefit of, abolished 412
CLERGYMEN, ineligible to the legislature or to offices of profit 31
not compelled to serve on a jury 627
not to disclose confessions 1090
See title *Marriages.*
CLERKS. CHAPTER 25. 200 to 205
Attorney General, notice of misdemeanor of clerk, to be given to 204
to prosecute charges against clerk 204

Digitized by Google

CLERKS.
Attorney General, shall file charges, and cause witnesses to be summoned 204
Bond, to be given by clerk 202
to be deposited with secretary of state, and recorded by him 203
certified copy of, evidence 203
new, required to be given, when, 202
clerk failing to give, office vacated 203
Certificate of election, and bond of clerk, to be filed with secretary of state 202
and oath of office to be recorded 202
Charges, to be prosecuted against clerk 204
to be notified of 204
clerk to appear and plead to, when 204, 205
may be tried by jury 205
Clerks of Circuit and County Courts, to be elected, when 201
to be elected every six years from the time he was first elected 201
vacancies, how filled 201
special election for, when ordered 201
election of, how conducted 201
tie, or contested election, how determined 202
qualifications of 202
tenure of office 201
to give bond 202
powers and duties 203
shall keep his office, where 203
may appoint deputies 204
may be suspended 204
may be prosecuted on charges 204
may be removed from office, and fined not over $1000 205
if acquitted, may be reinstated 205
shall furnish books, stationery, and furniture for his office 203
his accounts shall be allowed, and paid by county 203
shall reside in the county of which he is clerk 202
may be removed for misdemeanor, or punished by indictment 205
Clerk of Supreme Court, by whom appointed 200
tenure of office 200
vacancy, how filled 201
shall keep his office at the city of Jefferson 201
shall give bond 202
securities not required to be residents of the county 202
to preserve seal and property of his office 203
shall furnish books, stationery, &c. accounts, to be allowed and paid by the state 203
Costs, to be paid by clerk, if found guilty 205
of proceedings against circuit or county clerk, to be paid by county, in case of acquittal 205
of proceedings against clerk of supreme court, to be paid by the state 205
Court, when clerk has been guilty of a misdemeanor, to notify attorney general 204

CLERKS.
Court, may appoint a temporary clerk; his powers and duties 204
Executors and Administrators, to deliver over books, papers, &c., to clerk's successor, when 205
Records, may be removed by clerk, when 203
clerk to keep 203
Securities, of clerks of circuit and county courts, to be residents of county 202
of clerk of supreme court, need not be residents of the county 202
if non-resident, or insolvent, new bond and security may be required 202
CLERKS OF COURTS, to be elected by the people 52
tenure of office 52
to keep accounts of fines, penalties, forfeitures and judgments, in favor of a county 313
to certify amount of fines and forfeitures, to county court 313
penalty for failing to do so 313
may be proceeded against, for misdemeanor 334
not to practice law, in their own court 337
to keep fee-books, and issue fee-bills 506
fees, for certifying unsold tax lands 507
fees, in cases of naturalization 508
to leave margin on record book 625
to enter on margin, disposition of judgment 625
to keep docket of judgments and decrees 625
to enter judgments in, when 625
what docket shall contain 625
penalty against, for failing to keep docket, and make entries 625, 626
fees of 494 to 497
to keep grand jury book 628
not to be justice of the peace 630
deputy not to be justice of the peace 630
See titles *Clerks of Courts, and Practice at Law.*
CLERK OF COUNTY COURT, not to be executor or administrator 63
nor security in administration bond 65
to grant letters testamentary, when 62, 67
to present same to court 62
to issue citation to persons entitled to administer 63
to take bond of administrator in vacation 64
to see that securities therein are solvent 65
to record bonds given by executors or administrators 65
and letters testamentary and of administration 65, 66
penalty against, for delivering letters not recorded 66
may take separate bond, when two or more executors 72
to make deed to administrator, who purchases land at sale of estate 84
to keep abstract of judgments filed 94

Digitized by Google

CLERK OF COUNTY COURT, to keep abstract of demands established against estates ... 94
to provide books, and record settlements of executors and administrators therein ... 96
to keep docket of executors and administrators, and the terms when they settle ... 97
to put up list in his office ... 97
to issue execution against executor or administrator ... 98
to send transcripts to circuit court on appeal ... 107
to issue license to insurance agents ... 611
to issue auction licenses ... 162
to endorse fulfilment of condition of auctioneers' bond ... 165
to issue licenses for billiard tables 170, 171
to keep accounts of county ... 309
to file and preserve vouchers, &c ... 309
to issue warrants on treasury ... 309
compensation of ... 312
ineligible to office of county treasurer ... 314
to transmit to legislature election returns ... 447
to make and deliver poll books ... 449
to examine and cast up votes ... 449
penalty against, for failure to transmit returns of election ... 450
fees of ... 490 to 493
not to be guardian or curator, nor security for ... 549
to extend licenses of inn and tavern keepers ... 586
not to be justice of the peace ... 630
deputy not to be justice of the peace to certify to governor acceptance of office by a justice of the peace ... 630, 632
to keep register of negroes and mulattoes, apprenticed by county court ... 755
to receive and keep free papers of negroes and mulattoes ... 757
to certify election of assessors ... 930
to appoint assessor, when ... 930
to deliver to assessor abstract of conveyances ... 933
to make copy of tax book for use of collector ... 935
to make out and certify abstract of tax book ... 935
to receipt to collector for county taxes ... 947
to certify receipt of succeeding, to preceding collector ... 954
penalty against, for failure to perform duties in relation to county roads ... 969
to lay before grand jury schedule of road overseers ... 970
See title *Clerks of Courts.*
CLERK OF SUPREME COURT, how appointed, and term of office ... 200
where to keep his office ... 201
vacancy in office, how filled ... 201
duty in relation to the decisions of his court ... 924
compensation for making copies ... 925
CLERK OF SUPREME COURT, to be *ex officio* state librarian ... 1028
See title *State Library.*
CLINTON COUNTY, limits denned ... 257
CLIPPING COIN, forgery ... 374
CLOCK PEDDLER. See title *Peddlers.*
CLOTHING, exempt from execution ... 477
COCK FIGHTING, on Sunday ... 405
COIN, counterfeiting ... 369
counterfeit, bringing into this state ... 371
clipping, scaling ... 374
may be taken on execution ... 478
COIN MONEY, states not to ... 7
COLE COUNTY, limits defined ... 269
COLLECTORS to settle with county court at each term ... 308
to receive county warrants in payment of fines, &c., to counties ... 314
not to hold office of county treasurer 314
unlawfully exacting taxes ... 391
copy of bond of, evidence ... 471
not to be summoned as garnishee ... 476
duty of, in relation to merchants' licenses ... 739, 740
duty in relation to peddler's licenses, ... 779, 780
See *title Revenue.*
COLLEGE, burning of ... 355
COMMANDER-IN-CHIEF, governor to be 35
COMMISSION to take depositions, when, how, and to whom issued ... 416, 417
See titles *Practice and Proceedings in Criminal Cases, and Practice in Chancery.*
COMMISSIONERS to audit and settle demands against estates ... 95
of bridges ... 193
to select seat of justice in new county ... 291, 292
of county seat ... 293
for removal of seat of justice ... 301
to take depositions in other states ... 420
to make partition and assignment of dower in slaves ... 432, 433
to assign dower in real estate ... 433 to 437
copy of bond of, evidence ... 471, 472
to select 500,000 acres of land granted by congress to the state ... 677
in partition, to be appointed ... 768, 775
of county roads, powers and duties 962, 963
of state roads, powers and duties ... 972, 973
to view and mark out private way ... 565
See title *Practice in Chancery.*
COMMISSIONER, LAW, of St. Louis county 690
See title *Law Commissioner.*
COMMISSIONER OF THE PERMANENT SEAT OF GOVERNMENT. CHAP. 26. ... 206 to 208
Capitol, watch for, to be appointed ... 207
penalty, for writing on walls of ... 208
Commissioner, shall be elected, when ... 206
shall give bond, and take oath ... 206
shall preserve from waste, public property ... 206
shall preserve perishable property, in place of safety ... 206
shall have charge and control of capitol 206

Digitized by Google

COMMISSIONER OF THE PERMANENT SEAT OF GOVERNMENT.
Commissioner, shall prosecute, for trespass and injuries ... 207
shall provide fuel, candles, &c., for legislature ... 207
shall contract for, and superintend construction and repairs, when ... 207
shall keep accounts, between himself and state ... 207
shall deliver to successor, property and papers ... 207
compensation of ... 207
may appoint a watch for capitol, &c ... 207
Fines, &c., shall be applied, how ... 208
Guardians, &c., when liable for acts of ward or child ... 208
Judge of Circuit Court of Cole County, shall give this act in charge, to the grand jury ... 208
Public Property, penalty for trespassing upon ... 207
duty of officers of Cole county, when trespass upon, has been committed ... 208
Vacancy, the governor shall fill ... 206
CHAPTER 27. ... 209 to 210
Commissioner, may proceed against constables or sheriff, in certain cases ... 209
present commissioner, duty of ... 209
to bring suit against former ... 209
to pay certain costs, when ... 209
shall make report to general assembly, when ... 210
auditor shall allow to, certain moneys ... 210
COMMITMENT. See title *Practice and Proceedings in Criminal Cases.*
COMMON LAW, declared in force ... 693
limitation as to crimes ... 693
COMMON SCHOOL FUND. See titles *School Lands, and Seminary Funds.*
COMPENSATION, of witnesses aiding executor or administrator in making inventory ... 74
of appraisers of estates ... 75
of commissioner to audit and allow demands against estates ... 96
of executors and administrators ... 104
of public administrators ... 109
of arbitrators and referees ... 126
of appraisers of assigned effects ... 128
of officers for taking and keeping property under attachment ... 145, 154
of officers in suits against boats and vessels ... 186
of commissioner of bridges ... 195
of sheriff, for taking census ... 199
of surveyors for running county lines ... 286
of commissioners for selecting county seat ... 297
of commissioner of seat of justice ... 297
of superintendent of county buildings ... 288
of commissioners for removal of seat of justice ... 303
of county court clerk and county treasurer, for services under county treasury act ... 312
of justices of county court ... 331
COMPENSATION, of judge of St. Louis court of common pleas ... 317
of judge of St Louis criminal court ... 320
of reporter of supreme court ... 926
of clerk of supreme court for copying decisions ... 926
of commissioners in cases of dower ... 437
to occupying claimant for improvements ... 444, 445
of clerks for sending, and messenger for carrying election returns ... 451
of persons notifying presidential electors, and carrying election returns ... 460
of electors of president and vice-president of the United States ... 460
of ferrymen ... 509
of guardians and curators ... 553
of grand jurors ... 628
of clerks, for services in relation to grand juries ... 629
of registers and receivers of land offices ... 685
for copying laws and journals ... 704
of witnesses, attending legislature ... 712
of members and officers of the legislature ... 713, 714
of millers ... 742
of sheriff, in partition cases ... 772
of commissioners, in partition ... 775, 776
of patrols ... 777
of public printer ... 910, 911
of assessors ... 936
of collectors ... 945
of officers receiving and paying over revenue ... 945
of register of lands, for advertising land ... 953
of printer, for printing advertisements of lands ... 953
not allowed to county treasurer for services in relation to road and canal fund ... 959
of commissioner and others for marking state road ... 975
of governor, judges, secretary of state, and state treasurer ... 979, 980
of auditor, attorney general, and circuit attorneys ... 979
of sheriff, in cases of salvage ... 986
of salvor of lost or wrecked property ... 984, 985
of sheriff, county clerk, and county treasurer, for services in reference to school lands ... 990
of commissioner of seat of government ... 207
of taker-up of runaway slave ... 1024
of librarian of state library ... 1030
of professors and tutors of university ... 1037
of printer, for advertisement of strays ... 1040
of taker-up of strays ... 1041
of chainmen, and markers ... 1045
of keeper of state tobacco warehouse ... 607
of trustee of dissolved corporation ... 1054
of officer, collecting money, on auditor's distress warrant ... 1062
of auditor, or treasurer, *pro tem* ... 1067

Digitized by Google

COMPENSATION, of persons appointed to settle with auditor, and treasurer 1067
COMPOUNDING OFFENCES 380
CONCEALING, OFFENCES 380
property of minors, proceedings 550, 551
CONCESSIONS of land, by French and Spanish governments, evidence 468
CONFESSION OF JUDGMENT, false personation of another, in 375
See title *Justices' Courts.*
CONFEDERATION, not to be entered into, by the states 7
CONFIRMATIONS, of lands, by commissioners, or recorder, copies of, when evidence 468
CONGRESSIONAL DISTRICTS.
CHAPTER 29. 213 to 214
Congressional Districts, state divided into 213
what counties, shall be composed of 213
Certificates of Election, governor shall grant 214
Elections, when and where to be held 214
how shall be conducted 214
returns of, how made 214
Penalties or Fines, sheriff and other officers liable to, for failing to make returns or neglect of duty 214
CHAPTER 30. 214 to 215
Congressional Districts, new counties, how attached to 214
when new counties to constitute portion of congressional district 215
CONGRESS, composed of senate and house of representatives 2
senators in, when and how chosen 3
election and qualification of members 3, 4
compensation, privileges and incapacities of members 4, 5
proceedings on bills, resolutions, &c. 5
general powers of 5, 6
vacancies, how filled 3
printed laws of, when evidence 467
CONSERVATORS OF THE PEACE, judges of supreme and circuit court to be 38, 854, 855
judge of St. Louis court of common pleas to be 317
judge of St. Louis criminal court to be 320
justices of the county courts, and justices of the peace, to be 854, 855
proceedings by 855, 856
mayors and chief officers of towns to be 855
coroner to be 229
sheriff to be 1008
CONSOLIDATION OF CAUSES. See titles *Justices' Courts, and Practice at Law.*
CONSPIRACY, by slave 342
definition and punishment 397
proof of, See title *Practice and Proceedings in Criminal Cases.*
CONSTABLES. CHAPTER 28. 212 to 213
Approval, of new bond, effect of 211
Bond, to be given by constable 211
condition and penalty of 211
to be approved by court or clerk 211
CONSTABLES.
Bond, new, required, when 211
former discharged by approval of new 211
if taken in vacation, to be approved or rejected by court at next term 211
of constable appointed to fill vacancy 211
to be filed with clerk 211
may be sued upon, when 211, 212
Clerk, may approve constables' bond in vacation 211
constables bond to be filed, with 311
Constable, by whom elected 210
one to be elected in each township except St. Louis 210
contested election of, by whom determined 211
shall give bond, condition, approval, 211
new bond required of, in certain cases 211
may appoint deputies 212
detaining money, shall be removed from office 212
what process, may serve 212
to receive and receipt for claims 212
summary proceedings against 212
shall continue in office, when township divided 212
liable with sureties for money collected 212
may be appointed to continue until next general election 211
vacancy in office of, who to serve process 212
Election, for constables, when held 210
contested, how determined 211
judges and clerks of, to certify to clerk of county court 211
constables appointed to hold office until general 211
Judges and Clerks, of election, to certify election of constable 211
Liability, of constables and sureties 212
Process, &c., constables may serve 212
St. Louis, township, how many constables to elect 210
Summary Proceedings, against constable, his sureties liable 212
Sureties, liability of 212
Township, divided, constable to continue in office 212
of St. Louis, how many constables to elect 210
Vacancy, how filled 211
who to serve process, in case of 212
CONSTABLES, to attend polls at elections 452
copy of bond, evidence 471
fees of 500, 501
to pay road fines to justice of the peace 970
to execute process in cases of salvage 985
of incorporated towns, may be appointed 1050
may serve subpœnas issued by courts of record 1089
See titles *Justices' Courts, and Practice and Proceedings in Criminal Cases.*
CONSTITUTION, of the United States, and amendments 1 to 15

Digitized by Google

CONSTITUTION of Missouri, and amendments ..... 25 to 54
CONTEMPT, before legislature, may be punished 32
before arbitrators 122
of court, attorney practising without license, guilty of 159
before court of record, how punished 388
in disobedience or violation of injunction 581
may be punished by justice of the peace 632
See title *Practice and Proceedings in Criminal Cases.*
CONTESTED ELECTION, of governor and lieutenant governor regulated 37, 456
of clerks, how determined 202
of constables, how determined 210
of sheriff, coroner, assessor, justice of the peace, justice of county court, and county surveyor, how conducted 453
of members of legislature 454, 455
of electors of president and vice-president 460
of justices of the peace, decided by county court 631
CONTINGENT EXPENSES, of clerks, how allowed and paid 203
of supreme court, how paid 329
of circuit and county courts 339
of legislature, how adjusted and paid 712
of secretary of state 997
of librarian 1029
CONTRACTS AND PROMISES.
CHAPTER 31 ..... 215 to 217
Administrators, when contract to survive against 216
Contracts, construed to be joint and several 216
shall survive against heirs, &c., when part of joint obligors die 216
shall survive against heirs, &c., if all the joint obligors die 216
to repair, shall impose on tenant what obligation 216, 217
Copartners, suit may be brought against one or more 216
Covenant or Contract, to repair, what obligation shall impose on tenant 216, 217
Heirs, when contract to survive against 216
Joint Contracts, at common law, construed to be joint and several 216
shall survive against heirs, executors, and administrators, when 216
suits, how brought upon 216
Joint Obligations, &c., suits may be brought against one or more parties in 216
Promisors, in case of death of, contracts survive against legal representatives 216
Seal, scrawl equivalent to 216
CONTRACTS, law, impairing obligation of, not to be passed 7, 45
founded on prohibited currency, void 167
of counties, may be by agent 290
CONTRACTS, of corporations, by agent, 232
with state or county, copies of, evidence 471
must be in writing, to charge executor or administrator out of his own estate 530
to charge a person for debt, &c., of another 530
to charge any person, on agreement, in consideration of marriage 530
for sale of lands, or lease for longer than one year 530
for sale of goods 531
with indians, when void 577
with insane persons, void, without consent of guardian 597
See title *Marriage Contracts.*
CONTINUANCE, by arbitrators, of cause before them 122
in suit, against boats and vessels, before justice of the peace, not to be granted to plaintiff, unless for certain causes 186
See titles *Administration, Justices' Courts, Practice at Law, Practice and Proceedings in Criminal Cases, and Practice in Chancery.*
CONVENTION to amend constitution of state, authorised 1097
CONVEYANCES. CHAPTER 32. 217 to 228
Acknowledgment, when shall be taken 221
by whom taken 221
certificate of, to be endorsed on conveyance 222
not to be taken, unless grantor be personally known or identified 222
certificate of, how made 222
certificate of, what facts shall state 222
by whom may be taken, of married woman 222
not to be taken of married woman, 225
certificate of, when married woman makes 225
Attorney, letters of, how acknowledged, proved, &c 226
when deemed revoked 226
Attornment, of a tenant, void to a stranger, when 220
grants of rents, &c., effectual, without attornment of tenant 220
Conveyance, operation of, to use, &c ... 218
words "grant," "bargain," "sell," how construed in 221
to be signed and sealed 221
instruments of, to be acknowledged 221
by whom acknowledgment of, to be taken 221
what proof necessary to instrument of 222
deeds of, when to be recorded 226
recorded, shall be notice, &c., to all persons 226
instruments of, when not valid 226
title acquired after, enures to grantee 219
may be read in evidence, when 227
when certified copy evidence 227
of military bounty lands, how acknowledged 227
when instrument of, valid 228

Digitized by Google

CONVEYANCES.
Conveyance, filed for record shall be notice ... 228
may be read in evidence ... 228
certified copies of, when may be read in evidence ... 228
Deeds, valid, notwithstanding adverse possession ... 219
to be recorded ... 226
record of, shall impart notice ... 226
not valid without record ... 226
Dower, how married woman may relinquish ... 224
before whom relinquishment of, shall be taken ... 224
married women relinquishing, shall be known to officer, or identity proven ... 224
Entails, not allowed ... 219
Estate, limited in remainder, &c., how disposed of ... 220
future, on death of person without heirs, how disposed of ... 220
in fee tail, operation of ... 219
Evidence, what shall not be conclusive instruments of conveyance recorded, to be received in ... 227
of hand writing, not to be received, when ... 228
when grantor and witness are dead ... 223
Heirs, term of, in deed not necessary to to convey a fee simple estate ... 223
Married Woman, with her husband, may convey real estate ... 219
effect of conveyance, ... 225
Powers of Attorney, how acknowledged, proved, &c ... 225
when deemed to be revoked ... 226
Proof, what required in executing instruments conveying real estate, &c ... 226
when shall be taken by subscribing witness ... 222, 223
no certificate of, shall be granted unless, &c ... 222
certificate of, what facts shall set forth ... 223
when grantor and witnesses are dead ... 223
certificate of, when granted ... 223
what facts shall set forth ... 223
Real Estate, construction of the term ... 227
Remainder, in fee simple, to whom it shall pass, and when ... 219
limited to take effect on death of person without issue, how construed ... 220
how disposed of when limited to heirs, ... 220
Remedy, against persons who are subpœnaed refusing to answer ... 224
Rents, &c., grants good without attornment ... 220
Subscribing Witness, proof by, of execution of instrument ... 222
proof by, before certificate granted ... 223
proof of hand-writing of, not to be received unless, &c ... 223
when and how summoned ... 224
Tenants, in common, when ... 221
attornment of, void to a stranger, when ... 220
Title, acquired after conveyance, enures to grantee ... 219

CONVEYANCES.
Warrantees, lineal and collateral, abolished ... 220
Wills and Testaments, this act not to extend to ... 227
CONVEYANCES, by and to counties, their effect ... 289
by husband alone, not to bar dower ... 431
to occupying claimant, when ... 445
made before officer of French or Spanish government, evidence ... 468
general provisions as to evidence ... 468, 469
by sheriff, of land sold under execution ... 484
given on gaming consideration, void ... 540
assignment of, not to affect defence in such case ... 540
by guardians and curators ... 552
by guardians of insane persons ... 597
decree concerning, to be recorded ... 626
of acre of land, in cases of mill dams, operated by decree of court ... 746
under foreclosure of mortgage ... 751
in cases of partition ... 771
how recorded ... 917
index of, to be kept by recorders ... 918
by state, of saline lands ... 982
by state, of school lands ... 989
by town plats, when ... 1056
See titles *Administration, Crimes and Punishments, Fraudulent Conveyances, Practice in Chancery, and Revenue.*
CONVICTION, not to work corruption of blood ... 44, 412
when to work incompetency as juror. See title *Crimes and Punishments.*
when, as a voter. See same title.
when, to hold office. See same title.
when to work forfeiture of office. See same title.
former, when may be pleaded ... 412
second, for like offence, punishment ... 411
may be had of offence of less degree than that charged in indictment ... 411
of one degree, bars trial for same act for another degree ... 411
of persons under sixteen, of felony, punishment ... 412
not to work forfeiture of estate ... 412
CONVICTS. See titles *Crimes and Punishments, and Practice and Proceedings in Criminal Cases.*
COOPER COUNTY, limits defined ... 269
COPARCENER, may maintain action of account ... 55
may have partition of lands ... 765, 766
CORNERS, of land, decayed, how re-established ... 795, 796
CORONERS. CHAPTER 23. ... 229, 230
Bond, county court shall enquire into sufficiency of ... 230
what proceedings when insufficient ... 230
Clerk to certify vacancy to governor ... 230
County Court, duty of, in relation to bond ... 230
Coroner, to take oath and give bond ... 229
failing to give bond, office vacated ... 230
when to serve and execute writs ... 229

Digitized by Google

CORONERS.
Coroner, when to act as sheriff 229
shall take inquests 229
shall be conservator of the peace, &c. 229
when office vacated by neglecting to give bond 230
vacancy occurring, clerk of county court shall certify fact to governor 230
shall be exempt from serving on juries and working on roads 230
may appoint deputies 229
CORONERS, fees of 500
to have charge of jail, when 621
may serve subpœnas, when 1089
CORPORATIONS. CHAP. 34. ..230 to 239
Actions, against corporation, how instituted 237
summons in such, shall be sufficient 237
Attachments, against rights and credits of corporation may issue, when ... 238
shall be executed, how 238
moneys &c., of corporation, bound from time of service of 239
other writs of, may issue, when 239
Bills, Notes, &c., no corporation shall discount, unless created with banking powers 232
not to be issued for circulation as money, when 232
Board, what shall form, for transaction of business 232
a majority assembled, as a board, proceedings of, shall be valid, when .. 232
By-Laws, may be established 231
provisions of shall extend to, what .. 231
for transfer of stock, may be made .. 231
Charter of, subject to repeal 232
Clerk of Corporation, or other officer, having charge of the books, duty of 234
shall furnish officer with names, &c., of persons holding stock, and who are individually liable, when 234
Contracts, may be implied, on part of agent, when 232
may be implied from corporate acts, 232
parol, binding on aggregate corporation 232
Corporation, to have succession by corporate name 231
may sue and be sued 231
may make and use a common seal ... 231
may hold, purchase and convey real and personal estate, how 231
may appoint officers and agents 231
may make by-laws 231
powers of, shall hereafter vest, in what 231
hereafter created, shall possess what powers 231
necessary powers, may be exercised 232
shall not issue nor discount bills, notes, &c., unless, &c 232
shall not receive deposits, when 232
shall not have the power to purchase gold and silver, bullion, &c., unless, &c 232
shall not buy and sell bills of exchange 232

CORPORATIONS.
Corporation, board of, for transaction of business 232
powers and duties of 233
corporate powers of, shall cease, when 232
charter of, subject to repeal, when .. 232
parol contracts binding, when 232
contracts made with agent of, binding, 232
contracts with, may be implied, when 232
first meeting of, how called 232
warrant may be issued for call of meeting of, when, how 233
meeting of, called by warrant, who may preside 233
acts of meeting of, shall be valid ... 233
individual property of members of, liable to double the amount of stock 233
execution against property of stockholder in, how served 234
creditor of, may sue members and stockholders of, when and how 234
shall give annual notice of debts, &c. 234
failing to give notice, effect of 235
effect of paying dividend when insolvent 235
directors of, shall be liable for all debts of, when 235
debts of, must not exceed capital 235
directors of, liable for excess 235
of other states, liable to be sued, how 235
may convey land by deed 236
deed of, how executed, proved, &c .. 236
on dissolution of, who to be trustees. 236
trustees of, powers and duties of 236
members of municipal, competent witnesses, when 236
actions against, how instituted 237
moneys, &c., of, bound from service of attachment 239
what portion of this act not to extend to municipal corporations 239
Creditor, at his election, may sue stockholders, jointly or severally, when. 234
Debts, of corporation not to exceed amount of capital 235
banking companies excepted in the foregoing 235
directors liable for, when 235
Deed, corporation may convey land by 236
how to be executed, signed, sealed and acknowledged 236
shall be recorded, how 236
Defendants, order of court in relation to 238
Demand and Notice, made and given to stockholders, when and how 234
after which, creditor may proceed, how 234
to be served, how 234
Directors, shall not declare and pay dividend, when 235
liable for all debts of corporation 235
absent when dividend made, not liable, how 235
liable for excess of debts above amount of capital 235
when absent at time excess created, not liable 235

Digitized by Google

CORPORATIONS.
Dissolution of corporation, who shall be trustees ... 236
Dividend, effect and liability of directors in making, when corporation insolvent ... 235
Execution, individual property of stockholders, when and how liable ... 233
shall be levied on corporate property ... 233
corporate property not found, how levied ... 233
levied upon individual property, when shall be a *fieri facias* ... 234
shall be levied and proceedings had as in other cases ... 238
First Meeting of corporation, how called ... 232
Garnishee, may be summoned, when ... 238
when and how to answer ... 238
what moneys, effects, &c., shall be credited to, and when ... 239
proceedings against, how conducted ... 239
shall have credit for moneys paid ... 239
Individual Property, of stockholders liable, when ... 233
liability of, to continue after judgment recovered ... 233
Justice of the Peace, shall issue warrant, calling a meeting of stockholders, when ... 233
Literary or Benevolent Societies, stockholders and directors of, when not liable individually ... 235
Meeting, of corporation, when and how to be called ... 232
Notice, annual, shall be given of all the debts of corporation, how ... 234
failing to give, what effect ... 235
given by officer, for what, and how ... 234
Officer, shall give notice of execution, &c., when and to whom ... 234
summons must be served on chief, of corporation, how ... 237
duties of, in making return ... 237
Orders, Rules, Notices, &c., shall be served how ... 238
when to be published ... 238
Parol Contracts, binding on aggregate corporation, when ... 232
Powers, specified in first section, shall vest in all corporations hereafter created ... 231
necessary, only to be exercised ... 232
Real and Personal Estate, may be held and conveyed by ... 231
Seal, corporation shall make, use, &c ... 231
Stockholders, property of, may be levied on, when and how ... 234
Subordinate Officers and Agents, may be appointed, when ... 231
Suits, against corporations, shall be commenced, where ... 238
Summons, actions against corporations shall be commenced by ... 237
may be served, how ... 237
return of officer on, shall express what ... 237
returned "not served," proceedings ... 238

CORPORATIONS.
Trustees, who shall be, upon dissolution of corporation; powers of; duties of ... 236
Witnesses, inhabitants of municipal corporation, competent ... 236
CORPORATION, forging seal of ... 368
making false entries in books of ... 372
stock of, how levied on ... 479, 480
moneyed, not allowed benefit of statute of limitation, when ... 720
CORROSIVE SUBLIMATE, selling without label, &c ... 405
CORRUPTION OF BLOOD, not to be worked by conviction for crime ... 44
COSTS. CHAP. 35. ... 240 to 252
ART. I. *Costs in Civil Cases.*
Appeal, appellee, when not required to give security for costs ... 241
from justice, or county court, costs how adjudged ... 243
not prosecuted, costs how adjudged ... 244
or writ of error from circuit court, costs how adjudged ... 244
Attorney, judgment against for costs, 247
Clerk, shall issue writ without fees, when 242
duty of, in taxing bill of costs ... 245
to pay costs of re-taxation, when ... 246
Clerk of Supreme Court, failure of, to make out record, fees, &c ... 246
Costs, security for, in what cases required ... 240, 241
security for, in what cases to be given after suit commenced ... 241
failing to give, suit may be dismissed ... 241
appellee not required to give security for, when ... 241
when plaintiff may sue as a poor person ... 241
who shall recover ... 242
court may give or refuse, on motion ... 242
court, when may exercise discretion in giving ... 242
how awarded in certain cases ... 242
in case of several defendants, how recovered ... 242
shall be recovered in actions, *ex delicto*, 243
in *certiorari*, successful party to recover ... 243
how adjudged on appeals ... 243
how adjudged in favor of appellant ... 243
when appeal not prosecuted, how adjudged ... 244
on appeal or writ of error from circuit court, how adjudged ... 244
in equity, how adjudged ... 244
in suits, on contracts made with the state, how adjudged ... 244
no general judgment given against state or county, for ... 244
person to whose use action is brought, liable for ... 244
effect of judgment for, in such case 245
in petition for partition, how adjudged ... 245
when tender is made, plaintiff not to recover ... 245
how adjudged, when tender made in court, after suit brought ... 245

Digitized by Google

COSTS.
Costs, duty of clerk in taxing bills of 245
retaxation of, when made 246
effect of retaxation of 246
when supreme court shall retax 246
retaxation of, to be paid by clerk 246
judgment for, against attorney, when 247
Counts, one of several bad, costs how awarded 242
Damages, to determine jurisdiction of court and costs 243
Equity, costs in, how adjudged 244
Fee Bills and Executions, when to issue 247
Index, clerks of inferior court, to append to transcript to supreme court 246
Motions, costs on 242
Poor Person, may sue, when 241, 242
not liable for costs in certain cases 241, 242
when clerk shall issue writ for 242
counsel may be assigned to, by court 242
Record, failure of clerk of supreme court to make out 246, 247
Retaxation, of costs, when made; effect of, 246
duty of supreme court in 246
clerk to pay costs of, when 246
Supreme Court, to retax costs, when 246
ART. II. *Of Costs in Criminal Cases.*
Allowance, for ironing prisoners, court to make, when 250, 251
Auditor, fee-bills to be certified to 251
Bill of Costs, to be certified to county court, when 249, 251
Circuit Attorney, fee-bills to be delivered to 251
to examine fee-bills and certify them 251
Clerk, not to issue subpœna, when 250
costs when to be taxed against 250
to deliver fee-bills to circuit attorney 251
penalty on, for failing to deliver fee-bills 251
of county court, when fee-bills to be certified to 251
failing to collect fee-bills, penalty, 251, 252
refusing to pay money collected on fee-bills, penalty 251, 252
fees of, curtailed 50 per cent., when 249, 250
Costs, in capital cases and felonies to be paid by state, when 248
to be paid by county, when 248
in cases of acquittal, in capital cases and felonies, to be paid by state 248
informer or prosecutor to pay, when to be paid by county, when public officer prosecutes 248
prosecutors in cases of misdemeanor, liable for, unless, &c 248, 249
if accused discharged, prosecutor shall pay, unless, &c 249
when not to be taxed against state or county 249
to be paid by state if prisoner discharged by examining officer 249
jury shall determine in certain cases, who shall pay 249
slave shall be sold to pay, when, &c. 250
when slave convicted and executed, shall be paid by state 250

COSTS.
Costs, none paid by state, on conviction, except for board, &c 249
when curtailed fifty per cent. 249, 250
no costs allowed, when 250
not to be taxed against state or county for more than three witnesses 252
Execution for costs, when to be issued 249
Fee-Bills, clerk to deliver to circuit attorney, when 251
duty of judge and circuit attorney in relation to 251
to be certified to auditor, when 251
to clerk of county court, when 251
Fines and Penalties to be paid for benefit of county 251
Ironing Prisoners, court shall make an order of allowance for 250
Judge of Circuit Court to examine and certify fee-bills 251
Officers, how to proceed in selling slave for costs 250
fees of, curtailed 50 per cent., when 249, 250
Slave, shall be sold to pay costs, when 250
when reprieved, shall be sold, &c 250
when convicted of capital offence, costs paid by state 250
duty of officer, selling 250
proceeds of sale of, how applied 250
Subpœnas in criminal cases, how and by whom issued 250
Witnesses, recognized or subpœnaed, to attend till discharged 250
Of Costs, in Miscellaneous Cases.
in cases of apprentices 118
of arbitrations and references 124, 125
of proceedings against clerks 205
in cases of dower 437, 438
of escheat 462, 464
of fugitives from justice 537
of contested elections 454
of *habeas corpus* 557
of coroner's inquest 592
of inquiry of lunacy 594
of entering satisfaction of judgment 624
in cases of breach of peace 674
of *ad quod dammum* 746
of perpetuating testimony 797, 798
of *quo warranto* 913
on application for county roads 964
in cases against delinquent hands on roads 967
See titles *Administration, Attachment, Justices' Courts, Practice at Law, Practice and Proceedings in Criminal Cases, Practice in Chancery, and Revenue.*
COUNTERFEITING 367 to 375
COUNTERFEIT PLATES, making or possessing 370
COUNTY ATTORNEYS, when, and when not appointed 158
qualification, term of office, oath, powers and duties; certificate to be given 158
COUNTIES, actions by and against, regulated 289 to 290

Digitized by Google

COUNTY BOUNDARIES. CHAP. 36. ....252 to 286
North of the Missouri River....253 to 266
South of the Missouri River....266 to 285
Boundaries, by water courses, how construed 285
of range, township and sectional lines, how construed 285
when not correctly ascertained, duty of county court 285
order for ascertaining, notice of, to be given to adjoining county, what 285
duty of surveyors, in executing such order 286
Returns of surveyors approved, and recorded, evidence 286
compensation of surveyors, how paid 286
if one surveyor, only, attend, his duty 286
COUNTY BUILDINGS. CHAPTER 37. ....286 to 289
Bond, undertaker shall give 288
Circuit Court, shall examine as to title, and certify 287
County Court, when to order building 287
shall designate the place of building 287
duty of, when title approved 287
when plan approved by, what proceedings 288
power to alter, repair, &c., public buildings 288
Court House, shall be erected in each county 286
Fire proof, buildings, when and where to be erected 287
Jail, shall be erected in each county 286
Payment, county court to make order of 288
not to be made unless, &c 288
Superintendent, to be appointed, when 287
to select ground for public buildings .. 287
to submit plan of public buildings 287
shall take bond from undertaker 288
to direct work and make report, &c. 288
compensation of 288
Taxes, inhabitants of territory attached to county, not to pay, when 287
Vacancy, in office of superintendent, when filled 287
Waste, &c., four fold damages for, to be recovered, when 288
COUNTY BUILDINGS, burning, &c. See title *Crimes and Punishments*.
COUNTIES, CONVEYANCES, CONTRACTS, ACTIONS. CHAP. 38. ....289 to 290
Actions, where and how commenced and prosecuted 290
Agent, contracts of, to bind county 290
Commissioner, shall be appointed, when 289
deed of, when sufficient to convey real estate 289
Contracts, with counties, when binding 289
Counties, conveyances to, effect of 289
County Buildings not subject to execution 290
County Court, to appoint commissioner to convey real estate 289
may appoint agent for erecting county buildings 290
Conveyances, effect of, to counties 289
COUNTIES, CONVEYANCES, CONTRACTS, ACTIONS.
Conveyances, effect of, by commissioner 289
Jurors may be inhabitants of county suing or being sued 290
Process, against county, how served 290
COUNTY COURT to consist of three justices 330
justices to be elected, term of office .. 330
election to be certified to court 331
tie in, how determined 331
vacancy, how filled 331
justices elected to be commissioned .. 331
their compensation, how paid 331
fees for taking acknowledgments 331
jurisdiction and powers of 331
quorum, majority shall be 332
president of, to be chosen 332
to procure and keep seal 332
clerk to use private seal, when 332
attestation in such case 332
shall be courts of record 333
justice, if interested, not to sit 335
majority interested, &c., proceedings 335
justice not to have partner practising law 337
not to borrow school or county money, nor become security for; penalty 337
expenditures of, how paid 339
terms of, when to be holden 327
notice of special terms to be given 327
to appoint public administrator 108
may appoint county attorney 158
duty in issuing auction licenses 162
to license billiard tables 170
duty respecting bridges ....192 to 196
to settle accounts for taking census .. 199
to decide tie on election of constables 211
to examine every year coroner's bond 230
conveyances made by order of 289
contracts by and with, for county 289
buildings to be erected by 286, 288
county seats, removal of, duty in, 300 to 306
county lines, duty of, in ascertaining 285
county treasury, duty of, in relation to ....306 to 314
powers in relation to accounts, &c. 310
duty in relation to sixteenth sections, and three per cent. fund 310, 311
of St. Louis county, how constituted. See *Appendix*.
to fix rates of ferriage 509
to appoint guardians and curators 547
to grant licenses to inns and taverns .. 584
duty in reference to insane persons and idiots 593, 594
to decide tie and contested election of justice of the peace 631
to certify election of, J. P. 631
to bind out free negroes and mulattoes 754
to grant licenses to free negroes and mulattoes 755
to appoint patrols 777
to settle with collectors for peddler's licenses 779
to provide for poor of the county 798
to establish poor house 799
to settle accounts of recorders 916, 917

Digitized by Google

COUNTY COURT, to appoint assessor, when ... 930
to withhold pay of assessor, when ... 933
to hear appeals from assessment ... 935
may remove assessors ... 936
to notify governor of failure of sheriff to give bond as collector ... 938
to examine bond of sheriff annually ... 938
to cause collectors to settle ... 944
may levy county tax ... 946
to correct and certify delinquent lists 948
duty in relation to three per cent. fund ... 956 to 959
of road and canal fund ... 958
to report condition of fund ... 959
power of, over roads ... 960 to 965
to pay commissioners of state road ... 975
to pay expenses of survey of state road ... 975
to cause state road to be laid out ... 975, 976
to order sale of school lands ... 988
to forward to register of lands abstract of school lands sold ... 989
to order lease of school lands ... 991
to notify tenant to quit, when ... 992
may annul sale of school lands ... 992
to select land in lieu of sixteenth section ... 993
to direct purchase of school lands for township ... 994
to examine bond of county surveyor ... 1043

COUNTIES — THEIR ORGANIZATION.
CHAP. 39. ... 291 to 300
Accounts to be kept by commissioner of seat of justice ... 296
Administrators and Curators, falling in new counties, where to settle ... 298
accounts of may be transferred to new county ... 298
Bond, copy of, to be evidence ... 294
and security, when given on purchase of lots ... 294
Circuit Court, duty of, in approving title ... 293
Clerk, circuit court of new county, shall appoint ... 299
county court to appoint ... 299
Commissioners for selecting Seat of Justice, shall be appointed, how ... 291
certificate of appointment, by whom made ... 292
powers and duties ... 292
vacancy in office of, how filled ... 293
compensation of ... 297
Commissioner of Seat of Justice, how appointed; powers and duties 293 to 296
liable for disobedience of order of county court ... 296
or executors, &c., compelled to settle with county court, when ... 297
County Court, powers of, over commissioner ... 296
may remove commissioner from office 296
may fill vacancies ... 296
to determine when and where courts shall be held, when ... 297
to appoint justices' of the peace ... 299
Courts, to be held at seat of justice ... 297

COUNTIES — THEIR ORGANIZATION.
Courts, suits and prosecutions not affected by new county, or changing county boundaries ... 298
Deed, how executed ... 292
Donor or Vendor, to make an abstract of title, &c ... 293
Executors, &c., falling in new counties, where to settle ... 298
accounts of, may be transferred to new counties, when ... 298
Governor, to appoint justices of county court ... 299
Justices of the Peace, may proceed as if county lines had not been altered ... 299
how long may continue in office in new counties ... 299
books and papers to be delivered over, when and to whom ... 299
to appoint constables, when ... 299
Lots for Public Buildings, when reserved from sale ... 294
Lots, what portion of shall be sold and how ... 294
when credit given on sale of, how purchase money secured ... 294
shall be forfeited, when ... 295
resold at public auction, when ... 295
notice of sale of, to be given ... 295
forfeited, may be redeemed, when ... 295
money arising from sale of, how appropriated ... 296
New County, when established, proceedings ... 291
suits, &c., commenced shall be determined in old county ... 298
Payments, how and when to be credited 295
proceedings in default of, for lots ... 295
when commissioner shall enforce, &c 295
Purchase Money, to be paid out of first sales ... 293
Seat of Justice, when it shall be permanent ... 293
Secretary of State, duty of ... 292
Suits, who shall prosecute ... 295
Towns, shall be laid off, when ... 294

COUNTIES—REMOVAL OF SEATS OF JUSTICE. CHAP. 40. ... 300 to 306
Attached Territory, citizen residing in, not to vote when ... 301
Attorney General, to examine deed of relinquishment, records, &c ... 304
shall certify as to sufficiency of deed of relinquishment ... 304
certificate of, presented to county court, when ... 304
Circuit Court, duty of judge of, on approval of title ... 302
decision of, when certified to county court ... 302
Commissioner, how appointed, when seat of justice removed, his powers and duties, &c ... 303
Commissioners, county court to appoint, to select a site ... 301
qualifications, powers and duties 301 to 303
vacancies in office of, how filled ... 303
compensation of ... 303

Digitized by Google

COUNTIES — REMOVAL OF SEATS OF JUSTICE.
County Court, what number of inhabitants to petition for removal of county seat ... 301
shall grant certificate of credit in purchase of lots, how and when ... 304
when shall appoint persons to value lots, &c ... 305
Election, judge shall order, when ... 302
sheriff to give notice of ... 302
how to be held ... 302
county court to cast up votes ... 303
clerk of, duty of ... 303
Guardian, may act in behalf of minor 304
Land, to be paid for out of proceeds of first sales ... 303
Owner of lot, when a minor, guardian may relinquish in his behalf ... 304
may remove buildings, when ... 304
Relinquishment, of lots, when made ... 304
Removal of County Seat, in case of, proceedings ... 306
Public Buildings, courts to be held in ... 303
Seats of Justice, how removed ... 301
when removed owner of lots, &c., may recover, &c ... 304
shall not be removed after it has been fixed two years, unless, &c ... 305
lots and improvements of, how valued 305
what proceedings had in case of removal ... 306
title approved, proceedings ... 302
Title, when not approved, what proceedings ... 304
attorney general or circuit attorney to examine ... 304
Town Lots, proceeds of sales of, how appropriated ... 303
when sold, &c ... 305
shall become property of county ... 305
may be relinquished by deed ... 304
buildings may be removed from, when 304
COUNTY ROADS. See title *Roads and Highways*.
COUNTY SEATS, removal, in what cases ... 300 to 306
COUNTY SURVEYOR, to ascertain and fix county lines ... 285
duty in assignment of dower by commissioners ... 435
fees of ... 501
may issue fee-bills ... 505
duty of, in relation to re-establishment of decayed corners of land ... 796
COUNTY TAX. See title *Revenue*.
COUNTY TREASURER, appointment, qualifications, and duties ... 306, 307
who shall not be ... 314
not to pay warrants, when ... 311
his compensation ... 312
making false entries in books of ... 372
COUNTY TREASURIES. CHAP. 41. ... 306 to 314
Accounts, annual settlements to be made by treasurer ... 307
balance of, to be a lien on real estate 309
duty of clerk in keeping ... 309

COUNTY TREASURIES.
Appeals allowed to circuit court, when 312
Blank Endorsement, form of ... 312
Books, &c., of treasurer subject to inspection ... 307
Bond, treasurer shall give, its conditions 306
Clerk of County Court, powers and duties ... 309
compensation ... 312
Clerks of Circuit Courts, of Criminal court, of Saint Louis County, and Court of Common Pleas, shall certify to county court amount of fines, penalty for failure ... 31
Collector, Constable, &c., duties of, to pay over moneys ... 328
Courts of Record, shall settle with sheriff, when ... 313
shall certify as to sums chargeable to sheriff, when ... 313
shall require clerk of, to make out list, &c ... 313
County Court shall appoint treasurer ... 306
shall fill vacancy of ... 306
bond of treasurer approved by ... 306
shall inspect books, &c., of treasurer 307
shall ascertain amount of balance in treasurer's hands, when, &c ... 307
when collectors, &c., shall settle with 308
may adjust accounts of certain officers ... 308
may refuse to allow commissions ... 308
may enter up judgment for amount due by delinquent, and cause execution, &c ... 308
may re-examine accounts, when ... 308
may remit penalties, when ... 309
shall audit, adjust, and settle accounts 310
to order payment from treasury, when 310
to order suit to be brought on bond of delinquent ... 310
may require attorney general, &c., to prosecute ... 310
may issue all necessary process in suit 310
may compel appearance of witnesses ... 310
may enforce delivery of books, &c., by attachment ... 310
may commit to jail, person refusing to answer ... 310
duties of, in relation to 16th sections, moneys, interest, and three per cent. fund ... 310
shall make statement of debt due by county ... 311
shall make detailed statement of receipts and expenditures, &c ... 311
shall strike a balance, &c ... 311
shall ascertain what balance in treasury ... 311
Delinquent, refusing to settle, court may adjust accounts of ... 308
court may refuse to allow commissions ... 308
clerk may charge ten per cent., when 308
judgment of thirty per cent., entered against, when ... 308
penalties on, may be remitted, when 308

Digitized by Google

COUNTY TREASURIES.
Evidence, accounts, vouchers, &c., certified copies of, by clerk, may be received in evidence, when, &c... 309
Justice of the Peace to report fines, &c., how and when... 313
Lien, balance due on accounts of delinquent officers, shall be a lien upon real estate... 309
Treasurer, how appointed and qualified 306
shall reside, where... 307
powers and duties... 307
penalty for neglecting to pay warrants; how recovered... 307
guilty of misdemeanor, when... 307
shall pay warrant, to whom... 311
to certify on back of, when... 311
warrants drawn upon, assignable... 312
penalty on, for paying warrants contrary to law... 312
who shall not be eligible to office of 314
compensation of... 312
Warrants, form of, to draw money... 311
shall be drawn, signed and tested... 311
how written or printed... 311
to be paid to whom... 312
shall be assignable, form of... 311, 312
no blank endorsement on, shall transfer right... 312
shall be registered by treasurer... 307
8th section of 3d art., not applicable to warrants drawn prior to first March, 1843... 312
receivable for taxes... 314
COUNTY TREASURY, appropriation from, for support of insane person, when 598
COURT HOUSE, to be erected in each county... 286
penalty for injuries to... 288
burning or destroying... 355
COURT OF COMMON PLEAS OF ST. LOUIS COUNTY. CHAP. 42. ... 314 to 318
Appeals and Writs of Error may be allowed to supreme court, when and how... 316
Civil Suits, in either of courts of St. Louis county, to be certified to the other, when... 315
Clerk, to be appointed, qualifications... 318
shall procure and keep a seal... 318
shall keep account of fees taxed, &c 317
Compensation, of judge, how paid... 317
Fees, what to be taxed on judgment... 317
Injunctions, may be granted by court... 317
may be granted, returnable to circuit court... 317
Judge, how appointed; qualifications; term of office; may be removed from office; vacancy in office of, how filled... 317
shall be conservator of the peace... 317
may grant writs of ne exeat and injunction... 317
may take acknowledgments... 317
may issue writs of habeas corpus... 317
Jurisdiction, shall be concurrent with circuit court, when... 315
concurrent and original with justices 315

COURT OF COMMON PLEAS OF ST. LOUIS COUTTY.
Jurisdiction of circuit court, when case certified and transferred from common pleas... 315
St. Louis Court of Common Pleas, powers and jurisdiction... 314, 315
superintending control over justices of the peace, how... 315
concurrent and original jurisdiction with justices of the peace, when... 315
appellate jurisdiction from judgments of justices, when and how... 315
change of venue regulated in... 315
certificate of case by, to other court, when made &c... 315
when change of venue allowed by... 315
practice in, how regulated... 316
causes shall be heard before, at first term, when... 316
shall have power to prescribe rules of pleading, &c... 316
circuit court to have superintending control over... 316
appeals and writs of error from, how prosecuted... 316
proceedings of supreme court, on appeals or writs of error... 316
appeals and writs of error, to circuit court, how regulated... 317
Venue, circuit court to have jurisdiction, in change of, when... 315
common pleas to have jurisdiction, in change of, when... 315
not allowed, except... 315
Writs of Error, proceedings in cases of, to circuit court... 317
CRIMINAL COURT OF ST. LOUIS COUNTY. CHAP. 43. ... 318 to 320
Appeals and Writs of Error allowed to supreme court, how prosecuted... 319
may be taken to circuit court... 319
Circuit Court of St. Louis, not to have original jurisdiction, when... 318
not to have appellate jurisdiction from judgment of justice... 318
to exercise superintending control over criminal court, when... 319
Criminal Court of St. Louis County, establishment of; jurisdiction; powers and duties... 318
what criminal causes shall be tried and determined... 319
may stay proceedings, when... 319
may admit defendant to bail, when... 319
judge of, how appointed... 319
in case of vacancy, judge, how appointed... 319
qualifications of judge... 319
judge may be removed from office... 320
six terms shall be held in each year... 320
Clerk shall procure a seal, &c... 320
Judge, may be removed from office, for what cause... 320
compensation of, and how payable... 320
shall be conservator of the peace... 320
may take acknowledgments of deeds 320
may administer oaths... 320

Digitized by Google

CRIMINAL COURT, ST. LOUIS COUNTY.
Judge may issue writs of *habeas corpus* 320
COURTS. JUDICIAL CIRCUITS. TERMS. CHAP. 44. ....320 to 327
Circuit Court, two terms of, to be held in each year 322
may hold special terms, when 322
County Court, four terms to be held in each year 327
may hold adjourned terms 327
may order special terms 327
may alter the times for holding stated terms 327
Judicial Circuits, the state divided into fourteen ....321 to 322
Notice of special term of county court, how and to whom given 327
Sales, how and when made under this act 327
Special Terms of circuit court may be held 322
may be ordered by president or two justices of county court 327
Times of holding Circuit Courts, first and second judicial circuits 322
third judicial circuit 323
fourth judicial circuit 323, 324
fifth and sixth judicial circuits 324
seventh judicial circuit 324, 325
eighth, ninth and tenth judicial circuits 325
eleventh judicial circuit 325, 326
twelfth and thirteenth judicial circuits 326
fourteenth judicial circuit 326, 327
Times of holding County Courts 327
Writs, when returnable 327
COURTS, JUDICIAL POWER. CHAP. 45. ....328 to 339
Abatement, not operated, when 337
Abbreviations, common in english language, may be used 334
Accounts of officer, courts to audit and adjust 339
of expenditures in supreme court, how paid 339
of expenditures in circuit court, how paid 339
Arabic Figures, and Roman Numerals, numbers may be expressed by 334
Attachment, courts may enforce by, when return of writ or process, enforced by 335
papers when not delivered, to issue 335
Auditor, to draw warrants for accounts of clerks 339
Bills of Exception, may be omitted in transcripts, when 333
when allowed and signed, to be attached to roll of judgments, &c 333
Circuit Court, power and jurisdiction of 330
in criminal cases 330
exclusive jurisdiction of, in civil cases 330
concurrent jurisdiction of, with justices of the peace 330
appellate jurisdiction 330
original and exclusive jurisdiction in equity 330
COURTS, JUDICIAL POWER.
Circuit Court, to have general control over executors, administrators, minors, idiots and lunatics 330
shall call over execution docket 334
judge of, shall not sit, when interested 335
cause in, when removed 335
special term of, when to be held 336
notice of special term, when and how given 336
jurisdiction, at special term 336
special terms of, not to interfere with any other court, when 337
accounts accruing in, how paid 339
Clerks of County Courts, to certify to governor names of county justices who are elected, &c 331
duty of, after adjournment of court 333
shall preserve roll of judgments and decrees 333
bills of exception to be attached to rolls 333
execution shall be attached to roll 333
Clerks of Courts of Record, duty of, after adjournment of court 333
shall attach together pleadings and papers, &c 333
shall make memorandum on margin of papers, &c 333
shall preserve roll of judgments and decrees 333
bills of exception to be attached to roll, &c 333
execution shall be attached to roll, &c., by 333
Commission, shall be issued by the governor 329
certificate of having taken oath, endorsed upon 329
Contempts of Court, definition, punishment, &c.; proceedings 338
what courts have power to punish for 338
County Court, how composed 330
style of members of, how elected; term of office 330
elections, how certified; tie, how decided; vacancies, how filled 331
justices, by whom commissioned 331
compensation of justices 331
jurisdiction and power 331
power of, to award process 332
shall have control of county property 332
may sell real estate, &c 332
shall audit and settle demands against county 332
shall keep a seal, &c 332
accounts accruing in, how settled 339
Courts, what, established 329
shall be courts of record 333
clerks of, duties, &c 333
duty of, in relation to pleadings, rolls, records, clerks, &c 333, 334
sittings of, shall be public 334
power of, in issuing writs, compelling returns, and appointment of officers, &c 334, 335
of adjournments 335, 336, 337
special adjourned sessions, how held 336

Digitized by Google

COURTS—JUDICIAL POWER.
Courts, shall not transact business on Sunday
shall be attended by sheriffs
shall audit and adjust accounts
certificate of, shall be voucher
expenses of, how paid
officer attending, shall furnish fuel
Elizor, to be appointed, when
Execution, to be attached to roll
Interpreters, &c., may be appointed, when and how
Judges, qualifications and oath of office
age of, to be stated on oath
duty in relation to rolls, record, &c
when interested in trial, not to sit
shall not practice law, &c., nor have partner in practice of law
Judgments and Decrees, rolls of, to be carefully preserved
Justices of County Courts, qualification, election, &c 330,
jurisdiction and power
quorum, how constituted
shall choose a president
interested in cause, not to sit
majority interested, proceedings
conservators of the peace
shall not borrow money of school fund, three per cent. fund, &c., penalty for so doing
Seal, courts shall procure and keep
Sheriffs, to attend court 338,
courts to adjust accounts of
Special Term, for trial of criminals, may be ordered
grand jury may be summoned to attend court may exercise ordinary jurisdiction at
not to interfere with regular term
Supreme Court, power of, to direct form of writs, &c
judge of, interested in cause, not to sit
Transcript of Record, bills of exception in, may be omitted, when
Translators to be appointed by court
Venue, may be changed, when
Verdict, may be received on Sunday
Writs, power of court to issue
courts may compel return of, by attachment
COURT — SUPREME. CHAP. 46. 339 to 340
Clerk allowed necessary fuel
Marshal, how and by whom appointed and tenure of office
vacancy, how filled
duties, powers and compensation
Sessions, when and where held
COVENANTS, words "grant, bargain and sell," construed
of married women, in conveyances
by and against ex'r or adm'r
CRAWFORD COUNTY, limits defined
CREDITORS. See titles *Administration*, *Assignments for benefit of Creditors*, *Attachments*, *Boats and Vessels*, *Crimes and Punishments*, *and Fraudulent Conveyances*.

CRIME, capital or infamous, indictment 14, 44
no person to be twice in jeopardy 14, 44
337 right of accused on trial for 14, 44
338 committed by or upon slaves 33
339 CRIMES AND PUNISHMENTS. CHAP. 47.
339 320 to 415
339 *A. B. C. Table*, setting up, &c 401
339 permitting to be set up, &c 402
334 betting at 402
333 letting house for that purpose 402
Abandoning child under six years 352
335 *Abduction*, of woman 349
329 of woman under eighteen years 349
329 of child under twelve years 352
334 of colored persons 351
335 *Abetting*, forgery, counterfeiting, &c 376
Abortion, giving medicine to produce 351
337 *Abstaining*, from prosecution 380
Academy, burning of 355
333 *Accessory*, before and after the fact 409
Accusation, of criminal offence 44
331 *Acknowledgment*, falsely certifying 369
331 forging certificate of 367
332 false personation of another in 375
332 *Action*, right of, not merged in felony 413
335 of person injured, against owner of slave 414
335 *Adultery*, how punished 400
337 *Affray*, in the night time 396
Agent, embezzlement by 361
Agreement, by slave, to rebel, &c 342
337 for compounding felony 380
332 by officer to receive bribe 387
339 to sell office or deputation 390
339 *Aiding*, enemies in time of war 341
rebellion or insurrection 342
336 negro in crime 349
336 to entice slave away, grand larceny 359
in counterfeiting, forging, &c 376
336 escape of prisoners 383
337 *Ale-House*, keeping open on Sunday 406
Altering, will, deed, records, &c 368
330 bank note, or check on bank 369
336 *Animals*, suffering to go at large 346
maiming, beating or torturing 406
333 *Appeal* of felony, abolished 412
335 *Appointment*, bribery to procure 387, 388
335 assuming office, without 391
337 *Apprentice*, embezzlement by 361
334 *Arbitrators*, bribing or receiving 378, 379
Arms, furnishing to slaves, in rebellion 342
335 *Arrest*, without due and legal process 397
of judgment, not to bar second trial 411, 412
340 *Arsenic*, selling to minor or slave 405
exemption of physician, prescribing 405
340 *Arson*, plot by slave, to commit 342
340 in first second, third, and fourth degrees
340 354, 355
339 punishment of 355, 356
Assault, with intent to commit robbery,
221 rape, burglary, manslaughter, or other felony 350
225 of officer 381
88 with intent to commit crime, not punishable when the crime is committed 408
270 *Assignment*, to defraud creditors, parties and privies to 463, 464
of public securities, forgery of 367, 368
Attempt, to entice slave away 359

Digitized by Google

CRIMES AND PUNISHMENTS.

Attempt, to procure perjury 378
to corrupt juror, arbitrator or referee .. 379
to influence juror improperly 379
to rescue prisoner 382
to join enemies in war 341
by negro, on white woman 349
to break prison 384
to bribe officer 388
to bribe voter 389
to influence voter by threats 392
to commit offence prohibited by law ... 408
Bail, accused admitted to, except 44
false personation in becoming 375
Bailee, embezzlement by 362
Bank Note, counterfeiting 369
using spurious, as false token 362
Barn, burning of 355
Barratry, punishment of 385, 386
Bawdy House, keeping 402
who deemed keeper of 402, 403
lease of, when void 403
Benefit of Clergy, abolished, ... 412
Betting, upon certain gaming tables 402
does not excuse from testifying 403
on elections 404
Bigamy, definition and punishment 398, 399
cases in which it does not exist 399
indictment for, where tried 399
punishment of unmarried person 399, 400
Bill of Exchange, forgery of 369
Boards, pile or raft of, burning, &c 365
Boats and Vessels, overloaded so as to drown 346
burning, to defraud insurer 355
maliciously destroying or injuring, &c .. 364
cutting adrift, sinking, &c 365
bursting boiler of, by neglect, &c ... 346, 347
Brands, of animals, altering 360
Breaking prison 383, 384
Brewery, burning of 355
Bribery, conviction of, to exclude from office and suffrage 31
to procure election or appointment to office, effect of conviction 31
of witness, to absent himself, avoid process, &c 378
of arbitrator, referee, or juror 379
of officer to procure vote, opinion, &c. 386, 387
in consideration of vote, opinion, &c. previously given 387
attempt at, with officer 388
by giving office, &c., to procure election of voter 389
Bridges, burning of 355
Bringing into the state counterfeit money into the state stolen property 408, 409
Burglary, defined, punishment 356, 357
committed at same time with larceny .. 356
assault with intent to commit 350
Burning, inhabited dwelling house, shop, warehouse, office, or storehouse, barn, stable, church, college, academy, school house, or public building, brewery, distillery, grist mill, paper mill, fulling mill, saw mill, carding machine, or manufactory 354, 355

CRIMES AND PUNISHMENTS.

Burning, insured property, to defraud insurer 355
stocks, grain, grass, herbage, nursery, orchard, fence, toll or public bridge 355
pile or raft of wood, plank, boards or lumber 365
will, deed, or other instrument of writing 376
Buying, any forged instrument of writing 372
and selling offices, deputations, &c 390
stolen property 362
Camp Meeting, erecting booth, &c., for sale of liquors, within one mile of ... 404
Canoe, cutting adrift, injuring 365
Capital Crimes, prosecution by indictment 14, 44
committed by slave, punishment 33
Carding Machine, burning of 355
Cargo, burning, to defraud insurer 355
Carrier, embezzlement by 362
Casting away, boat or vessel 364
Castration, of negro, in case of rape 349
Cattle, administering poison to, maiming 364
altering marks or brands of, larceny .. 360
cruelty to 406
Certificate, of probate of will, forgery of 367
of acknowledgment of deed, forgery of 367
of record of will or deed, forgery of ... 367
of state, for payment of money, forgery of 367
of state stock, forgery of 368
of acknowledgment or proof of deed, certifying falsely 369
of deposit, forgery of 369
of court or officer, forgery of 371
Certifying, falsely, acknowledgment or proof of deed 369
Challenge to fight a duel, sending 393
posting another for not accepting 394
Cheat, intent to, as to whom it may be shown 415
Cheating, by false tokens, &c 363
by false personation 363
Check, or bond, forgery of 369
Child, under ten years of age, rape upon 348
under twelve years of age, enticing away 352
under six years of age, abandoning 352
Circulating, publications tending to insurrection, &c., of slaves 342
Civilly Dead, who considered to be 412
Civiliter Mortuus, person deemed to be .. 412
Clergy, benefit of, abolished 412
Clerk, embezzlement by 361
Clipping coin, forgery 374
Cock-fighting, on Sunday 405
Coin, counterfeiting 369
passing 371
clipping, scaling, impairing, &c 374
Collector, unlawfully exacting taxes 391
College, burning of 355
Combining, to usurp the government .. 341, 342
to levy war against people 342
to remove them forcibly from the state, or their habitations 342
Compounding offences 380

Digitized by Google

CRIMES AND PUNISHMENTS.
Compounding offences upon indictment for what need not be proven 380
Concealing offences upon indictment for what need not be proven 380
offender, after felony 409
Confession of judgment, personation of another, in 375
Conspiracy, by slave, to kill, &c 342
definition and punishment 397
what deemed 397
Consulting to raise rebellion 342
Conveyance, to defraud creditors 363, 364
making, without reciting previous 364
falsely certifying acknowledgment or proof of 369
personation of another, in acknowledging 375
Convict, rescue of 381, 382
aiding to escape 383
escaping, punishment 383, 384
conniving at, or suffering escape 385
may be retaken 385
in penitentiary, under protection of the law 412
Conviction, not to work corruption of blood 44, 412
when to work incompetency as juror, ... 343, 352, 366, 376 386, 407
when as voter 366, 376, 386, 391, 407
when as witness 366, 376, 386, 407
when to hold office, 343, 352, 366, 376, 386, 407
when to work forfeiture of office 385, 391
former, when may be pleaded 409
second, for like offence, punishment 409
may be had of offence of less degree than that charged in indictment 411
of one degree, bars trial for same act for another degree 412
of person under sixteen, of felony, punishment 412
not to work forfeiture of estate 412
Corporation, seal of, forging 368
making false entries in books of 372
Corrosive Sublimate, selling without label, and to minor or slave 405
exception of physician 405
Counterfeiting, will, deed; certificate of acknowledgment, probate, or record; warrant, order, bill, certificate, or other public security; certificate of public stock, or assignment, endorsement, or transfer thereof; seal of court, public office, officer, state, or corporation; record, return, or entry of record ..... 368 to 369
bank notes, bills, &c 369
order or check on bank 369
process, pleading, certificate, order, or allowance of court or officer, or license 371
any instrument, the act of another 371
press, tools, &c., making, having, &c ... 370
Counterfeit Plates, making, engraving, or possessing 370
County Treasurer, false entries in books of 372
Courts, stealing records and papers of ... 361
forgery of seal of 368

CRIMES AND PUNISHMENTS.
Courts, circuit, jurisdiction as to officers 414
Creditors, conveyances to defraud 363, 364
Cruelty to animals or slaves 406
Dams, injuring, destroying, &c 365
Dead Bodies, removing from grave 401
opening grave, &c., to remove 401
excepted cases 401
Decoying, child under twelve years 352
slave away, grand larceny 359
Deeds, stealing or embezzling 360
making without reciting previous 364
receiving such to defraud 364
forgery of 367
tearing, burning and destroying 376
Definition, of terms "felony," "infamous crime," "misdemeanor," "crime," "offence," "criminal offence," "personal property," "real property," "real estate," "property," "person" 414, 415
Delivery, of counterfeit money, ... 369, 370, 371
of challenge, to fight a duel 393
Deodands abolished 412
Deputations, to office, buying and selling 390
what not included in prohibition 390
void, when sold 390
assuming office without 391
Destroying, boats or vessels, windows, doors, gates, fences, inclosures, and trees, piles or rafts of wood, lumber, &c., land marks, mile posts, &c ... 364, 365
will, deed, or other instrument 376
Distilled Liquors, retailing on Sunday 405
Diminishing coin 374
Distillery, burning of 355
Disturbance, of religious worship 404
of the peace in the night time 396
Draft, forgery of 369
Duel, fighting 393
challenging, or carrying, or accepting challenge 393
posting, for not fighting 394
being present, as second, at 393
person about to fight, warrant to issue 394
to enter into recognizance 394
Dwelling-house, inhabited, burning 354
what to be deemed in cases of arson ... 354
Die, for counterfeiting, making, &c 375
Election, bribing to secure 389
betting on, or becoming stake-holder ... 404
Embankments, of mill-dams, destroying .. 365
Embezzlement, of will or deed 360
of records, papers, &c., of courts 361
by clerk, apprentice, servant 361
by tenant or lodger 362
Embracery, defined, punishment 378, 379
Endorsement, of public security, forgery 367
Engine, maliciously destroying or injuring for counterfeiting, making, having, &c 375
Engineer, of steamboat, when guilty of manslaughter 346
Engraving, counterfeit plate 370
Enticing child under twelve years 352
slave, grand larceny 359
Entries of record, forgery of 368
E. O. Table, setting up, &c 401
permitting to be set up in house, &c 402

Digitized by Google

CRIMES AND PUNISHMENTS.
E. O. Table, betting at 402
Equality, setting up, keeping, &c 401
permitting to be set up in house 402
betting at 402
Erasure, total, when forgery 373
Escape, aiding prisoners 383
of prisoner from penitentiary 383
conniving at or suffering 385
Evidence, on charge of receiving stolen property, what necessary 363
on charge of compounding offences 380
of overt acts in case of conspiracy 397
Exchange of counterfeit money ... 369, 370, 371
Extortion, letters sent with a view to 358
by officers under color of office 391
False Certificate, of acknowledgment of deed, probate of will, record of will or deed, of state stock 369
of court or officer 371
False Entries, making of, in books of state, or county treasurer, or auditor, or corporation 372
False Personation, of another 363, 375
False Tokens and Pretences, obtaining signature, &c., by 363
obtaining goods, &c., by 363
if false token be spurious bank note, &c., punishment 363
Falsely Altering will deed, &c 368
Falsifying Records 368
coin 374
Faro Bank, setting up, keeping, &c 401
permitting to be set up in house, &c ... 402
Felo de se, assisting in self-murder, manslaughter 345
forfeiture of estates of, abolished 412
Felony, compounding or concealing 380
accessories before the fact 409
accessories after the fact 409
principals in second degree 409
person under sixteen, punishment 412
right of action not merged in 413
slave guilty of, shall be whipped 414
definition of the term 414
Fence, burning of 355
Fermented Liquors, retailing on Sunday .. 405
Fine, not to be imposed, when 410
Fine, not to exceed $1,000, when 411
not to exceed $200, when 411
to be not exceeding $100, when 411
not exceeding $100, how recovered 413
may be recovered by indictment, when 414
Forfeiture, of office, when 385, 391, 412
of estate, not worked by conviction 412
in cases of suicide, death by casualty, and fleeing from justice, abolished .. 412
Forgery, degrees and punishment .... 367 to 376
of will, deed, certificate of acknowledgment, probate, or record; warrant, order, bill, certificate, or other public security; certificate of public stock, or assignment, endorsement, or transfer thereof; seal of court, public office, officer, state, or corporation; record, return, or entry of record .. 367, 368
of bank note, bill, &c., order or check on bank 369

CRIMES AND PUNISHMENTS.
Forgery of process, pleading, certificate, order, or allowance, license, or any instrument, the act of another 371
other cases of ..... 372 to 375
punishment of 374, 375
Former Acquittal, may be pleaded 409, 412
when not to bar second trial 411, 412
Former Conviction, may be pleaded 409
Fornication, and incestuous connection .. 400
by guardian, with his ward, under eighteen years 400
Fraud, officer guilty of, in office 390
Fraudulent Assignment, parties and privies to 363, 364
Fraudulent Pretences, obtaining goods, &c. by 363
Fruit Trees, burning of 355
destroying or injuring 365
Fulling Mill, burning of 355
Gambling Device, or Table, setting up, &c 401
permitting to be set up, &c 402
betting at 402
who deemed keeper of 402, 403
warrant to seize, when to issue 403
warrant against keeper, when to issue .. 403
to be destroyed 403
Gaming House, setting up or keeping 402
letting house for 402
who deemed keeper of 402, 403
warrant against keeper, when to issue .. 403
Gaming, at faro, roulette, &c 402
on Sunday 405
Girdling ornamental and fruit trees 365
Goods and Chattels, burning, with intent to defraud insurer 355
Grain, burning of 355
Grand Larceny, definition and punishment 359
in connection with burglary 357
enticing slave away, when to be 359
Grass, burning of 355
Grave, removing dead body from 401
opening to remove dead body 401
Grist Mill, burning of 355
Grocery, keeping open on Sunday 405
Guide Board, destroying, &c 365
Hog Stealing, grand larceny 359
Homicide, justifiable and excusable, ... 344, 345
Horse Racing, on public road 406
Horse Stealing, grand larceny 359
House-Breaking, in day or night 356
House-Burning 355
Imprisonment, where conviction of two or more offences, how awarded 410
for life, when 410
in penitentiary, not to be less than two years in any case 410
in penitentiary awarded, no fine to be imposed 410
in county jail not to exceed twelve months, when 411
when not to exceed six months 411
in penitentiary, sentence of, suspends civil rights of convict 412
for life works *civil death* 412
Impression, of seals, forgery 368
Incest, how punished 400

Digitized by Google

CRIMES AND PUNISHMENTS.
Incompetency, as juror 343, 352, 366, 376, 386, 407
to hold office 343, 352
as voter or witness ... 366, 376, 386, 391, 407
removed, by pardon of the governor .. 412
Indictment 378, 379
Infamous Crime, definition of the term .. 414
Insurrection, of slaves, raising 342
aiding in by free person 342
Intent, to defraud, cheat or injure 415
Jail, breaking, or aiding or attempting 383, 384
Jailor refusing to receive prisoner 385
Jurisdiction of circuit court 414
Juror, bribing, or receiving bribe 378, 379
promising to give verdict 379
receiving paper, evidence, &c 379
attempting to influence improperly 379
improper conduct in selection of 380
Keeper, of gaming house, brothel, &c.,
who deemed 402, 403
when warrant to issue against 403
officer may break open doors 403
Kidnapping, defined; punishment of 351
where to be tried 351
Killing, when murder 344
when justifiable, when excusable ... 344, 345
when manslaughter ..... 345 to 347
animal, for carcass or skin 360
cattle, maliciously 364
Landmarks, removing, defacing, &c 365
Larceny, grand, definition, punishment ... 359
when committed with burglary 357
enticing, &c., slaves, when to be 359
petit, definition and punishment 359
by slave, how tried and punished 413
Lease of tenement used as gaming house,
brothel, &c., void 403
Letters, sending, threatening 358, 396
sealed, opening without authority 406
publishing contents of 406
exception as to certain cases 406
Levying, on property without process 397
Lewdness, gross, punishment of 400
License, forgery of 371
Lodger, embezzlement or stealing by 362
Machinery, burning of 355
maliciously destroying or injuring 364
Maiming, cases of, enumerated 349, 350
by negligence of another 351
cattle, maliciously 364, 406
Malicious Mischief 364, 365
Manslaughter, in first degree 345
in second degree 345, 346
in third degree 346, 347
in fourth degree 347, 348
punishment of 348
assault with intent to commit 350
Manufactory, burning of 355
Marks and Brands, altering, larceny 360
Marriage, compelling women to 349
bigamy punished 398, 399
cases excepted from punishment 399
without this state, when bigamy 399
of single person to married 399, 400
incestuous, punishment 400
solemnizing certain, penalty 400, 401
Mayhem, cases of, enumerated 349, 350
by negligence of another 351

CRIMES AND PUNISHMENTS.
Mayhem of cattle 364, 406
Meeting, religious, disturbance of 404
Merchandise, burning, to defraud insurer .. 365
Mile-stone, destroying, removing, &c 365
Mill-dam, destroying &c 365
Misdemeanor, general provision as to punishment of 366
compounding or concealing 380
definition of the term 415
Misprision of Treason, punishment 342
Monuments, to designate boundary of land,
removing 365
Murder, in first degree 344
in second degree 344
Nature, crime against, punishment 400
Name, affixing pretended, forgery 373
using own, pretending it is another's ... 374
Notes, forgery of 369
Nursery, burning of 355
Negroes, raising rebellion 342
Offence, second, punishment 409, 410
conviction of, where convicted of the
like in another state 410
conviction of two or more, punishment 410
definition of the term 415
Offences, against the government 341, 342
affecting the lives of individuals ... 344 to 352
property ..... 354 to 366
records, currency, instruments, or securities, public and private .... 367 to 376
the administration of justice .... 377 to 386
by persons in office ..... 386 to 393
against the public peace, or affecting the
security of persons and property 393 to 397
against public morals and decency, or
the public police, and other offences
..... 398 to 407
compounding or concealing 380
upon indictment for, not necessary to
prove conviction of original offender 380
conviction of two or more, punishment 410
Officer, burning building in which papers
kept 354
having custody of records, &c., destroying, &c 361
embezzlement by 361, 362
forging seal of 368
guilty of improper conduct in selecting
jurors 380
obstructing or resisting 380, 381
assaulting, beating, wounding 381
suffering instruments to go into penitentiary or jail 384, 385
suffering prisoner to escape 385
refusing to execute process 386
bribery of 386, 387, 388
oppression, partiality, &c., by 390
fraud by, in office 390
extortion by 391
misdemeanors not provided for 391
military, to aid in quelling riots 395, 396
resistance to, in cases of riots 396
may break open doors, &c 403
Office, burning of 354
public, forging seal of 368
forfeiture, when 385

Digitized by Google

CRIMES AND PUNISHMENTS.

Office bribing to procure 387, 388
giving as bribe, to procure election 388
selling 390
forfeiture of, when 385, 391
assumption of, unlawfully 391
arresting person, or levying on property without legal process 397
Orchard, burning of 355
Order, for payment of money, issued by state, forgery of 367
on bank, forgery of 369
of court or officer, forgery of 371
Paper Mill, burning of 355
Pardon, by governor, effect of 412
Passing, counterfeit money 370, 371, 376
Penitentiary, escaping from, or aiding escape from 383, 384
Perjury, definition and punishment 377
subornation of 377
attempting to procure 378
what sufficient in indictment for 378
Person, definition of the term 415
Personal Property, definition 415
Petit Larceny, definition and punishment .. 359
by slave, how tried and punished 413
Physician, prescribing, while intoxicated, so as to produce death, guilty of manslaughter 347
administering drug to produce abortion 351
Pleading, forgery of 371
Poison, administering with intent to kill .. 350
putting in spring, well, &c 350
administering to cattle 364
exposing it to cattle, &c 364
selling to minor or slave 405
exception of physician 405
Porter-House, keeping open on Sunday ... 403
Posse Comitatus, may be summoned ... 395, 394
Posting, for not fighting duel 351
Pregnant Woman, administering medicine to, to produce abortion 375
Press, for counterfeiting, &c 374, 409
Principal, in second degree in felony 384
Prison, breaking, punishment 383, 384
attempt at 384
Prisoner, rescue of 381, 382
aiding to escape 383
escaping, punishment 383, 384
conniving at or suffering 385
escaping, may be retaken 361
Probate of Will, forging certificate 415
Process of Court, &c., forgery of 359
officer refusing to execute 413
Produce, severing from the soil 404
Property, definition of the term 405
Prussic Acid, selling without being marked, or to minor or slave 354
exception of physician 350
Public Buildings, burning of 355
Public Records, burning building 361
stealing or embezzling 367
Public Security, forgery of 404
Public Worship, disturbance of 405
Racing, on Sunday 354
on public road 355
Raft of Wood, &c., burning, injuring, or destroying, &c 365

CRIMES AND PUNISHMENTS.

Rape, defined, punishment 346
by negro, punishment 349
assault with intent to commit 350
aiding negro to commit 349
Real Estate, taking by violence; definition of the term 396, 415
Real Property, taking by violence; definition of the term 396, 415
Rebellion, raising, aiding in 342
Receiving Property, stolen or embezzled .. 362
in indictment for, conviction of principal need not be averred 363
counterfeit money 371
any forged instrument of writing 372
Recognizance, personation of another in making 375
to be entered into in case of duelling .. 294
Record, of will or deed, forging certificate of 368
of court, forging seal of 368
of will, conveyance, &c., falsifying ... 369
Records, public, burning building in which kept 354
of courts, stealing or embezzling 361
Referee, bribing, or receiving bribe 378, 379
Religious Meeting, disturbance of 404
Rescue of offenders 381, 382
Resistance of officer, in cases of riot 396
Return, falsifying, destroying, &c 368
Riots, definition and punishment 394, 395, 396
duty of peace officer, in case of 395
proclamation to disperse 395
Robbery, assault, with intent to commit ... 350
degrees and punishment of 358
Rolling Press, for counterfeiting, having, making, &c 374, 375
Roulette, setting up, keeping, &c 401
permitting to be set up in house, &c ... 402
betting at 402
Routs, definition and punishment 394, 395, 396
Sale, of counterfeit money 371
Saw Mill, burning of 355
School House, burning of 355
Seal, of court, forgery of 368
of corporation, forgery of 368
official, of any officer, forgery of 368
of public office, forgery of 368
of state, forgery of 368
Second Offence, punishment for 409, 410
Second Trial, for same offence 411, 412
Security, public, forgery of 367
false personation, in giving 375
Selling, counterfeit money 371, 372
offices and deputations 390
Servants, embezzlement by 361
Sheriff, suffering or conniving at escape .. 385
refusing to execute process 385
Shop, burning of 354
Shooting, with intent to kill, &c 350
Signature, affixing pretended, to notes, &c. of corporation 373
affixing to instrument, purporting to be the act of another 374
Slaves, raising rebellion of 342
making rebellion or insurrection 342
agreeing to make 342
plotting death of any person 342

Digitized by Google

CRIMES AND PUNISHMENTS.

Slaves, plotting to commit arson 342
enticing away, grand larceny 359
aiding or assisting to entice away 359
attempting to entice away 359
wanton cruelty to 406
guilty of petit larceny, how tried 413
guilty of felony, shall be whipped 414
master or owner made responsible 414
Spurious Bank Note, &c., using as false token 363
Stabbing, with intent to kill, &c 350
Stable, burning of 355
Stack of Grain, burning of 355
Stake-holder, of bet on election, how punished 404
State Seal, forgery of 368
State Treasurer, making false entries in books of 372
Stealing, ... 359
Steamboats, negligently, &c., bursting boiler 346, 347
captain or engineer of, when guilty of manslaughter 347
Storehouse, burning of 354
Stranding, boat or vessel, maliciously, to defraud 364
Subornation of Perjury 377
what sufficient in indictment for 378
Suicide, assisting to commit, manslaughter forfeiture in case of, abolished 345
Sunday, laboring, or compelling to labor 412
exceptions in favor of certain persons 404, 405
horse-racing, cock-fighting, or gaming 404
selling merchandise or keeping grocery 405
exemptions as to sale of medicines, &c 405
Taxes, collector unlawfully exacting 391
Tearing, will, deed or other instrument 376
Threatening, letters, sent with a view to extortion 358
attempting to influence voter by 392
letters, sent without purpose to extort 396
Tickets, giving false, to voter at election 392
printing or circulating fraudulent, at elections 392
Tippling Shop, keeping open on Sunday 405
Tools, for counterfeiting, making, having, &c 374, 375
Toll Bridge, burning of 355
Treason, punishment of 341
misprision of, punishment 341
Treasury Warrant, of state, forgery of 367
Trees, fruit, burning of 355
destroying fruit or ornamental 365
Unlawful Assembly, definition and punishment 394, 395
proceedings for dispersing 395
Unmarried Person, marrying husband or wife of another 399, 400
Usurpation, of government 341
of office 391
Verdict, on trial for murder or manslaughter, when to be "not guilty" 345
Voter, receiving bribe 389
bribing or attempting to bribe 389, 390
attempting to influence by threats, &c 392
voting twice at same election 392
deceiving by false tickets 392

CRIMES AND PUNISHMENTS.

Voter, importing illegal 392, 393
Warehouse, burning of 354
Warrant, against duellists 394
against gambler 403
officer may break open doors 403
Wares, burning, with intent to defraud insurer 355
Will, stealing or embezzling 360
forgery of 367
forgery of certificate of probate 367
tearing, burning, and destroying 376
Witness, bribing, &c., to absent himself 378
incompetent after conviction, when 366, ... 376, 386, 407
perjury of, how punished 377
Woman, ravishing 348
carnally knowing, when under ten years of age 348
carnal knowledge of, by giving liquids compelling to marry or be defiled 348
taking, with intent to compel, &c 349
under eighteen, taking, without consent of parent 349
pregnant, administering medicine to, to procure abortion 351
Wood, pile or raft of, burning, destroying 365
Worship, public, burning house of 355
disturbance of 404
Wounding, cattle maliciously 364
officer 381
Writings, what to be deemed, in forgery 373
Writs and Process, forgery of 371
Written Instrument, what to be deemed, in forgery 373
CRIMINAL OFFENCE, definition of 415
CROP, lien of landlord upon 688
CROSS BILL, in cases of divorce 426, 427
See title *Practice in Chancery*.
CROSS REPLEVIN, not allowed 921
CRUELTY to animals or slave 406
CURATOR, copy of bond of, evidence 471, 472
of minor's estate, when appointed 548
See titles *Guardians and Curators* and *State University*.
CUTTING, ornamental or fruit trees down 365
DADE COUNTY, limits defined 270
DALLAS COUNTY, limits defined 270
DAMAGES, action for, against apprentice 120
on bills of exchange 173, 174
for materials, in erecting bridges 195
to county buildings 288, 289
by slave, master liable for 414
in actions of detinue, omission of in verdict, how supplied 424
recovered in cases of dower 435
may be recovered of ferrymen 510
against steamboats, for landing at ferry 511
in cases of forcible entry and detainer 515
against master of slave, when recovered 414
in actions of, ejectment 443
not recoverable in freedom suits 533
not barred by penalties under *habeas corpus* act 570
for killing, hurting, &c., animals 576
on dissolution of injunctions 580
on return of mandamus 725

Digitized by Google

DAMAGES, in cases of erecting mill dams, how assessed 745
in actions for foreclosure of mortgages 751
to be assessed on penal bonds 782
upon affirmance of judgment by supreme court 906
against officer detaining records, &c .. 914
in actions of replevin 922
on laying out county roads 963, 964
on laying out state roads 974
See titles *Justices' Courts, Practice at Law, and Practice in Chancery.*
DAMS, injuring, destroying, &c 365
See titles *Mills, and Mill Dams.*
DAVIESS COUNTY, limits defined 257
DEAD BODIES, punishment for opening grave to remove, and for removing .. 401
DEATH, punishment of, when inflicted 341, 342, 344
civil, when 412
register of, when evidence 471
of parties in cases of dower, not to abate proceedings 438
in cases under habeas corpus act, not to take away right of action 570
of mortgagor, mortgagee, or assignee, representatives to come in 750
See titles *Justices' Courts, Practice at Law, Practice and Proceedings in Criminal Cases, Practice in Chancery, and Practice in Supreme Court.*
DEBT, imprisonment for, abolished 574
action of, limitation 716, 717
action of, on bonds and notes, by petition 800
mutual, may be set-off 1005
See titles *Administration, Justices' Courts, and Practice at Law.*
DEBTORS, absconding, non-resident, &c. See title *Attachment.*
DECISIONS OF THE SUPREME COURT. See title *Reporter.*
DECLARATION. See title *Practice at Law.*
DECOYING, child, under twelve years 352
slave 359
DECREES, made with intent to hinder, or defraud creditors, void 525, 526
duration of lien of, on real estate 622
execution on, when to issue 622
sale of land under junior, to pass title .. 622
money arising from sale, how disposed of 622
parties dying, who to prosecute; execution, how to issue 623, 624
executor or administrator dying, resigning, or dismissed, how revived 624
acknowledgment of satisfaction, effect of 624
party refusing to enter satisfaction, proceedings 624, 625
docket of, to be kept, contents 625
penalty for failure to keep 625, 626
in case of *ad quod damnum*, vesting title of acre of land in petitioner 746
See title *Practice in Chancery.*
DEDIMUS, to take deposit'ns, how obtained 416
to perpetuate testimony 793
in criminal cases, when 873
DEEDS, stealing or embezzling 360
DEEDS, making, without reciting previous forgery of 364
tearing, burning, destroying 367
by executor or adm'r, of land sold 376
by clerk of county court 88
made before officer of French and Spanish government, evidence 468
of trust, of personal property, when not valid 527, 528
by sheriff, of real estate 481
by guardian of insane person 597
by register of lands, for lands sold for taxes 954
See titles *Conveyances, Practice in Chancery, and Recorders.*
DEFAULT, in proceedings by address 59
in cases of dower 434
of escheat 464
of forcible entry and detainer 515
of impeachment 573
on *sci. fa.* to revive judgment 623
in cases of mandamus 725
in proceedings to foreclose mortgage ... 751
in suits for partition 767, 768
in actions on penal bonds 782
of plaintiff, in actions of replevin 922
of witness summoned, attachment to issue 1088
See titles *Attachment, Justices' Courts, and Practice at Law.*
DEFENDANTS. See titles *Attachment, Justices' Courts, Practice at Law, and Practice in Chancery.*
DEFINITION OF TERMS USED IN REVISED STATUTES. Of 'real estate,' used in title *Conveyances* 227
of 'felony,' 'infamous crime,' 'misdemeanor,' 'crime,' 'offence,' 'criminal offence,' 'personal property,' 'real property,' 'real estate,' 'property,' 'person,' in title *Crimes and Punishments* 414, 415
of "intoxicating liquor" 545
of term "real estate," in execution law 488
in law regulating judgments and decrees 626
of "heretofore" and "hereafter," in title *Laws* 697
of "master," in act concerning *Slaves* 1019
of "wills," in act respecting wills 1086
DE KALB COUNTY, limits defined 258
DELIVERY, bond for, in attachment suits 138, 149
bond for, of property levied on under execution 482
when necessary in sale, or mortgage, of goods and chattels 527, 528
of public records, books, and papers, how compelled 914
See title *Crimes and Punishments.*
DELIVERY BOND, in attachment cases 138, 149
of property taken in execution 482
second not to be taken 482
to be returned with execution 482
proceedings on 482
DEMURRER, costs of regulated 242
See titles *Practice at Law, and Practice in Chancery.*

Digitized by Google

DEODANDS abolished 412
DEPOSITIONS. CHAP. 48. ..... 416 to 419
Adverse Party, how notified 417
Adverse, non-resident party, how notified 417
Annexation, of interrogatories 418
Attendance, of witnesses, how compelled 418
Certificate, of officer taking depositions ... 418
Character, official, of officer in foreign country, how attested 418
United States, how attested 418
Commission, how issued and directed .. 416, 417
duty of officer under 416
not necessary when witness resides in the State 416
how issued when witness is out of the state 416
command of 418
special, to issue on affidavit 417
to whom directed 416, 417
Depositions, how obtained 416
when may be read and used as evidence 419
exhibits to be enclosed in, when 419
Examination of witnesses 418
Exhibits, to be enclosed in depositions ... 419
Interrogatories annexed to commission ... 418
Notice, how to be given to adverse party 417
adverse non-resident party 417
in what time to be served 417
Objections, to competency, &c., of witnesses, how taken 419
Officer, his duty, &c., and power under the commission 416
when may compel attendance of witnesses 418
official character of, in foreign country, how attested 418
United States, how attested 418
statement of, when prima facie evidence 419
Parties, may obtain depositions of witness may, in certain cases, by making affidavit 416
Service of notice 418
Statement of officer, when prima facie evidence 419
Witnesses, residing in the state, no commission to issue to 416
out of the state, commission to issue to 416
to be examined on oath 418
objection to credibility, &c., how taken
COMMISSIONERS TO TAKE DEPOSITIONS IN OTHER STATES. CHAP. 49.
Commissioners, acts of 420
Appointment of, to be by governor 420
Certificate of, how effectual 420
Continuance in office, to be during pleasure of the governor 420
Governor may appoint one or more in each state 420
Oath to be administered to 420
to be filed in office of Secretary of this state 420
Powers and duties of 420
Tenure of office of 420
DEPOSITIONS, in cases of address 58
in support of demands against estates ... 93
in contested elections 454
in cases of forcible entry and detainer .. 517
DEPOSITIONS in cases of impeachment 573
justice of the peace may issue subpœnas for witnesses to take 418
to be taken as evidence before justice of the peace 648, 649
to be taken as evidence before legislature 711
for perpetuating testimony 793
for proving execution of wills 1081
See titles *Justices' Courts, Practice and Proceedings in Criminal Cases, and Practice in Chancery.*
DEPUTY, of clerk of county court, not to be executor or administrator 63
of clerk or sheriff, not to be security in administration bond 65
of clerk, not to practice law in his own court 161
clerks may appoint 204
constables may appoint 212
coroner may appoint 229
jailor may appoint 619
of circuit or county court clerk, not to be a justice of the peace 630
collectors may appoint 939
sheriff may appoint 1008
county surveyor may appoint 1045
DESCENT, cast, not to affect right to lands 715
DESCENTS AND DISTRIBUTIONS.
CHAP. 50. ..... 421 to 422
Advancements, to children, brought into hotch pot 422
Alienage, of an ancestor, no bar to title by descent 422
Ascending Kindred, what portion to take of estate 422
Bastards, may inherit, and transmit inheritance, &c 422
Capita per, when descendants shall take 422
Certain Marriages, issue of, made legitimate 422
Children, advancements to, brought into hotch pot 422
and descendants, inheritance of 421
when legitimated 422
posthumous, to inherit 421
Collateral Kindred, how to inherit, and what portion 422
Descendants, how to take real and personal property 421
of equal degree, when to take *per capita*, when *per stirpes* 422
Descent, title by, alienage no bar to 422
Descent of real and personal estate, whom to 421
Hotch Pot, when 422
Husband, when to inherit the whole estate 422
Inheritance, of ascending and collateral kindred 422
of posthumous children 421
of bastards 422
Intermarrying afterwards, when, to make children legitimate 422
Issue of certain marriages, deemed legitimate 422
Kindred, rule in case of failure of 421
ascending and collateral, how to inherit 422
Legitimacy, of children, when 422

Digitized by Google

DESCENTS AND DISTRIBUTIONS.
Legitimacy, of issue of certain marriages, when 422
Marriages, issue of what, legitimate 422
Personal Estate, to whom to descend 421
Posthumous Children shall inherit, how .. 421
Real Estate, to whom to descend 421
Rule in case of failure of kindred, what .. 421
Stirpes per, when descendants shall take 422
Title by Descent, alienage no bar to 422
Wife, when to take the whole of the estate 422
DESERTION, by apprentices, how punished 118
by wife of her husband, bars her dower 432
DESTROYED WRITING, may be sued on 638, 639, 812
DETAINER. See title *Forcible Entry and Detainer*.
DETINUE. CHAP. 51. ..... 423 to 424
Affidavit, to be filed, contents 423
Bail Bond, conditions, proceedings 423
officer failing to take or return, proceedings 423
to be cancelled, when and how 424
Bail, remedy of plaintiff against 423
of officer, against principal and bail ... 423
court may reduce amount of 424
Capias, when issued, how endorsed 423
Defendant, appearance of, when accepted 424
Inquiry, when awarded 424
Officer, to be made co-defendant, when ... 423
to return bail-bond with writ 423
Verdict, when plaintiff's title barred by .. 424
no error in, when 424
DETINUE not cognizable before J. P 635
DEVASTAVIT, See title *Administration*.
DEVISE, in fee-tail, how construed 219
to two or more, tenancy in common, unless 221
to widow, when to bar dower 431
who may make 1078
does not lapse by death of devisee 1080
to subscribing witness, when and when not void 1084
for life, and afterwards in fee-tail 1085
omitting words of inheritance 1085
DEVISEE, judgment survives to and against 623
to be made party in supreme court 905
when may prove execution of will 1084
See title *Practice at Law*.
DILATORY PLEAS. See titles *Practice at Law, and Practice and Proceedings in Criminal Cases*.
DISCHARGE. See titles *Practice and Proceedings in Criminal Cases, Administration, Guardians and Curators*.
DISCLOSURES. See title *Practice and Proceedings in Criminal Cases*.
DISCONTINUANCE, not operated, by lapse of term of court 337
of suit on penal bond, on payment of principal and interest 781, 782
See titles *Justices' Courts, and Practice at Law*.
DISCOVERY. See titles *Justices' Courts, and Practice at Law*.
DISPROOF, See titles *Attachment, and Practice in Chancery*.
DISSOLUTION, of corporation, affairs to be settled by trustees 236
of injunction, damages to be assessed .. 580
of incorporated towns, when and how made, affairs, how settled 1053
See title *Attachment*.
DISTRESS WARRANT, to be issued by auditor of state, against delinquent collectors 1062
DISTRIBUTION. CHAP. 52. ... 424 to 425
Auditor of Public Accounts, county court to make draft upon, when 425
shall notify clerk of county court of amount allotted 425
shall draw warrant on treasurer 425
Auditor and Treasurer, to ascertain amount of money in treasury, when 425
shall apportion money among counties 425
shall give to each county an equal share 425
to enter upon their books amount allotted to each county 425
shall give credit for amount 425
County Court, when to draw upon auditor 425
may apply money to other purposes than internal improvement, when 425
Counties, may unite funds for common purpose 425
Internal Improvement, Money, to be applied to 425
Land, granted by congress, proceeds of sales of, to be distributed amongst counties 424, 425
DISTRIBUTION OF ESTATES. See title *Administration*.
course of, directed 421, 422
of laws 702
of three per cent. fund 957
DISTRICTS, congressional, established .. 213, 214
electoral, established 457, 458
senatorial, established 113, 114
DIVISION of townships, effect as to justices of the peace 632
of three per cent. fund 957
of townships by county court 1057
DIVORCE AND ALIMONY. CHAP. 53. ..... 426 to 429
Alimony and Maintenance, order of court in relation to 427, 428
wife complainant, defendant to give security 427, 428
cause of divorce commenced out of the state, and continued within 427
collusion between parties; effect of 428
court may allow, when 428
Circuit Court of Chancery, jurisdiction ... 426
proceedings in 426, 427
in *ex-parte* cases 428
Complaint, must be under oath; contents 427
Defendant, answer of, not to be under oath 426
Divorce, causes of; how decided 426
Property, of wife, to revert to children ... 429
DOCKET, of ex'rs and adm'rs to be kept .. 97
of judgments and decrees of court 625
to be entered when 625
what to contain 625
to be kept by justice of the peace, what to contain 627

Digitized by Google

DOCKET, of justice of the peace, how disposed of, upon resignation, removal, 633
See titles *Practice at Law, and Practice in Chancery.*

DOWER. CHAPTER 54. ..... 429 to 439
Appeal, when and how made 438
damages on, against appellant 439
proceedings on, &c 439
Commissioners, shall be appointed to make partition of dower in slaves, shall report, when 432, 433
shall be appointed to admeasure dower 434
oath, powers and duties; proceedings .. 434
shall report proceedings, when 435
shall again proceed to same duty, when 435
any one of, may be discharged and another appointed, when 435
vacancy, how filled 435
court approving report of, proceedings 435
lands not susceptible of division, proceedings 435
to be appointed, when dower has not been duly assigned; powers and duties 437
report of, proceedings upon 437
compensation 437
County Surveyor, duty of 435
Costs, shall be divided among parties according to their interests 436
services of commis'ers shall be taxed as 437
judgment for, how and when 437
Creditors, contingent, rights of, how secured 433
may require assignment of dower 435
Circuit Court, petition of widow may be filed in; proceedings 433
clerk of, shall issue summons, when ... 434
shall order publication, when 434
substance of order of 434
shall appoint commissioners to admeasure dower, when 434, 436
may assess damages and award writ of possession, when 435
shall inquire into value of widow's dower, when 435
shall give judgment of allowance in lieu of dower, when 435
shall assess damages in case of death of dowess, *pendente lite* 438
County Court, duties of, in relation to partition of slaves, &c 432, 433
Damages, to be assessed by jury on assignment of dower, when 435
no judgment for, when 436
execution on judgment for, how awarded 438
Devise of Real Estate shall be in lieu of dower, when 431
Divorce, when, and when not a bar to dower 431
Defendant, appearing, cause shall proceed. 433
not appearing when summoned, proceedings 434
shall be notified by publication, when .. 434
judgment against, by default, when 434
proceedings against those summoned ... 434
exceptions of, shall not abate writ, when 435
Dower in Real Estate, widow shall be endowed of, what 430

DOWER.
Dower, in leasehold estate, extent of 430
in lieu of dower, widow may elect, what 430
woman shall lose, when 431
divorce, bar to right of dower, when .. 431
devise of real estate bar to dower, when 431
jointure a bar to dower, when 432
jointure or dower, may be selected 432
on failure of jointure, dower to be obtained 432
uutil assigned, what rights of widow .. 432
petition for, may be filed by widow 433
judgment of, when and how given 434
commissioners to ascertain; proceedings of 434
county surveyor to lay off; when and how 435
yearly value of, how ascertained 436
allowance in lieu of, how ordered and paid 435
how assigned and admeasured by heirs 435
sued for by widow, without right, effect 436
collusion, to obtain, with guardian, effect of 436
actions for, not to abate, when 438
lost by default, how 437
Dower in Slaves, widow's share in, how assigned 432
assignment of, how made 433
proceedings to obtain 433
partition, how made 433
lost by default, how 437
Dowess, dying, *pendente lite*, proceedings 438
Execution, for annuity of widow 438
Guardian, action brought by, ward not bound, when 437
judgment obtained by collusion with ward, void 437
Jointure, contract for, when and how to bar dower 432
married woman having, shall not claim dower, when 432
widow may renounce, and have dower 432
shall cease and determine, when 432
forever barred, when 432
Judgment, by default on petition for dower 434
court shall render for dower, when 434
of allowance, in lieu of dower, when .. 436
none for damages, when 436
to retain dower, when and how 437
obtained by collusion, effect of 437
Jury, on petition of widow for dower 434
shall determine proportions of parties interested, when 434
damages shall be assigned by, when 435, 438
yearly value of dower shall be assessed 435
Minor, proceedings of, to get admeasurement of dower 436
Notice, of partition of slaves, when and how given 433
on petition for dower, to be given 436
Partition, of slaves, how made 432, 433
Petition, for partition of slaves 432
widow may file for dower 433
to assign and admeasure dower, by guardian, proceedings on 436
person not concluded by certain proceedings, may file 436

Digitized by Google

DOWER.
Publication, order of, when awarded; how and when made; effect and contents of 434
Slaves, widow entitled to share in, how 430
widow may elect to take, in lieu of dower 430
county court may make partition of 432
heirs and legatees, how secured 433
Summons, writ of, in dower, not to abate 435
shall be served on widow, when 436
Widow, of what property endowed 430
what share of slaves entitled to 430
what entitled to, when husband dies without heirs 430
may make election in lieu of dower 430
provisions for, when property subject to payment of husband's debts 431
may elect to take dower, how and when 431
may renounce jointure 432
may remain in mansion house until 432
may sue for dower, and recover damages 433
may file petition for assignment of dower 433
judgment of allowance to, in lieu of dower 435
petition against, for admeasurement of dower 435
action against to admeasure dower allowed 436
shall have judgment to retain dower 437
yearly allowance to, how collected 438
Wife, devise to, in lieu of dower 431
jointure of, when and how obtained 432
by what acts of, dower forfeited 432
Will, devise by, in lieu of dower, when 431
provisions of, when and when not accepted by widow 431
Writ, in dower, not to abate, when 435
DRUGGIST, subject to tax as merchant 741
DRUNKARD, children of, to be apprenticed 116
DRUNKENNESS, habitual, good cause for divorce 426
DUNKLIN COUNTY, limits defined 270
DUTIES, on sales at auction 164
DWELLING-HOUSE, burning of 354
what deemed in cases of arson 354
what deemed in cases of burglary 357
EDUCATION, to be encouraged 40
of apprentices, provided for 117
of minors, provided for 551
EJECTMENT. CHAP. 55. 439 to 445
Actual Ouster, plaintiff required to show 442
Appeal, in favor of defendants in ejectment, not allowed, unless, &c 444
recognizance in, shall be in what sum 444
condition of recognizance on 444
Averment, declaration shall contain, what 441
Bill of Complaint, complainant in, shall set forth, what facts 444
cross bill may be filed, when 444
Co-defendant, who may be made, on motion 441
Court of Equity, recovery may be had in bill filed in, shall set forth, what 444
may decree payment of money, when decree of, between plaintiff and occupying claimant 445
Damages and Costs, when and how collected 443

EJECTMENT.
Damages and Costs judgment for, when rendered 443
Declaration, what shall be averred in 441
Decree, in favor of occupying claimant 444
of conveyance to occupying claimant 445
requiring plaintiff to pay for improvements 445
Defendant, may plead general issue 441
may give in evidence, what 442
Ejectment, may be maintained, when 440
action of, tenants in common may join in 441
shall be prosecuted in real names of parties 441
in actions of, what defendant may plead 441
Evidence, what shall be *prima facie* 442
may be rebutted, when and how 442
Execution may be had for damages and costs 444
Improvements, compensation for, how recovered 444
value of, to be ascertained, when 444
exceeding value of land, decree of court 444
compensation for, not to be paid after notice 445
occupying claimant shall not recover twice for 445
made prior to January 23, 1816, not to be paid for 445
Injunction, may be granted, when 444
Joint Tenant, if plaintiff in action, shall show what 442
Judgment, for costs and damages, when 443, 444
shall be for recovery of premises, &c 443
for possession, what proceedings 443
of dispossession 444
Occupying Claimant, conveyance shall be made to, when 445
land may be divided between occupying claimant and plaintiff, when 445
shall not recover twice, for improvements 445
Partition shall not be decreed, when 445
Plaintiff, to recover, shall show what 442
shall recover damages, when 443
Pleadings regulated 441
Rents and Profits, value of, shall be found by jury, when 443
Tenants in Common, may join in action of ejectment 441
required, on trial, to show, what 442
Trespass may be maintained, when 445
Waste and Injury, damages for, how recovered 443
Writ of possession, when to issue, command of, service, &c 443
EJECTMENT, tenant sued in, to notify landlord 687
by landlord, when 688, 689
ELECTIONS. CHAP. 56. 446 to 457
Abstract of Votes, in what post office delivered; where directed 450
Arrest, judges, clerks, and voters, shall be free from 452
Ballot, vote by, in St. Louis county 449
Certificate of Election, how and when given, and transmitted 447, 449, 450
Circuit Court, shall decide contested elections of sheriff, how 453

Digitized by Google

ELECTIONS.
Circuit Court shall order notice of contest to be given 453
Clerks of County Courts, duty relative to certificates of election 447, 449
shall make copy of order of election districts and deliver to sheriff 448
to furnish poll books, when 449
shall deliver poll books to sheriff 449
shall compare returns publicly 449
duty in making out and transmitting abstract, of votes 450
neglecting, proceedings; penalty against 450
Clerks of Election, to be appointed by the judges 448
shall take oath, &c 448
shall attest certificate of judges 449
shall note the crying of votes, how 462
penalty on, for failing to perform duty 452
shall be free from arrest, when 452
Contestee, proceedings of, in taking depositions 455
shall select justices of the peace 455
Contested Election of sheriff, proceedings in 453
of clerk, how and by what power determined 453
of coroner, how decided 453
of constable, how decided 453
of justice of the peace, how decided ... 453
of county surveyor, how decided 453
of a county court justice, how decided 453
notice of, how given 453
what notice necessary in 453
notice of, shall contain, what 454
party having certificate, shall give notice 454
shall be determined, how 454
costs in, how adjudged 454
parties to, consenting, new election may be had 454
of senator, or member of house of representatives, proceedings in 455
contestor shall give notice 455
notice of, shall contain what 455
justice to take depositions in 455
contestee in, to select justice 455
contestee in, to give notice 455
contestor in, shall select justice, when .. 455
justices shall take depositions in 455
rebutting testimony in, may be taken .. 455
taking of depositions shall be commenced, when 455
justices shall certify testimony 456
what testimony to be received in 456
for governor and lieutenant governor, how decided 456
petition presented, how, and by whom 456
joint committee to be appointed, powers of 456
depositions, how and when taken 456
cross-examination allowed 457
committee on, shall report, what 457
day fixed for decision upon 457
decision upon, how made 457
costs in, how adjudged 457
County Court, shall name when election shall be held 447
shall appoint persons to hold elections .. 447

ELECTIONS.
County Court of St. Louis county, may divide townships 448
may order polls to be open, for what time 449
Depositions, either party may take, when 453
court shall determine how taken 453
may be taken as in civil cases, when ... 454
notice to take, when and how given 454
in case of contest for governor or lieutenant governor, how taken 457
Elections, general, when to be held 447
for governor and lieutenant governor, to be held, when 447
certificate of, transmitted to general assembly 447
held for senators and representatives .. 447
judges of, how appointed 447
shall be conducted, how 448
writ of, to fill vacancies, how issued 448
duty of officers attending on 449
judges of, shall open polls, when 449
in city and county of St. Louis, how conducted 449
judges of, may punish for contempt 452
duty of constable at 452
special held, when a tie vote; proceedings 453
contested, proceedings 453, 454, 455, 456
Costs, how adjudged in contested elections 454
Election Districts, townships shall compose 447
in St. Louis county, regulated 448
Fines, &c., how appropriated 457
Judges of Election, powers and duties of ..... 447 to 452
Justices of County Courts, when elected .. 447
Justices of the Peace, duties of, in taking and certifying depositions, &c 455, 456
Messenger, secretary of state shall despatch mileage allowed for 450
New Election, may be awarded, when 451
Notices, of contested elections, how and by whom given 453, 454, 456
Oath, voter shall take, when 452
Order, making election districts, copy to put up, where 448
Poll Books, how and by whom furnished; to whom delivered; how returned .. 448
Polls, shall be opened, when 449
Qualification of Voter, how tested 462
Representatives and Senators, election of .. 447
Returns, of election, how made 448
Secretary of State, duties of, in relation to elections 450, 451
Sheriff, to deliver poll books 449
Special Elections, in case of a tie, how ordered 451
governor may order returns of; how .. 451
Special Messenger, may be despatched for returns, when 450
Testimony, how certified in contested elections 456
what shall not be received 456
Tie Vote, proceedings in case of; how decided 451, 452
Voter, proceedings, when vote of rejected 452
free from arrest 452

Digitized by Google

ELECTIONS.
Votes, how and by whom certified and cast up ... 449
shall be given *viva voce* ... 451
Witnesses and depositions in contested elections ... 456, 457
Writs, of election, may be issued ... 448
ELECTION, of members of congress 6, 313, to 315
qualification of voters ... 5
of president of the United States ... 8, 14
qualification of voters in this state ... 30
of presidential electors, districts for, established ... 457, 458
bribery to secure ... 389
betting on, or becoming stakeholder ... 404
by legislature, how made, and authenticated ... 712, 713
ELECTORS. CHAP. 57. ... 457 to 460
Apportionment, in case of new, governor to lay off districts ... 458
Compensation, for carrying returns and notices ... 460
of electors, how audited and allowed ... 460
Contested Elections, how determined ... 460
Districts, the state divided into seven ... 457
of what counties composed ... 458
new, to be laid off, when and by whom 458
Election, when and where held ... 458, 459
how conducted ... 459
who qualified to vote at ... 459
returns of, to be made to clerks; by clerks, to governor ... 459
in case of a tie, by whom determined 459
Electors, when and how to be elected ... 459
one to be chosen in each district ... 459
to be notified of election, how ... 459, 460
list of persons chosen to be delivered to 460
when and where to meet; their duty ... 460
their compensation ... 460
Governor, duties of ... 458, 459
Proclamation, to be made of new districts 458
Vacancies, how filled ... 460
Votes, to be added up by governor ... 459
ELECTORS, of president and vice-president of the United States, how chosen 8, 14, 15
ELISORS, may be appointed to serve process, when ... 334, 335
where offices of coroner and marshal are vacant ... 1010
EMANCIPATION, of slaves by legislature, forbidden ... 32, 33
by owners may be authorized ... 33
how made ... 1019
EMBANKMENT, of dams, destroying ... 365
EMBEZZLEMENT, of estates, proceedings ... 74
of property of minors, proceedings ... 550, 551
by justice of the peace, of money received under the salvage act ... 986
of lost or wrecked boat, &c ... 986
See title *Crimes and Punishments*.
EMBRACERY, defined, punishment ... 378, 379
ENDORSEMENT, forgery of ... 369
ENGINE, destroying or injuring ... 364
for counterfeiting, making, having, &c ... 375
ENGINEER, of steamboat, when guilty of manslaughter ... 346
ENGLISH LANGUAGE, writs, process, &c., of courts to be in ... 324
ENGLAND, certain statutes of, prior to fourth year of James I, in force in this state ... 693
ENGRAVING counterfeit plate ... 370
ENTAILS, not allowed ... 219
ENTICING away child ... 352
ENUMERATION of inhabitants, when, how, and by whom taken ... 29, 198 to 200
E. O. TABLES, setting up, keeping, &c. 401
EQUALITY, playing at, keeping, &c ... 401
EQUITY, courts of, established ... 38, 39, 50
actions before justice of the peace, to be tried and determined according to ... 634
not to relieve against recovery by landlord, when ... 688
EQUITY OF REDEMPTION, when sold by executor or administrator ... 84
of mortgages, how foreclosed ... 749
ERASURE, total, when forgery ... 373
ERROR, writ of, on orders vacating or affirming awards ... 124
in cases of dower ... 438
in cases of escheat ... 465
in freedom suits ... 533
in cases of partition ... 776
See titles *Justices' Courts, Practice at Law, Practice and Proceedings in Criminal Cases, Practice in Supreme Court, and Writ of Error*.
ESCAPE, aiding prisoner to ... 383
conniving at or suffering ... 385
See title *Practice and Proceedings in Criminal Cases*.
ESCHEATS. CHAP. 58. ... 461 to 466
Administrator, shall account when there are no known heirs ... 461
balance on hand, to be certified to whom 461
shall pay balance into state treasury ... 462
shall deliver receipt to auditor ... 462
to be credited for amount, when ... 462
may be adjudged to pay costs, when ... 462
Appeal and Writ of Error allowed ... 465
Attorney General and C. Attorney, duties of, in relation to escheated estates 462, 463
Auditor of Public Accounts, his duties ... 461, 462, 465
Certificate, of auditor, to administrator when given ... 462
Costs, how adjusted and paid ... 464
defendant, when entitled to recover ... 464
shall not be adjudged against state, when 465
County Court, administrator to settle with 461
shall grant duplicate certificates, when 461
Decree, of court, when and for what made 465
Devise, person dying without, effect of ... 461
Escheat, real and personal property shall ... 461
Estate shall vest in state, when ... 461
Execution, may issue against administrator 462
Heirs, &c., none known, what proceedings 461
proceedings of, to recover real estate escheated ... 465
Issues, how made up and tried ... 464
Judgment, against administrator, when and for what ... 462
rendered for state, when ... 464
upon verdict, when and how ... 464
shall contain description of estate, when 464
Legislature, may sell lands escheated, how 466

Digitized by Google

ESCHEATS.
Limitation, shall bar action, when 465
Notice, of motion against administrator ... 462
Petition, of legal representatives 465
of heirs, to recover land 465
copy to be served 465
Publication, of *scire facias* 463
Real Estate, in escheats of, proceedings .. 463
claimants to, may appear and plead 463
judgment rendered for state, when 464
seized by sheriff, when 464
general assembly may sell, when 466
Scire Facias, to issue, when, and against whom 463
shall be served, when and how 463
Seizin, writ of, shall be issued, when 464
command of writ of 464
Survey, may be ordered, when 464
Transcript of record to be deposited, where of judgment, to be recorded, when 464
ESSOIGN, and wager of law abolished 809
ESTATES, forfeiture of abolished 44, 412
course of descents of, directed 421, 422
real, mode of transfer by deed. See title *Conveyances*.
definition of the term "real estate," as used in title *Conveyances* 227
as used in title *Crimes and punishments* 415
as used in title *Execution* 488
what conveyances of, deemed fraudulent and void 525, 526
of infants. See title *Guardians and Curators*.
of insane persons. See title *Insane persons*.
lien of judgments and decrees, upon real 622
decrees concerning real, to be recorded 626
definition of term "real estate," as used in title *Judgments and decrees* 626
See titles *Administration* and *Wills*.
ESTIMATES, of cost of bridges, to be made 193
of cost of county buildings to be made 288
of revenues and expenditures of state, to be prepared by auditor 1060
ESTOPPEL, deeds operate as, when 219
EVIDENCE. CHAP. 59. ..... 466 to 472
Acknowledgment, certificate of, shall be evidence, when 469
Bonds, suits brought upon copy of, court may require original 472
Books, printed by what authority, shall be evidence 467
Certified Copies Evidence, of laws in sister states, when 467
of acts, laws, &c., in office of secretary of state 467
of law, &c. contained in books, when .. 467
of confirmation of commissioners to adjust land claims 468
of New Madrid certificates 468
of French and Spanish grants 468
of title, from *Livre Terrein* 468
by recorder, of French and Spanish grants 468
of plats, surveys, &c., kept in surveyor general's office 469

EVIDENCE.
Certified Copies Evidence, of deed, when lost 470
of proceedings by justice 470
of papers in office of secretary of state 470
from docket of justice out of office 470
of ordinances, &c., of incorporated town 470
of register of religious society 471
from book of marriages 471
of bonds of officers 471
of contracts, &c 471
of executors' and administrators' bonds 471
translated, of instruments of writing .. 472
of papers in treasurer's and auditor's office 472
Deed or Conveyance, shall be evidence, in what cases 469
may be read in evidence on certain proof 469
Justices of the Peace, proceedings of, how made evidence 470
proceedings of, when out of office 470
New Madrid Certificates, to be received in evidence 468
Original Records, &c., evidence, when 468
Title, deed, &c., offered in evidence of, evidence may be produced to reject it 470
Translation, into English language, of papers, evidence, when 472
EVIDENCE. CHAP. 60. ..... 472 to 473
Digest of Maryland, evidence 472
of Tennessee, evidence 473
EVIDENCE, on charge of receiving stolen property, of conviction of principal not necessary 363
nor on charge of compounding offences 380
of overt acts in case of conspiracy 397
See titles *Administration*, *Practice at Law*, *Practice and Proceedings in Criminal Cases*, and *Practice in Chancery*.
EXCEPTIONS. See titles *Attachment*, *Practice at Law*, *Practice and Proceedings in Criminal Cases*, *Practice in Chancery*, and *Revenue*.
EXCESSIVE BAIL, not to be required 14, 44
EXCHANGE, bills of ..... 172 to 175
of counterfeit money 369, 370, 371
EXECUTIONS. CHAP. 61. ..... 475 to 489
Acknowledgment of deeds, before whom .. 485
Administrators, execution not to issue against, when 479
of sheriffs to deliver writs not executed 485
responsible for failing so to do 485
Animals, what and when exempt from ... 477
selected by defendant, to be appraised .. 478
sold for more than sixty-five dollars, proceedings 478
Apparel, wearing, exempt from execution 479
Application, to stay or quash execution ... 488
Bank, stock and shares in, liable to be seized and sold 478
what required of cashier of 479
rights and shares in, how levied on 479
can be claimed by another, how 480
stock, bill of sale of, to be given by officer to the purchaser, its effect, &c .. 484

Digitized by Google

EXECUTIONS.
Bills, issued of any moneyed corporation, may be seized and sold ... 498
of sale, to be given by officer ... 484
Bond, of indemnity, to officer ... 480
condition of ... 480
must be returned and filed ... 481
claimant may prosecute on ... 481
right of action on, barred, unless, &c ... 481
being given, property may be retained ... 482
approval and condition of such bond ... 482
condition of broken, levy a lien ... 482
officer may seize any other property ... 482
plaintiff may move for a judgment on motion on, how heard and determined ... 482
second, not to be taken ... 482
liability of officer on, for neglect ... 487
Claimant, of property seized, to give notice ... 480
may prosecute on indemnity bond ... 481
when barred of his right of action ... 481
Clerk, of court, his duties ... 477
what he shall endorse on executions and sheriff's deeds ... 477, 485
Collector, not to be summoned as garnishee 476
Construction of term "real estate" ... 488
Copies of Deeds, evidence ... 485
Corporations. See title *Bank* ... 488
Costs, by whom paid ... 480
County Buildings, not subject to ... 476
Death, &c., of officer, proceedings ... 486
Deed, of real estate, by officer, what it shall recite ... 484
must be acknowledged, before whom ... 485
certificate thereof, to be endorsed ... 485
how proved and recorded ... 485
how obtained, when officer is dead, &c. 485
Defendant, form of execution against estate of ... 475
real estate of, may be seized upon ... 478
may elect what property to be sold, proceedings, ... 480, 481
giving bond, may retain property levied on ... 482
on breach of bond, what property seized 482
Delivery Bond, to be returned with execution ... 482
no second shall be taken, when ... 482
Devisee, execution against ... 475
Duty of new sheriff in unexecuted executions ... 485
Duties of clerk of court ... 476, 485
Evidence of debt liable to be seized ... 476
Execution, in whose favor may issue ... 475
what property to issue against ... 475
shall be a *fieri facias* ... 475
form of ... 475
when against heir or devisee ... 475
when returnable ... 476
where to be directed and executed ... 476
garnishees can be summoned ... 476
regular index to abstract of ... 477
property exempt from, when owned by single person ... 477
when owned by head of family ... 477
inventory to be returned with ... 477
property exempt, can be claimed by the wife, when ... 478

EXECUTIONS.
Execution, wife's property liable to be seized, and sold, upon ... 478
not to issue against ex'rs or adm'rs ... 479
lien on personal property from delivery 479
time of reception of, to be endorsed ... 479
two or more delivered on the same day, &c., to have equal rank ... 479
levy of, and proceedings on against banks 479
sale of personal estate upon, notice, &c ... 481
sale to be fifteen days before return of ... 483
sale of real estate taken in, when and where to be made, and what notice ... 483
how conducted, within what hours 483
real estate, when to be divided ... 481
officer not to purchase property on ... 483
when liable for amount of ... 486
shall be continued in force, when, and to what time ... 484
may be quashed, or set aside ... 488
judge may order stay of ... 488
property bound by, not released by stay 488
perpetual stay of, when ... 488
lease upon lands subject to ... 488
not on, issued by justice of the peace ... 488
proceedings under, in case of garnishees 476
Fees of sheriff and witnesses ... 480
Form of execution ... 475
against heir or devisee ... 475
Garnishees, summoned, if no property ... 476
Gold and Silver Coin, may be seized on ... 478
Head of a Family, what property of, exempt from ... 477
married and absconding, wife to have property ... 478
Jury, may be summoned, when, &c ... 480
effect of verdict of ... 480
Justices of the Peace, jurisdiction of, in certain cases ... 483
leases of lands not subject to sale under execution from ... 448
Justices' Courts, executions from, what sections to apply to ... 483
Lawyers, privilege of selecting books ... 477
Leases, what subject to execution ... 488
Levy, meaning of the word ... 489
Lien, of execution ... 479
Liability, of officer, sheriff, &c. See their respective titles under this act.
Loss on property resold, how recovered ... 483
Mechanics' Tools exempt ... 477
Medicines, when exempt ... 477
Ministers, privilege of, to select books ... 477
Party, who may have execution ... 471
Personal Property, execution to be a lien on ... 479
proceedings by claimant on seizure of ... 480
when to be sold, and how ... 481
when may be retained by the defendant 482
bills of sale of, to be given, &c ... 484
Petition, to stay execution ... 488
how verified ... 488
to be returned by judge to what court ... 488
Physicians, privilege of selecting books ... 477
Property, exempt from execution, what ... 477
what liable to be seized ... 478
defendant may elect what to be sold ... 481
when and how to be sold ... 481, 483

Digitized by Google

EXECUTIONS.
Property, when to be resold 483
cannot be purchased by officer 483
Provisions, to what amount exempt 477
Real Estate, construction of term 488
what may be seized, &c 478
sale of, when made, where, how, when 483
not sold at first term of court, can be afterwards, how 484
deed of to be executed 484
to be acknowledged and recorded 485
Remedy, of plaintiff against officers 487
Sheriff, (or officer,) not to be summoned as garnishee 476
to apprise the defendant of his right to select working animals, &c 478
what to endorse on executions 479
how to levy on shares in bank, and other property 479, 480
may summon a jury and witnesses, when and how 480
may sell, upon receiving bond of indemnity, notwithstanding the verdict 480
no action against, on bond, when 481
to sell, according to the election of defendant 481
to give notice of time and place of sale 481, 483
to take delivery bond 482
may seize any property of the def't 482
shall return delivery bond 482
failing, shall stand as surety for defend't 482
shall appoint day of sale, fifteen days before return day, when 483
may cause property to be re-sold, when 483
may refuse bid at sale, when 483
shall recover the amount of loss of re-sale, how 483
how far liable, by such sale 483
shall not purchase property at sale 483
any such purchase by, shall be void 484
to deliver property to purchasers 484
to execute written instrument, &c 484
to give deed of real estate, its form and particulars 484
to deliver over unexecuted writs to successor 485
shall be liable, with his security, for neglect, &c., as if still in office, how 485
new, to receive and execute all such writs 485
executors and administrators of, to deliver such to successor 485
shall execute, &c., after expiration of term of office, &c 485
death or removal of, &c., after levy and before sale, proceedings 485
when to execute a deed, by order of court 486
liable, for refusing to levy, or to sell ... 486
liable for not paying over money 487
liable for non-return of writ, how, &c .. 487
damages to be recovered against for default 487
persons injured, may proceed against .. 487
Sale, of real and personal property 483
Slaves, may be seized on execution 478
Tools, &c., exempt from execution 477

EXECUTIONS.
Wife, may claim property exempt 478
Witnesses may be summoned; their fees 480
EXECUTION, on apportionment to creditors of estate 98
in cases of attachment 138, 145, 154
for collection of alimony 427, 428
in cases of dower 438
of forcible entry and detainer .. 516, 524
of fugitives from justice 537
may issue at any time during lien of judgment 622
to issue in favor of surviving plaintiffs and against surviving defendants .. 623, 624
to be returned after levy, in case of defendant's death 624
made with intent to hinder, delay, or defraud creditors, void 525
from justice of the peace in cases of breach of the peace 675
in foreclosure of mortgage 751
stayed by writ of error 903
See titles *Attachment*, *Justices' Courts*, *Practice at Law*, *and Practice and Proceedings in Criminal Cases*.
EXECUTIVE POWER of the United States vested in President 8
of the state vested in Governor 34
EXECUTOR, who shall not be 63
letters testamentary to issue to 63
those only to act who give bond 64
to make affidavit on taking out letters .. 64
to give bond 65
letters of, to be recorded, form of 65, 66
letters revoked, when, how 67, 68
additional bond may be required 69
may surrender letters, how 69
several, and part die or letters revoked, remainder to serve 69
representatives of, to deliver effects 69
failing to settle accounts, proceedings .. 70
duty of, relative to partnership property 70, 71
to take possession of effects of testator 73
to make inventory 73
proceedings by, to recover effects 74, 75
to cause appraisement to be made 75
to publish notice of letters 75
to collect debts, give receipts, &c 76
to prosecute and defend actions 76
debtor appointed, debt not discharged .. 77
to sell personalty 77, 78
to assign bonds, &c., in payment of debts 78
to lease real estate and hire out slaves .. 79
interest received by, assets 80
to render statement of money on hand 80
several, majority when to act 80
to sell and convey land under will 83
may complete payment for land, when 83
duties in sales of real estate 85, 86, 87
specific execution of contract, how enforced by and against 88, 89
to appoint agent during his absence ... 94, 95
to make annual settlement 97
failing to make, proceedings 97
to make distribution and pay legacies .. 100
compensation of 104

Digitized by Google

EXECUTOR, liable for waste 104
bond of, may be sued on 105
action of account by and against 56
may bind out minor 119
when county divided, where to settle .. 298
duties in cases of escheat 461, 462
copy of bond of, evidence 471, 472
of sheriff, to deliver to his successor executions 485
may sue for penalties under *habeas corpus* act 570
of tenant for life, may recover rent 687
may recover rent due testator 687
when to be made party in supreme court to deliver public records held by intestate 905
See titles *Justices' Courts, Practice at Law, and Practice in Chancery.* 914
EXEMPTION, of senators and representatives, from arrest 6, 32
of electors, from arrest 30
of judges and clerks of election, and voters, from arrest 452
of property, from execution 477
of persons, from serving as jurors 627
of property, from taxation 928
EXHIBITS, in chancery, to be filed, marked and numbered 842, 843
when evidence 843
EXPENDITURES, of state government, accounts of, to be published 35
statements and estimates of, to be made out by auditor 1060
FAILURE, by executor or administrator, to settle, proceedings 70
FALSE CERTIFICATE, of acknowledgment of deed, probate of will, &c 369
of court or officer 371
FALSE ENTRIES, making in books of state or county treasurer, auditor, or corporation 372
FALSE PERSONATION of another 363, 375
FALSE RETURN of marriage, penalty 731
FALSE TOKENS AND PRETENCES 363
FALSIFYING RECORDS 368
FARO BANK, setting up, &c 401
FATHER, consent of, in binding out child 115
mother may consent, when 116
when to inherit 421
natural guardian of child 547
to give bond as guardian, when 291
FEES. CHAPTER 62. ..... 489 to 507
Attorney General, fees of 490
Circuit Attorney, fees of 490
Clerks of Circuit Courts, fees of, in civil proceedings 494, 495
fees of, in criminal proceedings 495, 496
fees of, in chancery 496, 497
not to charge fees in criminal cases, unless allowed, &c 496
to examine accounts of fees 505
to make out and certify fee-bills 505
to endorse fees on execution 506
Clerks of County Courts, fees of, for county business ..... 490 to 492
fees of, in probate business, &c 492, 493
Clerks of Courts having Criminal Jurisdiction, fees of 495, 496
FEES.
Clerk of Supreme Court, fees of 494
Coroner, fees of 500
Constables, fees of 500, 501
Construction of this act 504
Costs, of unsuccessful party, how levied and collected 506
Fee-Bills, clerk to deliver to sheriff 505
sheriff to collect 505
not to issue after one year without notice 506
notice, how and when given 506
if not paid, sheriff to levy, when 505
Fee-Book, to be kept by clerk 506
what clerk shall enter in 506
shall be evidence, when 507
Interpreter, fees of 501
Jurors, fees of 502
Justices of the Peace, fees of 503, 504
may issue fee-bills 505
effect thereof 505
Notaries, fees of 502
Officers, not allowed fees, unless they make return at full length 504
to keep table of fees set up 504
to endorse fees on process 505
remedy against, for taking illegal fees .. 506
fees of, due when services are rendered 507
not allowed fees for opening or adjourning order 504
Penalty on officer, for charging illegal fees 506
Probate Judge of St. Louis County, fees of 493
Recorders, fees of 501, 502
Secretary of State, fees of 502
Sheriffs, fees of, in civil cases 497, 498
fees of, in criminal cases ..... 498 to 500
when to levy on property, to collect fee-bills 505
proceedings against, for failing to levy and collect fee-bills 505
Surveyors, fees of 501
may issue fee-bills 505
effect of fee-bills 505
Translators, fees of 501
Witnesses, fees of, in civil cases 503
fees of, in criminal cases 503
fees of, in one case only, on same day .. 503
accounts for fees, to be sworn to 503
fees, when to be claimed 505
fees of, due when services are rendered 507
FEES. CHAPTER 63. 507
Auditor to draw his warrant for clerk's fees, when 507
Clerks, fees of, for certificates of unsold tax lands 507
Register, to certify amount of fees, when 507
FEES. CHAPTER 64. 508
Clerks, fees of, for granting naturalization papers 508
FEES, in case of fugitives from justice ... 537
of witnesses before legislature 712
of officers of legislature 712
of clerks of county courts, for license, and registry of free negroes and mulattoes 757
in cases of perpetuating testimony .. 797, 798
of tobacco inspectors 601, 605

Digitized by Google

FEES. See titles *Justices' Courts, Practice and Proceedings in Criminal Cases, and Revenue.*
FEE-BILLS, to issue for cost of entering satisfaction of judgment ... 625
FELO DE SE, assisting in self-murder, manslaughter ... 345
forfeiture of estate abolished ... 412
FELONY, forfeiture of estate upon conviction of, abolished ... 44, 412
appeal of, abolished ... 412
right of action not merged in ... 413
damages in committing, how recovered ... 413, 414
FEMALE, prisoners, to be kept separate from males ... 617
guardian or curator marrying, appointment revoked ... 549
marrying after appeal or writ of error, husband to be made party ... 905
pregnant, under sentence of death, proceedings ... 886
FEME COVERT, not to be ex'x or adm'x ... 63
not to be guardian or curator ... 549
FEME SOLE executrix or administratrix marrying, letters revoked ... 67
FENCES, burning of, ... 355
around lead furnaces ... 706
around salt petre works ... 983
See title *Inclosures.*
FERMENTED LIQUORS, retailing on Sunday, penalty ... 405
FERRIES. CHAPTER 65. ... 508 to 511
Applicant, for license to petition county court ... 509
Attorney General, shall prosecute on bond of ferrymen ... 510
Bond, to be given by applicant ... 509
conditions of ... 509
to be filed with clerk ... 509
suit on, when, how and by whom instituted ... 510
Circuit Attorney, shall prosecute ferrymen ... 510
Clerk of County Court may grant license in vacation ... 509
shall issue license on order of court ... 509
County Court, shall order license to issue 509
shall assess the tax on licenses ... 509
shall fix the rate of ferriage ... 509, 510
may grant license without tax, when ... 510
may revoke license, when ... 510
Fees, for ferriage to be paid or tendered ... 510
Ferrymen, shall keep good boat and hands 509
not compelled to act without fees are paid or tendered ... 510
shall keep a list of rates posted up ... 510
liable to action for damages, when ... 510
failing to perform duties, license to be revoked ... 510
License, to be issued by court or clerk ... 509
ferry not to be kept without ... 509
not to be granted, when ... 510, 511
if issued in vacation, to continue till next term ... 509
may be granted without tax, when ... 510
Limitation, of prosecutions against ferrymen ... 510

FERRIES.
Penalties, on ferrymen ... 509, 510, 511
how recovered ... 510
against steamboats, and how recovered 511
Steamboat, master, &c., not to land at ferry or obstruct passage ... 511
Tax, rates of, on license, to be fixed by county court ... 509
FINAL SETTLEMENT of estates, when and how made ... 99
FINES, excessive, not to be imposed ... 14, 44
against public administrator ... 109
for defacing advertisements ... 112
against agent of foreign insurance co 611, 612
attorney gen'l and circuit attorney ... 157
auctioneers ... 165
for circulating illegal currency ... 167
against officers of corporation, for same 168
keepers of billiard tables ... 171
brokers, dealing without license ... 197
accounts of, to be kept by clerks ... 313
not to be imposed, when ... 410
not to exceed $1000, when ... 411
not to exceed $200, when ... 411
not to exceed $100, when ... 411
when recoverable before J. P ... 413
when by indictment ... 414
against judges and clerks of elections ... 452
messenger, carrying election returns 462
for contempt before judges of election 468
against ferrymen ... 510
grocers and dram shop keepers ... 544
owner of seed horse, found at large ... 570, 571
for unlawful trading with Indians ... 577
against inn and tavern keepers ... 584, 587
officer, for being bribed ... 629
for breach of the peace ... 674
for trespass on state lands ... 684
against vendors of lottery tickets ... 723, 724
for altering marks and brands ... 726
for solemnizing marriage, illegally ... 730
for dealing as merchant, without license 737
for bringing into the state free negro or mulatto ... 756
against free negro or mulatto ... 756
for dealing as peddler, without license 779
against clock peddlers ... 780
for refusing to obey summons of *posse comitatus* ... 903
in cases of *quo warranto* ... 913
for failing to deliver public records, &c 914
against recorders ... 919
for failing to work on road ... 967
for obstructing road ... 969
against overseer of roads ... 969
for trespassing on school lands ... 994
for trespassing on property of state ... 207
against owner of slave ... 1015
for bringing into the state, slave of non-resident ... 1013
for hiring slave to another slave ... 1014
for permitting slave to sell liquor ... 1015
for dealing with slave ... 1018
for violation of stray law ... 1042
against witnesses, failing to attend ... 1088
for firing woods, marshes, and prairies 1091
FIRE PROOF OFFICES, when to be erected 287

Digitized by Google

FORCIBLE ENTRY AND DETAINER.
CHAPTER 66. ..... 511 to 525
ART. I. *Proceedings before Justices of the Peace.*
Complaint, to be made in writing 513
what it shall specify 513
Complainant, required to make proof of lawful possession, only 515
Costs, how regulated 516
Damages to be assessed, on verdict for complainant 515
Defendant, failing to appear, justice to proceed ex parte 516
form of verdict for 515
Depositions, may be taken 517
in what cases may be read 517, 518
Detainer, where cognizable 513
to what estates to extend 513
Entry, possession of land to be taken only when given by law 512
Execution, form of 516, 517
to contain clause of restitution 416
not satisfied, transcript to be filed 518
Forcible Entry and Detainer, where cognizable 513
what acts deemed 512
to what estates to extend 513
Judgment, form of 515, 516
of non-suit, when 515
to be rendered according to verdict 516
of restitution 516
Jurors, challenged, others may be summoned 514
complaint to be read to 515
Justices of the Peace, to issue summons on complaint 513
to issue precept for jury, form 514
may proceed ex parte, when 515
to administer oath to jury 515
shall correct verdict in matters of form 516
to record verdict, and give judgment 516
what he shall enter in his docket 517
may grant a new trial 517
may issue subpœna and attach witnesses 517
may issue commissions to take depositions 517
to certify transcript 518
to issue execution 516
Lien, of judgment in circuit court 518
Limitation, of remedies under this act 517
Possession, proof of lawful, sufficient 515
peaceable, for three years, this act not to extend to 517
Public Lands, persons residing on, may maintain the action 518
quantity and extent of recovery on 518
how to be surveyed, if no legal survey 518
Sheriff or Constable, to serve summons and precept 514
what to endorse thereon 514, 515
Summons, form of 513, 514
how served 514
to be endorsed on, or annexed to complaint 513
Title, merits of, not to be enquired into 517
Trial, proceedings on 515
new may be granted, when 517
Unlawful Detainer, what deemed to be 512, 513

FORCIBLE ENTRY AND DETAINER.
Verdict, to be in writing 515
form of, for defendant 515
form of, for complainant 515, 516
not to be set aside for informality 516
Waste, damages for, may be assessed 515
ART. II. *Proceedings in Circuit Court.*
Affidavit, to be filed 520, 521
requisites of 519, 520
Appeal, when allowed 520
when returnable 521
when perfected, execution stayed 523
to be dismissed, when 523, 524
not allowed to supreme court without recognizance 524
Appellant, to cause transcript to be filed 523
failing to file, judgment to be affirmed 523
Cause, when to be set for trial 523
Certiorari, proceedings may be removed to circuit court, by 519
shall be allowed, when 519
affidavit for, to be made 519, 520
recognizance to be entered into 520
Clerk of Circuit Court, transcript to be filed in office of 523
to file and docket causes removed by certiorari or appeal 523
Circuit Court, shall affirm judgment 523
shall not dismiss cause for informality 523
may order new recognizance, when 523
to hear and determine anew, causes removed by certiorari or appeal 524
may compel justice to allow an appeal 524
Damages, may be assessed on judgment by default 524
Execution, may be issued at any time, but not to be levied till time expires for taking an appeal 522
may be levied before time expires 522
shall be returned, when 523
supreme or circuit court may issue, with clause of restitution 524
Judgment, may be appealed from 520
rendered in vacation, appeal when returnable 521
shall be stayed, when 523
by default, may be rendered, when 524
may be affirmed, when 524
Justice of the Peace, shall proceed to final judgment, when 520
party aggrieved by judgment may appeal 520
affidavit and recognizance to be filed 521
shall certify transcript, when 523
Officers, duty of, having charge of writs of restitution 524, 525
Recognizance, in appeal 521
on application for certiorari 520
condition 520
form of condition 522
Supersedeas, not to be awarded, unless 524
FORECLOSURE of mortgage 749
FOREIGN BANKS, agencies of, prohibited 169
FOREIGNERS, naturalization of 1093
FOREIGN EXECUTOR OR ADMINISTRATOR, when to receive estate of deceased 103, 104
guardian, when 554

Digitized by Google

FOREIGN INSURANCE AGENCIES, regulated ..... 609 to 613
FORFEITURE, of estates, abolished 44, 412
of office, when 385, 391
in cases of suicide, death by casualty, and fleeing from justice, abolished 44, 412
FORGERY, of free papers, for negro 1026
See title *Crimes and Punishments.*
FORMER ACQUITTAL, when may be pleaded 409, 412
when not to bar second trial 411, 412
FORMER CONVICTION, when may be pleaded 409
FORNICATION, and incestuous connection 400
FRANKLIN COUNTY, limits defined 271
FRAUDULENT CONVEYANCES.—CHAPTER 67. ..... 525 to 528
Assignments, of things in action, &c., void 525
of interest in lands, goods, chattels, &c., void, when 525
Boat, Vessel, Ship, &c., provisions of 8th section not to extend to 528
Bottomry and Respondentia, contract of, not defeated by 8th section 528
Chattels, and slaves, gifts of, void, as to creditors and purchasers 526
loans of, declared void, when 527
this act not to extend to, if conveyed bona fide, for valuable consideration 527
sale of, declared void, without a change of possession 528
assignment of interest in, declared void 525
Conveyance, of interest in lands, &c., with intent to defraud creditors, void 525
not void in favor of subsequent purchaser, if acknowledged and recorded .. 526
of slaves, &c., not for valuable consideration, void 526
not valid, till delivered for record, &c .. 527
Creditors, deeds, conveyances, &c., made to defraud, void 525, 526, 527
Deed, of gift, to use, &c., void, as to creditors and purchasers, when 525
of trust, not valid, unless possession be delivered to trustee, or proved and recorded 527, 528
Mortgage of personal property, void, without delivery of possession or record 527, 528
Sales of goods and chattels, without delivery, &c., to be conclusive evidence of fraud 528
FRAUDULENT ASSIGNMENTS AND CONVEYANCES, parties and privies to, punished 363, 364
FRAUDS AND PERJURIES. CHAPTER 68. ..... 529 to 531
Action, when not to be brought, unless the promise is in writing 530
not to be brought to charge another for representations, &c., unless in writing 530
Agreements, what shall be in writing 530
Assignments of leases and trusts to be in writing 529
Contracts for the sale of goods, &c., to be in writing 531
Creations of trusts, to be in writing 529
Declarations of trusts, to be in writing ... 529

FRAUDS AND PERJURIES.
Estates, created by parol, or livery of seizin, to have the effect of leases, or estates at will 529
Earnest, when given to bind the bargain .. 531
Lands, trusts of, to be in writing 529
leases of interests in, to be in writing 529
effect of trusts in 529
Leases, not in writing, to operate as estates at will, only 529
not to be assigned, granted or surrendered unless in writing 529
Resulting Trusts, force and effect of 530
declarations or creations of, to be in writing 529
FRAUDULENT PRETENCES, obtaining goods by 363
FREEDOM. CHAP. 69. ..... 531 to 534
Action, form of, to be trespass or false imprisonment 533
Appeal, or writ of error, allowed 533
Bond, to be taken, when 533
Costs, security for to be given 532
Declaration, what averments it shall contain 533
Defendant, may plead, how, and what 533
Freedom, who may petition to sue for 532
Liberation, judgment of 533
Orders, to be made by court on petition .. 532
to be endorsed on petition and writ, and served with them 532
Petition, to circuit court for leave to sue .. 532
Petitioner, allowed to sue, when 532
may be brought up by warrant 532
may have liberty to attend counsel and court 532
required to give security for costs, when 532
Plaintiff, not to recover damages 533
to prove his right to freedom 533
Pleadings, regulated 533
Sheriff, to hire out petitioner, when 533
to collect proceeds of hire and loan out 534
to take bond and security for loans 534
to deliver bonds to person entitled to same, when 534
Warrant, to bring up prisoner, restrained of liberty, or under severe treatment 532
to be directed to sheriff 532
by whom, and where, executed 533
on return of, person restraining to enter into recognizance 532, 533
FREEDOM, of speech and of the press .. 13, 45
right to, by negro, not to be had under habeas corpus act 563
FREE NEGROES. See title *Negroes and Mulattoes.*
FREE PAPERS, furnishing to slave 1026
FRENCH GRANTS, of land, when evidence 468
FRUIT TREES, burning of 355
maliciously destroying 365
FUGITIVES FROM OTHER STATES. CHAP. 70. ..... 534 to 539
Bail, may be taken for appearance of fugitive 536
if accused at large on, may be taken .. 536
Claimant, of fugitive from service, how to proceed 537
authority of, to remove fugitive 538, 539

Digitized by Google

FUGITIVES FROM OTHER STATES.
Claimant, if entitled to service of fugitive, certificate to be given ... 538
to pay $100, costs and damages, when ... 538
Costs, how regulated, and collected ... 537
Court, may discharge recognizance, when proceedings, when fugitive brought before ... 536
... 538
Execution may issue, for costs, when ... 537
Expenses, in case of fugitives from justice, how paid ... 535
how paid in proceedings against fugitives from service ... 539
Fees, how paid, in proceedings against fugitives from service ... 539
Fugitives from Justice, proceedings, when demand is made, by executive of another state ... 535
what warrant shall authorize ... 535
where, by whom, and how executed ... 535
may be imprisoned ... 535
may be arrested as, on affidavit; proceedings ... 535, 536
how long kept in prison, or held to bail ... 536, 537
Fugitives from Service or Labor, may be discharged, when ... 538
if a slave, and not property of claimant, proceedings ... 538
claimant of, to pay $100 costs, and damages, when ... 538
penalty for removing, without authority fees and expenses of, how paid ... 539
Governor, to issue warrant, when ... 535
to notify executive of state, whence fugitive fled, when ... 536
to issue warrant, for surrender of accused, when ... 536
Justice, duty of, on examination of fugitive, and issuing warrant ... 536, 537, 538
Recognizance, may be discharged, when ... 536
shall enure to the benefit of the state ... 537
Runaway Slave, not property of claimant, may be committed to jail ... 538
Sheriff, duty of, in executing warrant, for arrest of fugitive from justice ... 536, 537
duty of, in executing warrant, for arrest of fugitive from service ... 537, 538
Warrant, for arrest of fugitive from justice, by whom issued, how directed and served ... 535, 536
for arrest of fugitive from service, by whom issued, and how executed 537, 538
FUGITIVES FROM SERVICE not to be discharged, under the habeas corpus act 563
FUNDS, arising from seminary lands ... 40
See title *Road and Canal Fund*.
FURNACES, to be enclosed, how ... 706
penalty against owners, for neglecting to enclose ... 706
GALLON, standard of, to be kept ... 1076
GAMBLING HOUSE, TABLE, OR DEVICE.
See title *Crimes and Punishments*.
GAMING. CHAPTER 71. ... 539 to 541
Action, may be maintained for recovery of money or property lost at gaming ... 539, 540
limitation of, under this act ... 541
GAMING.
Assignments, of bond, note, &c., not to affect defence ... 540
Betting, on elections, declared gaming ... 541
Bonds, &c., founded on gambling consideration, declared void ... 540
Defence, how pleaded ... 540
Defendant, may be called on to answer on oath in suits before justices ... 540
answer of, not evidence on indictment, when ... 540
Heirs, &c., of person losing, have their remedy under this act ... 540
Judgments, founded on gaming consideration, void ... 540
Minor or Apprentice, loosing money in grocery or dram shop, parent, guardian or master to recover ... 540
Plaintiff, what he shall declare ... 540
Stake Holder, liable to the party who placed money in his hands ... 541
delivery to winner, no defence ... 541
not liable after delivery, unless demand made ... 541
GAMING, at faro, roulette, &c ... 402
on Sunday ... 405
GARNISHEE, in attachment suits ... 137, 148, 149
in cases against corporations ... 239
under execution, how summoned ... 476
sheriff or collector not to be, under execution ... 476
under execution from justice of the peace 662
GASCONADE COUNTY, limits defined ... 271
GENERAL ASSEMBLY, legislative power vested in ... 29
GENTRY COUNTY, limits defined ... 258
GIFTS, in trust for donor, void ... 525
of goods, chattels, and slaves void, unless accompanied with possession, or deed recorded ... 526
GIRDLING, trees ... 365
GOODS AND CHATTELS, of estates to be taken into possession of executor or administrator ... 73
embezzled, how recovered ... 74, 75
burning of, with intent to defraud insurer ... 355
what exempt from execution ... 477
gifts of, when void ... 525
loans of, to be evidenced by deed, recorded, &c ... 527
mortgage of, not valid unless accompanied by possession, or recorded ... 527, 528
sales of, presumed to be fraudulent and void, when ... 528
See title *Revenue*.
GOVERNOR, qualifications, term of service, election ... 35, 447
vacancy in office of, who to act ... 36
contested election, determined by legislature ... 37
proceedings in contested election ... 456
salary of ... 979
GRAIN, burning of ... 355
GRAND JURIES, qualification of persons to form ... 627
non-attendance of a juror after he is sworn, another may be sworn ... 627

Digitized by Google

GRAND JURIES, how to be summoned 627
may indict members of their own body 627
may be challenged 627
not compellable to serve as petit jurors at same term 628
who exempt from serving 627, 628
penalty for non-attendance 628
compensation, how paid, to be entered by clerk and scrip given 628
to be charged respecting act regulating groceries and dram shops 544
act to restrain intercourse with Indians 578
in reference to road law 971
in reference to act respecting saline lands 981
respecting trespasses on school lands 994
respecting act concerning slaves 1019
See title *Practice and Proceedings in Criminal Cases.*
GRAND LARCENY, defined and punished .. 359
GRANTS, to two or more, tenancy in common, unless, &c 221
in fee tail, how to operate 219, 220
French and Spanish, of land, when evidence 468
of right of way for state roads, how to be taken 973, 974
GRASS, burning of 355
GRAVE, removing dead body from 401
opening, to remove dead body 401
GREENE COUNTY, limits defined 271
GRIST MILL, burning of 355
GROCERIES AND DRAM SHOPS.
CHAPTER 72. .... 542 to 546
Ad valorem tax, when to be imposed, ... 543
Affidavit of applicant of amount of stock 543
Application, for license, how made 543
Applicant to prove good character 543
Attorney General and Circuit Attorney, duties of 545
Circuit Court, to charge grand jury on this act 544
Clerk of County Court, duties of 543, 544
Collector, duties of 543
Complaint for violations of this act, proceedings 545
Construction of this act 545
County Court, duties of 543
Debts for liquors not recoverable 542
Dram shop Keeper defined 542
must be licensed, how 542
may be licensed in vacation 544
not to assign or transfer license 542
not to keep at more than one place at same time 542
may be a grocer at same time 542
must obtain a separate license for 542
free negro or mulatto cannot be 543
Grocer defined 542
must be licensed, how 542
not to sell liquors in less quantity than a quart 542
nor liquor to be drank at place of sale .. 542
not to sell liquor to slaves, &c 542
Intoxicating liquors, not to be sold without license 542
construction of term 545

GROCERIES AND DRAM SHOPS.
Intoxicating Liquors, may be sold at place of making, not to be drank there 544
Licenses, applications for, to county court 543
not to be granted to free negroes or mulatoes 543
not to issue till collector's receipt is produced 543
may be granted in vacation 544
number of, to be reported by clerk 544
renewal of, ad valorem tax not charged on 544
Merchant's right to sell liquors not affected 545
Penalties for violating this act 544
Slaves not to have liquor, without permission from master 542
not to sell; proceedings against for selling; punishment 545
St. Louis County, this act not to apply to if conflicting, &c 545
Tax on licenses 545
may be imposed by incorporated towns, &c., on licenses, &c 545
amount of, to be determined by county court 543
GROCERIES AND DRAM SHOPS in St. Louis county. See *Appendix* 1099
keeping open on Sunday 405
GUARDIANS AND CURATORS.—
CHAPTER 73. .... 546 to 554
County Court, shall notify minor to appear and choose guardian, when 547
minor neglecting to appear, shall appoint guardian, how 547
guardian chosen, if suitable, may be appointed 548
if choice not approved, may be appointed 548
may appoint curator, when 548
may appoint another guardian, or curator, when 548
to order transcript of proceedings to be delivered to last appointed guardian, or curator, when 549
jurisdiction of, in certain cases 549
shall order proper education of minors. 551
may order lease or sale of real estate .. 551
shall enter discharge of guardians or curators, when 553
Curator, of estate of minor, when appointed 548
may be chosen by minor, when 548
may prosecute and defend for minors .. 548
if residing in different county from where appointment was made, what proceedings 548
no married woman shall be 549
must be a resident of this state 549
removing from the state, appointment to be revoked 549
who shall not be security for 549
shall be twenty-one years of age 550
shall give bond with security; conditions 550
shall make and return inventory of estate 550
shall cause estate to be appraised 550
appraisement not necessary, when 550
shall put money of minor at interest, how 551
may retain money in their hands, when 551
liable for principal only, when 551

Digitized by Google

GUARDIANS AND CURATORS.
Curator, shall loan money of minor, at what interest 551
shall account for interest received 551
shall make annual settlements with court 551
shall give notice of settlements 551
shall state, on oath, as to application of moneys, applied to education of minors 551
neglecting or refusing to make settlement, &c., how liable 552
discharges, receipts, &c. of, when valid 552
how liable, for illegal or fraudulent receipts, &c 552
living out of the state, how and with whom to settle 552
how long shall continue in office 553
may resign office, or be removed, in what manner 553
compensation of, how allowed 553
Guardian, court shall appoint, when minor refuses to choose 547
residing in another county, proceedings 548
appointment of, shall specify, what 549
powers of, shall have custody and control of, what 549
married woman shall not be, of estate 549
may be of person of minor 549
must be a resident of this state 549
removing from this state, appointment shall be revoked 549
who shall not be appointed 549
shall be twenty-one years of age 550
shall give bond, with security; conditions 550
shall make and return inventory of estate 550
shall cause appraisement of estate, when 550
when not necessary to appraise 550
shall put money of minors to interest 551
may retain money, when 551
when liable for the principal only 551
at what rate of interest shall loan money 551
shall account for interest received, &c 551
shall make annual settlement with court 551
shall make statement on oath, as to application of money for education of ward 551
how liable for refusing to make settlement, &c 552
discharges, receipts, &c. of, when and how valid 552
how liable for illegal receipts, &c 552
shall continue in office how long 553
may resign or be removed, in what manner 553
compensation of, how allowed 553
Minor, estate of, how managed 548
who shall prosecute and defend for 548
may choose another guardian, &c 548
religious persuasion of guardian of, must be same as parents, &c 549
education of, ordered by court 551
when liable to be bound as apprentice 552
dying, having guardian, what proceedings 552
not resident of this state, proceedings 552

GUARDIANS AND CURATORS.
Minor, shall acknowledge satisfaction of record 553
Natural Guardian, who shall be such 547
Officers having knowledge of minor without guardian, shall report, &c 547
Testamentary Guardian, may be appointed 553
powers and duty of 553
failing to accept, what proceedings 553
GUARDIANS AND CURATORS.—CHAPTER 74. ..... 554 to 555
Guardian and Ward, non residents of this state, may sue for property in this state, and remove the same, when 554
Non resident Guardian, shall produce evidence of appointment, &c 554
county court shall deliver the property of ward, &c., when 554
GUARDIAN, having carnal knowledge of ward 400
of persons of unsound mind 594
to act for ward, in cases of partition 774
See titles *Justices' Courts*, *Practice at Law, and Practice in Chancery*.
GUIDE BOARDS, destroying, &c 365
HABEAS CORPUS. CHAP. 75. ..... 555 to 570
Of proceedings to obtain the writ, and the form thereof. ART. I. ..... 555 to 557
Application, for writ of habeas corpus to be by petition 556
how and to whom made 556
writ may be issued without, when and by whom 556
Charges, when required to be paid 557
Courts of Record, may issue writ without application, when 556
Judge of Supreme or Circuit Court, powers; duties 556
Name of person having prisoner in custody, how designated and described on writ, ... 557
Petition, what facts to be stated in; must be verified by oath 556
to be accompanied by copy of warrant of commitment, &c 556
on presentation of, court or judge to issue writ 556
Writs of Habeas Corpus, who may prosecute 555, 556
to be issued without delay, when 556
to be in name of state; to whom directed 557
form and command of 557
if issued by court, to be under seal 557
what to be designated on 557
shall be endorsed "by the habeas corpus act" 557
to be obeyed, though defective in form 557
person served with, deemed the person to whom directed 557
Of the Service and Return of the Writ, and matters incident thereto. ART. II. ..... 558 to 561
Attachment, for refusing to obey writ, when to issue 560
how directed and served, if delinquent be a sheriff 560
power of the county may be called, to aid in execution of 560

Digitized by Google

HABEAS CORPUS.
Charges of service, to be paid, or tendered 558
Commitment, if no examination shall have accompanied, proceedings 561
Committing Magistrate, when to deliver to officer, examination and proofs 561
when to appear in person, on return of writ 561
may be attached, when 561
proceedings against, on failure to return examination 561
Coroner may serve attachment against sheriff 561
Court, &c., duty of, on failure of officer to return writ 560
Officer, fees to be paid, or tendered to 558
to obey, and return writ 559
what he shall state, in his return 559
to bring up body of prisoner 559
refusing to obey and return writ, proceedings 560
may be confined in jail 560
on return of writ, to bring examination, &c 560, 561
Person refusing to return writ, may be attached and imprisoned 560
Precept, may be issued, to bring up prisoner 560
how executed 560
Return, of writ, when and how made 559
what facts to be stated, in 559
to be signed; when to be verified on oath 559
proceedings, on failure to make 560
Service, of writ, how and by whom made 558
if person conceal himself, how made 558
not deemed complete, till charges are paid 558
Writ of Habeas Corpus, how, and by whom served and returned 558, 559
Of the hearing and proceedings on the return, ART. III 561 to 566
Allegations, in denial of return to be on oath 562
may be amended 562
Attachment, obedience to discharge may be enforced by 566
Bail, when to be taken 564, 565
Cause of imprisonment, on return a day to be set for hearing of 562
to be tried in a summary way 562
if no legal, be shown, prisoner to be discharged 566
Certificate of discharge to be given prisoner, when, 564
Clerk of the Court of Record, may take recognizance 565
Court or Magistrate when and how to determine cause of imprisonment 562
not to enquire into legality of process, &c., for contempt 563
shall not discharge prisoner for irregularity, &c., of commitment 564
shall bail, discharge or remand prisoner, to determine in what sum bail to be given 564
to remand prisoner for failure to give bail, and designate the sum required 565
shall remand prisoner if not entitled to discharge or bailed 565

HABEAS CORPUS.
Court of Magistrates, duty of, in case of sickness of prisoner 565, 566
how to proceed in such case 566
Custody of prisoner between return and judgment 565
Evidence, examination, &c., to be read in 564
what shall be received, when offence set forth in commitment 564
Examination, to be returned, if prisoner not discharged or bailed 565
Imprisonment, cause of, to be enquired into, when and how 562
if under indictment, prisoner not to be discharged 564
for criminal matter, proceedings 564
Judge or Justice may take recognizance 565
Limitation of the power of courts under this act 563
Order of discharge to be made when and how 564
how to be enforced 566
officer not liable for obeying 566
Order, of court requiring bail 565
Prisoner, may deny the facts in the return and file allegations 562
may be discharged by court or magistrate, when 562
of war, soldiers of U. S., felons, &c., not to be discharged 563
in what cases discharged, if in custody on process 563
on indictment, cannot be discharged, but may be bailed 564
may be bailed or recommitted 564
to be discharged or remanded according to circumstances 564
certificate of discharge to be given to 564
if held to answer for bailable offence, proceedings 565
recognizance of, by whom taken 565
to be discharged or remanded, when 565
custody of, between return and judgment 565
not to be brought up in case of sickness, &c 565, 566
if legally imprisoned, proceedings in such case 566
under custody for treason, felony, &c., committed in other States, &c., who ought to be delivered up, not to be discharged 563
Slave or fugitive from service, not to be discharged 566
Return, proceedings in 562
may be denied 562
may be amended 562
MISCELLANEOUS PROVISIONS. ART. IV. 566 to 570
Aiding or assisting in violating 13th and 14th sections of Art. IV, a misdemeanor 570
Construction of this act 570
Delaying to issue writ of habeas corpus, penalty for 568
Misdemeanor, persons convicted of, under this act, how punished 570
Party discharged, when not to be imprisoned 569
when he may be 567, 568

Digitized by Google

HABEAS CORPUS.
Penalties, under this act 568, 569
how sued for and recovered 570
may be recovered by executor or administrator 570
Pleadings, in defence 570
Prisoner, warrant may issue to bring before court, when 567
person having in custody, to be brought before court, when 567
may be removed out of county, when .. 568
obtaining second writ of habeas corpus, proceedings 568
shall not be discharged on second writ 568
refusing a copy of process to, penalty .. 569
concealing to avoid writ, penalty 569
for arresting for same cause after discharge 569
re-committing, penalty for 569
Recoveries, under this act, no bar to an action for damages 570
Warrant, when to issue to bring prisoner before court 567
to whom directed; command of 567
shall contain an order for arrest of party who has prisoner in custody, when .. 567
how executed and returned 567
HABEAS CORPUS, privilege of, not to be suspended, unless 7, 44
HABITATIONS, combining to expel inhabitants from 342
HABITUAL DRUNKENNESS, good cause for divorce 426
HALF BLOOD, relatives of, how to inherit 422
HARBORING, or secreting boatmen 178
minor, apprentice, servant, or slave, by inn or tavern keeper 587
non-commissioned officers, or soldiers of United States' army 587
free negro or mulatto, not entitled to live in this state 758
HARRISON COUNTY, limits defined 258
HEIRS, term not necessary to convey a fee simple 219
when to apply, to have dower assigned 435, 436
not to be prejudiced, by improper assignment of dower 436
judgment survives to, and against, when to be made parties in supreme court ... 623
HENRY COUNTY, limits defined 271
HERBAGE, burning of 355
HICKORY COUNTY, limits defined 272
HIGHWAYS. See title *Roads and Highways*.
HIRING, of slaves of estate, when, and when not to be made 79, 81
may be suspended, when 81
to forge, counterfeit, &c 376
of negro, suing for freedom 533
of free negro or mulatto, when 759
HOGS, marking or altering mark, with intent to steal 360
killing, with intent to steal 360
See title *Marks and Brands*.
HOG STEALING, grand larceny 352
HOLT COUNTY, limits defined 259
HOMICIDE, justifiable, and excusable .. 344, 345
HORSE RACING, in public road 406
HORSE STEALING, grand larceny 359
HORSES, wanton cruelty to, punished 406
altering brand, with intent to steal 360
HORSES. CHAP. 76. ..... 570, 571
Castrated, unaltered, horse, mule or jack may be, when 571
Castration, how performed 571
Fines, how recovered 570, 571
Horse, &c., unaltered, running at large, owner to be fined for 570
may be killed, when 571
Jackass, may be killed 571
Justice of the Peace, fines to be recovered before 571
Owner, of horse, mule or jack to be fined 570
Mule may be killed, when 571
Seed Horse, over two years old, not suffered to run at large 570
may be killed 571
HOTCH POT, advancement to be brought into 422
HOUSE-BREAKING, punished 356
burning, punished 355
HOUSE OF REPRESENTATIVES. See titles *Congress and Legislature*.
HOWARD COUNTY, limits defined 359
HUSBAND AND WIFE, may convey real estate of wife 225
for what causes, and how divorced 426
husband may recover rent due estate of wife 687
IDIOT. See title *Insane Persons*.
IMPEACHMENT, of United States officers, power of vested in United States House of Representatives 3, 4
tried by United States Senate 3
what state officers liable to 33
to be made by House of Representatives, tried by Senate 34
IMPEACHMENTS. CHAP. 77. .. 571 to 574
Accused, to be notified 572
to have time to answer 572
not appearing, proceedings to be ex parte 573
to be heard by counsel 573
Appointments, pro tem. may be made 572
Answer, filed, proceedings 572
Articles, to be preferred, by whom 572
to be transmitted to senate 572
Conviction, no bar to indictment 573, 574
Court of Impeachment, powers of 573
Depositions, how taken 573
commission to take 573
Governor, if impeached, who to preside .. 572
Impeachment, proceedings on 572, 573
Managers, to be elected 572
Oaths, power to administer 573
Officers, impeached, suspended 572
Replication, to answer of accused 572
Senate, to appoint a day for appearance ... 572
to issue summons to accused 572
president of to administer oaths 573
may issue subpœnas 573
members of to be sworn 573
to determine impeachment 573
may punish for contempt 573
two-thirds necessary to convict 573
Transcript, of proceedings to be deposited, 574

Digitized by Google

IMPEACHMENTS.
Trial, how conducted 573
Writs, form and attestation of 574
IMPORTING, non-residents to vote 392, 393
IMPOTENCY, good cause for divorce 426
IMPRISONMENT. See title *Crimes and Punishments*.
IMPRISONMENT FOR DEBT. CHAP. 78. 574
imprisonment for debt, abolished 574
inconsistent acts repealed 574
IMPROVEMENTS, on land, recovered in ejectment, when to be paid for ... 444, 445
INCENDIARIES. See title *Crimes and Punishments*.
INCEST, how punished 400
INCLOSURES. CHAP. 79. ..... 575 to 576
Animal, trespassing, owner liable 575
may be killed, for third offence 575
injuring, &c., if fence insufficient, damages 576
Damages, for trespasses 575
double, when recovered 576
Fences, of what composed; how high ... 575
sufficiency of, how determined 575
Field, to be inclosed, how 575
Inclosure, lawful, what deemed 575
View of fence, to be had, when 576
INCOMPETENCY, as juror, when to follow conviction of crime 343, 352, 366, 376, 386 407
to hold office 343, 352, 366, 376, 386, 391, 407
as voter 366, 376, 386, 391, 407
as witness 366, 376, 386, 407
removed by pardon by governor 412
INDEMNITY to sheriff, authorises sales of property under execution 480
See title *Justices' Courts*.
INDIANS, CHAP. 80, ... 576 to 578
Agents, may sue for and recover property 577
Contracts with Indians void, when 577
Governor shall transmit this act to Indian Agents 578
Indians, permit shall not be granted to, except 576
selling or giving liquor to, prohibited .. 577
certain articles not to be purchased from 577
penalty, for residing in territory of 577
penalty for trafficking with 577
may recover property, when 577
found hunting or roaming without permit, penalty 578
Judges of Circuit Courts shall give this act in charge to Grand Jury 578
Officers, civil and military, powers and duties of 578
Penalty for violating certain sections of this act 577
Permits, persons giving, when and how liable 577
Trader shall not reside in hunting camp of Indian tribe 576
INDICTMENT, how to conclude 40
for kidnapping, where to be tried 351
for perjury, what sufficient 378
for bigamy, where found and tried 399
for stealing property in another state and bringing here 408, 409
INDICTMENT. See title *Practice and Proceedings in Criminal Cases*.
for offences, consisting of different degrees, conviction on 411
INFAMOUS CRIME, definition of the term .. 414
INFANT, appropriation for support of 101
not to be executor or administrator 63
when bound apprentice. See *Apprentices and Vagrants*.
may apply to have dower assigned, when 435
not to be prejudiced by improper assignment of dower 436
to be examined before being sworn 762
INFANT. See titles *Guardians and Curators, Justices' Courts, Practice at Law and Practice and Proceedings in Criminal Cases*.
INFORMATION, in nature of quo warranto . 912
INJUNCTIONS. CHAP. 81. .... 578 to 582
Answer, court not bound to take as true .. 581
witness to disprove, may be had 581
Attachment, for contempt, when 581
Bond, of complainant, its provisions 580
before whom entered into, where filed .. 580
Damages, shall be assessed by a jury 580
if jury not required, by the court 580
if money enjoined, not to exceed ten per cent 580
Decree, shall be entered, how 580
execution may be awarded upon 580
enforced, how 580
Depositions, may be read, when 581
Injunctions, by whom may be granted .. 579
proceedings to obtain 579
shall be returnable, where 579
to stay proceedings at law 579
none shall be granted, except 580
shall operate as a release of errors ... 580
none shall issue, until complainant give bond, &c 580
damages, in dissolution of 580
no notice of, necessary, when 580
application overruled, certificate to be granted 581
shall not be granted in same cause .. 581
penalty, for violating injunction 581
Motion to Dissolve, always in order, after answer filed 581
continuance of, how granted 581
testimony to be heard on, how taken ... 581
affidavits, filed with bill or answer, may be read 581
Notice of Application, shall be given, how, to whom 579, 580
shall contain, what 580
service of, shall be proved, how 580
Subpœna, where directed 579
INJUNCTIONS, CHAP. 82 ..... 582 to 583
Amount to be enjoined 582
Cause to be heard and decree to be made, *Courts* authorised to grant injunctions, .. 582
Injunction where real estate is concerned, party entitled to, in what cases 582
shall not be granted, when 582
not to extend to certain cases, when 582
shall extend to certain cases, when 583
INJUNCTIONS to stay proceedings in ejectment 234

Digitized by Google

INJURING boat or vessel with intent to defraud insurer 364
INNS AND TAVERNS. CHAPTER 83. ..... 583 to 589
Application, for tavern license, shall be in writing 584
shall designate where tavern to be kept 584
Bond, of applicant to be taken; condition how, and by whom approved 585
condition of, given by inn keeper 585
breach of, what deemed 585
Civil Officers, duty of, in giving information of violations of this act 588
Clerk of County Court, shall deliver to applicant, copy of order, in relation to his license 589
shall issue license, when 585
to approve bond, when 585
fees of 586
shall make list of tavern licenses, when, and deliver to whom 588
Collector shall give applicant receipt, when 585
County Court, authorised to grant, and renew licenses 584
duty of each justice or member of, on application 585
may grant, or refuse license, in its discretion 585
shall fix sums paid for licenses 585
shall grant no license, unless, &c 585
shall direct, as to amount to be specified in bond 588
Disorderly House, deemed guilty of keeping, when 588
penalty for keeping 588
Fines, Penalties, &c., for violating this act; where paid 584, 587, 588
Grocer, this act not to apply to, when 589
Inn Keepers, what entertainment shall keep 586
penalty, for not keeping proper entertainment 587
for not keeping inn, according to provisions of this act 587
for harboring apprentice, minor, &c .. 587
for selling liquors to certain persons 587
for harboring U. S. soldiers, &c 587
for keeping disorderly house 588
License, no person to keep a tavern, without 584
what facts shall be recited, in 586
may be extended, how 586
proceedings, to obtain extension of 586
extent of, under this act 586
may be annulled, how and when 586
Private Entertainment, this act not to prevent person from keeping 588
Prosecutions, who shall carry on 589
INQUESTS. CHAPTER 84. ..... 589 to 592
Constable, his duties, in serving process .. 590
failing to execute warrant, penalty 590
duties of, to be executed by householder 591
Coroner, shall make out warrant for jury 589
subject matter of warrant, of 590
shall administer oath to jurors; form .. 590
to charge jury; substance of charge .. 590
to issue summons, for witnesses 591
to administer oath to witnesses; form .. 591
may recognize witnesses, to appear 591

INQUESTS.
Coroner, may commit witnesses, for what 591
shall return inquisition, &c., to court .. 591
verdict shall be signed, by 591
if death by felony, duty of 591
shall certify costs and expenses 592
County Court, duty of, in allowing expenses 592
Inquests, who may hold 591
Jurors, failing to appear, &c., forfeiture .. 590
fees of, how audited and paid 592
Jury, number of; how and when summoned 590
shall remain together, when 591
shall deliver verdict, when and how 591
Proclamation, made, for persons to give evidence 591
Warrant, how directed, and served 590
may be directed to householder 591
Witnesses, evidence of, to be taken in writing 591
fees of, how audited and paid 592
INQUIRY, of damages 815
in actions of detinue 424
of lunacy 593
of pregnancy 886
INSANE PERSONS, CHAP. 85 ... 592 to 599
Bond of guardian, where deposited 595
Contract of insane person not binding 597
Conveyance by order of court shall be valid 597
Costs when and how paid 594
County Court, shall cause facts of insanity to be inquired into 593
special term of may be called 593
may cause person to be brought before it 593
on information of officers, proceedings. 593
shall appoint guardian, when 594
may set aside inquisition, when 594
may require guardian to give new bond 594
make order concerning insane person ... 595
shall make order concerning mortgage, 596
shall direct terms and times of sale 596
may approve proceedings of guardian in making sale 597
may set aside sale, when 597
must approve agreement of sale by guardian, when 597
may order money paid out of the treasury, when 598
may inquire into soundness of mind ... 598
shall have power to control guardian ... 599
County Treasury, appropriations made out of, how recovered 599
Guardian, shall give bond; condition 594
shall give new bond, when 594
shall take charge of insane, how 595
shall take possession of goods, &c 595
shall make and file inventory 595
shall prosecute and defend actions, &c .. 595
shall file additional inventory 595
may petition to mortgage, sell or lease estate 596
shall cause notice of sale, how 596
shall sell at auction 596
shall report proceedings of sale 596
report of, how verified 597
shall execute deed, when, how 597
shall render account, when 597

Digitized by Google

INSANE PERSONS.
Guardian, shall make settlement 597
may sue for and recover money 597
may apply for money from county treasury, for what 599
when power of, shall cease 598
may be removed, how 599
when removed, shall settle accounts 599
Information, to be in writing 593
may be given in vacation 593
Inquiry, into insanity, how held 593
new, may be had, when 594
Insane Persons, proceedings in relation to 593
shall not be held to bail 597
suits against, process to be served on guardian 597
becoming sane, property to be restored 598
heirs to receive effects of 598
furiously mad, proceedings 599
may be apprehended, how and when ... 599
Jury, to inquire into the facts of insanity 593
verdict of 594
to decide upon restoration of insane person 598
Notice of sale, how and when published .. 596
Officers of county, shall report insane persons 594
Petition, of guardian to sell estate, &c 596
for appropriation to ward 598
Sale, how made 596
may be set aside, how 597
INSPECTION OF TOBACCO. CHAPTER 86. ..... 600 to 608
Bond to be given by inspectors 601, 602
by warehouse keeper 605
where filed; how sued on 601, 603
County Court, to authorize erection of warehouses, where, &c 601
to prescribe dimensions of warehouse 601
duty of person who erects under authority of 602
Fees, by whom paid 601
of inspection, storage, &c., in St. Louis by whom received, in St. Louis 605
of warehouse keeper, &c 607
Governor, to appoint two of board of inspectors 607
warehouse keeper 607
Inspectors, how appointed 601
qualifications and term of office 601
vacancies of, how filled 601
attend warehouse, &c 602
forfeiture for non-attendance 602
county, to conform to this act, &c 608
Inspectors, Board of, to consist of three, how appointed; term of office 602
filling vacancies in 602
to take oath, form of, &c 602, 603
violation of, deemed perjury 603
to keep an office, and attend, where and when 603
book of entries, &c 604
duties of, in inspecting and marking tobacco 604
to issue certificate, form of 604
to certify, &c., amount paid over by warehouse keeper 606
may act as agents of owners 607

INSPECTION OF TOBACCO.
Inspectors, not to furnish hands, where, &c. 607
to discharge the duties of keeper, when 608
penalty, on others than, inspecting, what 608
State Inspection, established in St. Louis .. 602
Tobacco, how inspected and marked 604
not to be passed, when 605
Warehouse Keeper, by whom appointed .. 606
term of office 605
to take oath 605
not to be an inspector 605
to receive storage, &c., fees, for 606
to pay same over, how and when 606
to employ labor at his own expense 606
not to store articles of combustible nature 606
storage of any articles not to interfere with tobacco 606
penalty for suffering such interference 607
compensation, &c., of 607
shall store at night tobacco inspected in the day 607
shall forfeit, &c., for failure 607
may offer premium for best tobacco, what, &c 607
may reduce storage, &c., fees, when and how 608
to report to Governor, when and what 608
to take duplicate receipts of money paid 608
INSURANCE AGENCIES. CHAPTER 87. ..... 609 to 613
Agent, or Agents, shall deposit with clerk of county court, copy of charter, commission, &c., when 609
shall furnish statement of condition, capital stock, &c., when 610
statements shall be subscribed, and sworn to 610
shall be subject to examination 610
shall furnish resolution of board of directors, concerning suits 610
service of process on, how authorised 610
shall obtain license, how and when 611
not located in St. Louis, to report to county collector, when 612
report of, shall be under oath; contents 612
what tax shall pay to county collector 612
penalty, for making false or fraudulent report of business, &c 612
who are deemed agents 613
Collector, to enforce fines, forfeitures, &c.. 611
of city of St. Louis, to receive semi-yearly tax, on license 611
of county, what tax shall collect 612
Fines, Forfeitures, &c., in St. Louis county, how recovered 611
in other county, how recovered 612
License, clerk of county court shall issue, when 611
tax on, in St. Louis county 611
tax to be paid, when obtained 611
tax on, for city of St. Louis 611
Penalty, for doing business without license, in St. Louis county 611
for failing to pay license, imposed by city of St. Louis 612
on agent located in other county, for violating provisions of this act 612

Digitized by Google

INSURANCE AGENCIES.
Process served on agent, shall be service on company 610
Premiums, on insurances, shall be taxed, how and when 612
how collected and paid 612
INTEREST. CHAPTER 88. 613 to 615
Costs, defendant may recover, when 615
Illegal Interest, defendant may show when and how taken 615
plea of, if sustained, what shall be the judgment 615
amount of judgment for taking, shall form part of common school fund 615
Interest, creditors shall be allowed, what and when 614
parties may agree, in writing, what shall be paid 614
persons prohibited from taking illegal 614
illegal, when and how may be shown to have been taken 614
by agreement, may become part of principal, when 615
not to be compounded, when 615
Judgments, and Decrees, interest on, how, when, and at what rate 614
declaring interest at ten per cent., when 615
INTERNAL IMPROVEMENT, to be encouraged 40
fund, established 681
INTERPLEADER, by persons claiming property attached 141, 153
INTERPRETERS, may be appointed by courts 335
fees of 501
INTOXICATING LIQUOR, meaning of the term 545
sale, exchange, or gift of, to Indians, penalty 577
inn and tavern keepers, selling to minor, apprentice, &c., penalty 587
to be drunk at place of sale, merchant not to sell 740
slave selling, with master's permission, penalty 1015
See title *Groceries and Dram Shops*.
INVENTORIES, by ex'r or adm'r 73
by assignee, for benefit of creditors 127
by guardians and curators 550
by guardians of insane persons 595
JACKSON COUNTY, limits defined 272
JAILS AND JAILORS. CHAP. 89. 615 to 621
Coroner shall have charge of jail, when 620
Expenses, of commitment, how paid 617
of support of prisoner, how paid 617
property of prisoner liable for 617
accruing before conviction, how paid 617
of guard, how paid 619
of criminal from other county, how paid 620
Fees of sheriff, what allowed 620
Female prisoners shall be kept separate from the males 617
Grand Juries shall examine jail and make report 618
Guard, to guard prisoners, when 619
shall not exceed three persons 619
Jailor, may be appointed 616
shall receive prisoner, when 616

JAILS AND JAILORS.
Jailor, refusing to receive prisoner, penalty 616
shall allow prisoner certain liberties 617
shall receive U. States prisoners 618
penalty for neglect of duty 618
fees of, from U. States 618
deputy may be appointed 619
shall obey habeas corpus 620
failing to obey, how punished 620
may be removed from office 620
Jails, shall be examined, by whom 618
U. S. shall pay for use of, when 618
when insufficient, proceedings 618
Poor Prisoners, how provided for 617
Prisoners, detained for fine and costs, how discharged 617
shall take oath of insolvency, when 617
shall be humanely treated 618
may be committed in other county, when 619
Prosecuting Attorney may discharge prisoner, when 617
Sheriff, duty of in receiving prisoners 616
shall not keep debtors and criminals in same room 616
imprisoned in jail, who shall act as 620
JAILS AND JAILORS. See *Appendix* 1098
JAILS, exempt from execution 290
to be erected in each county 286
breaking or aiding to break 383, 384
JASPER COUNTY, limits defined 272
JEFFERSON COUNTY, limits defined 272, 273
JOHNSON COUNTY, limits defined 273
JOINT CONTRACTS, to be joint and several 216
JOINT DEBTORS, in attachment 136
any may be proceeded against 811, 812
JOINT DECREES, parties to, dying, proceedings 623
JOINT JUDGMENTS, parties to dying, proceedings 623
JOINT TENANCY, not to exist unless expressly declared 221
JOINT TENANTS, may have action of account 55
suing in ejectment must show what 442
may have partition of land 765, 766
JOINTURE, bar to dower 432
failing, right of dower restored 432
may be renounced 432
forfeited, if dower demanded 432
may be barred, when 432
JOURNALS, of Legislature to be published 32
printing and distribution of 700 to 706
JUDGES, Supreme and Circuit to be appointed, qualifications 38
of St. Louis Court of Common Pleas 317
of St. Louis Criminal Court 319
of St. Louis Probate Court 1103
salaries of judges of Supreme and Circuit Courts 979
duties of in reference to saline lands 981
JUDGMENTS, in account 56
on awards of arbitrators 123, 124
on report of referees 126
against boats and vessels 185
personating another in confession of 375
arrest of, not to bar second trial for criminal offence 411, 412
in Supreme Court, lien of 622

Digitized by Google

JUDGMENTS, made with intent to hinder, delay and defraud creditors, void 525
on gaming consideration, void 540
not to be inquired into on habeas corpus 563
transcripts of, ir. forcible entry and detainer cases, filed, lien, &c 518
by covin in dower not to prejudice heirs 436
when presumed to be paid 721
presumption, how repelled 721
in cases of foreclosure of mortgage 751
in cases of partition 770
on penal bonds 782
in actions of replevin 922
See titles *Attachment, Justices' Courts, Practice at Law, and Practice and Proceedings in Criminal Cases.*
JUDGMENTS AND DECREES. CHAPTER 90. .... 621 to 626
Clerks of Courts of Record, shall keep dockets of judgments, &c 625
shall make, what entries 625
shall enter satisfaction on margin of judgments, &c 625
penalty on, for failing to comply with law 625
Conveyance decree of, when, and when not not to be recorded 626
not valid, when 626
Defendant not found in scire facias, proceedings 623
Docket, shall be ruled in columns, how .. 625
Execution, may issue, when 622
sued against surviving defendant, when 624
Judgments and Decrees, lien on real estate of, when 622
in county where rendered, shall be lien may be revived, how and when 622
where shall be revived 623
survive to whom, when 623
shall survive against heirs, &c., of defendant 623
may be revived against administrator, how, &c 624
satisfaction of, how acknowledged 624
Lien, in county where land lies 622
shall extend to what real estate 622
shall commence, when 622
Order of Publication, when made; contents when published 623
"*Real Estate*," construction of term 626
Sale, under junior judgment, effect of 622
money arising from, how applied 622
Satisfaction of Judgment or Decree, may be entered by plaintiff, how 624
entered of record, when 624
may be made by agent 624
judgment or decree released by 624
court may order, when 625
costs of, how recovered 625
Scire Facias, to revive, may issue, when issued before expiration of lien, effect .. 622
shall be served, on whom 622
Transcript, of judgment, &c., to be entered on docket, when 625
JUDICIAL CIRCUITS, established .. 38, 321, 322
JUDICIAL PROCEEDINGS, of one state, to have faith and credit in every other .. 11
JUDICIARY, of U. S. constituted 10
JUDICIARY, of this state 38
JURISDICTION, of U. S. Courts 10, 14
of state courts in law and equity .... 38, 50, 329 to 331
in cases of assignments for benefit of creditors 128, 130, 131
of circuit court in criminal cases 414
in cases of divorce 426
of dower 435, 436
of justice of the peace in civil cases .. 634, 635
in cases of breach of the peace 672
of mechanics' lien 735
in foreclosure of mortgage 751
in cases of partition 768
JURY, right of trial by, secured 14, 44
judges of law and fact in prosecutions for libel 45
in criminal case, disagreeing, may be discharged without prejudice 44
to try charges against clerks 205
to try right of property taken in execution by sheriff 480
in cases of forcible entry and detainer .. 514
at coroner's inquest 590
on inquisition of lunacy 593
how summoned in courts of record 627
service on, to be equalized,, and officers to avoid idlers, vagabonds, &c 628
witness, and persons who have formed an opinion, and kindred of parties, not to be on 628
challenge of, in civil cases 628
special, of eighteen persons, may be summoned 628
panel to be delivered to each party 628
exhausted, talesmen to be sworn 628
officer taking bribe for excusing persons from serving on, penalty 629
in cases of *ad quod damnum* 744, 745
of part aliens not allowed 878
for assessing damages upon opening state road 914
JURY. See *Justices' Courts, Practice at Law, and Practice in Chancery.*
JURORS. CHAP. 91. .... 626 to 629
Clerk, to keep account of service of grand jury 629
to give jurors scrip for the amount 629
fees of, in such cases 629
Courts, may order jurors to be summoned 627
Grand Jurors, qualification of 627
to be summoned, when, how 627
not attending, another may be sworn 627
may be indicted; proceedings 627
may be challenged and discharged; exceptions 627
not to serve on petit jury, when 628
who exempt from serving as 627
who shall not be summoned 628
compensation, discretionary with court 628
accounts of, to be verified by oath 628
Officer, receiving bribe to excuse person from jury, &c.; forfeiture 629
Penalty, for non-attendance as jurors 628
Petit Jurors, qualification of 627
may be challenged or discharged; exceptions 627
persons exempt from serving as 627

Digitized by Google

JURORS.
Petit Jurors, who shall not be summoned as 628
who shall not be sworn as 628
in civil cases, who may be challenged 628
Special Jury, of eighteen, may be ordered 628
if panel exhausted, proceedings 628
JURORS, before justices of the peace and constables, may be fined 664, 665
JUSTICES OF THE PEACE. CHAPTER 92. 629 to 633
Acceptance of Commission, what deemed 631
to be certified by clerk to governor 631, 632
Clerk of County Court, duties of 631, 632
on resignation of justice 633
or deputy, not to hold the office of 630
County Court, duties of, in relation to the appointment and election of 630, 631
Election, of justices, how conducted 631
if contested, or a tie, county court to decide 631
certificate of, to be made out for person elected, by county court 631
to be void, when 631
to be recorded in thirty days 631
Jurisdiction and Power, to keep the peace to arrest those who break the peace, and hold to bail 632
those who attempt to break the peace, or are not of good fame, and commit or hold to bail 632
to commit on refusal to give security 632
to certify recognizance to next circuit court 632
to punish for contempt, when and how 632
punishment for contempt, what 633
no person so punished, till opportunity given to be heard 633
on conviction, justice to make up record 633
Justices of the Peace, each municipal township entitled to four 630
each ward in the city of St. Louis entitled to two 630
to keep their offices and hold their courts in the ward or district for which they are elected 630
to perform their duties throughout St. Louis township as other justices 630
removal of, from ward or district, to vacate office 630
who not to be 630
now in office, to continue to act as such, how long 630
when vacancy occurs in office of, county court to appoint 630
appointed, to hold office, how long 630
qualifications of 631
to be commissioned by county court 631
elected, to qualify within twenty days 631
receiving certificate, to cause it to be recorded within thirty days 631
to continue to act until commission expires, on division of township 632
not to act till commission is recorded; penalty for so acting 632
to have power to issue subpœnas, in what cases 633
convicted of bribery, &c., how punished 633
resigning, what his duty shall be 633

JUSTICES OF THE PEACE.
Justices of the Peace, on resignation of, duty of clerk 633
Warrant, of commitment for contempt, what to specify 633
JUSTICES OF THE PEACE, fees of, regulated 603, 604
may solemnize marriages 730
to confiscate arms found in possession of free negro or mulatto 754
proceedings by, against free negro or mulatto not authorized to reside in this state 758
proceedings by, against peddlers 780
to lay off road districts and allot hands 965, 966
to issue process against delinquent hands on roads 967
penalty against, for failure to perform duties in relation to roads 969
in reference to saline lands, duty of 981
in cases of lost or wrecked property, duty of 986, 987
JUSTICES' COURTS. CHAPTER 93. 631 to 671
Abatement, not to take place, when 645
by death of parties, not to take place 650
Actions, where to be brought 636
Adjournment, of case by justice 645
on application of parties, when 645
Administrator and Executor, not suable in 635
judgment against, on set-off, how given 644
of plaintiff may appear and prosecute 650
failing to do so, may be cited, proceedings 650
Affidavit, for continuance 645
for obtaining transfer of case 657
for appeal from judgment 668
Agent, parties may appear by 642
authority of, how given and how proved 642, 643
Allegations and proofs at trial 653
Appeal, from judgment against constable and securities 666
from judgment of justice 667
from judgment confessed, not allowed 667
from judgment by default or non-suit 667, 668
must be within ten days after judgment 668
recognizance to be given, form of 668
not to be dismissed for want of affidavit or recognizance 669, 670
to be entered on justices' docket, and all further proceedings suspended 669
certificate of to be given; constable to release property seized 669
how and when taken in case of vacancy in office, or death of party 669
justice failing to allow, may be compelled 669
pending in circuit court, suit may be revived 669
transcript to be filed 669, 670
proceedings in circuit court 670
justice may be compelled to amend transcript, and send up appeal 670
to be tried at return term, when 670
notice of, to be given, when and how 671

Digitized by Google

JUSTICES' COURTS.
Appeal, not dismissed for want of notice.. 671
judgment in circuit court.... 671
Appearance, voluntary, suits may be instituted by.... 638
by defendant, cures illegality of writ.. 670
Assumpsit, actions of, cognizable in.... 634
Attachment, suits by, where brought.... 636
may be first process in suits.... 638
for witnesses, when issued, how served 647
against justice to compel allowance of appeal.... 669
to compel sending up appeal, &c.... 670
Bail, in recognizance on stay of execution
execution against, when.... 658
Bill of Discovery, in circuit court, after appeal.... 658
Bills of Exchange, consideration of not to be impeached.... 653
Bill of Items, of account to be filed.... 639
of set off, to be filed.... 644
Bond of Indemnity, given to officer.... 644
to be returned with execution.... 663
claimant may have copy of.... 663
justice to produce original in court, when.... 663, 664
Bonds, consideration of, may be impeached.... 653
defence not precluded by contract of payee.... 653
Capias, execution not to issue.... 666
Cause of Action, to be tried on appeal... 670
Citation, to revive judgment after death of plaintiff.... 651
how directed and served, proceedings 651
Concurrent Jurisdiction, with circuit court 635
Confession of Judgment, to be taken.... 656
for what amount, and when.... 656
Consolidation, of causes of action and suits.... 646
costs in such case, how paid.... 646, 647
Constable, to receive claims for suit... 640, 641
liability on official bond for claims.... 641
to serve and return process.... 639, 640
failing, penalty.... 641
not to purchase at sale under execution proceedings against, for default.... 662
Continuance, to bring in defendants, not served.... 666
by justice, when, on application of parties.... 645
application for, how made.... 645
Contract, actions founded on, cognizable 634
Corporation, not suable in.... 635
Costs, security for, when required.... 638
plaintiff to pay, when he persists in suit after demand and costs are paid.... 641
next friend, in suits by infants, liable for 642
of trials of right of property, how paid 663
Covenant, actions of, cognizable in.... 634
Damages, witness not attending, liable to 648
Death, of parties, proceedings.... 650, 651
after default or non-suit, proceedings... 652
Debt, actions of, cognizable in.... 634
Default, judgment by, when.... 651
set aside when.... 652
application for setting aside, when made 652
new trial, notice of, how served.... 652

JUSTICES' COURTS.
Default, appeal from judgment by, when allowed.... 667, 668
Defendant, dying, while suit is pending, proceedings.... 650
several, in different townships, how served with process.... 639, 640
several, discontinuance as to those not served.... 643
surviving may be prosecuted.... 650
dying after judgment, proceedings.... 651
Depositions, how taken, when to be read 648, 649
Detinue, action of, not cognizable in.... 635
Discontinuance, as to defend'ts, not served 643
not to take place, when.... 645
Discovery, in trial, may be had.... 655
Docket, to be kept, what to contain.... 637
Endorsement, on execution by justice.... 661
by constable, at time of receipt.... 661
by justice, of renewal.... 661, 662
Equity and Law, actions to be tried by... 634
Execution, against ex'r or adm'r.... 644
stay of, to be allowed, when and how.. 658
when to issue, to whom directed, when returnable, and form of.... 660
a lien on slaves, goods, chattels, shares in stock, &c.... 661
to another township, when.... 661
may be renewed, how.... 661
sales of property under, regulated.... 662
constable failing to return, proceedings 665
with clause of capias, not to issue.... 666
False Imprisonment, not cognizable.... 635
Fees, collected on execution, constable failing to have before justice, proceedings 666
Fine, against witness for not attending.... 648
judgment and execution for.... 648
may be remitted or mitigated by justice 648
against juror, not attending.... 655, 664
Garnishees, may be summoned.... 662
Guardian ad litem, when appointed.... 642
consent to serve to be filed.... 642
Infant, to sue by next friend.... 642
next friend how appointed.... 642
suit by, without next friend, not to be dismissed.... 642
Instrument of Writing, sued on, to be filed 638
presented as set-off, to be filed.... 644
may be withdrawn, where vacancy occurs.... 645
evidence, unless denied, on oath.... 655
as against ex'r or adm'r, must be proven 655
Joinder of causes of action.... 646
Judgment, by confession, to be taken.... 656
for what account, and when.... 656
in cases of set-off.... 644
of nonsuit, when.... 650, 652, 657
new trial, notice of, how served.... 652
mutual, may be set off.... 656
for defendant, when.... 657
for plaintiff, when.... 657, 658
when to be entered.... 658
to whom to be, and not to be paid.... 664
of justice, appeal from.... 667
Jurisdiction, of justices.... 634, 635
co-extensive with county, when.... 636
excess of judgment over, shall be remitted.... 658

Digitized by Google

JUSTICES' COURTS.
Jury, may be demanded, number of, how summoned, oath, duty, and verdict 653, 654
may be discharged, when 655
to try right of property; proceedings 662, 699
Law Day to be held 637
Levy released by appeal 669
Lien of judgment, when transcript filed .. 659
Lost Writing, may be sued on 638
loss to be proved at trial 639
Malicious Prosecution not cognizable 635
Motion, by bail, in stay of execution, for judgment against principal 658
by security in appeal bond, when 671
Negotiable Note, consideration not to be impeached 640
New Trial, how obtained 650
Non est Factum, how pleaded 652
Nonsuit, against plaintiff, suing several defendants, in different townships, when against ex'or or adm'r, when 652
when rendered generally 652
may be set aside, when 652
application for setting aside 652
new trial, notice of, how served 652
not to be rendered, after cause submitted 657
appeal from judgment of, not allowed, unless 667, 668
Notes, concurrent jurisdiction of actions on, with circuit court 635
assigned, not allowed as set-off, when .. 643
Notice, of assignment of note, pleaded as a set-off, to be proven, when 643
of set-off, when and how to be given .. 643
to take depositions, how served 648
to ex'or or adm'r of plaintiff, to appear of new trial, after default or non-suit .. 650
appeal not to be dismissed, for want of 652
Oath, of jurors and witnesses 671
of jurors, to try right of property 654
Penalty, actions for, cognizable, in 633
against constable, for failure to serve and return process 635
Personal Property, actions for injuries to 642
Plaintiff, may appear and conduct his suit at trial to make verbal statement of his demand 643
dying, executor or administrator of, may appear, and failing, may be cited 650
survivor of several, may prosecute .. 650, 657
Poor Person, who may sue as such 638
Process, by what, suits instituted 638, 639
to run in the name of the state 639
to be a summons, unless 639
return of, how made 641
Prochein Ami, infant to sue by 642
Property, to be sold, notwithstanding verdict, when 663
not defendant's, and sold under execution, remedy of purchaser 664
Recognizance, for stay of execution 658
in cases of appeal 668
judgment against securities in 671
Release, of excess of judgment 658
Replevin, action of, not cognizable in 635

JUSTICES' COURTS.
Return, of execution against principal and bail 658
by justice, of appeals 669, 670
erroneous or defective to be amended .. 670
justice may be compelled to make 670
Revival, of judgment, when, how 651
Revocation, of execution, by appeal 669
Rights of Property, trial of; proceedings .. 636
Sales, of property under execution 662
officer not to purchase at 662
Security, judgment against, when 671
property of, to be levied on, when 671
remedy of, against principal 671
Set-off, may be presented by defendant .. 643
exceeding jurisdiction, not allowed 643
instrument and bill of items to be filed 644
Slander, action for, not cognizable in 635
Statutory Penalty, actions for 635
Subpœna, for witnesses, valid, how served 647
Summons, may be first process in suit .. 638
to be the process, unless 639
to whom directed; command and form 639
when and how to be served 639, 640
Title, to lands not to be questioned 635
pleaded, proceedings 644
plea, to be sworn to 644
Transcript, of judgment offered as set-off 656
in cases of transfer of suit 657
of judgment may be filed in circuit court 659
justice may be compelled to amend 670
justice may be compelled to file 670
Transfer, of cases from one justice to another, when and for what cause .. 657
Trespass, actions for 635
Trespass on the Case, actions for 635
Trial, to take place, when 643
to take place on return of process 652
of right of property before constable .. 663
Vacancy, proceedings by plaintiff in case of 645
occurring in office after default or non-suit, proceedings 652
appeal, how taken in such case 667, 668
Verdict, of jury, how rendered, &c 655
of jury summoned to try right of property, effect of 663
Warrant, not to be issued 666
Witness, subpœna and attachment for 647
liable to damages also 648
competency of, how determined 654
form of oath 654
either party may be made 654
refusing to testify, other party may be sworn 654
either party may be summoned as 654
not attending, other party may testify .. 654
justice being, case to be transferred 657
Writ, not being in the name of the state, not to affect proceedings when 670
JUSTICES' COURTS. BREACHES OF THE PEACE. CHAPTER 94. 672 to 676
Appeals, may be taken, proceedings to obtain 674
when to be taken and when to be returned 675
Assaults and Batteries, not indictable; cognizable before justice 672

Digitized by Google

JUSTICES' COURTS.
Clerk of Circuit Court, duties of..... 675
Continuance, by justice, what proceedings 676
Costs, how paid when injured party prosecutes..... 674
when defendant takes benefit of insolvent act..... 674
County Treasurer, duty of..... 676
Defendant, may be committed to jail..... 673
may take benefit of insolvent act..... 674
Execution, when to issue..... 674
from circuit court..... 675
Fines, extent of..... 674
how recovered..... 676
Jurisdiction, of justices over affrays, &c.. 672
what cases shall not extend to..... 672
Justices of the Peace, to issue warrant, when and in what cases..... 673
to hear and determine the complaint.... 673
to proceed as in criminal cases..... 673
to require recognizance, when..... 673
proceedings before, how regulated..... 675
to certify amount of fines to county treasurer..... 675, 676
Penalties, an officer refusing to perform duty..... 676
Penalty and Fines, how recovered..... 676
Prosecutor, name of injured party to be endorsed as..... 674
liability of, for costs..... 674
Recognizance, breach of, to be certified to circuit court..... 673
Trial, may be postponed, when..... 673
to be by jury..... 674
Witness, to be subpœnaed..... 674
to be recognized, when..... 675
KIDNAPPING, defined; punishment; where triable..... 351
KILLING. See *Crimes and Punishments*. ..... 344 to 347
KINDRED, of half blood, how to inherit.. 422
KNOX COUNTY, limits defined..... 259
LA FAYETTE COUNTY, limits defined..... 273
LANDS. CHAP. 95..... 677 to 682
Commissioner, to select land, to be appointed..... 677
his duties in selecting..... 677, 678, 679
to make weekly returns..... 681
to be a practical surveyor..... 682
governor to appoint additional, when 681, 682
not to employ surveyor or chain carriers 682
Governor, his duties..... 677, 678, 681
to issue proclamation..... 679
Internal Improvement Fund, what denominated..... 681
Lands, to be selected, where, when..... 677
price per acre..... 680
Land Offices, four established, where..... 678
Pre-emption Rights, who entitled to..... 680
transferable..... 680
conflicting, how decided..... 680
on proof of payment, receipts to issue.. 680
when not to vest in first settler..... 680
Registers and Receivers, to be appointed... 678
their fees and tenure of office..... 678
may be removed..... 679
shall take oath and give bond..... 679
to take proof of pre-emption rights 679, 680

LANDS.
Registers and Receivers, to decide on conflicting claims..... 680
appeals allowed from, to whom..... 680
receivers to pay moneys quarterly..... 681
allowance for traveling expenses..... 681
registers to make quarterly reports..... 681
Register of Lands, duties of..... 681
LANDS. CHAP. 96..... 682 to 685
Compensation of commissioner..... 684
Fines how appropriated..... 685
Lands, to be offered for sale, when..... 683
minimum price..... 683
additional may be selected, when..... 684
Penalty for trespassing on state lands..... 684
Pre-emption Rights, who entitled to; quantity of land, and at what price..... 683
certificates of, assignable..... 684
assignments of, and certificates, prima facia evidence, when..... 684
registers and receivers to take proof of 684
testimony in proof of, who may take.. 684
Pre-emptor, when to pay for his land..... 682
when to prove his right..... 682
proving his right, entitled to certificate 683
may make full payment, when..... 683
no affidavit required of, when..... 684
law liberally construed in favor of..... 683
LANDS. FEES OF REGISTERS AND RECEIVERS. CHAP. 97..... 685 to 686
Nodaway and Atchison Counties added to territory for selecting lands..... 686
Registers and Receivers, to keep their offices in same house..... 685
compensation for office rent..... 685
fees of..... 685
Savannah, lands hereafter selected, to be sold at..... 686
LANDS, legislature not to interfere with primary disposal of public..... 41
of U. S., not to be taxed..... 41
of, non-residents, taxed as others..... 41
aliens may hold..... 113
conveyance of, regulated..... 217 to 228
counties may hold and convey..... 289
how acquired for county seats..... 292
dower of widow in..... 460
escheat of, to state, when..... 461
liable to execution, how sold and conveyed..... 478
conveyance of, with intent to defraud.. 525
leases, &c., of, when to be in writing.. 529
of minors, may be leased, sold or mortgaged..... 551
of insane persons, may be sold, mortgaged, &c..... 598
judgments and decrees, a lien on..... 622
decrees concerning, to be recorded..... 626
when record may be dispensed with..... 626
taking possession of, by violence..... 396
title to, not cognizable before J. P.... 635
corners of, decayed, &c., how re-established..... 795, 796
See titles *Administration*, *Saline Lands*, *School Lands*, *Revenue and Distribution*.
LAPPING, ornamental or fruit trees..... 365
LAPSE OF TIME, presumption of payment arising from..... 721

Digitized by Google

LARCENY, defined and punished 359
LAWRENCE county, limits defined 273
LANDLORDS AND TENANTS.—CHAPTER 98. ..... 688 to 689
Attornment to a stranger, void, except 688
Ejectment, may be brought, when 688
summons in, how served 689
effect of service 689
judgment in 689
if tender of rent and cost before judgment, proceedings 689
Equity, no relief in, when 688
Landlord, may recover, for use and occupation 688
lien of, on crop grown 688
shall hold premises, discharged from lease, when 689
Lessee, barred from relief, when 689
Mortgagee of lease, reservation in favor of 689
Parol, Demise, &c., effect of evidence of, in action for use and occupation 688
Rents, ex'r or adm'r of tenant for life, may recover 687
dependant on life of another, remedy .. 687
freehold estate in, in right of the wife, may be recovered 687
in arrear, on lease for life, remedy 687
double, when and how recoverable .. 687, 688
Tenant, to give notice to landlord, of summons in ejectment 687
penalty on, for failure 687
giving notice of intention to quit, and not delivering possession, liability 687, 688
liability of, after termination of term, and demand and notice 688
LANDLORDS AND TENANTS in St. Louis county 1101
LAND MARKS, removing, defacing, &c ... 365
decayed, proceedings to replace 795, 796
LAND OFFICES. See title *Lands*.
LAW COMMISSIONER. CHAPTER 99. ..... 690 to 692
Law Commissioner, for St. Louis county, to be appointed by the governor 690
his qualifications 690
oath and term of office 692
general powers and duties; to take depositions, and issue subpœnas 690, 691
shall keep a docket; provide a seal 691
place of business, and compensation ... 691
to return depositions 692
power to acknowledge deeds, &c 692
how removed from office 692
Vacancies, how filled 692
LAWS. CHAPTER 100. ..... 693 to 695
Acts, hereafter passed, to take effect ninety days from passage 695
Common Law, in force 693
punishment by, limited 693
Bills, vetoed, how authenticated 694
not returned, by governor, how authenticated 694
British Statutes, prior to 4th James I., in force 693
for punishment for crimes, not in force 693
Law, repealing a former law, being itself repealed, not to revive former law ... 694
Original Rolls of laws, to be bound, how 695
LAWS, *ex post facto*, not to be passed 7, 45
impairing obligation of contracts, not to be passed 7, 45
of the state, style of 34
retrospective, shall not be passed 45
LAWS. REVISED STATUTES. CHAPTER 101. ..... 695 to 699
Actions pending at repeal, proceedings ... 698
Acts, what the revised statutes shall contain 696
what shall not be published 696
local and private, not repealed, continued in force 698
repeal of, by this act, effect of 698
of a general nature to take effect, when 698, 699
public, not revised, continued in force .. 699
former in force repealed 699
applicable to St. Louis, not repealed ... 699
Commissioner, to superintend and direct publication, his duties 697
vacancy in office, how filled 697
Constitutions &c., to be published 696
Construction of terms and words in revised statutes 697
of repugnant provisions 697
Militia Law, 4000 copies to be printed 696
Offence, &c., when not affected by repeal .. 698
Revised Statutes, 10,000 copies to be printed 696
School Law, 7000 to be printed 699
Sentence, when pronounced under former law 698
LAWS AND JOURNALS—PUBLICATION. CHAP. 102. ..... 700 to 706
Clerks, duties in relation to distribution ... 702
Laws and Journals, number of copies to be printed 701
to be distributed, when, how 701, 702
what number to be retained 702
what number to be printed and bound .. 703
to be deposited with circuit clerks 703
compensation for copying 703
for making index 703
of sister states to be kept 703
who entitled to copies 703
Officers to deliver over copies of laws 703
Original Rolls, to be deposited, where 700
to be bound and indexed 700
to be copied and delivered to printer, &c 701
Printing, secretary to advertise for proposals 704
price, &c., to be specified in bid 704
manner of presenting bids 705
proposals, to whom delivered 705
contractor for, to enter into bond 705
bond where deposited, who may sue on 705
power of each house to contract for 705
may be given to others than those who bid 705
printer failing to comply, proceedings .. 705
when contract for is complied with, auditor to settle 706
Secretary of Senate and Clerk of House, their duties 703
Secretary of State, his duties 700, 701, 702, 703, 704, 705
LEAD FURNACES. CHAP. 103 .. 706, 707
Damages to be recovered, how 706

Digitized by Google

LEAD FURNACES.
Furnaces to be inclosed, how 706
Penalty for neglect, liability to party injured 706
owner not liable to, when 707
LEASE, of land, by ex'r and adm'r 73
not in writing to have effect of estate at will 529
assignment of, to be in writing 529
of tenement for gaming house, brothel, &c., void, when 403
of school lands, when, and what to contain 991
LEGISLATURE. CHAP. 104 707
General Assembly, when to meet 707
LEGISLATURE, VACANCIES. CHAPTER 105 ..... 707 to 709
County or District divided, election how held 709
Election, to supply vacancies, how held .. 708
notice of to be given, how, by whom ... 708
Governor his duties 708
Vacancy to be certified to governor 708
Writs of election, how directed 708
LEGISLATURE, PETITION. CHAPTER 106 709
Petitioners to give notice, when and how .. 709
LEGISLATURE, PROCEEDINGS.—CHAP. 107 ..... 710 to 713
Committee, disturbing, how punished 711
Contingent Expenses, how controlled 712
Depositions may be taken and read 711
commissioners to take 711
Elections, majority of whole, to determine 712
Fees, and expenses, how and when paid .. 712
Joint Expenses, how controlled and adjusted 712
Joint Meetings, how organized 710
who to preside, what rules govern 710
member how punished in, for contempt 710
who may be ordered into custody 711
Oaths, power to administer 713
witness, compensation of 712
Subpœnas and process, how issued and attested 711
Writs and Process, power to issue 711
LEGISLATURE, COMPENSATION. CHAP. 108 ..... 713 to 714
Compensation, of members 713
of president of senate and speaker 713
to continue in case of sickness, &c 713
of clerks of either house 714
certificate of, how granted and issued .. 714
LEGISLATURE, to consist of senate and house of representatives 29
H. R., how constituted, qualification ... 29
apportionment 29, 113, 114
possesses sole power of impeachment .. 34
senate, how constituted, appointment 30, 113, 114
qualifications of electors 30
who ineligible to either house 31
powers of each house, rules, journals, expulsions 31, 32
disqualification of members to hold certain offices 31
to sit with open doors 32
power to punish for contempt 32
LEGISLATURE, privileges and compensation of members 32, 713
powers as to introduction, emancipation and treatment of slaves 33
LETTER BOOK, to be kept by auditor and treasurer 1060
LETTERS, of administration and testamentary 62, 63
of attorney, must be recorded 226
LEVYING ON property without legal process 397
LEWIS COUNTY, limits defined 259, 260
LIBEL, in prosecution for, truth may be given in evidence, and jury to be the judges of the law and the fact 45
LIBERTY, of speech and of the press, guaranteed 45
LIBRARY, state. See title *State Library*.
LICENSE, to agents of insurance companies 611
to attorneys at law 159
to auctioneers 162
to billiard tables 170, 171
to brokers 196
forgery of 371
to ferries 509
to groceries and dram shops 543, 544
to inns and taverns 585
to merchants 737
to free negroes, to reside in this state .. 755
to peddlers 779
to clock peddlers 780
made taxable 927
LIEN, of counties for balances due on settlement 309
for expenses of imprisonment 617
of executions 479
of judgments and decrees 622
of judgments before justice of the peace, when transcript filed in circuit court 659
of execution issued by justice of the peace 661
of landlord, on crop, for rent 688
of artizans, builders, mechanics 733
of accounts audited, allowed and adjusted by auditor in favor of state 1066
See titles *Revenue and Mechanics' Liens*.
LIEUTENANT GOVERNOR, election and qualification 36
to be president of the senate, when 36
to act as governor, when to vote 36
contested election of, regulated 37, 456
LIMITATIONS. CHAPTER 109. 714 to 722
Limitation of actions relating to real property. ART. I.
Disability, saving to persons laboring under 715
proceedings, when person laboring under dies 715
Entry, when not deemed valid 715
Limitation, to real actions 715
Right of Possession, not impaired by descent, cast 715
Limitation of actions, ex contractu, ex delicto and penal actions. ART. II.
Defendant, if out of the state before, or depart after cause of action accrues, when action may commence 717

Digitized by Google

LIMITATIONS.
Disability, saving to persons under 717
on death of persons under, cause of action to survive 717
Limitation, of actions founded on writing, sealed or unsealed 716
of actions of debt, penal actions, trespass, account, detinue, assumpsit, trover or case 716, 717
of actions on open accounts, store accounts, assault and battery, and false imprisonment 717
of actions of replevin and slander 717
General provisions and persons exempt from the operations of this act. ART. III.
Actions, limited by other statutes, not affected by this act 720
barred by this act, written promise required to revive 720
of covenant 16th section, not applicable to 721
Alien, enemy, limitation against 718
provisions relative to, not applicable to penal actions 718
Application, of the provisions of this act .. 721
of 13th and 14th sections of 3d article of 16th section of 3d article 721
Corporations, moneyed, this act not applicable to 720
Covenants, in conveyances, &c., this act not to extend to 720
Disability, must exist at the time the right of action accrued 719
Joint Debtors, provisions for 720, 721
Limitation, of actions of covenant 720
against absconding or concealing defendant 720
all disabilities must be removed before limitation attaches 719
of suit stayed by injunction 721
not to extend to actions or rights accruing before December 1st, 1835 721
Remedy, in case of nonsuit, arrest or reversal of judgment, &c 719
in case of defendant's death, after suit and before judgment 719
in case of death of plaintiff 719
Of the presumption of payment, arising from the lapse of time. ART. IV.
Judgments and Decrees, made after 1st of December, 1835, presumed to be paid within twenty years from rendition .. 721
rendered before 1st of December, 1835, presumed to be paid within twenty years from that time 721
Presumptions, may be repelled, how 722
Sealed Instruments, presumed to be paid within twenty years from the 1st of December, 1835 ..... 721, 722
LIMITATION, of action against securities on administrators' bond 722
of demands against estates 723
of actions against apprentices 723
against boats and vessels 186, 187
on constable's bond 211, 212
claims to escheated estates 465
suits against ferrymen 510
of actions of forcible entry and detainer 517
LIMITATION, under gaming act 541
of scire facias on liens on buildings 736
of prosecution for penalty for altering mark or brand 726
of suits against notaries 761
of proceedings against peddlers 780
of suing out writ of error 901
See title *Practice and Proceedings in Criminal Cases.*
LINCOLN COUNTY, limits defined 260
LINN COUNTY, limits defined 260, 261
LIQUOR, not to be sold without license 452, 584
not to be sold to Indians 577
selling to slaves, apprentices, &c 587
merchant not to sell to be drank at store 740
peddler not to sell 778
master permitting slave to sell, penalty 1015
LIVINGSTON COUNTY, limits defined 261
LOAN, of slaves, goods and chattels, when deemed fraudulent 527
LOST MONEY AND GOODS. CHAPTER 110. ..... 722, 723
Appraisers, to be appointed; duty of 722
Finder, to make affidavit; nature of 722
to set up copy of valuation 723
to advertise in newspaper; when 723
to restore property, when 723
failing to make discovery, penalty 723
Justice of the Peace, his duties 722, 723
Owner, may recover, how 723
may appear and prove property, when 723
LOST WRITING, may be sued on before justice of the peace 638
in circuit court 812
LOTTERIES. CHAP. 111. ..... 723, 724
Lotteries, and devices in nature of, abolished 723
Penalty, on persons engaged in selling lottery tickets 723, 724
MACON COUNTY, limits defined 261
MADISON COUNTY, limits defined 273, 274
MAIMING, punishment for 349, 350
MALICIOUS MISCHIEF 364, 365
MALICIOUS PROSECUTION, actions for, not cognizable before J. P 635
MANDAMUS. CHAP. 112. ..... 724, 725
Case, action on for false return; proceedings 725
Costs, for whom adjudged 725
Damages, may be recovered 725
Issue, where to be tried 725
Mandamus, return to first writ of 724
pleadings, on return of 724, 725
peremptory, may be granted, when 725
time allowed to make return, or plead to 725
Recovery, a bar to further suit for making return 725
MANSLAUGHTER. ..... 345 to 348
MANUFACTORY, burning of 355
MANUMISSION, of slaves 1019
MARION COUNTY, limits defined 261
MARKS AND BRANDS. CHAPTER 113. ..... 726, 727
Cattle, Hogs and Sheep, to be marked or branded 726
at what age to be marked or branded .. 726
running at large, duty of person killing 727

Digitized by Google

MARKS AND BRANDS.
Mark or Brand, owner of stock to have.. 726
description of, to be recorded..... 726
disputes concerning, how decided 726
not more than one to be used in same family..... 726
Minors, may have marks or brands..... 727
Penalty, for using mark or brand not recorded..... 727
for altering or defacing mark or brand 726
for mismarking or misbranding 726
for concealing offences 727
Penalties, how recovered and appropriated 727
MARKS AND BRANDS, of cattle, altering, larceny..... 727
MARRIAGE CONTRACTS. CHAPTER 114. 727,
Contracts, to be in writing..... 728
how acknowledged, or proved and certified 728
to be recorded, where 728
when deposited for record, shall impart notice 728
not to affect third persons till delivered for record..... 728
Evidence, contract, duly authenticated, to be received in 728
a certified copy of contract shall be.. 728
MARRIAGES. CHAPTER 115. ..729 to 731
Evidence, record of marriages, and certified copies, shall be..... 731
Marriage in law, a civil contract..... 729
in what degrees, incestuous and void.. 729
when illegal and void..... 729
penalty on persons, for contracting or solemnizing such..... 729
contracted without the state, when valid 729
who may perform the ceremony of.... 730
penalty, for making false entry or return of..... 730
Minors, not to be married, without consent of parent or guardian..... 730
certificate of consent, to be registered and filed, with recorder..... 730
penalty, for marrying without consent.. 730
how recovered..... 730
Record of marriages, to be kept, &c..... 730
Records, his duties; fees, and penalty for neglect..... 731
Religious Societies may solemnize marriages, how..... 731
MARRIAGES. CHAPTER 116. 732
Evidence of marriages, how supplied, if person performing ceremony, die before certificate filed..... 732
affidavits to supply, force and effect of 732
MARRIED WOMAN, of ex'x or adm'x, effect of.... 67
of female sole guardian or curator, revokes appointment..... 549
of female party to suit, husband to be brought in..... 824
may be dissolved, by divorce, when.... 426
See title *Crimes and Punishments*.
MARRIED WOMAN, cannot be executrix or administratrix 63
abandoned by husband, court may decree maintenance..... 427
may convey property; relinquish dower 224
MARRIED WOMAN, abandoning husband, with adulterer, barred of jointure and dower 432
shall not make will, without authority of husband..... 1079
MARSHAL of St. Louis county..... 1009
See title *Sheriff and Marshal*.
MARSHES, firing prohibited, penalty, how recovered..... 1091
MAYHEM, cases, and punishment of...349, 360
MECHANICS' LIENS, CHAPTER 117. ..... 733 to 737
Account, on oath, to be filed, when..... 733
Clerk, duty of, relative to liens filed in his office 734, 735
Execution against property, bound by lien 735
Judgment, against property, bound by lien 735
extent and effect of..... 735
Land, quantity around building, subject to lien 736
contractor considered owner of, to extent of his right and interest..... 736
how sold and applied..... 736, 737
Lien, of artizans, builders, mechanics, &c 733
proceedings, to procure..... 733
of sub-contractor, to procure..... 734
sub-contractor to settle with contractor 734
certificate to be filed with clerk..... 734
effect of certificate of settlement..... 734
employer becomes debtor of sub-contractor, when..... 734
proceedings against property bound by 735
limitation of..... 736
Notice of settlement, to be served by sub-contractor on employer..... 734
Payment, to sub-contractor, effect of, after certificate of settlement..... 734
before notice of settlement, valid..... 734
liability, after, to sub-contractor..... 734
not to be made, till credit has expired.. 734
Release to be filed by sub-contractor, when 736
Satisfaction, of lien, to be entered, when 736
forfeiture on creditor, for failing to enter 736
Scire Facias, plaintiff may proceed by... 735
how served..... 735
judgment on; and extent of execution 735
Suit, to procure judgment against property, how commenced..... 735
MERCER COUNTY, limits defined..... 262
MERCHANDIZE, burning, with intent to defraud insurer..... 355
MERCHANTS. CHAPTER 118. ..737 to 740
Merchants, who declared to be..... 737
not to deal, without license..... 737
Advalorem Tax, when not to be levied... 739
Applicant for License to deliver statement of amount of goods, &c., to collector 738
statement to be signed, and under oath 738
oath, how made..... 738
Clerk, shall issue blank licenses..... 737
duty of, after issuing license..... 738
to certify to auditor, the amount charged against collector..... 740
form of license..... 738
Collector, to make return to county court failing to make return, to be charged 739
two hundred dollars..... 739
duty of, in offering to furnish licenses.. 740

Digitized by Google

MERCHANTS.
Court, to settle with collector, when 739
Justices, shall issue warrant, when, &c ... 740
proceedings by, if accused be found guilty 740
License, extent of 740
Liquors, authority to sell, limited 740
Officers and Citizens, duty of, in giving information of violation of this act ... 740
MERCHANTS. CHAPTER 119. 741
Druggists, not exempt from license tax ... 741
penalty on, for dealing without license 741
Physicians not to be taxed, for medicines used in their practice 741
MILE POST, or stone, destroying, &c 365
MILITARY OFFICERS, to aid in quelling riots 395
MILITIA may be summoned, to quell riots 395
MILLER COUNTY, limits defined 274
MILLS AND MILLERS. CHAPTER 120. ..... 741 to 743
Mills, what are declared public 741
shall grind for customers 742
grain to be ground in turn 742
public mill made private, how 743
effect of such conversion 743
forfeiture of privilege, proceedings ... 743
Millers, duty, when bolting machine is turned by hand 742
extent of liability 742
when not responsible for loss 742
to keep sealed measures 742
penalty for violations of this act 743
Toll, rates of 742
MILLS AND MILL DAMS. CHAP. 121. ..... 743 to 748
Ad Quod Damnum, writ of, when and how to be issued 744
subjects of inquiry upon 745
when court may order a new writ 746
Costs, how adjudged 746
Dams, who may erect 744
may erect, by owning one side of water course, when 744
petition for privilege to erect 744
character of petition 744
where petition to be filed 744
height of dam may be increased 744
order of court, on petition 746
penalty for heightening dam 747
power of county court to prevent erection of 747
what deemed public nuisances 747
effect of failure to build 748
when right to construct shall cease ... 748
Issues, when court may direct to be made 746
Jury, to be summoned 744
to meet where dam is proposed to be erected 745
of what they shall inquire 745
inquest to be in writing and signed ... 745
persons aggrieved by verdict, how to proceed 745
Sheriff, to summon jury 744
duty of, in executing writ 745
shall give notice to proprietor of land .. 745
with assistance of jury, to set apart one acre of land, when 745
MILLS AND MILLDAMS.
Sheriff, to return inquest of jury 745
power of sheriff in adjoining county ... 745
MILLS AND MILL DAMS, destroying, &c ... 365
MINISTERS OF THE GOSPEL, not eligible to legislature 31
not to be appointed to office 31
exempt from serving as jurors 627
may solemnize marriages 730
penalty for solemnizing certain 731
not bound to disclose confessions 1090
MISCARRIAGE, administering medicine, intending to procure by 351
MISDEMEANOR, in office, what officers may be impeached for 33
sheriff removable for 37
public administrator may be indicted and fined for 109
circuit attorney may be indicted for 157
attorney at law may be removed or suspended from practice for 159
clerk, when deemed guilty of 204
county treasurer, when deemed guilty of making false returns of marriage, &c., declared to be 731
bringing slave into the state, who is entitled to freedom 758
bringing into the state free negro 758
recorder, when deemed guilty of 919
in auditor and treasurer, what deemed .. 1065
See titles *Crimes and Punishments*, and *Practice and Proceedings in Criminal Cases*.
MISPRISION OF TREASON, punishment .. 341
MISSISSIPPI COUNTY, limits defined 274
MONEY, found, how disposed of 722, 723
MONITEAU COUNTY, limits defined 275
MONROE COUNTY, limits defined 262
MONTGOMERY COUNTY, limits defined ... 262
MORTGAGES. CHAPTER 122. ..748 to 753
Assignee or Mortgagee, may sue in his own name 750
proceedings in case of death of 750
not deprived of remedy in chancery ... 752
shall acknowledge satisfaction, when .. 752
failing shall forfeit ten per cent 752
Deed of Release, attorney in fact, empowered to execute; and effect of such deed 753
Estates Leasehold, shall be proceeded against as estates real 752
Execution, shall be a special fieri facias .. 751
when returnable; sales how conducted 751
where directed 751
Interest, claimant of, in property, how made defendant 750
persons having, shall be made parties 750
Judgment, what it shall be in certain cases 751
Personal Property, mortgaged, (except slaves) may be sold without suit 752
Petition, when and where filed; contents when filed, if part of property be real estate 749
Publication, order of, when and how made 750
Redemption, before sale, certificate to be given and recorded 753
Summons, how to issue 750
service and return 750

Digitized by Google

MORTGAGES.
Summons, proceedings on return of "non est"
if defendants reside in different counties, separate to each county
MORTGAGES, redemption of by ex'r or adm'r, when 83,
of personal property, to be acknowledged and recorded, or possession to accompany 527,
of estates of minors, when
of property of insane persons
MOTHER, when to bind out children
when guardian of child
when to inherit
MOULD, for counterfeiting, making, &c
MURDER
NAME, affixing pretended, forgery
using own, pretending it is another's
NATURE, crime against
NATURALIZATION, law of the U. S. in relation to
NAVIGATION, of rivers in and bordering the state declared free 41,
improvement of, to be encouraged
NEGOTIABLE NOTE, what to be considered, effect of
action on, by payees and endorsees
payable to order of maker, or of fictitious person, effect of
protest of, by notary, evidence of demand and refusal
NEGROES AND MULATTOES.—CHAP. 123. 753 to
Bond, when violated
Clerks, fees of
Free Negroes and Mulattoes, not to carry arms without license
weapons found in possession of, shall be forfeited
county court to bind as apprentices
how court to proceed in such cases
not to reside in the state without license
to be arrested, when
register of, to be kept by clerk
county court may grant license to
who are entitled to license
shall produce evidence and give bond
duty of in removing
born out of this state shall have benefit of this act
shall have three days to leave the state
penalty for introducing into this state
when not subject to provisions of this act
Harbor Master of St. Louis, duty of under this act
Justice of the Peace, duty of under this act
shall commit runaway slave
may sentence to pay fine and leave the state
may order commitment until fine and costs are paid
License, to be granted, contents
how authenticated, authority of
copy, when granted
duty of officers in relation to
when county court may revoke

NEGROES AND MULATTOES.
License, duties of clerks, relative to copies 757
Mulattoes, who deemed such 754
Sheriff, may hire out runaway slave 759
shall take from person hiring a bond, &c 759
Slaves, penalty for bringing into this state such as are entitled to freedom 757
NEGROES AND MULATTOES, free, legislature may prevent introduction of 33
apprentice, not to be taught to read and write 117
raising rebellion or insurrection of, punishment 342
castration of in cases of rape 349
slave, or fugitive from service, not to be discharged under habeas corpus act 563
NEW MADRID COUNTY, limits defined 276
NEWTON COUNTY, limits defined 276
NEW TRIAL, may be granted in cases of forcible entry and detainer 517
See titles *Justices' Courts, Practice at Law, Practice and Proceedings in Criminal Cases, and Practice in Chancery.*
NODAWAY COUNTY, limits defined 262, 263
NON-AGE, suit not deferable for 809
NON EST FACTUM, must be pleaded under oath 655, 819, 820
NON-RESIDENT, land of, not to be taxed higher than residents 41
debtors, proceedings against by writ of attachment 133, 147
to give security for costs 241
not to be guardian or curator 549
guardian, when may remove estate of ward from this state 564
how notified of proceedings in partition 767
See titles *Administration, Practice at Law, and Practice in Chancery.*
NOTARIES PUBLIC. CHAPTER 124. 760 761
760
Notaries, how appointed 760
power to administer oaths 760
powers and duties 760
to keep a record, &c 760
to provide seal, &c 760
vacancy occurring, records and papers to be delivered to recorder 760
shall take oath of office, and give bond 760
bond shall be recorded 761
actions against, limited 761
NOTARIAL protest of bill of exchange or note, evidence 176
NOTES. See titles *Administration Bonds and Notes, Crimes and Punishments, Negotiable Notes, and Revenue.*
NOTICE in proceedings by address 58
required to be published, how done 111
by assignee, for benefit of creditors 130
to creditors of boat or vessel 184
conveyances recorded, impart 226
to corporators, of first meeting 232, 233
by corporation, of debts, to be published 234
how served, in suits against corporations 238
of meeting of commissioners to select county seat 291, 292
of special term of court, for trial of prisoner 336

Digitized by Google

NOTICE, of special term of county court .. 327
to take depositions .. 417
of contested election .. 454
by governor, of new electoral districts .. 458
to electors of President and Vice President of U. S .. 459, 460
by person claiming property taken in execution .. 480
of sheriff's sale of real estate .. 483
of sheriff's sale of personal property .. 481
of application for injunction .. 579
by guardian of insane person, of his appointment .. 595
to pre-emptors, to prove their claim 679, 680
by tenant, of intention to quit, when subjects to double rent .. 687
to tenant to quit, subjects tenant, holding over, to double rent .. 688
of petition to legislature .. 709
by sub-contractor upon building, of intention to furnish materials, &c .. 733, 734
to proprietor of land, in cases of ad quod damnum .. 745
in suit to foreclose mortgage .. 752
of presentation of petition for partition .. 766, 767
of sale of land in partition .. 771
in case of perpetuating testimony .. 793
in case of re-establishing decayed corners of land .. 797
of writ of error .. 904
by auditor, to counties, of their share of the three per cent. fund .. 957
of application for new county road .. 962
to hands, to work on road .. 967
by taker up of lost or wrecked property .. 984
of sale of school land .. 988
by security, requiring principal to be sued .. 999
by security in official bond, of application to be discharged .. 1000
of set-off .. 1005
of runaway slave apprehended .. 1021
of special meeting of curators of state university .. 1035
by taker up of stray .. 1039
of petition to dis-incorporate town .. 1053
of application for change of venue .. 1072
of application for right of way .. 1074
See titles *Administration, Attachment, Justices' Courts, Practice at Law, Practice and Proceedings in Criminal Cases, and Practice in Chancery.*

NUNCUPATIVE WILLS. See title *Wills.*

NURSERY, burning of .. 185

OATHS AND AFFIRMATIONS.—CHAPTER 125. .. 761 to 763

Belief, religious, person not required to state .. 762
or unbelief, may be proved .. 762

Oaths, mode of administering .. 761
swearing with uplifted hand, &c .. 761
affirmations instead of, when .. 762
when person may swear in his peculiar mode .. 762
required to be taken before a particular court or officer; may be taken before any other court, unless, &c .. 762

OATHS AND AFFIRMATIONS.

Oaths, who shall have power to administer 762
in what form may be taken .. 763
what deemed lawful .. 763
swearing falsely deemed perjury .. 763

OATH, taking false, perjury .. 377
See titles *Administration, Justices' Courts* and *Practice in Chancery.*

OATH OF OFFICE, to be taken .. 34

OBLITERATION, total, forgery .. 373

OBSTRUCTING, officer .. 380, 381
county road .. 969

OCCUPYING CLAIMANT, how compensated for improvements .. 444

OFFENCE. See title *Crimes and Punishments.*

OFFICE. See same title.

OFFICERS. CHAP. 126. .. 763

Officer, may call to his aid the power of the county .. 763

Penalty, for failing to obey summons .. 763

CHAPTER 127. .. 764

Officer, liable to injured party for causing him to render service, or spend time or money, illegally .. 764

exception in favor of judicial officers .. 764

OFFICERS, appointment of, when not otherwise directed in constitution .. 34

to give information of trespass on school lands .. 994
See titles *Crimes and Punishments*, and *Public Records.*

OFFICIAL BONDS, copies of, evidence .. 471
suits upon, regulated .. 783
recorder to record .. 917
securities in, how and when discharged 1000

OFFICIAL SEAL, forgery of .. 368

OPINIONS, of supreme court to be in writing .. 924

OPPRESSION, by officer .. 390

ORCHARD, burning of .. 355

ORDER, See titles *Administration, Crimes and Punishments, Evidence, Practice at Law, Practice and Proceedings in Criminal Cases, and Practice in Chancery.*

ORDER OF PUBLICATION, in attachment suits .. 137, 151
in foreclosure of mortgage .. 750
in partition cases .. 767
in chancery cases .. 838

ORDINANCE, declaring assent of Missouri to terms of act of Congress .. 17
See title *Evidence.*

OREGON COUNTY, limits defined .. 276

OSAGE COUNTY, limits defined .. 277

OVERSEER OF ROADS. See title *Roads and Highways.*

OWNER, of mischievous animal, suffering to go at large .. 346
of slaves, responsible for crimes of, to person injured .. 414
See title *Slaves.*

OYER, of writing declared on .. 812

OZARK COUNTY, limits defined .. 277

PAPER MILL, burning of .. 355

PAPERS. See titles *Administration, Practice at Law, and Records.*

Digitized by Google

PARDONS, President of U. S. may grant .. 9
governor may grant .. 35
by governor, effect of .. 412
PARENTS. See titles *Apprentices, and Guardians and Curators.*
PARTIALITY, by officer .. 390
PARTITION. CHAPTER 128. ...764 to 776
Adverse Claims, how decided upon .. 768
person holding, may be made a party .. 767
how the court may decide on .. 768
effect of confirmation of report on .. 770
sheriff to retain money arising from .. 772
Commissioners, appointed to make partition .. 768
shall be sworn or affirmed .. 769
shall proceed to make partition, how .. 769
proceedings by, if division cannot be made without prejudice .. 769
may divide into lots, and make return 769
shall make report in writing .. 769
report by, shall be proved and acknowledged .. 769
may be set aside and new commissioners appointed .. 770
report of, when confirmed and judgment given .. 770
to be recorded, where .. 770
on report of, court may order premises sold .. 770
when parties in interest are adults, three to be appointed .. 770
confirmation of report of, and judgment 775
proceedings of, if land susceptible of division .. 775
vacancies, how filled .. 775
compensation of .. 775
majority of, may act .. 776
Court, when to proceed .. 767
Default, when to be entered .. 767
proceedings in case of, &c .. 768
Guardian, authority of, in divisions of lands .. 774
court to appoint, when to give bond .. 774
Issues, with pleadings, to be as in actions at law .. 767
form of .. 773
Judgment, shares may be set off in one parcel, and residue divided .. 768
parcel set off to several, how held and enjoyed .. 768
when given, its effect .. 775
where recorded .. 770
by default, when .. 773
Jury, questions of fact to be tried by .. 773
Order of Publication, how made and published .. 771
Order of Sale, what it shall specify .. 771
may be renewed, when .. 771
may be made without appointment of commissioners .. 776
Parties, any person in interest, may be unknown, to be stated in petition .. 766, 767
how may plead .. 767
shares of absent, how invested .. 766
claiming money, to file petition .. 772
if adults, what proceedings .. 773
Partition, what lands subject to .. 775
who may petition for .. 765
PARTITION.
Partition, judgment of .. 766
not to be made, contrary to will of testator .. 774
if cannot be made in kind, sale may be ordered .. 776
Petition, subject and nature of .. 776
who to be made parties to .. 776
service of, how made; notice, &c .. 776
by whom filed; what to be stated in .. 776
when may be filed in any county .. 774
Publication, notice by .. 767
Sale, how premises may be sold .. 771
Sheriff, duty of; shall make deed; effect thereof .. 771
responsible on official bond, &c .. 771
shall collect and pay over money, &c .. 772
compensation of .. 772
to report proceedings to court .. 772
to pay over proceeds of sales, and how to retain money belonging to adverse claimants .. 772
Slaves, and personal property, partition may be had of .. 776
Tenants, joint, &c., entitled to remedy by partition .. 773
PATENT for saline lands, to issue to purchaser .. 981
for school lands .. 989
PATROLS. CHAPTER 129. .....777 778
Patrols, county court to appoint .. 777
company of, to consist of how many .. 777
to take an oath .. 777
duty of .. 777
to visit negro quarters .. 777
compensation of .. 777
captain of to be notified of his appointment .. 778
penalty on captain of, for neglect of duty .. 778
Slaves, when strolling about, to be whipped 777
allowed to go to or return from divine worship .. 778
PAUPER, permitted to sue .. 241, 638
who deemed to be, and how supported 798
PAYMENT. See titles *Administration, Justices' Courts, Practice at Law, Practice and Proceedings in Criminal Cases, and Revenue.*
PEDDLERS. CHAPTER 130. ....778 to 780
Book Peddlers, may deal without license 780
Clock Peddlers, who deemed such .. 779
to have a special license .. 780
amount of license of .. 780
penalty on, for peddling without license 780
Collector, to receive blank licenses from clerk .. 779
county court to settle with .. 779
Justice, when informed of violation of this act shall cause offender to be arrested 780
duty of, when offender is brought before him .. 780
License, what it shall state .. 779
clerks of county court to issue in blank 779
who may obtain license .. 780
Limitation, prosecutions limited .. 778
Peddlers, who declared peddlers .. 779
who may obtain license .. 779

Digitized by Google

PEDDLERS.
Peddlers, not to deal without license, or sell liquors 778
penalty on for dealing without license .. 779
for refusing to exhibit license 780
officers and householders, duty of in informing on 780
PENAL BONDS. CHAP. 131. ..781 to 785
Declaration shall set out condition of bond, and assign breaches 781
Defendant, what may plead, in bar 781
may cause suit to be discontinued, on payment of principal, &c 782
when discharged from all further liability 784
Damages, when and how assessed 782
other proceedings, to obtain 783
Execution, form and direction of 782
effect of; how proceeded on 783
Judgment, how rendered 782
for penalty, to remain as security for further damages, &c 782
for defendant, bar to suit on same bond, by same relator 783
when suits not barred, by plea of 784
and execution, how satisfied 784
Judgments, proceedings, when there are several 785
executions upon, money how apportioned 785
Jury to assess damages for breach 782
Official Bond, suits on, to be in name of the state 783
who may sue thereon 783
may sue again upon such 784
suit upon, to use, deemed private, when 784
Plaintiff shall assign specific breaches ... 782
Pleadings, &c., how they shall be had 783
Scire Facias, when plaintiff may have 783
when it shall be barred 783
when not to be brought 784
Security, proceedings, in estimating his liability 784
Suits, who may bring, under this act, and against whom suits may be brought .. 785
PENITENTIARY. CHAP. 132. ..786 to 792
Convicts, penalty for receiving reward from 788
clothing, food, and diet of 789
quality of clothing, food, &c 789
not to furnish with spirituous liquors .. 789
penalty for conveying letters to or from United States', attempting to escape, how punished 789
may be brought out, by habeas corpus, to testify 791
competent witnesses, when 791
provision for retaking 791
Inspectors, who shall be; shall take oath 792
two shall be a quorum 786
compensation, and duty of 786
to examine into discipline, treatment, &c., of convicts 786
shall report to legislature, when 787
what report shall set forth 787
shall provide for religious instruction .. 787
shall keep minutes of proceedings 788
shall provide convict with bible 790

PENITENTIARY.
Lessee, duty of, relative to inspectors 788
to receive felons, &c 788
to take charge of money and property of convict, and keep an account thereof 790
to furnish discharged convict with clothes and money 790
to keep a journal, &c 790
what entries to make therein 791
shall receive convicts under laws of United States 791
liability to penalty, for neglect or violation of duty 791
to have authority of sheriff, in certain cases 792
Penitentiary shall be maintained at Jefferson City 786
Physician shall keep a register of sick, &c 788
PENITENTIARY, escaping from 383
PERJURY defined, punishment 377
PERPETUATING TESTIMONY.
CHAPTER 133. ART. I. ....792 to 798
Clerk of Circuit Court, duty of, on receiving depositions 795
Commission, to take depositions granted on petition 793
by whom issued; to whom directed 793
Depositions, may be taken to perpetuate testimony 793
how certified, and to whom delivered .. 794
when may be sent by mail or otherwise 794
in what cases may be read 795
all legal exceptions may be taken to 795
Justices or Clerk, shall attend to take depositions 794
shall reduce answer of witness to writing 794
power of, to adjourn from day to day 794
Notice, of taking depositions, to be given 793
upon whom served in certain cases 793
publication of, in newspaper, when 793
questions to be reduced to writing 794
Witnesses, summons, &c., by whom issued 794
answers of, to be reduced to writing ... 794
ARTICLE II.
Corners of Land, if perishable, survey may be made 795
may be established by testimony 796
County Surveyor, duties of, in establishing decayed corners, making out plats, &c 796, 797
Costs, how paid 797
Evidence, plats, certificates, depositions, and certified copies thereof, &c 797
Justices, duty of, in procuring surveyor and witnesses 796
to examine witnesses, when and where 796
shall have power to adjourn 796
shall reduce examination of witnesses to writing 796
Notice, to take depositions, to be given .. 797
Recorder, shall record plat and certificate of survey and depositions, delivered to him by the county surveyor 797
Testimony, to establish decayed corners, how taken 796
PERRY COUNTY, limits defined 788
PERSON, meaning of term in criminal cases 115

Digitized by Google

PETITION, right of, not to be abridged ... 13
right of people to, declared ... 43
for assignment of dower ... 433
in cases of escheat ... 465
in suits for freedom ... 532
for habeas corpus ... 556
for erection of mill dam ... 744
to foreclose mortgage ... 749
for partition ... 766
for commission to perpetuate testimony 793
for county roads ... 962
for incorporation of towns ... 1048
for change of venue ... 1072
for right of way ... 1074
to contest validity of will ... 1083
See titles *Attachments, Administration, Practice at Law, Practice and Proceedings in Criminal Cases, and Practice in Chancery.*
PETITION IN DEBT, action by, regulated 800
See title *Practice at Law, Petition in Debt.*
PETIT LARCENY ... 359, 413
PHYSICIAN, prescribing when intoxicated 347
administering to procure abortion ... 351
exempt from serving as juror ... 627
not to be required to disclose information given by patients ... 1090
PIKE COUNTY, limits defined ... 263
PLATS, made by officer of French or Spanish governments, evidence ... 468
of towns and villages, to be recorded .. 1056
PLATTE COUNTY, limits defined ... 263
PLEADINGS, in proceedings by address ... 59
in complaints by and against apprentices and masters ... 118
in cases of attachment ... 142, 150
in proceedings against attorneys ... 159
by and against boatmen, ... 77, 78
in actions against boats and vessels ... 182
to be attached together in form of roll 333
forgery of ... 371
in actions of detinue ... 423
in suits for divorce ... 427
in suits for dower ... 433, 434
in actions of ejectment ... 441
in cases of escheat ... 463, 464
in forcible entry and detainer, complaint 513
in suits for freedom ... 533
in suits under act to restrain gaming ... 539, 540
in cases of habeas corpus ... 562
in cases of impeachment ... 572
in cases of usury ... 614, 615
in cases of ad quod damnum ... 744
in foreclosure of mortgage ... 749, 750
in cases of partition ... 766
in actions on penal bonds ... 681, 682, 683
in cases of quo warranto ... 913
in actions of replevin ... 922
in certain actions of trespass ... 1070
in cases of contesting will ... 1083
See titles *Practice at Law and Practice in Chancery.*
POLK COUNTY, limits defined ... 278
POOR. CHAP. 134. ... 798, to 800
County Court, shall use its discretion in granting relief to ... 799

POOR.
County Court, may allow funeral expenses 799
may purchase lands ... 799
shall prescribe rules for government of poor house ... 799
may remove superintendent and appoint another ... 800
County Treasurer, duties of ... 799
shall keep account of funds separate, &c 800
Inhabitant, who deemed such under this act ... 798
Poor, by whom supported; order for relief 798
Poor House, may be erected ... 799
superintendent of, shall be appointed ... 799
duty of ... 799
Poor Persons, who shall be deemed such 798
Poor Tax, manner of levying ... 799
PORTER HOUSE, keeping open on Sunday 405
POSSE COMITATUS, may be summoned 396, 403
to aid execution of process ... 763
POSSESSION, adverse does not invalidate deed to land ... 219
within 20 years, necessary to maintain ejectment ... 373
POSTHUMOUS CHILDREN, to inherit ... 421
of testator, not provided for, to inherit 1080
POSTING, for not fighting a duel ... 394
POWER, by will, to sell lands, by whom executed ... 83
of attorney, to sell lands, to be acknowledged or proved, and recorded ... 226
revocation of, to be recorded ... 226
PRACTICE AT LAW—PETITION IN DEBT. CHAPTER 135 ... 800 to 803
Assignee, must set out assignments ... 802
Bond or Note, holder of may commence suit by petition in debt ... 800
Common Law Actions, on bonds, bills, and notes regulated ... 802, 803
Defendant, shall plead to merits, when ... 802
when to plead to common law actions ... 802, 803
Petition, form of ... 801
instrument sued on and assignment must be filed ... 802
Suit, when to be determined ... 802
Writ, how sued out, executed and returned ... 802
PRACTICE AT LAW. CHAPTER 136. ... 804 to 835
Abatement, plea in, to be sworn to ... 810
when determined ... 811
Actionem non, allegation dispensed with 834
Administrator, not to be made liable for false pleading ... 813
Affidavit, for continuance ... 817
to obtain appeal ... 831
Allegation, want of, when not to stay verdict or affect judgment, ... 827
Amendment, of process, pleading, &c. allowed ... 826, 827
to be allowed after arrest of judgment 828
Answer, to petition for discovery, effect of 819
Appeal, when to be allowed, proceedings to obtain ... 831
Appearance, defendant must make, at return term, when ... 809
at second term, when ... 809

Digitized by Google

PRACTICE AT LAW.
Arrest of Judgment, motion for, when made 829,
Assumpsit, what necessary in declaration, for money received contrary to statute 830
Attachment, suits by, when to be brought 812
Averment, want of, when not to stay verdict or affect judgment 805
Bill of Exceptions, how taken 820, 827
Books, production of, may be compelled 821
party failing to obey order, proceedings 817
Cause of Action, joint against several 818
Clerk, to make out and put up docket 811, 812
to issue subpœnas for witnesses 832
penalty against, for failure 832
Consolidation of actions, when 832
Continuance, to bring in parties 825
how applied for, proceedings to obtain 809
second application for, what affidavit to state 817
may be refused, when 817
Contract, action on, against several, judgment 812
Copy, of declaration, to accompany counterpart attachments 805
service of writ by 805
of pleadings filed in vacation to be served 810
Costs, in suits by infants, guardian or next friend responsible for 807
in case of a multiplicity of suits 825
Counts, imperfect, may be stricken out 819
several, verdict good, though some may be defective 831
Court, may try issues of fact, when 819
Damages, inquiry of, when and how made 815
to be stated on record and suit to proceed 823
Death, to be stated on record, and suit to proceed 823
Debt, action of, for money received contrary to statute 812
Declaration, to be signed by party or attorney 810
in detinue or trover, what necessary 813
Default, interlocutory, when 814
may be set aside, before damages assessed 814
against part of several defendants 815
how made final 815
Defects, in record, pleadings, &c., may be amended, after judgment 826
what not to stay verdict, or affect judgment 827
Defendants, several, in different counties, separate writs against 805
infant, guardian to be appointed 807
some served, and some not, proceedings may plead as many pleas as they deem necessary 809
interlocutory default against 813
Demurrer, joinder in, when may be filed 814
not to be sustained, if matter substantially set forth 810
may be joint and several, and sustained in part, and overruled in part 811
when to be determined 811

PRACTICE AT LAW.
Demurrer, form of 835
Destroyed, instrument of writing, may be sued on 812
profert unnecessary, destruction to be averred 812
Detinue, declaration, contents 813
Devisees, of deceased plaintiff or defendant may appear 823
Dilatory Plea, to be sworn to 810
when to be determined 811
Discontinuance, as to defendants not served with process 809
when not to stay verdict, or affect judgment 827
in vacation, allowed 832
Discovery, may be had, how obtained 818
petition and order for, to be filed and served 818
proceedings in, as in court of equity 819
answer to, effect of 819
when petition for, to be taken as confessed 819
Docket, to be made out by clerk, and put up in office 832
Documents, production of, may be compelled, proceedings 817
party failing to obey order for, proceedings 818
Duplicity is a substantial objection to pleadings 811
Election of pleas, may be compelled 813
Error of law, by triers of fact, good reason for a second new trial 830
Essoign not to be allowed 809
Evidence, on issue joined on plea of justification under statute 813
of contents of lost instrument, when taken 821
Exceptions, how taken 820
Execution stayed by appeal 831
Executor, not to be made liable, by reason of false pleading 813
so of executor, de son tort 813
of deceased plaintiff or defendant, may appear in suit 823
dying before judgment, suit not to abate 823
Extension of time for pleading, when 810
Fact, issues of, how tried 819
Failure of consideration of specialty, may be inquired into 832, 833
False Pleading, ex'r or adm'r, or surety of, not to be made liable by 813
Female parties to suits marrying, husbands to be made parties 824
Feme Sole party to suit marrying, husband to be made party 824
Forms, ancient, parties not to be prejudiced by 811
General Issue, in actions against officers, what evidence under 813
to declaration in tort and trespass joined, evidence under 833
Guardian to prosecute suits by infants 807
responsible for costs 807
to be appointed for infant defendant 807
not to be liable for costs, unless 807
Heirs, may appear in suit, when 823

Digitized by Google

PRACTICE AT LAW.

Husband to be made party, when 824
Imperfect Counts may be stricken out 819
Imperfections, in process, pleading, &c., to be amended after judgment, when what not to stay verdict, or affect judgment 826
Incompetency of witness, not to prevent his being sworn 827
Indemnity, bond of, when recovery is had on lost instrument 833
Infants, suits by, how commenced and prosecuted 806, 807
in suits against, guard'n to be appointed 808
appearance of, by attorney, not to stay verdict or affect judgment, when 827
Informality in entering judgment, or making record, not to stay verdict or affect judgment 815
Inquiry of Damages, when and how to be made 812
Instrument of Writing, lost or destroyed, may be sued on 820
in such case, profert unnecessary, loss or destruction to be averred 812
sued on, when profert to be made 812
sued on, evidence, unless denied on oath 819, 820
in suit against ex'r or adm'r, must be proven 820
want or failure of consideration, may be alleged 832
Insufficient Pleading, when not to stay verdict, or affect judgment 827
Interest, of witness, not to prevent his being sworn 833
damages, in nature of, may be allowed 834
Interlocutory default, when 814
may be set aside, before damages assessed 814
against part of several defendants 815
how made final 815
Interrogatories, with petition for discovery 818
Irregularity, motion to set aside judgment for, when to be made 831
Issue, general, in actions against officers, special matter may be given in evidence under 813
so, in case of persons acting under command of officers 813
of law, to be first determined 816
of fact, how tried 819
general, to declaration in tort and trespass joined 833
Jeofail not to stay verdict, or affect judgment 827
Joinder, in demurrer, when may be filed .. 810
of counts in tort and trespass, evidence 833
Joint cause of action against several, all or any may be sued 811, 812
Judgment, action or scire facias on, payment may be pleaded 813
by default, interlocutory, when 814
may be set aside before damages assessed 814
of non pros, when 814
may be set aside, when 815
by default, interlocutory, against part of several defendants 815

PRACTICE AT LAW.

Judgment, by default, how made final 815
where party dies after verdict, when entered 823
not to be, where party dies before verdict actually entered 823
not to be reversed for certain defects 827
motion for arrest, when made 829, 830
motion to set aside for irregularity, when 831
Jury, to assess damages 815
to try issues of fact 819
guilty of misbehavior, good cause for second new trial 830
Leave of Court, not to be stated in pleading 835
Local Description, when to be given 834
Limitation, of motions to set aside judgment for irregularity 831
Loss, of instrument in writing, when adverse party may be examined as to .. 821
Lost, instrument of writing may be sued on 812
profert unnecessary, loss to be averred 812
evidence of contents of, when taken 819, 820
Misbehavior, of jury, good cause for second new trial 830
Miscontinuance, not to stay verdict or affect judgment 827
Misjoinder, of issue, when not to stay verdict, or affect judgment 827
Mispleading, not to stay verdict, or affect judgment 827
Mistake, when not to stay verdict, or, &c. 828
Motion, for new trial and arrest of judgment, when to be made 829, 830
to be accompanied with reasons 830
to set aside judgment for irregularity, when to be made 831
Negligence, of officer or attorneys, when not to stay verdict or affect judgment 828
Negotiable Security, in hands of bona fide endorsee, consideration not to be impeached 833
New Parties, to suits, how brought in 824
entitled to continuance, when 825
New Process, to bring in parties 809
New Trial, motion for, when made 829, 830
to be accompanied with reasons for 830
one only to be granted, unless 830
costs of, how awarded 830
Next Friend, in suits by infants, how appointed 807
to give bond to infant 807
to be responsible for costs 807
petition, consent, and bond to be filed .. 809
Non-Age, suit not deferable for 807
Non est Factum, must be pleaded under oath 819, 820
Non-Resident, may be sued, where 805
Non-Suit, plaintiff not to suffer because of failure to prove all defendants liable 812
not allowed after submission 821
Notice, how and by whom served 805, 806
of motion to strike out imperfect counts 819
of want, or failure, of consideration may be given 832
Officer, in actions against, defendant may plead the general issue, and give special matter in evidence 813

Digitized by Google

PRACTICE AT LAW.
Officer, persons acting under command of, may plead how 813
death or removal of, suit to survive to successor 824
Omission, of allegation or averment, when not to stay verdict, or affect judgment may be supplied 828
Order, for production of books, papers and documents, when ..... may be vacated, when ..... party failing to obey, proceedings ..... for discovery, when made, to be filed and served ..... 818, making new parties, when ..... allowing appeal, when 831
Original Writ, to be summons, when not otherwise provided 805
how served and returned 805
Oyer, of writing declared on 817
Papers, production of may be compelled. 818
party not obeying order for, proceedings
Payment, plea of, to action on bond or judgment 813
Petition, for production of books, papers and documents ..... for discovery, to be presented, filed and served 822
when taken as confessed 810
Plaintiffs, one or more of several dying, suit not to abate 819
Plea, in abatement, or dilatory, shall be sworn to 810
to the merits, when to be filed ..... as many as are deemed necessary may be filed ..... election of, may be compelled ..... of payment to action on bond or judgm't of non est factum, to be under oath 819, form of commencement of 834
Pleading, time for may be extended 810, may be amended, when ..... amended, adverse party to have opportunity to answer 811
Pleadings, to be signed by party, and filed after replication, when to be filed ..... filed in vacation, copy to be served 826
Precludi Non, allegation of dispensed with 826
Proceeding, may be amended, when 810
Process, may be amended, when 834
default or defect of, not to stay verdict or affect judgment 811
Prochein Ami, in suits by infants, how appointed 826
Profert, want of is substantial defect 826
not necessary in declaring on lost or destroyed writing 826
when to be made 826
Proper Person, suits may be conducted in 807
Protestation, in pleading, dispensed with 811
Reasons, for new trial and arrest of judgment to be filed 824
Recognizance, of appeal, to be taken 831
Record, defects, imperfections, and variances in, when to be amended 826
Referees, may try issues of fact 819
Reference, of suits, when and how made .. 825
Refusal, of service of writ, equivalent to 806
Refusal, of continuance, when 817
Rejoinder, several, may be allowed 813
Replications, when to be filed 824
filed in vacation, copy to be served 824
to plea of justification under a statute 828
several, may be allowed 828
Resident, where to be sued 817
Return, of writs, how made 818
may be amended 818
imperfect or insufficient, not to stay verdict, or affect judgment 819
Revival, of suits upon death of parties 824
Scire Facias, to make new parties 831
how obtained, service and return of ... 805
to revive judgment, when to be brought 806
Several Actions, costs in, how disposed of 812
Several Defendants, in different counties, separate writs against 817
judgment against 818
interlocutory default against part 818
survivors of, may be prosecuted 813
Several Plaintiffs, death of one or more not to abate suit 817
Similiter, when may be filed 818
Special Matter, may be given in evidence under general issue, when 819
so under plea of justification under statute 822
Specialty, consideration may be impeached 810
Statutes, how referred to in pleadings 810
justification under, how pleaded and replied to 810
evidence under plea of 813
Subpœna, for witnesses, to issue 813
Substitution, of parties, how made 813
Suits, how and when commenced 820
by infants, by whom prosecuted ... 834
not deferrable for non-age of parties ... 811
to be continued at return term, and tried at second term 826
to survive to surviving plaintiffs, and against surviving defendants 826
may be dismissed in vacation 840
Summons, to issue, when 810
to be annexed to, or endorsed on, declaration 834
date; to whom delivered; service; return 826
Sureties, of executor or administrator not to be made liable for false pleading .. 826
Surviving, plaintiffs, may prosecute suit 827
defendants may be prosecuted 811
Time, for pleading may be extended, when 807
Trespass, counts in, may be joined with counts in tort 811
general issue to such declaration, evidence 811
Trial, to be had at second term 812
may be stayed till order for discovery complied with 812
motion for new, when to be made .. 812
Trover, declaration, contents 812
Vacation, pleadings filed in, copy to be served 812

Digitized by Google

PRACTICE AT LAW.
Vacation, suits may be dismissed in 832
Variance, in record, when to be amended 826, 827
not to stay verdict or affect judgment ... 827
Venire, award of, may be amended 827
Venue, want of a right, not to stay verdict or affect judgment 828
how laid in declaration 834
Verdict, not to be stayed, when 827
good, though some counts defective 831
Voluntary Appearance, when 804
orders making new parties, to be upon .. 824
Wager of Law, abolished 809
Warrant of Attorney, not necessary 809
want of, not to stay verdict, or affect judgment 827
White Person, of family, service of writ on 806
Witness, to testify, notwithstanding incompetency on account of interest .. 833
mode of preserving evidence of his being sworn 834
Writ, not to issue without declaration 804
to be endorsed on, or annexed to, declaration 805
date, to whom delivered, service, and return 805
separate to different counties, when 805
original to be summons, where not otherwise provided 805
want of, not to stay verdict, or affect judgment 827

PRACTICE IN CHANCERY. CHAPTER 137. ..... 835 to 853
Abatement, by death of parties, when, and when not to take place 847, 848
Account, duty of commissioner in relation to taking 846
of money received on foreclosure of mortgage 852
Acquittance, decree for, equivalent to 852
Administrator, dying, resigning, or removed, suit to survive to successor .. 850
Affidavit, of non-residence of defendants of unknown parties 837
before whom to be sworn to 838
for continuance 841
Allegations, as to contents of books, deeds, &c., when taken as confessed 844
Amended Bill, by representatives of deceased complainant, may be filed 843
Amendment, of bill, petition, answer, plea, and replication, when allowed 849
Answer, when to be filed 839, 840
nature of; to be under oath, or affirmation 841
cross interrogatories to complainant ... 841
of complainant, when evidence 841
insufficient, further to be filed 841
second, deemed insufficient, defendant to pay double costs, and answer instanter 841
third, seemed insufficient, defendant to pay treble costs, and bill taken as confessed 841
to cross bill not to be required until sufficient answer is filed 842

PRACTICE IN CHANCERY.
Answer, at hearing on bill and answer to be taken as true 842
when not conclusive 842
to be signed by party or solicitor, and filed 843
time for filing may be extended 843
may be amended 843
of deceased party, to be taken as answer of representatives 848
further answer by representatives, how obtained 849
Appeal, when and how obtained 853
by order of supreme court, or judge ... 853
recognizance to be given upon 853
Appearance, when defendant to make .. 839, 840
of representatives of deceased defendant, to be entered by court, when 848
Attachment, to compel production of books, deeds, &c., when 843
to compel answer, by representatives of deceased defendant 848
to put party in possession of property 852
to enforce orders and decrees generally 852
Bill, to be filed 837
copy of, to accompany summons and be delivered 837
when taken as confessed 840
not to be dismissed after cross bill, without defendant's consent 842
to be signed by party or counsel and filed 843
may be amended 843
of revivor, of suit against defendant, not necessary 848
dismissed by court for failure of representatives of deceased complainant to appear 849
of review, when allowed, proceedings . 851
Bill of Exceptions, allowed 845
Books, production of, may be compelled . 842
allegations as to contents of, when taken as confessed 843
Commission, to take depositions, to issue . 845
Commissioner, to be appointed, his powers and duties 845
special, when to be appointed 846
oath of 846
Complainant, may dismiss as to some defendants and proceed against others, or take process to bring in others 838
dying, proceedings 847, 848
Continuance, to bring in parties, when ... 838
costs of, regulated 844
to be on affidavit 844
Conveyance, under foreclosure of mortgage, not affected by setting aside decree 852
decree for, equivalent to 852
Copy, of bill, to accompany summons 837
to be delivered to defendant 837
of record, relied on, when to be filed .. 842
of original paper, when to be left 843
Costs, of exceptions, demurrers and pleas, how paid 840
of exceptions to cross bill 841
double and treble, when to be paid 841
of amendments and continuances 843

Digitized by Google

PRACTICE IN CHANCERY.
Cross Bill, when allowed, how answered 840
not answered, bill to be dismissed 841
exceptions to, when to be filed 841
answer to, not to be required, till defendant files sufficient answer 824
Curator, dying, resigning, or removed, suit to survive to successor 850
Damages, in lieu of performance, when 853
Death, of parties, proceedings 847, 848
Decrees, how enforced 852
interlocutory, when, how, set aside 840
not binding on representatives of deceased parties, to which they are not parties 851
final, may be set aside, on bill of review when equivalent to conveyance, release, or acquittance 851
Deed, relied on in bill, answer, or plea, to be set out 852
original, when to be filed as exhibit 842
party not able to produce, to file best evidence of, in his power 843
production of, may be compelled 842
allegations as to contents of, when taken as confessed 842
Defendant, not found, non-resident, or unknown, proceedings 837, 838
non-resident, may be served any where in the United States, how 838
when to appear, failing, proceedings 840
to answer amended bill of representatives of deceased complainant 849, 850
Demurrer, to bill, when to be filed 839
to be considered, without delay 840
costs of, how paid 840
to be disposed of, before proceeding on answer 842
to be signed by party or solicitor, and filed 843
time for filing, may be extended 843
Depositions, may be taken and read 845, 846
commission for, to issue 846
Disclaimer, when to be filed, by representatives of deceased defendant 848, 849
Dismissal, as to parties not served, when of bill, for failure to answer cross bill 838
of bill, after cross bill, not allowed, without consent of defendant 841
of bill, by court, for failure of representatives of deceased complainant to appear 842
of suit, when 849
Disproof of answer, when 850
Docket to be made out 842
Double Costs, when allowed 844
Evidence, complainant's answer to cross bill 841
exhibits to be, when 843
rules of, to be same as at law 845
Exceptions, by defendant, to bill, when to be filed 839
not after decree nisi 840
to be argued and determined without delay 840
allowed, complainant to pay costs 840
overruled, defendant to pay costs 840
to cross bill, when to be filed 841

PRACTICE IN CHANCERY.
Exceptions, to be signed by party, and filed 843
bill of, allowed 845
to report of commissioner, how made 846
Executor, or guardian, dying, resigning or removed, suit to survive to successor 850
Exhibits, to be filed, when 842
to be marked, numbered and filed 843
evidence, when 843
Extension, of time for answering, &c 843
Hearing, case to be for, at next term after replication filed 842
on bill and answer, when 842
Husband, of female party, when to be brought in 850
Inquiry, of damages to be allowed in lieu of performance 852, 853
Interlocutory Decree, when 840
Issue, cause deemed at, when replication filed 842
may be ordered by court; how tried 844
Jurisdiction, of courts of chancery 836
Jury, to try issues directed by court, when to ascertain damages in lieu of performance 853
List, of causes to be set up 844
Marriage, of female party, husband to be brought in 850
New Trial, when granted 844
Nisi Decree, when 840
Non Residents, suits against, where bro't 837
publication as to 837
may be served any where in U. S., how 838
Notices, by commissioner, how served 846
Oath, answer to be under 841
of commissioner 846
Officer, dying, resigning, or removed, suit to survive to successor 848
Order, of publication, when made and how published 837
for production of books, deeds, &c 842
failure to comply with, proceedings 843
as to representatives of dec'd defendant 849
Original, deeds, &c., to remain on file 843
when may be withdrawn 843
Performance, may be commuted by damages, when 853
Petition, to be signed by party or solicitor 843
may be amended, when 843
to revive suit against representatives of deceased defendant 848
what to state when further answer is wanted 848
copy of, to accompany summons 849
substance of, to be stated in publication 848
by defendant, to revive suit in name of representatives of deceased complainant 848
by defendant, to revive against representatives of co-defendant 848
Plea, when to be filed 839, 840
not after decree *nisi* 840
may embrace several matters 840
not to be joined with demurrer or answer, unless 840
costs of, how paid 840
to be disposed of before proceeding on answer 842

Digitized by Google

PRACTICE IN CHANCERY.
Plea, to be signed by party or solicitor, and filed 843
time for filing may be extended, when 843
may be amended, when 843
Pleadings, to be signed by party or solicitor, and filed 843
Possession, writ of, when allowed 852
Publication, when made 838
as to representatives of deceased defendant 848
Real Estate, suits concerning, where to be brought 836
Recognizance, of appeal, when 853
Record, relied on, in bill, plea, answer, to be set out 842
exemplification of, when to be filed 842
Release, decree for, equivalent to 852
Replication, may be general, when to be filed 842
to be signed by party or solr, and filed 843
time for filing may be extended 843
may be amended, when 843
Reporter, of testimony taken in court, may be appointed 845
compensation of 845
Representatives, of deceased parties, proceedings by and against 848, 849
provisions in relation to, how construed 850
not bound by order or decree to which they are not parties 850, 851
Review, bill of, when allowed 851
what to contain 852
Revival, of suits after death of all parties 848
Revivor, bill of, not necessary 848
Sale, of property under foreclosure of mortgage, not affected by setting aside decree 848
Scire Facias, when to issue, to bring in representatives of deceased defendant 848
how served 848
Sequestration, to put party in possession of property 852
Successor, of public officer, trustee, guardian, curator, executor, administrator, how made party to suit 850
Suits, how and where brought 836, 837
against non-resident and unknown parties 837
how revived 848
Summons, to issue, when 837
separate to different counties, when 837
to be accompanied by copy of bill 837
how served 837
when issued against representatives of defendant, how served 848
Surviving, of suits 848, 849
Survivor, may make representatives of deceased complainant parties 849
Testimony, of witnesses examined in court may be reduced to writing 845
Time, of answering, pleading, &c., may be extended, when 843
Treble Costs, when allowed 841
Trial, when to be had 842
of issues directed by court, how 842
Trustee, dying, resigning, or removed, suit to survive to successor 850

PRACTICE IN CHANCERY.
Unknown Parties, how notified 838
Verdict, issues directed by court, to be disposed of by 842
Witnesses, may be examined in court 844
testimony of may be reduced to writing 845
subpœnas for, to issue 846
Writing, relied on in bill, answer, or plea, to be set out 842
original, when to be filed as exhibit 842
party not able to produce, to file best evidence of, in his power 842
production of, may be compelled 842
allegations as to contents of, when taken as confessed 843

PRACTICE AND PROCEEDINGS IN CRIMINAL CASES. CHAP. 138. 854 to 900
Abatement, plea in, to be sworn to 872
Accessory, indictment against, where may be found 869
may be indicted, tried, and punished before principal 869
Administration, of effects of person sentenced to imprisonment for life 896
Affray, in presence of court or magistrate 856
Alien, not entitled to jury of part aliens 878
Answers of prisoners to be reduced to writing and certified 860
Appeal, to supreme court, by defendant 888
not to be a supersedeas unless ordered 888
by state, when allowed, effect of 889
Arraignment, prisoner not to be asked how he will be tried 872
what deemed plea of not guilty 872
Arrest, of person on complaint of intended breach of the peace 855
of offender charged with criminal offences 858
before whom to be taken 858
of escaping offender, without warrant 858
of defendant bailed, after appeal or writ of error 891
Assessment, of value of property 883
of punishment to be by jury, when by court 883
of punishment, higher or lower than law allows, judgment, how to be entered 883
may be reduced by court, when 884
Assignment, of counsel for prisoner, by court 872
of error, when not necessary 890
Attachment against magistrate, to compel return of examination for recognizances 861
Bail, offender admitted to 861
proceedings, where not allowed 861
refused, or insufficient offered, prisoner to be committed 861
amount of to be endorsed on warrant, when prisoner is committed 861
after commitment, by whom taken 862
after indictment, by whom taken 870
after supersedeas granted 889
Bill of Exceptions, allowed when 881
proceedings to obtain 881
Boat, offence committed on, where indictable 868

Digitized by Google

PRACTICE IN CRIMINAL CASES.
Breach, of the peace, threatened or intended, complaint of may be made 855
to be examined, warrant to issue 855
party complained of, to enter into recognizance, when 855
failing to give, to be committed 855
may be discharged, when 855, 856
Burglary, indictment for, in county into which goods are taken 869
Challenge, of grand jurors, when 863
of petit jurors, when 878, 879
Change of Venue, when, proceedings .. 873, 874
costs of, regulated 877
may be, as to part of several defendants 877
Chief Officer of incorporated town, conservator of the peace 855
Circuit Attorney, may be required to attend grand jury 864
not to be present, when vote taken 864
Clerk of grand jury, may be appointed, his duties 864
Commission, to take depositions, when .. 873
interrogatories to be annexed 873
Commitment of person charged with intended breach of the peace, when ... 855
of person charged with criminal offence 861
of witnesses 860, 861
Complaint, of intended breach of the peace, how and to whom made 855
proceedings thereupon 855
of criminal offence, proceedings 857
may be examined by two magistrates .. 861
Conservators, of the peace, who are ... 854, 855
to issue process for person charged with criminal offence 857
Conspiracy, evidence of 881
Constable, penalty against, for failing to pursue escaping offender 862
Contempt, commitment for, of persons refusing to testify before grand jury ... 864
Continuance, of indictment, until arrest of defendant 870
may be granted 880
Convict, to be taken to penitentiary 885
becoming insane, proceedings 885
female, pregnant, proceedings 886
escaping, reward may be offered, how paid 894
sentenced to imprisonment for life, his effects to be administered 896
trustee of, when to be appointed 896
powers and duties of trustee 897
creditors of, how to proceed 898, 899
discharged, trustee to deliver up effects 899
Coroner, penalty against, for failing to pursue escaping offender 862
Corporation, charter of, how proved 881
Costs, of change of venue, regulated 877
prisoner detained for, may take benefit of insolvent law 887
Counsel, may be present with prisoner, and aid in examination of witnesses 859
may be assigned by court 872
Criminal Offence, process to issue for person charged with 858
arrest of offender, and proceedings .. 858, 859
Death, punishment of, to be by hanging .. 887

PRACTICE IN CRIMINAL CASES.
Death, punishment of, suspended by insanity or pregnancy 885, 886
when inflicted after cessation of insanity or pregnancy 886
Death Warrant, to issue, what to specify 885
Degrees, different may be included in same indictment 869
verdict to specify 883
Depositions, may be taken, when, how ... 873
Discharge, of person arrested on complaint of intended breach of the peace 856
of prisoner charged with criminal offence 860
of person indicted, when 882
of convict on payment of costs, when .. 887
Disclosures, by grand jurors, when to be made 865
penalty for making 865
charge to grand jurors in reference to .. 866
of indictment, a misdemeanor 865
Dilatory Plea, to be sworn to 872
Endorsement of magistrate's name on warrant from another county, effect of .. 858
Error, writ of, when to issue 888
not to be a supersedeas, unless ordered 888
assignment of, when not necessary 890
Escape, of offender into another county, proceedings 858
Estates, of convicts, management of 896 to 900
Evidence, of witness on examination before magistrate, to be reduced to writing 860
in cases of treason, conspiracy, and rape 880, 881
of charter of foreign corporation 881
court not to sum up or comment on 882
Examination, of complaint of intended breach of the peace, proceedings 855
of complaint of criminal offence 857
of prisoner charged with criminal offence 859, 860
of witnesses for prisoner 860
to be certified by magistrate to clerk of court 861
when to be delivered to jailor 861
return of may be compelled 861
Exceptions, bill of, when 881
Execution, of sentence of death, when ... 885
may be suspended by governor or court suspended in case of insanity or pregnancy 885, 886
delayed till expiration of time, proceedings 886
to be by hanging 887
for fine and costs, when to issue 887
suspended for application to supreme court for supersedeas 888
Fees, of witnesses, not to be paid or tendered 873
Felony, punishable with death, or imprisonment for life, may be tried at any time 895
indictment for, when not so punishable, to be found within three years 895
Female, pregnant, under sentence of death, proceedings 885
Foreman, of grand jury, to be appointed . 863

Digitized by Google

PRACTICE IN CRIMINAL CASES.

Foreman, may administer oath 863
to certify indictments 866
Fugitive, from justice, warrant for to issue 894
expenses of, how paid 894
Grand Jury, number of; foreman to be appointed 863
persons summoned may be challenged 863
foreman may administer oaths, &c 863
may appoint clerk, his duties 864
may require circuit attorney to attend their meetings 864
no person other than, to be present when vote given 864
may cause witnesses to be summoned 864
proceedings against witnesses not attending, or refusing to testify ...864, 865
when second may be summoned 865
members of may be required to testify as to statements of witness before them 865
not required to disclose votes or opinions 865
not to disclose unless required by court 865
not to disclose finding of indictment 865
penalty against for disclosing 865
charge to, in relation to disclosures 866
twelve members of, to concur in finding indictment 866
Hanging, punishment of death to be by 887
Hue-and-Cry, to be raised, when 862
Indictment, twelve grand jurors to concur in finding 865
how certified 865
how presented to court 866
name of prosecutor to be endorsed on 866
returned "not a true bill," prosecutor liable for costs 866
not open to inspection, when 867
fact of, not to be disclosed, when 867
two for same offence, or same matter, first to be suspended 867, 868
against receiver of stolen goods, where may be found 868
for offence committed on boat or vessel, where found 868
for offence committed on boundary of two counties, where found 868
for offence against property of several partners, or owners, sufficient to charge as property of one 868
for offence committed in one county, where death follows in another, may be found in either county 868
for mortal injury inflicted in this state, where death takes place out of it 868
for death, following in this state, upon injury inflicted in another 869
against accessory, where found 869
for burglary and robbery, in county to which property is taken 869
shall include all engaged in same offence 869
may comprise different degrees 869
not deemed invalid for certain omissions 869
continuance of, until arrest of defendant 870
to be tried at first term, unless 871
copy of, to be delivered to defendant 871
to be tried where found, though defence pleaded as having occurred in another county 872

PRACTICE IN CRIMINAL CASES.

Indictment, against judge, to be removed to another circuit 873
for treason, overt act to be charged in indictment 880
for offence, punishable with death or imprisonment for life, may be at any time 895
for offence not so punishable, to be found within three years 895
for offences punishable with fine, within one year 895
Infants, witnesses, to procure surety for appearance 861
change of venue for, how obtained 874
Injured Party a competent witness 881
Imprisonment in county jail, to be till sentence complied with, and all cost paid may be inflicted in lieu of fine 887
Inquisition, of lunacy and pregnancy, when and how conducted 885, 886
Insanity, of convict how tried 885
Insolvent Law, prisoner may take benefit of, when 887
Instructions, court may give, to be in writing 882
Interrogatories, to be annexed to commission to take depositions 873
Jailor, to receive and keep prisoner being removed 894
Judges, of supreme and circuit courts, conservators of the peace 855
indictment against, to be removed to another circuit 893
Judgment, entered according to verdict 884
to be entered of record 884
affirmed on appeal or writ of error, proceedings 890
reversed, proceedings 890
Jury, trial to be by 878
of part aliens, not allowed 878
peremptory challenge of, when 878
number of, to be summoned 879
list of, to be delivered to defendant 879
who shall not serve on 879
challenge of, for cause 880
law in civil cases in relation to empannelling, &c., applied to criminal cases 882
court not to charge, as to matter of fact 883
to specify degree of conviction 883
to assess value of property, when 883
to assess punishment 883
assessing punishment higher or lower than law allows, judgment to be entered, how 884
assessment of punishment by, may be reduced by court 884
to inquire into existence of insanity or pregnancy 885, 886
Justices, of county courts, and of the peace, conservators of the peace 855
Kill, person threatening to, in presence of court or magistrate, proceedings 856
Limitation, of prosecutions 895
time of, how computed 895
Lunacy, inquisitions of 885
Married Women, to procure surety for appearance to testify 861

Digitized by Google

PRACTICE IN CRIMINAL CASES.
Misdemeanor, officers failing to pursue escaping offender, guilty of ... 862
grand jurors, when guilty of ... 865
person disclosing fact of indictment, guilty of ... 867
New Trial, may be granted ... 880
may be ordered by supreme court ... 890
Not Guilty, what deemed plea of ... 872
Notice, to witness, of change of venue, how given ... 877
Offender, escaping into another county, proceedings ... 858
arrested, before whom to be taken 858, 859
attempting to escape, pursuit to be made 862
property of, bound for fine and costs ... 862
Officers, penalty against, for failing to pursue escaping offender ... 887
Omissions, certain, not to invalidate indictment ... 862
Order, for change of venue, how made ... 869
for supersedeas, how obtained, effect ... 874
Owner, of stolen property, how to recover same ... 888, 893
Pardon, may be granted with conditions and restrictions ... 855
Penalty, against clerk for neglect of duty in cases of change of venue ... 895
Petition, for change of venue, what to contain ... 877
Petit Larceny, first offence, name of prosecutor to be endorsed on indictment ... 874
Pregnancy, inquisition of ... 886
found to exist, sentence of death suspended ... 886
Prisoner, may be examined ... 859
witnesses not to be present during examination of ... 860
answers of, to be reduced to writing, and certified ... 860
discharge of, when ... 860
admitted to bail, or committed ... 860, 861
to have copy of indictment ... 871
counsel for, to be assigned ... 872
where to be tried ... 872
entitled to process for witnesses ... 872
when to be present at trial, in person ... 880
when may be present by counsel ... 880
to be discharged in default of trial, when 881
to be taken to penitentiary ... 885
by what route taken from one county to another ... 885
escaping, reward may be offered, how paid ... 894
Process, to issue for person charged with criminal offence ... 858
against person indicted ... 870
for witnesses for prisoner ... 872
Property, of offender bound for fine and costs ... 887
stolen, how disposed of ... 892, 893
sale of, proceeds how disposed of ... 893
Prosecutor, to give recognizance ... 860
name, &c., to be returned ... 862
name of, to be endorsed on indictment ... 866
to pay costs, when ... 866
Public Peace, who conservators of ... 854, 855
security for keeping, may be required ... 855

PRACTICE IN CRIMINAL CASES.
Public Peace, complaint of intended breach of, made, proceedings ... 855
security to keep, may be required after conviction ... 884
Punishment, to be assessed by jury ... 883
if not assessed by jury, when by court 883
jury finding higher or lower than law allows, court to give judgment, how ... 883
assessment of, by jury, may be reduced by court ... 884
of death, warrant for, to issue ... 885
suspended by insanity or pregnancy 885, 886
when to be inflicted after cessation of insanity or pregnancy ... 886
time set for elapsed, how warrant for renewed ... 886
of death, to be by hanging ... 887
Quashing of first indictment, when two are found ... 867, 868
Rape, evidence of ... 881
Receiver of stolen goods, where may be indicted ... 868
Recognizance, to keep the peace, when ... 855
to be returned to circuit court ... 856
person bound in, to appear at circuit court ... 856
forfeited, when ... 856
deemed to be broken, only by commission of offence ... 856
to be prosecuted, when ... 856, 857
to be certified to clerk of court ... 861
when to be delivered to jailor ... 861
magistrate may be compelled to return 861
taken by another court, to be transmitted to that in which offence is to be tried ... 862
taken by officer out of court, to be filed with clerk of court ... 863
of persons committed, for refusing to testify before grand jury ... 865
given after indictment, to be returned ... 870
in cases of change of venue ... 875
of witnesses, upon continuance ... 877
may be required after conviction ... 884
what deemed breach of ... 884
of bail, after supersedeas granted ... 889
taken in open court, to be entered on minutes of court, and read to person giving ... 893
when to be in writing and signed ... 894
Reference, of controversy between trustee of convict and creditor ... 898
Reprieve, when and by whom granted ... 885
Reward, for apprehension of offender or convict, when, amount of, how paid ... 894, 895
Robbery, indictment for, in county to which goods are taken ... 869
Sale, of stolen property, when ... 893
proceeds of, how disposed of ... 893
Search, of person arrested, when ... 891, 892
Search Warrant, when and by whom issued, and how executed ... 892
Security, to keep the peace may be required 855
may be required after conviction ... 884
Sentence, transcript of, to be delivered to sheriff, when ... 884

Digitized by Google

PRACTICE IN CRIMINAL CASES.
Sentence, to be executed by sheriff, when 884
reprieve of, when, by whom 885
suspended by insanity or pregnancy 885, 886
when executed, after cessation of insanity or pregnancy 886
of death, to be executed by hanging 887
Separate Trial, by several defendants 881
Slave, change of venue for, how obtained 874
Stay, of execution of judgment, how and when obtained, effect 888, 889
defendant may be bailed after 889
Stolen Property, how kept by officer 892
owner of, proceedings by, to obtain 892, 893
may be sold, when 893
proceeds of, where to be paid 893
Subpœna, for witness before grand jury to issue 864
for witnesses for prisoner 872
Summing up, of evidence by court, not allowed 882
Supersedeas, appeal or writ of error not to be, unless ordered 888
how obtained, proceedings 888
Suspension, of first indictment, where there are two 867, 868
of execution of sentence of death, when and by whom 885, 886
Tender of fees, to witness, not necessary 873
Transcript, in case of change of venue 876
of sentence, to be delivered to the sheriff, when 884
in cases of appeal or writ of error 890
Treason, in trials for, evidence to be received only of overt acts charged 880
Trespass, name of prosecutor to be endorsed on indictment for 866
Trial, to be had at first term, unless 871
to take place in county where indictment is found, though defence pleaded as occurring in another 872
to be by jury 878
persons indicted for felony to be personally present at 880
when defendant may be present at by counsel 880
separate, by several defendants, when 881
in default of, prisoner discharged, when 881
for offence punishable with death or imprisonment for life, may be at any time 895
Trustee, of person sentenced to penitentiary, when and how appointed 896
powers and duties of 897, 898
to deliver up effects upon discharge or death of convict 899
delivery and settlement by, may be enforced 899
compensation of 900
Vagrant, may be searched, when 892
Venue, change of, in indictment against judge 874 to 876
change of, generally, provisions for 874
Verdict, how rendered 880
may be set aside, how 880
to specify degree of offence 883
to declare value of property, when 883
to declare punishment 883

PRACTICE IN CRIMINAL CASES.
Vessel, offence committed on, where indictable 868
Warrant, for person charged with intended breach of the peace, to issue, proceedings 855
on complaint of criminal offence, where executed 858
to whom to be returned, proceedings after return 858
arrest of escaping offender, without 862
for person indicted, by whom issued, where directed, how executed 870
for punishment of death 885
execution of, suspended by insanity or pregnancy 885, 886
issued by Governor after cessation of insanity or pregnancy 886
may be under hand of officer 893
to messenger after fugitive from justice 894
Witnesses, to be examined on complaint of intended breach of the peace 855
on charge of criminal offence 859
not to be present during examination of prisoner 860
for prisoner to be examined 860
not examined, may be excluded from place of examination and kept separate 860
evidence of, to be reduced to writing and signed 860
to give recognizance for their appearance 860
may be committed to prison 861
how summoned before grand jury 864
refusing to attend or to testify, proceedings 864, 865
for prisoner, process for 872
liability of, for disobeying process 872
bound to attend, without payment or tender of fees 873
depositions of, may be taken, how 873
in cases of change of venue, to attend at place to which case is removed 877
to give recognizance upon continuance 877
provisions of law in civil cases to obtain attendance of, extended to criminal cases 880
injured party, competent 881

PRACTICE IN SUPREME COURT.
CHAPTER 139. 900 to 906
Appeals, when, and to what court returnable 904
when appellant shall assign errors 904
appellant to furnish court with a concise statement of the case, &c 905
Chancery, provisions of this act, to extend to decrees and decisions therein 906
Clerk, shall sign writs of error, &c., and make return 904
how punished, for failing to make return 904
in what manner to docket cases, and to give notice 904
Court, in appeals, or writs of error, what shall decide 906
may award damages, in certain cases 906
divided in opinion, judgment of court below affirmed 906

Digitized by Google

PRACTICE IN SUPREME COURT.
Court, how judgment carried into effect.. 906
Error, what plaintiff may answer, as to other persons who ought to join, &c 901
joinders in, when filed 905
Exceptions, none shall be taken in appeal or writ of error, except, &c..... 906
Execution, when order made by court, to stay..... 903
order to stay, to be endorsed on writ... 903
if none issued, or if issued and not executed, how to proceed 903
Notice of Writ of Error, to be served on adverse party..... 904
if not served, writ to be dismissed..... 904
Writs of Error, when to issue out of supreme court 901
in what cases to issue from circuit to county court..... 901
when, and in what time to be brought.. 901
may be brought by survivor, &c 901
all living, shall join in, except, &c.... 901
persons refusing to join in, what order shall be made..... 902
any person may be permitted to join in 902
when person not appearing to join in, shall be precluded..... 902
persons' rights not impaired, when living out of the state..... 902
proceedings, when person may be permitted to join in..... 903
when execution to be stayed by..... 903
how returned, &c 904
when plaintiff shall assign errors..... 904
proceedings, when one or more plaintiffs or defendants die..... 905
when all the plaintiffs die..... 905
when all the defendants die..... 905
proceedings, when female appellee marries 905
PRAIRIES, setting fire to..... 1091
PREGNANT WOMEN, administering medicine to, to procure abortion..... 351
PRESIDENT AND VICE PRESIDENT, electors of, how chosen 459
PRESS, freedom of, guaranteed.....13, 45
for counterfeiting, making, having, &c 374, 375
PRESUMPTION, of payment, from lapse of time 721
PRINCIPAL, in second degree of felony... 409
PRISON, breaking or attempting to break, punishment 383, 384
PRISONERS. See titles *Crimes and Punishments*, *Habeas Corpus*, *Jails*, *Penitentiary*, *and Practice and Proceedings in Criminal Cases.*
PRIVATE ACTS, how proved..... 467
PRIVATE BANKS. See title *Banking.*
PRIVILEGES, of electors..... 30
of members of legislature..... 32
of witnesses..... 1088
PROBATE OF WILL, forging certificate of 367
when, where, and how made.....1078, 1079
PROCESS, against att'ys at law, on charges 159
in favor of, and against boatmen..... 177
against boats and vessels..... 182
against corporations..... 237
PROCESS, against counties..... 290
forms may be prescribed by supreme court 390
forgery of 371
officer refusing to execute..... 385
how returnable, where terms changed.. 327
in cases of detinue..... 423
in cases of dower..... 434
in forcible entry and detainer..... 513
in case of fugitive from justice 535
in cases of breach of the peace..... 673
legislature may issue 711
of ad quod damnum 744
in cases of foreclosure of mortgage.... 750
posse comitatus may be called to aid in executing 763
on information in nature of quo warranto 912
to obtain public records..... 914
in actions of replevin..... 921
to run in the name of the "State of Missouri" 1092
to be signed by officer issuing..... 1092
certain, not to be executed on Sunday, or 4th of July 1092
when alias may issue 1092
See titles *Practice at Law*, *Practice and Proceedings in Criminal Cases.*
PROCHEIN AMI. See titles *Justices' Courts*, *and Practice at Law.*
PROCLAMATION, in cases of riot..... 395
PRODUCE, severing from the soil..... 361
PROFERT. See title *Practice at Law.*
PROMISES. See *Contracts and Promises.*
PROMISSORY NOTE, made on gaming consideration, void..... 540
See titles *Bills of Exchange and Negotiable Notes*, *Bonds and Notes*, *and Crimes and Punishments.*
PROPERTY, term, in criminal cases, defined 415
what liable to, and exempt from execution 477, 478
what liable to, and exempt from taxation.....927, 928
PROSECUTOR. See titles *Practice and Proceedings in Criminal Cases.*
PROTEST, damages on..... 173
what evidence of..... 176
fees on 502
by notary public 760
PRUSSIC ACID, selling without label..... 404
PUBLIC ADMINISTRATOR, ... 108
PUBLIC BUILDING, burning of..... 354
PUBLIC, NOTARIES..... 760
PUBLIC PRINTER. CHAP. 140. 907 to 912
Advertisements, *&c.*, to be in brevier, 280 ems a square..... 909
price per square, for printing..... 911
Contracts, this act not to affect existing 912
Decisions of Supreme Court, provisions as to printing, binding, &c..... 910
Job Work for legislature and governor, to be in small pica type 909
Journals, time when shall be printed, &c 910
copy of, of each house to be furnished printer, when 911
Laws and Journals, printing of, to be superintended by certain officers..... 908

Digitized by Google

PUBLIC PRINTER.
Laws and Journals, shall be executed in small pica type, &c 909
head notes and index of, to be in brevier 909
Prices, for printing blanks and forms 909
for job work, for legislature 909
for book printing 910
for binding, with strong paper covers ... 911
for binding laws, in sheep 911
for rule and figure work 912
Public Printer, office of, established 907
to be elected by joint vote of legislature 907
shall give bond, and take oath 907
bond of, payable how, penalty and condition 908
to be elected at each session 908
vacancy of, how filled 908
what printing done by 908
time in which must be furnished with copy of laws 909
at revision session, to print and bind local and private acts only 910
accounts of, for printing, how audited and paid 911
PUBLIC RECORDS, burning building in which kept 354
stealing or embezzling 361, 362
See title *Records*.
PUBLIC SECURITY, forgery of 367
PUBLIC WORSHIP, disturbance of 404
PUBLISHING, matter tending to excite crime in slaves 342
counterfeit money 373
contents of letter 406
PULASKI COUNTY, limits defined 278
PUNCHEON, for counterfeiting 375
PURCHASERS, conveyance to defraud, punishment of parties and privies to ..363, 364
conveyances made to defraud, void 525
PUTNAM COUNTY, limits defined 264
QUALIFICATIONS of members of the legislature 29
of voters 30
of governor and lieutenant governor .. 34, 36
of judges 39
of public administrator 108
of clerks 202
of constables 210
of members of the convention 1097
of coroners 229
of justices of county court 330
of jurors 627
of justices of the peace 631
of register of lands 919
of overseer of roads 965
of inspectors of tobacco 991
QUASHING INDICTMENT, where another is found 868
writ of error, when 904
QUI TAM ACTIONS, plaintiff to give security for costs in 240, 241
QUO WARRANTO. CHAP. 141. 912 to 913
Appearance and Plea, when, and proceedings thereon 913
Defendant, found guilty or acquitted, proceedings 913
shall be allowed time to plead 913
Information, what shall be named in 912
QUO WARRANTO.
Information, several rights may be included in 912
Quo Warranto, information in nature of, to be exhibited 912
Relator, shall be allowed convenient time to plead, &c 913
RACING HORSES, on Sunday 405
on public roads 406
RAFT, of wood, destroying, burning, &c 365
See title *Salvage*.
RALLS COUNTY, limits defined 264
RANDOLPH COUNTY, limits defined 264
RAPE. See titles *Crimes and Punishments, and Practice and Proceedings in Criminal Cases*.
RAY COUNTY, limits defined 264
REAL ESTATE, mode of transfer by deed See title *Conveyances*.
corporations may hold 231
may be acquired by counties, for county purposes 292
descent of, regulated 421
dower in, regulated 430
action of ejectment for, regulated 440
escheat of, when to take place 461
liable to execution 475
possession of, how recovered by action of forcible entry and detainer 512
what conveyances of, deemed fraudulent 525
trusts of, must be in writing and recorded 527, 528
sale or lease of, when may be made by guardian of infant 551
inclosures of, regulated 575
injunctions in relation to, where all the purchase money has not been paid .. 582
sale of, by guardian of insane person .. 596
liens of judgments and decrees upon .. 622
decrees concerning, to be recorded 626
when bound by mechanic's lien 736
limitation of actions for recovery of ... 715
entry on, when to be made 715
mortgages of, how foreclosed 749
partition of, regulated 765
decayed corners of, how re-established 796
conveyances of, where recorded 917
liable to taxation 927
conveyance of, when operated by plat of town 1056
penalties for certain trespasses upon ... 1068
right of way over, how obtained 1074
wills devising, to be recorded in recorder's office 1083
definition of the term as used in title *Conveyances* 227
as used in title *Crimes and Punishments* 415
as used in title *Execution* 488
as used in title *Judgments and Decrees* 626
See titles *Administration, Attachment, Crimes and Punishments*, and *Justices' Courts*.
REBELLION, raising, aiding in 342
RECEIVERS OF LAND OFFICES. See title *Lands*.
RECEIVING STOLEN PROPERTY. See title *Crimes and Punishments*.

Digitized by Google

RECOGNIZANCE, of appeal, in cases of admeasurement of dower ... 439
in actions of ejectment ... 444
in actions of forcible entry and detainer ... 521,
in cases of persons having possession of slave suing for freedom ... 522
in cases of fugitives from justice ... 533
of prisoner on habeas corpus ... 536
of witnesses examined at coroner's inquest ... 565
in cases before J. P., of breach of peace by clock peddlers dealing without license ... 591
on writ of error to supreme court ... 673
by master of slave, on slave being delivered to him ... 780
by witnesses, for appearance to testify ... 903
See titles *Crimes and Punishments*, and *Practice and Proceedings in Criminal Cases*.
RECORDS, of courts to be kept ... 1015
judge to examine ... 1088
to be in English language ... 333
burning building in which kept ... 334
stealing or embezzling ... 324
of notaries public ... 354
RECORDS, PUBLIC. CHAP. 142. 913 to 915
Citation, when and how shall issue ... 361
obedience, may be enforced to ... 760
Office, when vacated, duty of judge of supreme or circuit court ... 914
Officer, to deliver records and papers to successor ... 915
executor or administrator shall deliver such records ... 914
penalty on for failing to make such delivery ... 914
liable for illegal detention, &c ... 914
Public Records, private persons in possession of shall deliver them ... 915
failing to do so, how proceeded against ... 915
Sheriff or Coroner, writ may be directed to executing such, may break open doors trunks, &c., and may arrest any person resisting executing such writ, &c. ... 914
penalty on, for not executing such writ ... 914
RECORDERS' OFFICES. CHAPTER 143. ... 915 to 919
Index, of what instruments to be kept ... 918
what shall contain ... 918
general, to all books and records to be kept ... 918
of book containing officers' commissions to be kept ... 918
Instruments of Writing, certain, to be recorded in separate books ... 917
list of, deposited for record to be kept ... 917
Recorder, office of, in each county to be styled, &c ... 915
where office of shall be kept ... 916
duty of ... 916
who shall ex officio hold the office ... 916
shall give bond, in what sum; condition ... 916
bond of where deposited ... 916
penalty for entering on duties, without giving bond ... 916

RECORDERS' OFFICES.
Recorder, in what time shall give bond ... 916
what seal shall use ... 916
county court shall settle with ... 916
what his duty to record ... 917
what manner shall record ... 917
shall certify on instrument, the date of reception, in what book recorded, &c ... 917
liability of, for neglect of duty ... 918
penalty for neglect ... 919
not bound to make a record without fee paid or tendered ... 919
REDEMPTION. See titles *Administration*, *Mortgages and Revenue*.
REFEREE, bribing or receiving bribe 378, 379
REFERENCE. See titles *Account*, *Arbitrations*, *Practice at Law*, *and Practice and Proceedings in Criminal Cases*.
REFUSAL, of officer, to execute process ... 385
REGISTERS OF LAND OFFICES. See title *Lands*.
REGISTER OF LANDS. CHAP. 144. ... 919 to 920
Register, office of, established ... 919
qualifications of; by whom appointed; term of office ... 919
shall reside, and keep office at Jefferson City ... 920
to give bond, and take oath ... 920
bond of, where filed ... 920
duty of, relative to books, &c., of office ... 920
shall communicate information, when and to whom ... 920
shall keep a seal of office, &c ... 920
liability of, for neglecting or refusing to perform duty ... 920
for wilful neglect, subject to indictment ... 920
REGISTRY, of marriages to be kept by persons solemnizing ... 730
of colored apprentices bound by county court ... 755
of licenses granted to free negroes and mulattoes ... 756
of lands sold for taxes ... 950
REJOINDER of several matters, allowed ... 814
RELIGION, law respecting establishment of, not to be passed ... 13
free exercise, and opinions concerning, guaranteed ... 43
RELIGIOUS CORPORATIONS not to be established ... 43
RELIGIOUS MEETINGS, disturbance of ... 404
RELINQUISHMENT of dower, by married women ... 224
RENTS AND PROFITS may be recovered, in ejectment ... 443
RETURN, falsifying, destroying, &c ... 368
See titles *Justices' Courts, and Practice at Law*.
REPLEVIN. CHAPTER 145. ... 921 to 923
Defendant, may plead not guilty; what it will put in issue ... 922
not required to make election, until, &c ... 922
may cause damages and costs to be levied ... 922
when elects to take damages, property vests in plaintiff ... 922
may sue on plaintiff's bond, for violation of condition, &c ... 923

Digitized by Google

REPLEVIN.
Judgment, against whom and for what, shall be given, in certain cases 922
Officer, remedy of, on plaintiff's bond 923
failing to return bond, or returning insufficient one, liable for damages 923
Replevin, Writ of, in what cases maintainable 921
no cross, shall be brought 921
not issued, till affidavit be filed 921
command of 921
not executed till plaintiff gives bond ... 922
how executed 922
failure to prosecute, proceedings, &c ... 922
REPORTER. CHAP. 146. .....923 to 926
Causes, title of, prefixed, note of points, &c. to be published 925
Clerk, to endorse day of filing opinion 924
penalty on for failing to do his duty 924
duty of 924
Clerks of County Courts, shall deliver to each justice of county court one copy of each volume of reports 926
Clerks of S. Court, compensation of for transcripts 926
Counsel, to make briefs and file them 924
Index to each volume to be made out 925
Opinion shall be reduced to writing, and filed 924
what it shall contain 924
Reporter, the attorney general shall be ex officio 924
duty of in certain cases 924
shall prefix notes to decisions 925
shall let out contracts for printing and binding 926
compensation of 926
REPRESENTATIVES, in Congress, election, qualification, &c 4, 213, 214
in Legislature 30, 114, 115, 708
REPRIEVES, may be granted by President of U. States 9
by Governor 35
See title *Practice and Proceedings in Criminal Cases.*
RESCUE, of offender 381, 382
RESISTANCE, of officer in riots 396
RESTITUTION, writ of, in forcible entry and detainer, form of 416
power of officer under 524, 525
RE-RESTITUTION, in forcible entry and detainer 524
power of officer under 524, 525
REVENUE. CHAPTER 147. ....926 to 955
Abstract, of deeds, &c., to be made by recorder, when 933
to be delivered to assessor 933
receipt for, to be given 933
of tax book, to be made out 934
transmitted to auditor 940
Advertisement, of delinquent lands for sale, when and where to be published 948
copies of papers containing, to be deposited, where 953
certificate to accompany 953
Affirmation, may be administered by assessor, when 935
Annual Settlement, by collectors 950

REVENUE.
Appeals, from assessment, how determined 935
court of, how constituted 935
Army, of the United States, persons belonging to, exempt from taxation 928
Asses, taxable 927
Assessment, to be made, rule of 934
of omitted property, when 934
copy of, to owner, when 934
appeals from, how determined 935
Assessor, to be elected 929
vacancy, how filled 930
certificate of election, or appointment .. 930
to take oath, penalty for failing 930
to give bond 930
to require written list of property 931
list to be delivered under oath 931
to send list to assessors of other counties 932
to make personal application or leave written notice 932
to make list on his own view, when 932
to receipt for tax book 933
failing to return tax book, &c 933
to make tax book 934
to assess and value property 934
to assess property omitted, when 934
to return copy of tax book 934, 935
may administer oath 935
may be removed from office 936
compensation of 936
account for compensation to be sworn to 936
Attachment, against officer to compel settlement 943
against collector to compel settlement .. 944
Bills of Exchange, of brokers and exchange dealers, taxable 927
Bond, of collector 937
failing to give, office vacated 938
additional, when required 938
failing to give, office vacated 938
Bonds, of brokers, taxable 927
Carriages, taxable 927
Cattle, taxable 927
Cemeteries, exempt 928
Certificate, of purchase at tax sale to be given 955
Chapels, exempt 928
Chattels, to be seized and sold for taxes ... 940
Churches, exempt 928
Collector, sheriff to be, ex officio 937
bond of, when additional may be required 937, 938
failing to give, office vacated 938
of St. Louis county, how appointed 938
vacancy, how filled 938
of St. Louis county, to give bond, failing, office vacated 939
may appoint deputy, in writing 939
tax book to be delivered to 940
to seize and sell goods and chattels for taxes 940
to collect costs of sale and ten per cent. 941
receipt of, for taxes on lands, what to specify 941
to give duplicate receipts to officers 942
to settle for fines, &c., received from officers 943
to make and set up delinquent list 943

Digitized by Google

REVENUE.
Collector, to make settlement of tax list 944
attachment against, to compel settlement 944
to pay over money collected, when, &c 944
compensation of 945
lien of, upon property taxed, when he pays the tax 946
collecting taxes illegally, penalty 946
to pay county tax into county treasury 947
penalty for failure 947
to advertise and sell real estate 948, 949
to return account of sales 950
to state payment of taxes, when it has been made 951
fees of, for sales of land 953
to pay over moneys to successor 954
Compensation, of collector and officers of assessors 953
Conveyances, abstract of, to be made by recorder, and delivered to assessor 936
of lands sold for taxes 952
Corporations, property of, over capital stock, taxable 927
charters of, exempting members from tax repealed 927,
list of owners of stock of, how obtained 928
penalty against officers of, for refusing to give list of shareholders 933
stock of, when to be sold 933
rights of purchasers 941
penalty against, for refusing to give information of stock of 941
Costs, of sale of goods and chattels, to be collected 941
County Court, to appoint assessor 930
to withhold compensation of assessor 933
to hear appeals from assessment 935
may remove assessors 936
to notify governor of failure of sheriff to give bond as collector 938
to examine bond of sheriff annually 938
to cause collector to settle 942
may levy county tax 946
to correct and certify delinquent lists 948
County Tax, to be levied by county court upon what, and to what amount 946
rate of, to be fixed 946
to be paid into county treasury 947
Court of Appeals, county court to be when otherwise constituted 935
Deeds, for lands sold, when to be made, what evidence of 936
Delinquent List, to be made and set up, and returned to court 938
to be delivered to successor of collector 938
when to be credited to collector 942
to be corrected by county courts and certified to register of lands 946
Deposit, in bank of state of Missouri, to be made by collector of St. Louis county 948
Deputy Collector, may be appointed, how 939
notice of appointment to be given 940
Double Tax, when to be levied 932
Exemption, of property from taxation 928
False List, penalty for delivering to assessor 932

REVENUE.
Fees, of officers and printers 953
Fines and Forfeitures, to be collected by sheriff 941
settlement of, when to be made 942
received by other officers, how accounted for 942
Fraudulent List, penalty for delivering to assessor 932
Free Male Persons, taxable 927
Geldings, taxable 927
Gold Plate, taxable 927
Goods and Chattels, to be sold for taxes 940
Grave Yards, exempt 928
Horses, taxable 927
Hospitals, exempt 928
Household Furniture, taxable 927
Houses, taxable 927
Imprisonment, of officer, to compel settlement 943
Improvements, taxable 927
Lands, what taxable, and what exempt 927, 928
how to be described 931
tax upon, receipt for, what to specify 941
when, where, how, and by whom sold for taxes 948 to 951
registry of, sold, to be kept 950
redemption of, how and when 948, 949, 951
delinquent for 1843 and 1844, and previous years, to be sold, when 953
Licenses, taxable 927
Lien, of collector for taxes, paid by him before collection 946
List, of taxable property, to be required and delivered under oath 931
of property in other counties to be sent to assessor there 932
transmitted by mail, who to pay the postage 932
not received before return of tax book, proceedings 932
false or fraudulent, penalty for delivering 932
of delinquents, to be made and set up 943
to be delivered to successor 944
Lots of Ground, what taxable, and what exempt 927, 928
how to be described 931
Mares, taxable 927
Market House, exempt 928
Money, of brokers, taxable 927
at interest 927
Mules, taxable 927
Notes, held, by brokers, taxable 927
Oaths, may be administered by assessor 935
Officers, to pay over amount due on settlement 942
may be attached and imprisoned to compel settlement 943
to forfeit five per cent. per month, when 943
Omitted, property, how assessed 934
Payment, of revenue, when and where to be made 944
Penalties, to be collected by sheriff 941
Personalty, to be seized and sold for taxes 940
Plate, taxable 927
Pleasure Carriage, taxable 927
Printers, fees of 953

Digitized by Google

REVENUE.
Property, what liable to, and what exempt from taxation 927, 928
Public Squares, exempt 928
Quietus, when to be granted 951
Receipt, by assessor, for tax book 938
by collector, for tax book 940
of collector, for taxes on lands, what to specify 941
of collector, to officers, when 942
of succeeding to preceeding collector 954
what to specify 954
Record, of settlement, to be transmitted to auditor 944
Recorder, to make out abstracts of deeds, &c., when 933
Redemption, of delinquent lands, how and when 948, 949
Register of Lands, duties of ..... 948 to 954
fees of 953
Registry, of lands sold for taxes, to be kept 950
Removal, of assessor from office, when 936
Revocation, of appointment of deputy collector, how made 939
St. Louis County, collector appointed 938
to deposit revenue in bank 944
penalty for failure to deposit 945
Sale, of goods and chattels for taxes 940
when made, costs of, and ten per cent. to be collected 941
not to be made till after demand 940
of lands, advertisement of, when and where ..... 948 to 950
when and where to take place 948
return of, to be made 948, 949
School House, exempt 928
Securities, held by brokers, taxable 927
Seizure, of goods and chattels, for taxes 940
Settlement, by court with officers, to be made and entered of record 942
may be compelled by attachment 942
by collector, of fines, &c., received from officers 942
by collector, of tax list, or attachment to compel 944
record of, to be sent to auditor 944
Sheriff, to be ex officio collector 937
of St. Louis county, not to be collector 937
to give bond as collector 937
not to enter on office till bond given as collector 937
failing to give bond as collector, office vacated 938
bond to be given in duplicate, where deposited 938
to be examined by county court 938
when additional bond required 938
Silver Plate, taxable 927
Steamboat, shares or interest in, taxable 927
Stock, in banks, &c., taxable 927
list of shares of, how obtained 933
tax on, to be paid by company 933
Tax, to be levied, on what 927, 928
rates of 928
double, when to be levied 932
tripple, when 932
for county purposes, to be levied 946

REVENUE.
Tax Book, when to be delivered 933
to be made out by assessor, contents 934
when copy of to be returned 934, 935
to remain in clerk's office for inspection, how long 935
certified copy of, for use of collector, to be made out 935
abstract of, to be made 935
to be delivered to collector 940
Town Halls, exempt 928
Value, of property, what to be 934
Watches, watch chains and seals, taxable 927
REVENUE. CHAPTER 148. 955
County Court, to correct assessment, and certify to register 955
REVENUE. CHAPTER 149. 956
Register, shall refund taxes improperly paid 956
REVISION, of the laws to be made every ten years 34
of 1845, publication, &c 696
REVIVAL, of judgments and decrees 622
See titles *Justices' Courts, Practice at Law, and Practice in Chancery.*
REVOCATION, of submission to arbitration, effect of 125
of power of attorney, how made 226, 227
of appointment of deputy collector 939
of will, how made 1079
See titles *Administration, and Justices' Courts.*
REWARD, to be offered by lessees of penitentiary for escaped convicts 792
to taker-up of runaway slave 1023
to taker-up of strays 1041
REYNOLDS COUNTY, limits defined 278
RIOTS, by slaves, how punished 1016
See title *Crimes and Punishments.*
RIPLEY COUNTY, limits defined 279
ROAD AND CANAL FUND. CHAPTER 150. ..... 956 to 959
Apportionment, to be made by treasurer and auditor 957
to be divided, how and when 957
Counties, may unite funds, when 958
County Court, powers and duties 957, 958, 959
County Treasurer, no compensation allowed 959
Road and Canal Fund shall be managed and accounted for, separately, &c 957
State Treasurer, to draw funds, &c 957
may give checks, when 958
to keep accounts with each county 959
ROADS AND HIGHWAYS. CHAPTER 151. ..... 960 to 976
ARTICLE I. *County Roads.*
Applications, for, how made 962
notice of, how, &c 962
to turn road, &c 964
proceedings on, &c 964
to vacate, how, &c 964
proceedings on, &c 964, 965
Bridges, when not to be built 962
Circuit Court to charge grand jury, on this act 971
Commissioners, appointment; oath; duties 962, 963

Digitized by Google

ROADS AND HIGHWAYS.
Commissioners, duties and proceedings of,
on turning road 964,
to report, what, &c .....
report to be recorded, &c .....
judgment on, when conclusive .....
County Courts, power of, &c .....
duties of, &c 962, 964,
to appoint justices, &c .....
to appoint overseers, when 965,
clerks of, their duties, &c 962, 964,
penalty for neglect of .....
to lay schedule before grand jury, &c
County Roads, opened and repaired, how
in whom the power to open, &c .....
width of .....
condition and clearing of, &c .....
bridge, worth of, &c .....
applications for opening, turning, &c
..... 962,
notice of, proceedings, &c 962,
opening of, when not .....
remedy of one injured thereby .....
viewers of, appointed .....
their duties, &c 963,
costs of, by whom paid .....
vacated, how .....
justices, to lay off, &c .....
their appointment, duties, &c .....
certificate of alteration of, &c .....
overseer appointed, his duties 965,
who shall work on .....
penalty for not working on .....
for obstructing, &c .....
Costs, &c., by whom paid 964,
Finger Board, to be put up .....
compensation for erecting .....
Fines and Penalties, under this act .....
how received; where to go 969,
against minors, &c .....
paid to J. P., when; his duty .....
how applied by overseers; how settled
Hands, how called out; notice to .....
penalty on .....
delinquent list of, to whom given .....
suits against; costs .....
entitled to credit for work, when .....
how allotted .....
Indictment, against overseers, how .....
Justices of the Peace, to lay off, &c .....
appointment of; to allot hands; duties
for neglect of, penalty .....
to return list of hands, &c .....
may alter and re-allot; certificate of
continuance in office .....
to give list to overseer .....
discretionary power given to .....
to pay over and receipt, how .....
New Road, to be repaired, how .....
Overseer, appointed, how, &c .....
to apply for hands, how .....
to call out and notify, how .....
privilege of to enter lands .....
appointment of, of new road, &c .....
to keep finger boards .....
compensation therefor .....
neglect of duty, penalty for .....
not required to act more than one year

ROADS AND HIGHWAYS.
Overseer, when excused .....
to apply fines .....
to settle with county court .....
to give list, &c., to grand jury .....
indictment against, what .....
Persons, injured or aggrieved, remedy of
..... 963 to
who shall work on roads .....
Petitions, &c. See *Applications*.
Remonstrance. See *Commissioners*.
Sheriff, duties of, under this act .. 962, 965,
neglect of, penalty for .....
Sign Board, injuring, penalty for .....
Viewers, appointed, how; duties of .....
ARTICLE II.—*State Roads*.
Chain Carriers, appointment and duties
of 972,
oath, and compensation of 973,
Commissioners, appointment of, when to
meet .....
failure to meet, duty of first .....
to organize, how .....
may appoint certain officers; to take oath
..... 972,
to proceed to survey and duties of .....
make plat for the state .....
report, &c., to the governor .....
take grants of rights of way .....
assess damages, when .....
what to consider, whom to report to
to report where land in several counties
their report may be objected to, how ...
vacancy of, how filled .....
compensation of, how paid .....
when appointed by county court, duties
of .....
who shall not be .....
in examining route, to be changed, du-
ties of .....
to report, and file papers, &c .....
County Court, to order a jury, when .....
pay expenses of commissioners, &c ....
open new state roads, when and how ...
cause road to be cut as state road, when
appoint commissioners, &c .....
to report to the governor, what, &c ....
may order a review, &c., when .....
how to proceed in such case .....
to determine between routes, when ....
to order new road opened, when .....
to confirm new, and vacate old route ...
expenses incurred under this act, how
paid by .....
courts and officers proceeding under sec.
29 of this article, to be governed by
1st article .....
Damages, assessment of, by whom paid &c
..... 974,
Grant of Right of Way, effect of .....
to be to the state .....
ground additional not included in, &c ..
original, when to be sent to governor ...
Jury, when summoned .....
Persons Aggrieved, remedy of 974,
when to pay costs, &c 974,
jointly and severally liable, when .....
Roads (State), how marked out and opened

965 964 964 965 961 965 965 968 965 969 970 961 962 962 964 964 963 963 964 964 965 965 966 966 967 969 970 970 970 967 969 967 967 967 968 970 965 965 969 966 966 966 968 968 970 968 965 966 967 967 968 969 969 969

Digitized by Google

ROADS AND HIGHWAYS.
Roads, (*State*) must be sixty feet wide··· 975
new, how opened, &c., on marsh land how wide··· 975
to be districted, &c··· 976
county roads, declared to be cut as··· 976
changed, how, &c··· 976
right of way extinguished in old road·· 978
Surveyors, appointed, to take oath··· 973
to survey route··· 973
note the courses, &c., of··· 973
to make plat of route for each county·· 973
compensation of··· 975
duty of, in route to be changed··· 976
Width, of roads··· 975
ROBBERY, assault, with intent to commit· degrees and punishment of··· 350
ROULETTE, setting up, keeping, &c··· 358
permitting to be set up in house, &c··· 401
betting at··· 402
ROUTS, definition and punishment··394 to 402
RUNAWAYS. See titles *Fugitives from Justice and Slaves*.
SABBATH BREAKING···404, 405
ST. CHARLES COUNTY, limits defined··· 265
ST. CLAIR COUNTY, limits defined··· 280
ST. FRANCOIS COUNTY, limits defined 280 to 282
STE. GENEVIEVE COUNTY, limits defined ···282 to 283
ST. LOUIS COUNTY, limits defined··· 282
SALARIES. CHAPTER 152. ···978 to 980
Accounts, when presented to auditor··· 979
to be drawn for quarterly··· 979
Salaries, of governor··· 979
of judges of supreme court··· 979
of judges of circuit court··· 979
of secretary of state··· 979
of treasurer of state··· 979
of auditor of public accounts··· 979
of attorney general··· 979
of each circuit attorney··· 979
CHAPTER 153. ··· 979
Governor, salary of··· 979
CHAPTER 154. ··· 980
State Treasurer, salary of··· 980
SALARIES, of judge of St. Louis court of common pleas··· 317
of St. Louis criminal court··· 320
of reporter of supreme court··· 926
of commissioner of seat of government 207
of state librarian··· 1030
of tobacco warehouse keeper··· 607
SALES, at auction, tax upon regulated··· 164
of boats and vessels under warrant··· 183
of lots, by county··· 294
of property under legal process, where terms of court are changed··· 327
of escheated property, when··· 466
of property under execution···481, 483
of real estate, to defraud creditors, void ···525, 526
of personal property, when void··· 527
not valid, without acceptance or earnest 531
of liquor by slave, prohibited··· 542
of real estate of infants, when··· 551
to Indians, prohibited··· 577
of real estate of insane persons··· 596
of lottery tickets, prohibited··· 723
SALES, of liquor, by merchant, forbidden· 740
of mortgaged property, under execution 751
of real estate, in partition··· 771
of liquor by peddlers, forbidden··· 778
of land, for taxes···948 to 951
of saline lands··· 980
of lost or wrecked property··· 986
of school lands··· 988
of runaway slaves, when··· 1022
of strays, before title vested in taker up, forbidden··· 1041
of town lots, before plat recorded, forbidden··· 1056
See titles *Administration*, *Attachments*, *Crimes and Punishments*, *Justices' Courts*, *and Lands*.
SALINE COUNTY, limits defined··· 279
SALINE LANDS. CHAP. 155. 980 to 982
Certificates, treasurer shall give, when··· 980
Grand Jury, shall indict offenders··· 981
this act to be given in charge to··· 981
Judicial Officers may commit offenders to jail··· 981
Patent, when and how to be issued··· 981
Saline Lands, penalty for trespass, &c··· 981
CHAPTER 156. ··· 982
Reserved Lands, when twice sold, money to be refunded, &c.; how··· 982
SALT-PETRE WORKS. CHAP. 157. 983
Damages, how recovered··· 983
Owners, to enclose, &c··· 983
penalty for failing··· 983
liable to party injured··· 983
SALVAGE. CHAP. 158. ···983 to 987
Boats, *Rafts*, &c., lost, may be taken up· 984
claim to, how proved··· 984
proceedings, as to···985, 986, 987
Justices of the Peace, powers and duties·986, 987
Notice, to be given, when and how··· 984
of sale, how given··· 986
Owner, damages may be recovered by··· 985
Penalty, for detaining, embezzling or injuring property··· 986
against justice for secreting, &c··· 986
Sale, justice shall order, when··· 985
judge of supreme or circuit courts may order, when··· 986
Salvage, twenty per cent., when paid··· 984
forfeited, when··· 985
of lumber, staves and shingles··· 985
of logs, rails and wood··· 985
justice shall allow and pay over··· 985
twenty-five per cent., when allowed··· 987
Sheriff, shall pay salvage, after sale; retain balance of money until, &c··· 986
compensation of··· 986
SAW MILL, burning of··· 355
SCALING, coin, forgery··· 374
SCHOOL FUND, established··· 40
SCHOOL HOUSE, burning of··· 355
SCHOOL LANDS. CHAP. 159. 987 to 994
Abstract, of lands sold, to be furnished to register··· 989
Attorney General and *Circuit Attorneys*, shall prosecute suits for recovery of moneys, when··· 994
Bond and Security, when given for purchase money··· 989

Digitized by Google

SCHOOL LANDS.
Bond, shall bear interest
additional security, when given
Certificate, when and by whom given
shall entitle purchaser to patent
Clerk and Treasurer, compensation of
County Court, shall make abstract of lands sold
may sell lands on petition of less than fifteen inhabitants
shall make an order of lease, when
duty of, upon breach by lessee
shall order sale annulled, when
Fines, &c., paid into county treasury
Governor, to appoint person to make selection of land, when
to certify as to selections of land, when and how
shall cause secretary of state to certify, and to whom
Judges of Circuit Court, shall give part of this act in charge to grand jury
Lease, stipulations of
to be approved before taking effect
Lessee, obligations and duty of
Notice, of intended petition, how given
of sale shall be given, how
of sixty days shall be given, when
to quit, given to lessee, how
Patent, to issue, when, and by whom
shall be recorded, how
shall be forwarded to county court for delivery
purchaser entitled to, when
Purchase Money, may be paid at time of sale, &c
court shall proceed to collect, when
to be refunded with interest, when
Rents, upon leased school lands, when paid
duplicate receipts for, when given
Sheriffs, compensation of
selected lands sold by, how
may bid in school land, when
shall take bond, &c., when
Sixteenth Sections, in what manner and by whom sold
shall be sold on petition of majority of householders
minimum price of
may be offered for sale once a year, when
may be sold in forty acre lots, how
may be sold in lots of less size than forty acres, when
may be leased, when
in lieu of, how, and in what manner, other lands may be selected
Trespassers, what fine shall be imposed
in what manner arrested
shall be recognized to appear at court
may be committed to jail, when
Waste, punishment for
SCHUYLER COUNTY, limits defined 264,
SCIRE FACIAS, on information filed, concerning escheats
to revive lien of judgments and decrees
to establish lien on buildings
upon judgments on penal bonds
See *Administration, and Practice at Law.*

SCOTLAND COUNTY, limits defined 265
989 SCOTT COUNTY, limits defined 270
990 SCRAWL equivalent to a seal 216
989 SEAL, common, corporations to have 231
989 courts to procure and keep 332
990 notaries public to keep 760
register of lands to keep 920
989 of state, to be used by sec'y of state 996
state university to have 1034
990 incorporated towns may have 1048
991 treasurer and auditor to keep 1059
991 for weights and measures 1077
992 See title *Crimes and Punishments.*
994 SEARCH WARRANT. See title *Practice and Proceedings in Criminal Cases.*
993 SEAT OF GOVERNMENT, commissioner of 206
SEAT OF JUSTICE, how located 291
993 how removed 301
SECOND OFFENCE, punishment of 409, 410
993 SECOND TRIAL, for same offence, when and when not to be had 411, 412
994 SECRETARY OF STATE, office established 37
991 liable to impeachment 33
991 SECRETARY OF STATE. CHAP. 169.
991 995 to 997
991 *Bond*, how given; condition 995
988 *Commissions*, to be made out and delivered 996
988 register and abstract of, shall be kept 996
992 *Contingent Expenses*, how paid 997
989 shall be settled quarterly 997
989 *Office*, where to be kept 995
990 who shall have access to 996
990 *Original Rolls, Papers, &c.*, not to be taken out of office, unless, &c 996
990 *Postage*, on official letters and documents, how paid 995
990 *Rolls, Documents, Resolutions, &c.*, how
992 kept 995
992 copies of, may be made out 996
990 copies shall be evidence, when 996
993 *Seal*, to be kept by secretary 995
994 to be affixed to executive acts, when 996
994 *Secretary of State*, shall report to governor 996
shall countersign commissions 996
988 in case of absence, &c., secretary pro tem. to be appointed 996
988 duty and compensation of secretary pro
988 tem 997
988 shall procure stationery for general as-
989 sembly 997
shall make report of expenses, and to
989 whom, when 997
991 shall keep account of contingent ex-
penses 997
993 penalty upon, for neglect of duty, taking
994 illegal fees, &c 997
994 SECURITIES. CHAPTER. 161. 998 to 1002
994 *Bond and Security*, new required, when 1000
994 how taken and filed 1001
994 when taken and filed, former discharged 1001
265 new bond in certain cases, when given, former sureties discharged 1002
463 *Limitation*, of motion for judgment, &c 1000
622 *Notice*, to commence suit, by security 998
735 how served 999
783 in case of petition by security on bond of officer 1000

Digitized by Google

SECURITIES.
Petition, shall set forth, what 1000
copy of personally served on, whom... 1000
Publication, of notice and petition..... 1000
Securities, may require suit brought..... 998
may be relieved by petition 1000
remedy of, who pay money for officers.. 1001
when to be residents of the county.... 1001
Security, when exonerated 999
who not liable to suit at request of securities 999
money paid by to be refunded by principal 999
may have remedy against principal by suit 999
may recover the excess, when has paid more than his proportion..... 999
can have judgment against principal debtor, on motion, when 1000
additional, when officer required to give 1002
Vacancy, in office, how caused..... 1001
how supplied..... 1001
SECURITY FOR COSTS, when required in courts of record 241
in cases of fugitives from justice..... 537
in justices' courts..... 638
SEED HORSES, not to run at large 570
SELLING, counterfeit money..... 371, 372
offices and deputations..... 390
poison without label..... 405
SEMINARY FUND, See *State University*.
SEMINARY LANDS. CHAPTER 162. ..... 1002 to 1003
Commissioner, office of abolished in Cape Girardeau land district..... 1002
to make return to treasurer of books, papers, &c., when 1002
shall make final settlement..... 1003
Seminary Lands, subject to entry with treasurer of state, when..... 1003
SEMINARY LANDS, how appropriated..... 40
SENATORS, U. S. CHAP. 163. 1003 to 1004
Credentials, governor shall cause to be made out..... 1003
form of 1004
form of, for temporary appointment... 1004
Election, how held 1003
by whom certified to governor..... 1003
U. S. Senator, what necessary to choice of 1003
SENATORS, of state, apportionment...113, 114
SENATE, of U. S., constitution, election, classification 3
of state, constitution, election, and classification..... 30
SEQUESTRATION, to enforce payment of alimony 428
See titles *Administration, and Practice in Chancery*.
SERVANTS. See titles *Apprentices, Crimes and Punishments*.
SET-OFF. CHAP. 164. .....1004 to 1007
Executors and Administrators, debts may be set-off, in suits brought by..... 1005
Execution, between same parties may be set-off, when 1006
delivered to officer, how he shall proceed..... 1006
set off, when not allowed on..... 1006
SET-OFF.
Joint Obligors, in suits against, when set-off allowed 1005
Judgment, how rendered when set-off be equal or less than plaintiff's demand. 1005
for balance due defendant..... 1006
may be set-off, when and how..... 1006
Officer, how shall proceed with executions issued by both parties..... 1006
Set-Off, mutual debts may be 1005
when, and when not allowed against executor or administrator..... 1005
may be given in evidence under the general issue, or pleaded in bar..... 1005
notice of, when to be given..... 1005
SET-OFF. See titles *Bonds and Notes, and Justices' Courts*.
SETTLEMENT, by persons holding moneys of counties..... 308
by guardian and curator..... 551
by guardians of insane persons..... 597
by commissioner of seat of government 207
of accounts of secretary of state..... 997
of expenses of library..... 1029
of public accounts..... 1061
See titles *Administration and Revenue*.
SEVERING, produce from the soil..... 361
SHANNON COUNTY, limits defined....279, 280
SHELBY COUNTY, limits defined..... 265
SHERIFF, election, term of service, vacancies 37
SHERIFF AND MARSHAL. CHAPTER 165. ..... 1007 to 1011
Bond, new, to be given, when..... 1008
to be given to state, when and in what sum 1008
how conditioned..... 1008
failing to give, effect of..... 1008
may be taken by clerk in vacation..... 1008
approval of by court, when 1008
binding until disapproved..... 1008
shall be recorded, when and where.... 1008
of marshal given, how and when..... 1009
how taken and approved..... 1010
failing to give, effect..... 1010
Certificate of Election, shall be recorded, by whom and when..... 1008
official of appointment, by whom sent.. 1008
of vacancy in office of marshal..... 1010
of appointment of marshal, how transmitted 1010
Clerk of County Court, shall deliver certificate of election..... 1007
shall certify vacancy to governor..... 1009
bond to be taken by, when..... 1008
Clerk of Criminal Court of St. Louis, bond of marshal may be taken by.. 1009
shall certify vacancy to governor..... 1010
when appointment made, duty of..... 1010
Coroner, duty of, when office of marshal vacant 1010
Deputy Sheriff, how appointed, &c..... 1008
powers and duties of..... 1008
Election, contested, or tie in, in case of marshal, how decided..... 1010
Elizor, how appointed..... 1010
Marshal of St. Louis County, office of established..... 1009

Digitized by Google

SHERIFF AND MARSHAL.
Marshal of St. Louis County, how and when elected ... 1009
term of office ... 1009
shall give bond, how and when ... 1009
failure to give bond, effect ... 1010
vacancy in office, how filled ... 1010
powers and liabilities in serving process ... 1010
fees of ... 1010
tie in, and contested elections, how decided ... 1010
shall attend on and serve process in what courts ... 1011
Securities, summary proceedings may be had against, when ... 1009
recovery against, extent of ... 1009
Sheriff, to give new bond and security ... 1008
shall be conservator of peace, take recognizance of offenders, &c ... 1009
shall certify recognizance to clerk of circuit court ... 1009
shall quell and suppress riots, &c ... 1009
shall execute process, attend on courts ... 1009
vacancy in office of, to be certified to governor ... 1010
of St. Louis county, what courts shall attend, and serve process in ... 1011
SLANDER. CHAPTER 166. ... 1011
what words declared actionable ... 1011
SLAVES. CHAPTER 167. ... 1012 to 1024
Boat or Vessel, how liable for violation of this act ... 1018
penalty on master or owner, how recovered ... 1018
Circuit Courts shall give this act in charge to grand jury ... 1019
Clerk, duty and fees of ... 1020
County Court, shall audit statement ... 1023
clerk of, shall certify amount to auditor of public accounts ... 1023
Emancipation of Slaves, how effected ... 1019
act for, to be delivered to slave ... 1020
by last will, testator to deliver copy of will, to whom ... 1020
Fees of Sheriff, how and when paid, &c ... 1024
Ferryman, penalty for crossing slave ... 1017
how recovered ... 1017
Grand Jury, duty of ... 1019
presentment cognizable by justice of the peace ... 1019
Justice of the Peace, duties, in relation to free negroes and mulattoes ... 1017
in relation to runaway slaves ... 1021
Master or Owner, penalty for permitting slave to go at large, dealing on his own account, &c ... 1014
not appearing to claim slave, when, what proceedings ... 1014
not appearing, slave may be sold ... 1014
penalty on, for permitting slave to sell liquors ... 1015
penalty on, for allowing slave belonging to another, to remain on premises ... 1016
penalty for permitting more than five slaves to be on place ... 1018
Master, term, how construed ... 1018
Negro or Mulatto, suspected of being runaway, any person may apprehend, &c 1021

SLAVES.
Notice of Sale, sheriff shall give, how ... 1022
Penalty, for bringing slaves into state, how 1013
for hiring one slave to another, &c ... 1014
for hiring or harboring ... 1014
on sheriff, coroner, or constable, when 1017
for trading with slaves ... 1018
for removing slaves out of the state, without right ... 1018
Petition, of person claiming money, &c ... 1023
proceedings on ... 1023
Publication, sheriff shall make, relative to slave taken up, when and how ... 1014
when and how made, relative to runaway ... 1021
owner of slave not appearing, how made, and by whom ... 1022
Recognizance entered into by owner of slave, when ... 1015
Reward, how paid ... 1023
Runaway Slave, may be committed to county jail ... 1021
shall be sold, when ... 1022
who declared to be ... 1024
may be discharged by court or judge ... 1024
to die in jail, who to pay expenses ... 1024
Sheriff, Coroner or Constable, shall arrest, without warrant, slave running at large ... 1014
shall take before justice, &c ... 1014
unlawful meeting of slaves, shall arrest 1017
Slaves, introduction of, prohibited, in certain cases ... 1013
of non-residents, not to be brought into this state ... 1013
may be brought into state, for purpose of passing through ... 1014
may remain in state, a short time ... 1014
shall be kept in employment, how ... 1014
must not be sold, or hired, &c ... 1014
penalty for hiring or harboring, when ... 1014
when may be arrested, and what done ... 1014
owner not appearing, proceedings ... 1014
delivered to owner, when ... 1015
sold, when ... 1015
how punished, for harboring others ... 1015
leaving home without a pass, how punished ... 1016
going to another plantation, without permission, how punished ... 1016
shall not carry arms, &c., penalty for ... 1016
how punished for riots, seditious speeches, &c ... 1016
for disturbing religious congregation 1017
emancipated, liable for execution, when 1019
emancipated, liable for taxes, when ... 1020
CHAPTER 168. ... 1024 to 1027
Free Negro giving pass, or abducting slave, how punished ... 1026
Free Pass, forgery of, and abducting away slave, how punished ... 1026
Notice of runaway, by sheriff, how given 1025
Owner, may prove title to slave, how ... 1026
refusing to pay reward, proceedings ... 1025
Publication of this Act, in Illinois, governor shall cause to be made, how ... 1026
shall be made annually ... 1026
expenses paid out of state treasury ... 1026

Digitized by Google

SLAVES.
Purchase Money, of runaway slave, how applied ... 1025
sheriff and securities liable for, how ... 1026
Reward for arresting runaway slave ... 1025
Runaway Slave, any person may arrest ... 1025
taker up of, may deliver to sheriff ... 1025
sale of, duty of sheriff ... 1025
Sheriff, required to receive runaway slave 1025
shall sell slave at public auction, when 1025
shall execute bill of sale ... 1025
CHAPTER 169. ... 1027
Reward, for apprehending runaway slave, further explained ... 1027
five dollars to be paid, when ... 1027
ten dollars to be paid, when ... 1027
SLAVES, escaping from one state into another, to be given up ... 11
power of legislature concerning, defined 33
dower in, what it shall be ... 430
partition of, among heirs and legatees may be made by county court ... 432,
lien of execution from courts of record upon ... 479
may be seized and sold under execution 478
gifts of, when void ... 526
loans of, regulated ... 527
how may sue for freedom ... 532
master of, permitting them to sell liquor, penalty ... 542
selling liquor, punishment ... 545
not to be discharged, or have right of freedom, under habeas corpus ... 563
penalty against inn and tavern keeper, for harboring or selling liquor to ... 587
lien of execution from J. P., on ... 661
mortgages of, how foreclosed ... 749
partition of, may be made by circuit court ... 776
found at unlawful assemblages, may be punished by patrol ... 777
made taxable ... 927
See titles *Administration, and Crimes and Punishments*.
SOLDIERS, not to be quartered in any house, in time of peace ... 13
may dispose of wages, by will ... 1082
SPIRITUOUS LIQUORS. See title *Liquor*.
STABBING, with intent to kill, &c ... 350
STABLE, burning of ... 355
STACK OF GRAIN, burning of ... 355
STAKE-HOLDER of bet on election, how punished ... 404
STALLIONS not permitted to run at large ... 570
STANDARD weights and measures ... 1076
STATE, boundaries of ... 28, 29
STATE LIBRARY. CHAP. 170. 1027 to 1030
Auditor, shall audit accounts of librarian 1029
shall deduct from wages of member of legislature treble value of books not returned, when ... 1029
Books, &c., catalogue of, to be kept ... 1029
taken from library to be receipted for ... 1029
none shall be taken from room, unless ... 1029
Expenses, of binding, fuel, stationery, &c., how paid ... 1029
Library, to be kept open, when ... 1029
Librarian, clerk of supreme court shall be 1028
STATE LIBRARY.
Librarian, shall have custody of library ... 1028
what books and papers shall cause to be bound ... 1028
shall keep library, where ... 1028
continuity of books when wanted, duty of 1028
may purchase books, maps and charts ... 1029
shall report to general assembly, when 1029
to report members to auditor who have failed to return books ... 1029
compensation of ... 1030
may appoint assistant, when ... 1030
Penalties, for violating this act, how recovered ... 1030
Secretary of State, what books shall deliver to librarian ... 1028
what books shall sell ... 1030
shall sell at what price ... 1030
money from sales, paid to librarian ... 1030
STATE PRISON. See title *Penitentiary*.
STATE SEAL, forgery of ... 368
STATE TOBACCO WAREHOUSE. See title *Inspection of Tobacco*
STATE TREASURER. See titles *Crimes and Punishments, and Treasurer*
STATE UNIVERSITY. CHAPTER 171. ... 1031 to 1037
ARTICLE I.—*Seminary Fund.*
Auditor, shall keep "the register of seminary lands" ... 1032
shall enter list of sales, &c., when &c ... 1032
powers and duties relative to seminary lands ... 1032
to hold bonds and certificates of stock 1033
shall transmit statement showing increase of fund, to whom, and when ... 1036
Certificates of Stock, or Bonds, when taken as investment in trust for seminary fund ... 1032
may be deposited in bank ... 1033
Dividends, on stock in bank to be reported to auditor, and paid to state treasurer 1033
Public Stocks, money of capital of seminary fund, to be invested, when ... 1032
dividends declared on, to whom reported 1033
paid to state treasurer, when ... 1033
interest and profit of, to be paid to state treasurer ... 1033
treasurer to be charged with interest and profits of ... 1033
Seminary Fund, of what to consist ... 1031
shall be, and remain permanent ... 1031
balance of certain income to be added ... 1032
who shall be commissioners ... 1032
investments, when to be made by auditor 1032
stock in bank held in trust for ... 1033
balance after paying salaries, how applied ... 1037
State Treasurer, powers and duties of, relative to seminary lands ... 1032
to be charged with dividends, when ... 1033
ARTICLE II.—*Of the University.*
Board of Curators, university governed by 1034
annual meeting of, when and where held 1034
president and vice president, how chosen 1034
secretary, treasurer, &c., to be appointed 1034
who shall preside at meeting of, when president and vice president absent ... 1035

Digitized by Google

STATE UNIVERSITY.
Board of Curators, tenure of office.... 1034
special meetings of, how and by whom called 1035
adjourned meetings of, may be held, when and where 1035
what number to constitute quorum, at annual meeting to do business 1035
less number may adjourn 1035
Curators, number of 1034
how, and by whom chosen 1034
who shall be besides those elected 1034
vacancy in office of, how filled 1034
shall severally take oath 1034
President of University, curators may appoint, prescribe his powers, duties, &c., and fix compensation, when 1036
duties of 1036
Salaries, payable, when 1037
how drawn 1037
when, and in what sum to bear interest 1037
Secretary, shall keep journal of proceedings of curators, &c 1035
shall keep, records, books papers, &c .. 1035
shall prepare reports, &c., and record the same 1035
Treasurer, to keep and disburse moneys, &c 1035
to make report at annual meeting 1035
University, established 1034
incorporated a body politic 1034
STEALING 359
STEAMBOATS, taking slave from one part of the state to another, liability 1018
See titles *Boats and Vessels, and Crimes and Punishments.*
STODDARD COUNTY, limits defined 280
STOLEN PROPERTY, receiving 362
STOREHOUSE, burning of 354
STRANDING, boat or vessel, to defraud, ... 364
STRAYS. CHAP. 172. .... 1037 to 1042
Appraisers, oath of, and what appraisement shall embrace 1039
Clerk of County Court, shall record Justices' certificate, when 1039
shall file advertisements, &c 1040
shall transmit copy of appraisement, to whom 1040
when shall not transmit copy of appraisement 1040
fees of 1041
penalty on, for failing to perform duty 1042
Justice of the Peace, notice to be given to, when 1039
shall summons appraisers 1039
shall enter appraisement, how 1039
shall deliver to taker up, copies of entry 1039
shall give to taker up, statement of duties, &c 1039
fees of 1041
penalty on, for non-performace of duty 1042
Notices, taker up shall give, how and where 1039
Owner, may prove property, when and how 1040
proceedings when stray proved, after one year 1041
what may recover for violation of this act 1042

STRAYS.
Printer, one on north, and one on south side of Missouri river, to print adv'ts 1039
duty of, in printing advertisements 1040
compensation of 1040
contracts with, when to terminate and be renewed 1040
vacancy in office of, how filled 1040
penalty on, for failing to perform duty 1042
Reward, for taking up strays 1041
Secretary of State, to contract for printing advertisements 1039
to notify clerks of printer, &c 1039
Strays, not to be taken up, when, unless .. 1038
who authorised to take up 1038
when and how may be taken up 1038
taken before justice, when 1039
Taker Up, to go before justice and make oath, when and how 1039
shall set up notices in township, when 1039
shall pay clerk's fees, postage, &c 1040
may use stray, how 1040
justice may settle allowance to be paid for taking up, when 1040
title to vest in, when 1041
not liable for death of stray, when 1041
penalty on for disposing of, &c., when 1041
penalty on, for taking up, working stray, &c., contrary to law 1041
SUBORNATION OF PERJURY 377
SUICIDE, assisting to commit 345
SULLIVAN COUNTY, limits defined ... 265, 266
SUNDAY, certain process not to be executed on 1092
See title *Crimes and Punishments.*
SUPREME COURT, constitution, jurisdiction, and powers 38, 329
terms of 339
decisions of, how published 925
opinions of, to be in writing 924
practice in, regulated .... 900 to 906
SURVEYORS. CHAP. 173. .... 1042 to 1045
Bond, of county surveyor, conditions, &c 1043
failing to give, effect 1043
shall be valid until rejected, when 1043
when rejected new one to be given 1043
recorded, at whose expense 1044
Chainmen and Markers, to make oath ... 1045
compensation of 1045
by whom paid 1045
County Courts, power to obtain field notes, how and where 1045
County Line, lands divided by, by whom surveyed 1044
lands in dispute, divided by, by whom surveyed 1045
County Surveyor, how elected, and when, and term of office 1043
how commissioned 1043
vacancy how filled 1043
shall take oath of office, when 1043
shall execute orders of court 1044
shall make survey, when called on 1044
when interested, who shall survey 1044
shall keep record of surveys, deliver copy, &c 1044
not to charge for certain field notes 1045
penalty on, for failing to perform duty .. 1045

Digitized by Google

SURVEYORS.
Deputies, may be appointed, shall take oath 1045
Election, how certified, and by whom 1043
Field Notes, county court may obtain, how and when 1045
copies of, evidence, when 1045
Penalty, for failing to perform duties 1045
Surveys, what shall be legal evidence 1044
when court shall direct to be made 1044
SURVEYS. CHAP. 174. 1046
County Courts, authorized to obtain certified copy of field notes of surveys, from whom 1046
County Surveyors, reasonable allowance to be paid to, for copy of field notes 1046
shall make no additional charge, when 1046
copy of copies of, certified, shall be evidence, when 1046
Field Notes, copies of, when to be filed in county surveyor's office 1046
SURVEYOR GENERAL, copies of plats, surveys, &c., from office of, evidence .. 469
SURVIVING PARTNER. See title *Administration*.
TANEY COUNTY, limits defined 283
TAVERNS. See title *Inns and Taverns*.
TAXES, shall be in proportion to value of property 45
collector unlawfully exacting, penalty .. 391
law of 1843, providing for sale of land for, repealed 1098
repayment of, in certain cases, provided for 986
erroneous assessments, correction of, provided for 955
See title *Revenue*.
TENANCY IN COMMON, estates in 221
TENANT IN COMMON, may maintain action of account 55
may maintain action of ejectment 441
may have partition of land 773
TENANTS. See title *Landlord and Tenant*.
TEXAS COUNTY, limits defined 283, 284
THREATENING. See title *Crimes and Punishments*.
THREE PER CENT. FUND. See title *Road and Canal Fund*.
TICKETS, giving false, to voter at election, or printing or circulating false 392
TIPPLING SHOP, keeping open on Sunday 405
TOBACCO. See title *Inspection of Tobacco*.
TOWNS—INCORPORATION OF. CHAPTER 175 .... 1047 to 1055

ARTICLE I.

Board of Trustees, majority of shall constitute quorum to do business 1049
smaller number may adjourn, when, &c 1049
shall judge of qualifications, elections 1049
determine contested elections 1049
establish rules of proceedings 1049
keep a journal of proceedings, &c. 1049
proceedings of shall be public 1049
may pass by-laws and ordinances 1049
may appoint officers, agents and servants 1050
may order streets and alleys opened and repaired 1050
may require foot-ways, &c paved 1050

TOWNS.
Board of Trustees, may cause to be paved, when owner refuses 1050
may recover expenses of paving from owner 1060
vacancies in, how filled 1052
shall appoint judges of election, when 1052
shall supply vacancies, in judges 1052
By-Laws, and Ordinances, may contain what provisions 1049
shall not be repugnant and contradictory to laws of the land 1050
Chairman of Board of Trustees, to report amount of moneys received and expended, when 1051
shall publish an account of moneys received and expended, how and when 1051
penalty on, for neglect to publish report 1051
shall cause to be printed, by-laws and ordinances 1051
shall cause by-laws and ordinances to be carried into effect 1051
in absence of, who may act 1051
Clerk of Election, how appointed, his duties 1052
Corporation, may be disincorporated, how 1053
shall not be disincorporated, when 1053
dissolution of, not to affect rights for or against 1053
dissolved, trustee appointed for, how 1053
dissolved, annual revenue of, if any, how disposed of 1054
County Court, may disincorporate town 1053
shall not disincorporate, when 1053
shall appoint trustee of dissolved incorporation 1053
revenue whom paid to, of dissolved corporation 1054
Elections, judges of, how appointed 1052
judges appointed by electors, when 1052
how long to be kept open 1052
how conducted 1052
Electors, qualifications of 1052
may appoint judges of election, when 1052
Fines and Forfeitures, how recovered 1051
Judges of Election, shall give notice of election, how 1052
failing to attend election, what proceedings 1052
in case of tie, shall decide by lot 1052
Jurors, who competent, and in what case 1051
Notice of Election, how, when, and by whom given 1052
Oath of Office, shall be taken by trustees 1049
Petition, for incorporation, by whom and to what court 1048
Real Estate, how may be sold and redeemed for taxes 1051
Taxes, how to be collected 1050
due from non-resident, how collected 1051
property may be sold to pay, when 1051
real estate sold for, may be redemed 1051
Tenant, expense of paving, &c., paid by, shall be set-off against rent 1050
Towns, may be a body politic and corporate, when 1048
incorporated, name of 1048
Trustees, corp'te powers of town vested in 1048

Digitized by Google

TOWNS.
Trustees, how appointed and elected 1048
shall be chosen, how and when 1048
qualifications of 1048
term of office 1048
shall take oath 1049
shall assemble, when 1049
shall choose chairman and clerk 1049
shall fix time and place of meeting 1049
may be convened by chairman, when .. 1049
Witnesses, when competent 1051
ART. II.
Warrants, on treasurer, how to be drawn and by whom 1054
but one to be drawn for one amount allowed 1054
in whose favor to be drawn 1054
person in whose favor drawn, shall present for payment 1054
may be assigned 1055
form of assignment 1055
penalty on treas'r for paying improperly 1055
21st section of first article of this act, to what applicable 1055
TOWN PLATS. CHAP. 176. 1055 to 1057
Conveyance, map or plat shall be sufficient 1056
Forfeitures, recovered, how 1057
property may be attached for 1057
Ground for Public Uses, double the value of forfeited, when 1056
Lot, shall not be sold till map recorded ... 1056
Map, of town shall be made out 1056
shall contain description in full 1056
lots in, shall be numbered 1056
shall be deposited, where 1056
shall be preserved, by whom 1056
shall be acknowledged, certified, &c 1056
Penalty, if map does not represent facts .. 1056
Recorder, shall preserve map or plat 1056
Town Plat, in case of new county, to be sent, when and to whom 1057
TOWNSHIP. CHAPTER 177. 1057
County Court, may divide, sub-divide and erect, when 1057
may alter township lines 1057
shall transmit to secretary of state description of township, when &c 1057
shall cause clerk to enter description of record 1057
Township, no line of, shall pass through any town or common field, &c 1057
TRANSLATORS, may be appointed by courts 355
fees of 501
TREASON, what constitutes 44
See titles *Crimes and Punishments, and Practice and Proceedings in Criminal Cases.*
TREASURER, of the state, office established 34
may be impeached 34
ex officio inspector of the penitentiary .. 786
duty in reference to road and canal fund 957
to be commissioner of seminary fund .. 1003
general duties and liabilities ..... 1058 to 1067
of counties. See title *County Treasurer.*
TREASURY DEPARTMENT. CHAPTER 178. ..... 1058 to 1067
Auditor of Public Accounts, shall be included in treasury department 1058
TREASURY DEPARTMENT.
Auditor of Public Accounts, shall reside and keep office, where 1058
shall be commissioned, give bond, &c .. 1058
shall keep a seal of office, &c 1059
declared to be general accountant of state 1059
shall make report to general assembly, when, and what 1060
shall audit, adjust and settle claims, &c., except, &c 1060
shall draw warrants on treasury for money, &c 1060
shall audit and settle accounts of collectors, &c 1060
shall keep accounts between state and treasurer 1060
shall keep account of debts and credits between U. S. and this state 1060
shall direct prosecution in name of state 1060
shall give information to general assembly how, and when 1060
shall settle with collectors of revenue .. 1061
shall charge delinquent, when 1061
shall issue warrant against delinquent ... 1061
may examine parties and witnesses 1062
may issue subpœnas, &c., when 1062
shall draw warrants on treasurer, when . 1063
decision upon claim certified to general assembly, when 1063
shall audit and adjust claim and give certificate, when 1063
shall report default of collectors to general assembly, when 1063
shall publish list of defaulters, when, and how 1064
penalty on, for issuing warrant without authority 1065
who shall be appointed to settle with 1066
when appointed by governor 1066
compensation of acting auditor so appointed 1067
shall have power to administer oaths 1067
Bond and Security, of treasurer and auditor to be given, in what amount, condition of bond, &c 1059
securities upon bond to swear to what they are worth 1059
governor to approve, &c 1059
must be given before commission issues 1059
Claims against State, shall be exhibited to auditor, when 1062
what shall be allowed as a set-off 1062
may have certified to general assembly .. 1063
Collectors of Revenue, shall exhibit accounts and vouchers to auditor, when 1061
shall pay damages for failing to pay .. 1061
warrant of distress may issue against .. 1061
failing to pay, shall be published by auditor, when, and how 1063
Governor, whom shall appoint to settle with auditor, when and where 1066
Lien, accounts, &c., to be upon real estate 1066
Property Distrained shall be sold, how ... 1062
Sheriff or Coroner, authorised to serve warrant of distress 1061
shall levy and collect of delinquent, how 1062
shall advertise and sell property how ... 1062
compensation of, for collecting, &c 1062

Digitized by Google

TREASURY DEPARTMENT.
Treasurer and Auditor, shall compose treasury department 1058
shall reside and keep offices, where 1058
shall be commissioned, take oath, and give bond 1058
penalty on, for performing duties before qualifying 1058
no commission shall issue, till bond and security given 1059
shall each keep seal of office 1059
no warrant shall be drawn or paid by, without previous appropriation 1063
shall have free access to each other's offices, &c 1065
shall each keep letter book, &c 1065
penalty on, for neglect of duty, &c 1065
vacancy in office of, how filled 1066
Treasurer, to receive and keep moneys of state 1064
to disburse moneys upon warrants 1064
to keep an account of moneys received and disbursed 1064
to render accounts for settlement, quarterly 1064
to report condition of treasury to general assembly, when and how 1064
shall grant duplicate recepts for money paid, when 1064
security on bond of, shall make oath to what 1068
Warrant, on treasury, form of, when drawn 1063
shall not be drawn, when 1063
Warrant of Distress, auditor to issue against delinquent, when 1061
how and upon whom executed 1062
proceedings under 1062
TREASURY DEPARTMENT. CHAPTER 179. 1068
Securities on bond of treasurer, shall make oath, as to the amonnt they are worth, how, to whom and when 1068
TREASURY ORDER, forgery of 367
TREASURY WARRANT. See titles *County Warrants, Crimes and Punishments, and Towns.*
TREES. See titles *Crimes and Punishments, and Trespass.*
TRESPASS. CHAP. 180. .....1068 to 1070
Damages, double, to be paid, when 1069
recovered and paid, when and how 1069
when single, how recovered 1069
Defendant, what may plead and give in evidence 1070
Doors, Gates and Fences, throwing down or leaving open, penalty for 1069
Penalties and Damages, how recovered .. 1069
paid to the county, when 1069
Trespasses, treble damages recovered for .. 1068
action for may be, how 1069
slave committing, when owner liable for 1069
who shall be liable for, when slave commits in certain cases 1069
TRIAL, by jury, right of secured 14, 44
See titles *Justices' Courts, Practice at Law, Practice and Proceedings in Criminal Cases, and Practice in Chancery.*
TRUST, operation of conveyances in 218
for grantor, when void 527, 528
declarations or creations of, to be in writing 529
TRUSTEES, of corporation dissolved 236
of incorporated towns 1049
of dis-incorporated towns 1053
UNITED STATES, constitution of, and amendments ..... 1 to 15
soldiers or seamen in army or navy of, not entitled to vote 30
person enlisted in army of, or prisoner of war of, not to be discharged by habeas corpus 563
penalty against inn or tavern keeper for harboring, &c., soldier or non-commissioned officer in army of 587
persons convicted of offences against, to be received into county jail 618
into penitentiary 791
UNKNOWN PARTIES, how notified, in case of foreclosure of mortgage 750
in cases of partition 776, 777
See title *Practice in Chancery.*
UNLAWFUL ASSEMBLY, of slaves, proceedings for dispersing 1016
white person found at, penalty 1017
See title *Crimes and Punishments.*
USE, conveyances to, their operation 218
USE AND OCCUPATION, action for 688
USURPATION, of government 341
of office 391
USURY, prohibition against taking 615
See title *Interest.*
UTTERING, matter tending to insurrection of slaves 342
counterfeit money 373
VAGRANTS. CHAP. 181. ....1070 to 1071
County Court, to direct sheriff to bind out minor as apprentice, when 1071
Grand Jurors, shall make presentment of vagrants, when 1071
upon presentment of, what proceedings 1071
Jury, vagrancy to be established by, when 1071
Justice of the Peace, shall issue warrant ... 1070
shall order vagrant into custody, when 1071
duty of, when vagrant is a minor 1071
money arising from hire of vagrants, how disposed of 1071
Minor, vagrant minor, when to be committed or give recognizance 1071
Sheriff and Constable, shall inform upon vagrants, &c 1071
Vagrancy, how established 1071
Vagrants, who deemed such 1070
keepers of gaming tables, &c., deemed 1070
shall be arrested, how and when 1070
Warrant, justice of the peace to issue ... 1070
VAN BUREN COUNTY, limits defined 284
VENUE, change of, in civil cases, in St. Louis county, regulated 315
VENUE. CHAP. 182. .....1072 to 1073
Clerk of Court, shall make out transcript . 1073
duty of, when cause is removed 1073
shall file papers and docket cause 1073
may make out fee-bill, and cause the same to be collected, when and how .. 1073

Digitized by Google

VENUE.
Clerk of Court, failing to send transcript, effect of ... 1073
Costs and Expenses, to be paid by petitioner, when ... 1073
failing to pay costs, effect of ... 1073
Notice, reasonable; when and how given, and effect of ... 1072
Petition and Affidavit, shall contain, what 1072
may be presented to judge in vacation .. 1072
Transcript, to be made out, when and how 1073
penalty on clerk for failing to make 1073
Venue, change of, may be awarded, when and for what causes ... 1072
proceedings to obtain change of ... 1072
judge may order change of, when ... 1072
court may order change of, without application from either party, when 1072
change of, awarded in vacation, what proceedings ... 1073
VERDICT, may be received on Sunday ... 337
in detinue, omitting value, &c., proceedings ... 424
in cases of escheat ... 464
in cases of forcible entry and detainer .. 515
See titles *Crimes and Punishments, Justices' Courts, Practice at Law, Practice and Proceedings in Criminal Cases, and Practice in Chancery.*
VESSELS. See titles *Boats and Vessels, Crimes and Punishments, and Practice and Proceedings in Criminal Cases.*
VOTER, who deemed qualified ... 30
See title *Crimes and Punishments.*
WAGER OF LAW, abolished ... 809
WAREHOUSE, burning of ... 354
WARES, burning, with intent to defraud 355
WARRANT, not to issue without affidavit 44
in cases by and against apprentices 118
in cases by and against boatmen ... 177
against boats and vessels ... 182
in cases of negroes suing for freedom .. 532
for fugitive from justice ... 535, 536
from justice of the peace in cases of breach of the peace ... 673
for apprehension of free negro or mulatto ... 758
for aprehension of peddler ... 780
for recovery of public records ... 914
for appointment of assessors of lost or wrecked property ... 986
for apprehension of slaves holding unlawful assembly ... 1017
for apprehension of free negroes or mulattoes, at unlawful assembly of slaves 1017
for conveyance and delivery of runaway slave ... 1021
on state treasury, to be drawn by auditor 1060
for apprehension of vagrants ... 1070
not to be served on Sunday or 4th of July, when ... 1092
See titles *County Warrants, Crimes and Punishments, Justices' Courts, Practice at Law, Practice and Proceedings in Criminal Cases, and Towns.*
WARREN COUNTY, limits defined ... 266
WASHINGTON COUNTY, limits defined ... 284
WASTE, on county buildings, penalty 288
on saline lands ... 981
on school lands ... 994
See title *Administration.*
WAYS. CHAP. 183. ... 1074 to 1076
Applicant, for right of way shall give notice, when, and to whom ... 1074
shall produce evidence to the court that notice has been given, when ... 1074
Commissioners, to mark out a road to be appointed, when ... 1074
shall assess damages occasioned by road 1074
shall take an oath, when and how ... 1074
shall make report to county court ... 1075
objections to report of, when to be filed 1075
others may be appointed, when ... 1075
report of, confirmed; what proceedings 1075
report of, rejected; what proceedings .. 1075
County Court, to appoint commissioners to lay out private road, when ... 1074
proceedings of, in case of objections to commissioners' report ... 1075
proceedings of, when report is approved 1075
may dismiss petition, when ... 1075
Way, right of, how obtained ... 1074
applicant for right of, how to proceed 1074
commissioners' report with regard to .. 1075
right of, to a mill, how established 1075
WEIGHTS AND MEASURES. CHAPTER 184. ... 1076 to 1077
Clerk of County Court, to procure standards of weights and measures, how 1076
shall give notice of having procured ... 1076
shall seal all weights and measures 1077
"*100 Weight*," *and the* "*Ton*," what shall constitute ... 1077
Sealing, clerks of county courts shall seal weights and measures, when ... 1077
Standard, penalty for using weights and measures, contrary to ... 1076
Wheat, Rye, and Corn, what weight shall constitute a bushel of each ... 1077
WIDOW. See titles *Administration, and Dower.*
WILLS. CHAPTER 185. ... 1077 to 1086
Attestation, of witness to will, when sick, absent, &c., how procured ... 1081
commission to take, how and when made out ... 1081
mode of taking ... 1081
effect of, when taken in proper manner 1081
Children, not named in will have rights as though parent died intestate ... 1080
devisees and legatees, shall refund to .. 1080
advancement to, effect of ... 1080
Circuit Court, may order contribution and distribution for making up shares of legatees, heirs, &c ... 1086
County Court, shall take proof of last wills 1080
clerk of, in vacation, may take proof, &c. 1080
shall take, and receive proof of handwriting of witnesses to will, when .. 1081
clerk of, shall certify as to testimony of witnesses to will, when ... 1082
shall have power to summon person to produce will, when ... 1085
Creditor, shall not be a witness, when 1084
Devise, void to attesting witness to will ... 1084

Digitized by Google

WILLS.
Devise, shall not be void, to others than the attesting witness, when 1084
witness may recover amount of devise to him, when and how 1084
shall be valid to witness, when 1084
what shall be an estate for life, &c 1085
considered in fee simple, when 1085
Devisee, dying before testator, lineal descendants of shall take the estate 1080
deemed legal witness to will, when 1085
shall refund part of money received by devise, when 1086
court shall require, to refund, when 1086
Incumbrance, on real or personal estate, when not deemed a revocation of will 1079
Jury, validity of will shall be tried by 1083
verdict of, shall be final, when 1083
Legatees, may be competent witnesses when 1085
death of, shall not affect competency as witness to will, when 1085
shall not demand or receive legacy, when 1085
shall make contribution to estate, when 1086
circuit court shall order contribution from, when 1086
Married Woman, not capable of making will, when 1079
shall have power to make will, when .. 1079
Mariners and Soldiers, may dispose of wages, or personal property, how 1082
making nuncupative will, proof of such will, when and how made 1082
Nuncupative Wills, not good, when estate exceeds two hundred dollars in value 1082
must be proved by two witnesses 1082
maker of, must call upon witnesses, &c 1082
must be made at time of last sickness .. 1082
must be made at dwelling of deceased .. 1082
valid, when testator was taken sick, from home, and dies before his return 1082
proof, how made and when received ... 1082
must be reduced to writing, when 1082
probate of, shall not be granted, unless 1082
widow, or next of kin of deceased, may be cited to contest will, when 1082
Personalty, who may make will of personal property 1078
Probate, county court or clerk, shall take proof of last wills 1082
shall be taken, when and where 1081
shall be taken in county where lands lie 1082
taken in county where testator died 1081
may be taken in any county, when 1021
certificate of, when and by whom granted 1081
Record, of wills, shall be made, how and by whom 1082
shall be evidence, when 1083
certified copy, evidence 1083
Testator, person signing name of, must subscribe his own, as witness to will 1079
may revoke will, how 1079
after making will, shall marry and die, leaving issue, will shall be revoked, unless 1079
shall be deemed to have died intestate, as to children not named in will 1080

WILLS.
Testator, hand-writing of, may be proved, when 1081
Wills, who may devise estate by 1078
no married woman shall be capable of making, except, &c 1079
shall be in writing, signed, attested, &c 1079
may be signed by other person than testator 1079
not to be revoked, except when 1079
may be revoked by marriage, when 1079
unmarried woman, making, when revoked 1079
first, not revived when second has been cancelled or destroyed, unless, &c ... 1080
shall be proved, where 1081
proof of, and certificate given, when ... 1081
rejected, certificate granted 1081
when lands devised, shall be recorded, where 1083
who may contest validity of 1083
validity of, may be contested, when ... 1083
validity of, how may be contested 1083
real estate may be bequeathed, by person living out of the state, how 1084
copies of wills made out of the state, effect of, and to be recorded in this state 1084
made out of the state, may be contested 1084
creditor shall be a witness to execution of, when 1085
term of, defined, and how to be construed 1086
courts shall have due regard to direction of, and to the true intent and meaning of testator 1086
Witnesses, wills shall be attested by two, or more 1079
name of, shall be subscribed, who have signed testator's name to will 1079
sick, absent, or non-resident, attestation of, how procured 1081
testimony of sick, absent, or non-resident witness, effect of 1081
dead, insane, or unknown, what proof sufficient to establish will 1081
when all but one of, are dead, insane or unknown, what proceedings 1081
proof of hand-writing of, when and how taken 1081
testimony of, shall be in writing, and signed by 1082
oath of, examined at probate, shall have weight, when and how 1083
beneficial devise to, void, when 1084
extent of share of, when and from whom may be recovered 1084
credit of, when left to consideration of court and jury 1085
competency of, not affected by death of legatee, when 1085
having been examined as such, effect of, to them 1085
WITNESSES. CHAP. 186. ....1087 to 1090
Arrest, witnesses shall be privileged from 1088
of witness shall cause suit to abate, ... 1088
penalty for causing arrest of witness, wrongfully 1089
Continuance, of cause from absence of witness, when 1087

Digitized by Google

WITNESSES.
Court, may award writ of attachment for witness, when 1088
may impose a fine upon witness for not obeying summons, in how much 1088
may remit fine, when 1088
may commit witness for refusing to testify 1088
Damages, witness when liable for, in failing to obey summons 1088
may be recovered by action, unless 1088
Fees, paid or tendered witness, what effect 1088
Habeas Corpus, may issue to bring witness 1089
witness may be brought from jail by, except when confined for felony 1089
witness may be brought out of jail by, to testify before justice, when 1089
on application for, what proceedings ... 1089
affidavit to obtain, not required of whom 1089
Justice of the Peace, witness may be brought by habeas corpus to testify before 1089
Minister or Priest, as witness, not compelled to disclose confessions, when 1090
Negro and Mulatto, shall not be a competent witness, when 1090
may be witness in pleas of state against negro or mulatto 1090
may be witness where negroes and mulattoes alone are parties 1090
Physicians or Surgeons, not required, as witnesses, to disclose information, acquired from patient, when 1090
Prisoner, brought from jail to testify, shall be remanded, when 1090
Subpœna, for witness, how directed, and by whom served 1089
how served 1089
return upon, conclusive as to facts 1089
return upon, shall be verified by affidavit, when 1089
Suit, shall abate, when party causes witness to be wrongfully arrested 1088
Summons, shall be issued for witness, how and by whom 1087
may be served in any county in the state 1087
Witnesses, how summoned 1087
summons for, to contain names of all .. 1087
summoned, and failing to attend, may be attached 1087
may give recognizance to sheriff, &c., for appearance, when 1088
cause continued by absence of, what effect 1088
not excused from answering questions .. 1090
not incompetent on account of religious opinions 1090
WITNESSES, two necessary in cases of treason 44
in proceedings by address 58
before arbitrators and referees 122
to prove deed before officer 222, 223
in cases to which town, city, &c., is party, inhabitants competent 236
depositions of, may be taken 416
fees of 503
depositions of, to perpetuate testimony . 793
WITNESSES, two necessary to will 1079
WOLVES, act to encourage destruction of, repealed 1099
WOMAN. See title *Crimes and Punishments*.
WOODS, MARSHES AND PRAIRIES. CHAPTER 187. ..... 1090 to 1091
Damages, what amount of, may be recovered for firing woods, marshes, &c., wilfully 1091
divided between person suing and county where offence is committed 1091
satisfaction of, shall be made to party injured, when 1091
how recovered, in what action 1091
Farm, any person may fire any thing upon his own, if done how 1091
Master, liable for offence of slave in firing, &c., when and how 1091
Penalty, for firing woods, marshes, &c ... 1091
for wilful firing woods, &c 1091
WRECKS. See title *Salvage*.
WRIGHT COUNTY, limits defined 285
WRIT OF ERROR, from order vacating or affirming award 124
by attorneys, on charges against them .. 160
in suits against boats and vessels 186
costs on, regulated 244
in cases of dower 438
in actions of ejectment 444
in cases of escheat 465
in cases of partition 776
in suits for freedom 533
to be brought within five years 901
may be brought by survivors of parties 901
all parties to join in, unless 901
may be quashed, when 902
refusing parties, how brought in 902
parties may join in, when 903
rights of persons not impaired 902
to stay execution, when 903, 904
notice of, to be given 904
how returned, penalty against clerk for not returning 904
errors to be assigned 904
joinder in, when to be filed 905
surviving parties to prosecute and defend 905
executors and administrators, when to be made parties 905
feme sole, marrying after, husband to be made party 905
parties to, to furnish points of argument 905
what exceptions allowed on 906
WRITS AND PROCESS. CHAP. 188. ..... 1091 to 1092
Writs and Process, shall run in the name of the "state of Missouri" 1092
shall be tested how, and by whom 1092
shall be sealed with judicial seal 1092
issued by judge or justice of the peace .. 1092
shall not be served on Sunday or fourth of July, except, when 1092
service of, shall be void, when 1092
when not served, alias may issue 1092
may be issued in vacation, when 1092
WRIT. See titles *Crimes and Punishments, and Process*.

Digitized by Google

ERRATA.

In Chapter 53; title "*Divorce and Alimony*," page 428, 6th line from bottom, "*fifth*" should be read "*sixth.*" The error occurred in the enrolled bill.

In Chapter 18; title "*Bills of Exchange*," page 175, 6th line from top, for "*Endorsers*" read "*Endorsees.*"

In Chapter 79; title "*Inclosures*," page 575, 3d line of section one, the word "[or,]" should be read to follow "palisades," instead of preceding it.

In Chapter 15; title "*Auctioneers*," page 165, section 17, in the sixth line of the section, the sentence should read "such account shall *not* be deemed truly rendered." This error is in the enrolled bill.

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google