THE

REVISED STATUTES OF KENTUCKY,

BY

C. A. WICKLIFFE, S. TURNER, AND S. S. NICHOLAS,

COMMISSIONERS APPOINTED BY THE LEGISLATURE:

APPROVED AND ADOPTED

BY THE GENERAL ASSEMBLY, 1851 AND 1852.

IN FORCE FROM JULY 1, 1852.

FRANKFORT, KENTUCKY.
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UNITED STATES OF AMERICA, *District of Kentucky,* } *Sct.*

L. S.

Be it remembered, that, on this 9th day of January, anno domini 1852, C. A. WICKLIFFE, S. TURNER, and S. S. NICHOLAS, Commissioners appointed by the Legislature of Kentucky, of said District, deposited in this office the title of a book, which is in the words and figures following, viz: *"The Revised Statutes of Kentucky, by C. A. Wickliffe, Squire Turner, S. S. Nicholas, Commissioners appointed by the Legislature—approved and adopted by the General Assembly,* 1851 *and* 1852;" the right whereof they claim as authors, for the use of the State of Kentucky, in conformity with an act of Congress, entitled, "An act to amend the several acts respecting Copy-Rights."

ATTEST, JOHN A. MONROE,
Clerk for the Kentucky District.

TO THE CITIZENS OF KENTUCKY.

In this volume you have the Statute Law of your state, revised, and adopted by the legislature.

The constitution of the state made it the duty of the general assembly of Kentucky, first to convene after its adoption by the people, to appoint two boards of commissioners—one to prepare a code of practice for the courts, both civil and criminal, in this commonwealth, by abridging and simplifying the rules of practice and laws in relation thereto; the other to revise and reduce into system the civil and criminal statute law of Kentucky, so as to have but one law on the same subject. Under this section, and in virtue of an act of the legislature passed at the session of 1849–'50, the two boards were organized.

The final report of the board to revise the statutes was made to the legislature in December, 1851, as follows:

To the General Assembly of the Commonwealth of Kentucky:

The undersigned were selected to revise and to reduce into system the civil and criminal statute law of Kentucky. A portion of the work was submitted to the legislature at its last session, and having been adopted, the 1st day of July, 1852, was fixed as the prospective period at which it should operate. The object contemplated by the legislature in the postponement was, that the revision might be completed, and the remainder of the work submitted for the consideration and adoption of the present legislature. We have fulfilled the duty assigned us, and now have the honor of presenting to the representatives of the people, for their consideration, the result of our labors, and invite their patient and careful examination. The legislation of the past had caused a great accumulation of statutes, but it is believed that the present revision condenses in a single volume all the material provisions of our complex statutory law.

We will at any time, if it be deemed necessary, attend at the capitol during the session, to afford to the committees of your body to whom you may refer the examination of the work, such explanations as they may require in regard to the details it embraces.

It may be necessary, after the final action of the legislature upon the revision, that the commissioners should so arrange the chapters as to make the compilation harmonious, and to attach indices and marginal notes, to facilitate reference to its contents. These duties the commissioners would discharge if required.

In the prosecution of their labors, the commissioners have sought to embody with method and fidelity the spirit of the existing statutes of the state, rather than to embark in hazardous innovations, and have only ventured to introduce improvements when the legislation of our sister states or the advancement of legal science demonstrated their utility. We have been less ambitious of rendering the revision theoretically perfect, than practically beneficial, and we trust that our labors will receive the approbation of the legislature, the bar, and the people.

Respectfully, yours,

C. A. WICKLIFFE,
SQUIRE TURNER,
S. S. NICHOLAS.

In a work of this magnitude, requiring labor, vigilance, and a familiar practical acquaintance with our statute laws in their chaotic form, perfection was not to be expected. Imperfect as it may be, the sanction and approval of the work by the representatives of the commonwealth stamps it with the authority of law.

The legislature of 1851–'2, after the adoption of the revised statutes, adjourned without providing for their publication. The undersigned, two of the commissioners, believing that the publication ought to be made under the superintendence of the commissioners, or some of them, determined to publish this book for the use of the state, upon their own responsibility. They regret that the other commissioner declined to assist in the preparation of the work for the press.

It was to be expected that differences of opinion would arise in the board as the work of revision progressed. These differences, when deemed of sufficient importance, were noted and submitted to the legislature. Since that tribunal has passed upon them, they have ceased to possess any interest, so far as the public are concerned, and they have not been noted in this publication. Some of the most material alterations and amendments to the original reports of the commissioners, made by the legislature, have been noticed.

C. A. WICKLIFFE,
SQUIRE TURNER.

August 2, 1852.

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EXPLANATIONS OF REFERENCES.

M. & B.	Morehead & Brown's Digest.
L.	Loughborough's Digest.
A. 1850, &c.	Session Acts of 1849–'50, &c.
Con.	New Constitution of Kentucky.
M. R.	Massachusetts Revision.
N. Y. R.	New York Revision.
V. R.	Virginia Revision.

THE DECLARATION OF INDEPENDENCE.

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

July 4, 1776.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident:—that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immedi-

July 4, 1776.

ate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise, the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offenses:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it

at once an example and fit instrument for introducing the same absolute rule into these colonies: July 4, 1776.

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war, in peace, friends.

We, therefore, the representatives of the UNITED STATES OF AMERICA, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, FREE and INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain

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is, and ought to be, totally dissolved; and that, as FREE and INDEPENDENT STATES, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which INDEPENDENT STATES may of right do. And for the support of this Declaration, with a firm reliance on the protection of DIVINE PROVIDENCE, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

New Hampshire.—Josiah Bartlett, William Whipple, Matthew Thornton.

Massachusetts Bay.—Samuel Adams, John Adams, Robert Treat Paine, Elbridge Gerry.

Rhode Island, &c.—Stephen Hopkins, William Ellery.

Connecticut.—Roger Sherman, Samuel Huntingdon, William Williams, Oliver Wolcott.

New York.—William Floyd, Philip Livingston, Francis Lewis, Lewis Morris.

New Jersey.—Richard Stockton, John Witherspoon, Francis Hopkinson, John Hart, Abraham Clark.

Pennsylvania.—Robert Morris, Benjamin Rush, Benjamin Franklin, John Morton, George Clymer, James Smith, George Taylor, James Wilson, George Ross.

Delaware.—Cæsar Rodney, George Read, Thos. M'Kean.

Maryland.—Samuel Chase, William Paca, Thomas Stone, Charles Carroll of Carrollton.

Virginia.—George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, jr., Francis Lightfoot Lee, Carter Braxton.

North Carolina.—William Hooper, Joseph Hewes, John Penn.

South Carolina.—Edward Rutledge, Thomas Hayward, jr., Thomas Lynch, jr., Arthur Middleton.

Georgia.—Button Gwinnett, Lyman Hall, George Walton.

THE CONSTITUTION OF THE UNITED STATES.

We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, 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 1.

Legislative powers.

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

Section 2.

Members of the house of representatives—how chosen.

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 members of house of representatives.

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 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—when to be taken.

Vacancies, how filled.

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

House representatives has power of impeachment.

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

Section 3.

Senate—how to be chosen.

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.

Senators classed.

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.

Vacancies in recess, how filled.

Qualification of senator.

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.

Vice President.

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

Senate to choose their officers.

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.

Try impeachments

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

Judgment in case of impeachment.

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

Section 4.

Manner of electing members 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.

Congress to assemble annually.

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

Section 5.

Elections, how judged.

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

Quorum of senate and house of representatives.

Rules.

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 by 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.

Adjournment.

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

Section 6.

Compensation.

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 the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Privileges.

Arrests.

Exclusion from office.

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

Section 7.

Revenue bills—how passed.

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.

Bills, their formalities.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objection at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by

Where to be returned by the president.

Two-thirds may pass bills, he objecting.

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.

When bills to be returned.

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.

Orders, resolutions, and votes to be approved by the President.

SECTION 8.

The congress shall have power—

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

Congress to lay taxes, duties, &c.

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

Borrow money.

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

To regulate commerce, &c.

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

Naturalization, &c.

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

Coin money.

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

Counterfeiting punished.

7. To establish post offices and post roads:

Post offices, &c.

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:

Copy right and patent.

9. To constitute tribunals inferior to the supreme court:

Inferior courts.

10. To define and punish piracies and felonies committed on the high seas, and offenses against the laws of nations:

Piracies, &c.

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

Declare war.

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

Raise armies.

13. To provide and maintain a navy:

Navy.

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

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions: Militia.

16. 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. Organize the militia.

17. To exercise exclusive legislation in all cases whatsoever, over such district, not exceeding ten miles square, as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings: And Exclusive legislation over 10 miles.

18. 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. Make laws necessary and proper, &c.

Section 9.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person. Limitations of the powers of congress. Importation of persons after 1808.

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. Habeas corpus.

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

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

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. No exportation duty, or preference in commerce or tonnage.

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. Money, how to be drawn.

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. No title of nobility to be conferred, &c.

Section 10.

Limitations of the powers of the 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.

States not to lay imposts.

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.

States not to lay any duty of tonnage, &c.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Article II.—Section 1.

The executive power.

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, how appointed.

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.

Electors to meet and vote.

[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.

Proceedings.

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 hav-

ing 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.*]

[*Altered, see amend. art. 12.]

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.

Electors, when to meet.

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.

Qualifications of President of the United States.

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

In case of the removal, &c., of the president his powers and duties to devolve on the Vice President.

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 of the United States, his compensation.

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

9. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

Oath of office.

Section 2.

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

Powers of the President of the United States.

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 ap-

Make treaties, and appoint officers, with consent of the senate.

point 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.

Fill vacancies in office in recess of the senate.

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

Section 3.

Further powers and duties of the President.

1. He shall, from time to time, give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

Section 4.

Civil officers removable 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 1.

Judicial powers and tenure of the Judges.

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

Section 2.

Extent of the judicial power.

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 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. See amendment Article 11.

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. Jurisdiction of supreme court.

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

Section 3.

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

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. Attainder.

Article IV.—Section 1.

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

Section 2.

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

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. Fugitive slaves.

Section 3.

1. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be form- Of new states.

ed by the junction of two or more states, or parts of states, without the consent of the legislature of the states concerned, as well of the congress.

Territory of the United States.

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

Section 4.

Republican form of government guaranteed.

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

Article V.

Of amendments to the constitution

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.

Article VI.

Debts prior to the adoption of the constitution.

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.

Force of the constitution, laws, & treaties of the U. States.

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 to support the constitution.

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

Religious test.

shall ever be required as a qualification to any office or public trust under the United States.

Article VII.

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

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

GEORGE WASHINGTON, President,
and deputy from Virginia.

New Hampshire.—John Langdon, Nicholas Gilman.

Massachusetts.—Nathaniel Gorham, Rufus King.

Connecticut.—William Samuel Johnson, Roger Sherman.

New York.—Alexander Hamilton.

New Jersey.—William Livingston, David Brearly, William Patterson, Jonathan Dayton.

Pennsylvania.—Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.

Delaware.—George Read, Gunning Bedford, jun., John Dickinson, Richard Bassett, Jacob Broom.

Maryland.—James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll.

Virginia.—John Blair, James Madison, jun.

North Carolina.—William Blount, Rich'd Dobbs Spaight, Hugh Williamson.

South Carolina.—John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.

Georgia.—William Few, Abraham Baldwin.

Attest: William Jackson, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

[The following 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 4th of March, 1789, and were adopted by the requisite number of states. 1st Volume of the Laws of the United States, page 72.]

Article I.

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. Free exercise of religion, freedom of speech and of the press, and the right of petition.

ARTICLE II.

Right to bear arms

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

ARTICLE III.

Soldiers not to be quartered

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

ARTICLE IV.

People to be secured against unreasonable searches and seizures.

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

ARTICLE V.

Criminal proceedings regulated

Private property not to be taken &c.

1. 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 offense, 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 be taken for public use without just compensation.

ARTICLE VI.

Trial by jury secured in criminal proceedings, &c.

1. 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 defense.

ARTICLE VII.

Trial by jury in common law cases, when to be had.

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

ARTICLE VIII.

Excessive bail.

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

ARTICLE IX.

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

Rights retained by people.

ARTICLE X.

1. 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.

Powers not granted, &c, are reserved.

[The following Amendment was proposed at the second session of the third congress. It is printed in the Laws of the United States, 1 vol. p 73, as article 11.]

ARTICLE XI.

1. 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.

States not to be sued, &c.

[The three following sections were proposed as Amendments at the first session of the eighth congress. They are printed in the Laws of the United States as article 12.]

ARTICLE XII.

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

Manner of choosing President.

House of representatives, when to choose the president.

If President not chosen, vice president to act as such

as in the case of the death or other constitutional disability of the President.

Senate, when to elect the vice president.

2. 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.

3. But no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

[In the edition of the Laws of the United States, and also in the edition of the Digest of the Laws of Kentucky printed in 1822, there is an Amendment printed as article 13, prohibiting citizens from accepting titles of nobility or honor, or presents, offices, &c., from foreign nations. But, by a message of the president of the United States, of the 4th of February, 1818, in answer to a resolution of the House of Representatives, it appears that this Amendment had been ratified only by 12 states, and therefore had not been adopted. See vol. 4 of the printed papers of the 1st session of the 15th Congress, No. 76.]

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COMPACT WITH VIRGINIA.

COMMONWEALTH OF VIRGINIA.

An Act concerning the erection of the District of Kentucky into an Independent State.

Passed the 18th of December, 1789.

Preamble.

WHEREAS, it is represented to this present General Assembly, that the act of last session, entitled, "an act concerning the erection of the District of Kentucky into an independent state," which contains terms materially different from those of the act of October session, one thousand seven hundred and eighty-five, are found incompatible with the real views of this commonwealth, as well as injurious to the good people of the said district:

Representatives, to compose a convention, to be elected in Kentucky district.

SEC. 1. *Be it enacted by the General Assembly*, That in the month of May next, on the respective court days of the counties within the said district, and at the respective places of holding courts therein, representatives to continue in appointment for one year, and to compose a convention, with the powers, and for the purposes hereinafter mentioned, shall be elected by the free male inhabitants of each county above the age of twenty-one years, in like manner as delegates to the General Assembly have been elected within said district, in the proportions following: In the county of Jefferson shall be elected five representatives; in the county of Nelson five representatives; in the county of Mercer five representatives; in the county of Lincoln five representatives; in the county of Madison five representatives; in the county of Fayette five representatives; in the county of Woodford five representatives; in the county of Bourbon five representatives; and in the county of Mason five representatives: *Provided*, that no free male inhabitant above the age of twenty-one years, shall vote in any other county except that in which he resides, and that no person shall be capable of being elected unless he has been a resident within the said district at least one year.

Qualification of the electors.

Qualification of Representatives.

Elections to be continued 5 days.

SEC. 2. That full opportunity may be given to the good people of exercising their right of suffrage on an occasion so interesting to them, each of the officers holding such elections, shall continue the same from day to day, passing over Sunday, for five days including the first day, and shall cause this act to be read on each day immediately preceding the opening of the election, at the door of the court

Duty of sheriffs conducting them.

house or other convenient place; each of the said officers shall deliver to each person duly elected a representative, a certificate of his election, and shall transmit a general return to the clerk of the supreme court, to be by him laid before the convention.

Penalty on them for neglect of duty

SEC. 3. For every neglect of any of the duties hereby enjoined on such officer, he shall forfeit one hundred pounds, to be recovered by action of debt by any person suing for the same.

The convention to determine upon the expediency of erecting said district into an independent state on certain conditions

SEC. 4. The said convention shall be held at Danville on the twenty-sixth day of July next, and shall and may proceed, after choosing a president and other proper officers, and settling the proper rules of proceeding, to consider and determine whether it be expedient for, and the will of the good people of the said district, that the same be erected into an independent state, on the terms and conditions following:

Boundary.

SEC. 5. First, that the boundary between the proposed state and Virginia, shall remain the same as at present separates the district from the residue of this commonwealth.

The proposed state to pay part of the debt of the U. S. and of this Commonwealth.

SEC. 6. Second, that the proposed state shall take upon itself a just proportion of the debt of the United States, and the payment of all the certificates granted on account of the several expeditions carried on from the Kentucky district against the Indians, since the first day of January, one thousand seven hundred and eighty-five.

Rights, &c. to lands secured.

SEC. 7. Third, that all private rights and interests of lands within the said district, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in this state.

How lands of non resident proprietors are to be taxed.

SEC. 8. Fourth, that the lands within the proposed state of non-resident proprietors, shall not in any case be taxed higher than the lands of residents, at any time prior to the admission of the proposed state to a vote by its delegates in congress, where such non-residents reside out of the United States, nor at any time either before or after such admission, where such non-residents reside within this commonwealth, within which this stipulation shall be reciprocal; or where such non-residents reside within any other of the United States, which shall declare the same to be reciprocal within its limits; nor shall a neglect of cultivation or improvement of any land within either the proposed state or this commonwealth, belonging to non-residents, citizens of the other, subject such non-residents to forfeiture or other penalty, within the term of six years, after the admission of the said state into the federal Union.

Neglect of cultivation, not to subject to forfeiture or other penalty, within term of six years.

Grants of land by this commonwealth and the proposed state not to interfere.

SEC. 9. Fifth, that no grant of land or land warrant to be issued by the proposed state, shall interfere with any warrant heretofore issued from the land office of Virginia, which shall be located on land within the said district, now liable thereto, on or before the first day of September, one thousand seven hundred and ninety-one.

Unlocated lands appropriated to individuals for military services to be disposed of until 1st of May, 1792, by Virginia.

SEC. 10. Sixth, that the unlocated lands within the said district, which stand appropriated to individuals, or description of individuals, by the laws of this commonwealth, for military or other services, shall be exempted from the disposition of the proposed state, and shall remain subject to be disposed of by the commonwealth of Virginia, according to such appropriation, until the first day of May, one thousand seven hundred and ninety-two, and no longer; thereafter the residue of all lands remaining within the limits of the said district, shall be subject to the disposition of the proposed state.

Navigation of the Ohio to be free and common.

SEC. 11. Seventh, that the use and navigation of the river Ohio, so far as the territory of the proposed state, or the territory which shall remain within the limits of this commonwealth lies thereon, shall be free and common to the citizens of the United States, and the respective jurisdictions of this commonwealth and of the proposed state on the river as aforesaid, shall be concurrent only with the states which may possess the opposite shores of the said river.

Commissioners to settle disputes which may arise respecting the above articles.

SEC. 12. Eighth, that in case any complaint or dispute shall at any time arise between the commonwealth of Virginia and the said district, after it shall be an independent state, concerning the meaning or execution of the foregoing articles, the same shall be determined by six commissioners, of whom two shall be chosen by each of the parties, and the remainder by the commissioners so first appointed.

What number of members necessary to proceed to business, and to determine question concerning the erection of the said district into independent state.

SEC. 13. *Provided, however*, That five members assembled shall be a sufficient number to adjourn from day to day, and to issue writs for supplying vacancies which may happen from deaths, resignations, or refusals to act; a majority of the whole shall be a sufficient number to choose a president, settle the proper rules of proceeding, authorize any number to summon a convention during a recess, and to act in all other instances where a greater number is not expressly required. Two-thirds of the whole shall be a sufficient number to determine on the expediency of forming the said district into an independent state on the aforesaid terms and conditions: *Provided*, that a majority of the whole number to be elected concur therein.

When the authority of this commonwealth over the said district to cease.

SEC. 14. *And be it further enacted*, That if the said convention shall approve of the erection of the said district into an independent state on the foregoing terms and conditions, they shall and may proceed to fix a day posterior to the first day of November, one thousand seven hundred and ninety-one, on which the authority of this commonwealth, and of its laws, under the exceptions aforesaid, shall cease and determine forever over the proposed state, and the said articles become a solemn compact mutually binding on the parties, and unalterable by either without the consent of the other.

The assent of the general government to be obtained.

SEC. 15. *Provided, however*, That prior to the first day of November, one thousand seven hundred and ninety-

one, the general government of the United States shall assent to the erection of the said district into an independent state, shall release this commonwealth from all its federal obligations arising from the said district as being part thereof, and shall agree that the proposed state shall immediately after the day to be fixed as aforesaid, posterior to the first day of November, one thousand seven hundred and ninety-one, or at some convenient time future thereto, be admitted into the Federal Union.

The convention to provide for the establishment of a constitution of government for the proposed state

SEC. 16. And to the end that no period of anarchy may happen to the good people of the proposed state, it is to be understood that the said convention shall have authority to take the necessary provisional measures for the election and meeting of a convention, at some time prior to the day fixed for the determination of the authority of this commonwealth, and of its laws over said district, and posterior to the first day of November, one thousand seven hundred and ninety-one aforesaid, with full power and authority to frame and establish a fundamental constitution of government for the proposed state, and to declare what laws shall be in force therein, until the same shall be abrogated or altered by the legislative authority acting under the constitution so to be framed and established.

Privileges of the electors and representatives.

SEC. 17. *And be it further enacted*, That the electors in going to, continuing at, and returning from, an election of members to the said convention, shall be entitled to the same privileges from arrest, as are by law allowed at an election of members to the General Assembly; and each person returned to serve as a member in said convention shall be entitled to the same privileges from arrest in going to, during his attendance on, and returning from said convention, as are by law allowed to the members of the General Assembly.

The executive to transmit this act to representatives in Congress.

SEC. 18. This act shall be transmitted by the Executive to the representatives of this commonwealth in Congress, who are hereby instructed to use their endeavors to obtain from Congress a speedy act to the effect above specified.

THE OLD CONSTITUTION OF KENTUCKY.*

THE CONSTITUTION, OR FORM OF GOVERNMENT FOR THE STATE OF KENTUCKY.

Preamble.

We, the Representatives of the People of the State of Kentucky, in Convention assembled, to secure to all the citizens thereof the enjoyment of the right of life, liberty, and property, and of pursuing happiness, do ordain and establish this Constitution for its government.

ARTICLE I.

Concerning the distribution of the powers of the government.

Division of the powers of government into three departments.

Section 1. The powers of government of the state of Kentucky, shall be divided into three distinct departments, and each of them be confined to a seperate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another.

Powers to be kept separate.

Section 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others; except in the instances hereinafter expressly directed or permitted.

ARTICLE II.

Concerning the Legislative Department.

Of the legislative power.

Section 1. The legislative power of this commonwealth shall be vested in two distinct branches; the one to be

*[The first Constitution of the State of Kentucky was adopted and ratified in Convention at Danville, on the 19th day of April, 1792; and provided that the Government of the Commonwealth of Kentucky should commence on the first day of June of the same year. The Constitution will be found in 1 Littell's Laws of Kentucky, page 21 to 38. Kentucky was admitted into the Union by act of Congress on the first of June, 1792.

By the sixth section of the eighth article, it was provided, that all laws then in force, in the state of Virginia, not inconsistent with the Constitution, and of a general nature, and not local to the eastern part of Virginia, should be in force here, until altered or repealed by the Legislature.

By the eleventh article, it was provided that, at the general election for Representatives in 1797, the sense of the people should also be taken upon the propriety of calling a Convention, and that if the result was in favor of a Convention, similar proceedings should be had in 1798, and that if the result was again in favor of a Convention, the General Assembly should, at their next ensuing session, pass an act for calling a Convention to revise the Constitution. The result of the vote in each of the years of 1797 and 1798, being in favor of a Convention, the Legislature, on the 18th of December, 1798, passed the necessary law for calling the Convention. For the act, see 2 Littell's Laws of Kentucky, 211.

The Convention accordingly met at Frankfort, and adopted this Constitution of Kentucky on the 17th day of August, 1799.]

styled the House of Representatives, the other the Senate, and both together, the General Assembly of the Commonwealth of Kentucky.

House of representatives, term of service of members.

SECTION 2. The members of the house of representatives shall continue in service for the term of one year from the day of the commencement of the general election, and no longer.

When to be chosen, and election to continue 3 days

SECTION 3. Representatives shall be chosen on the first Monday in the month of August in every year; but the presiding officers of the several elections shall continue the same for three days, at the request of any one of the candidates.

Qualifications of members.

SECTION 4. No person shall be a representative, who at the time of his election is not a citizen of the United States, and hath not attained the age of twenty-four years, and resided in this state two years next preceding his election, and the last year thereof in the county or town for which he may be chosen.

Places of election.

SECTION 5. Elections for representatives for the several counties entitled to representation, shall be held at the places of holding their respective courts, or in the several election precincts into which the legislature may think proper, from time to time, to divide any or all of those counties: *Provided*, that when it shall appear to the legislature that any town hath a number of qualified voters equal to the ratio then fixed, such town shall be invested with the privilege of a separate representation, which shall be retained so long as such town shall contain a number of qualified voters equal to the ratio which may from time to time be fixed by law; and thereafter elections for the county in which such town is situated, shall not be held therein.

Towns may have separate representation.

Apportionment of representation.

SECTION 6. Representation shall be equal and uniform in this commonwealth; and shall be forever regulated and ascertained by the number of qualified electors therein. In the year eighteen hundred and three, and every fourth year thereafter, an enumeration of all the free male inhabitants of the state, above twenty-one years of age, shall be made in such manner as shall be directed by law. The number of representatives shall, in the several years of making these enumerations, be so fixed, as not to be less than fifty-eight, nor more than one hundred, and they shall be appointed for the four years next following, as near as may be, among the several counties and towns in proportion to the number of qualified electors; but, when a county may not have a sufficient number of qualified electors to entitle it to one representative, and when the adjacent county or counties may not have a residuum or residuums, which, when added to the small county, would entitle it to a separate representation, it shall then be in the power of the legislature to join two or more together for the purpose of sending a representative: *Provided*, that when there are two or more counties adjoining which have residuums over and above the ratio then fixed by law, if said residuums,

Residuums.

when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum.

To choose its officers.

SECTION 7. The house of representatives shall choose its speaker and other officers.

Qualifications of electors of representatives.

SECTION 8. In all elections for representatives, every free male citizen, (negroes, mulattoes, and Indians excepted,) who at the time being, hath attained to the age of twenty-one years, and resided in the state two years, or the county or town in which he offers to vote one year next preceding the election, shall enjoy the right of an elector; but no person shall be entitled to vote except in the county or town in which he may actually reside at the time of the election, except as is herein otherwise provided. Electors shall in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest during their attendance at, going to, and returning from elections.

Electors, when exempt from arrest.

Term of service of senators.

SECTION 9. The members of the senate shall be chosen for the term of four years; and when assembled, shall have the power to choose its officers annually.

Senators to be classed.

SECTION 10. At the first session of the general assembly, after the constitution takes effect, the senators shall be divided by lot, as equally as may be, into four classes. The seats of the senators of the first class shall be vacated at the expiration of the first year; of the second class, at the expiration of the second year; of the third class, at the expiration of the third year; and of the fourth class, at the expiration of the fourth year; so that one-fourth shall be chosen every year, and a rotation thereby kept up perpetually.

Number of senators.

SECTION 11. The senate shall consist of twenty-four members at least, and for every three members above fifty-eight which shall be added to the house of representatives, one member shall be added to the senate.

Senatorial districts, how to be formed.

SECTION 12. The same number of senatorial districts shall, from time to time, be established by the legislature, as there may then be senators allotted to the state; which shall be so formed as to contain, as near as may be, an equal number of free male inhabitants in each above the age of twenty-one years, and so that no county shall be divided, or form more than one district; and where two or more counties compose a district, they shall be adjoining.

Additional senators—how to be classed.

SECTION 13. When an additional senator may be added to the senate, he shall be annexed by lot to one of the four classes, so as to keep them as nearly equal in numbers as possible.

Qualifications of electors of senator

SECTION 14. One senator for each district shall be elected by those qualified to vote for representatives therein, who shall give their votes at the several places in the counties or towns where elections are by law directed to be held.

Qualifications of senators.

SECTION 15. No person shall be a senator, who, at the time of his election, is not a citizen of the United States,

and who hath not attained to the age of thirty-five years, and resided in this state six years next preceding his election, and the last year thereof in the district for which he may be chosen.

Time of electing senators.

SECTION 16. The first election for senators shall be general throughout the state, and at the same time that the general election for representatives is held; and thereafter, there shall, in like manner, be an annual election for senators to fill the places of those whose time of service may have expired.

Time of meeting of the legislature.

SECTION 17. The general assembly shall convene on the first Monday in the month of November in every year, unless a different day be appointed by law; and their sessions shall be held at the seat of goverment.

Quorum of the senate and house of representatives

SECTION 18. Not less than a majority of the members of each house of the general assembly shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and shall be authorized by law to compel the attendance of absent members, in such manner, and under such penalties as may be prescribed thereby.

Elections, how judged.

SECTION 19. Each house of the general assembly shall judge of the qualifications, elections, and returns of its members; but a contested election shall be determined in such manner as shall be directed by law.

Rules of proceedings, & power to punish.

SECTION 20. Each house of the general assembly may determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

Journals by each house.

SECTION 21. Each house of the general assembly shall keep and publish, weekly, a journal of its proceedings; and the yeas and nays of the members, on any question, shall, at the desire of any two of them, be entered on their journal.

Adjournment.

SECTION 22. Neither house, during the session of the general assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Compensation of members.

SECTION 23. The members of the general assembly shall severally receive, from the public treasury, a compensation for their services, which shall be one dollar and a half a day, during their attendance on, going to, and returning from the sessions of their respective houses: *Provided*, that the same may be increased or diminished by law; but no alteration shall take effect during the session at which such alteration shall be made.

Privileges of the members.

SECTION 24. The members of the general assembly shall, in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest, during their attendance at the sessions of their respective houses, and in going to, and returning from the same; and for any speech or debate, in either house, they shall not be questioned in any other place.

To what offices members shall not be appointed.

SECTION 25. No senator or representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit under this commonwealth, which shall have been created, or the emoluments of which shall have been increased during the time such senator or representative was in office, except to such offices or appointments as may be made or filled by the elections of the people.

Who ineligible to the Legislature.

SECTION 26. No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, nor whilst he holds or exercises any office of profit under this commonwealth, shall be eligible to the general assembly, except attorneys at law, justices of the peace, and militia officers: *Provided*, that justices of the courts of quarter sessions shall be ineligible, so long as any compensation may be allowed them for their services: *Provided, also*, that attorneys for the commonwealth, who receive a fixed annual salary from the public treasury, shall be ineligible.

Collector of tax ineligible until he obtains a quietus.

SECTION 27. No person, who at any time may have been a collector of taxes for the state, or the assistant or deputy of such collector, shall be eligible to the general assembly until he shall have obtained a *quietus* for the amount of such collection, and for all public moneys for which he may be responsible.

Bills, their formalities.

SECTION 28. No bill shall have the force of a law, until, on three several days, it be read over in each house of the general assembly, and free discussion allowed thereon; unless, in cases of urgency, four-fifths of the house where the bill shall be depending, may deem it expedient to dispense with this rule.

Revenue bills—where they are to originate.

SECTION 29. All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in other bills: *Provided*, that they shall not introduce any new matter, under the color of an amendment, which does not relate to raising a revenue.

Writs of election.

SECTION 30. The general assembly shall regulate, by law, by whom, and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

ARTICLE III.

Concerning the Executive Department.

The executive power.

SECTION 1. The supreme executive power of the commonwealth shall be vested in a chief magistrate, who shall be styled the Governor of the commonwealth of Kentucky.

Governor elected for term of 4 years.

SECTION 2. The governor shall be elected for the term of four years, by the citizens entitled to suffrage, at the time and places where they shall respectively vote for representatives. The person having the highest number of votes, shall be governor; but if two or more shall be equal and highest in votes, the election shall be determined, by lot, in such manner as the legislature may direct.

Ineligible for the succeeding seven years

SECTION 3. The governor shall be ineligible for the succeeding seven years after the expiration of the time for which he shall have been elected.

Qualifications for governor.

SECTION 4. He shall be at least thirty-five years of age, and a citizen of the United States, and have been an inhabitant of this state at least six years next preceding his election.

Commencement and termination of his service.

SECTION 5. He shall commence the execution of his office on the fourth Tuesday succeeding the day of the commencement of the general election on which he shall be chosen, and shall continue in the execution thereof until the end of four weeks next succeeding the election of his successor, and until his successor shall have taken the oaths or affirmations prescribed by this constitution.

Who ineligible.

SECTION 6. No member of congress, or person holding any office under the United States, nor minister of any religious society, shall be eligible to the office of governor.

Compensation.

SECTION 7. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

Military powers and restrictions.

SECTION 8. He shall be commander-in-chief of the army and navy of this commonwealth, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he be advised so to do by a resolution of the general assembly.

Powers of the governor.

SECTION 9. He shall nominate, and by and with the advice and consent of the senate, appoint all officers, whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for: *Provided*, that no person shall be so appointed to an office within any county who shall not have been a citizen and inhabitant therein one year next before his appointment, if the county shall have been so long erected; but if it shall not have been so long erected, then within the limits of the county or counties from which it shall have been taken: *Provided, also*, that the county courts shall be authorized by law to appoint inspectors, collectors, and their deputies, surveyors of the highways, constables, jailers, and such other inferior officers, whose jurisdiction may be confined within the limits of a county.

May fill vacancies in recess of senate.

SECTION 10. The governor shall have power to fill up vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

Pardoning powers

SECTION 11. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In cases of treason, he shall have power to grant reprieves until the end of the next session of the general assembly, in which the power of pardoning shall be vested.

SECTION 12. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices. — May require information from executive officers.

SECTION 13. He shall, from time to time, give to the general assembly information of the state of the commonwealth, and recommend to their consideration such measures as he shall deem expedient. — Shall give information to the general assembly.

SECTION 14. He may, on extraordinary occasions, convene the general assembly, at the seat of government, or at a different place, if that should have become, since their last adjournment, dangerous, from an enemy, or from contagious disorders; and in case of disagreement between the two houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months. — May convene the general assembly.

SECTION 15. He shall take care that the laws be faithfully executed. — General duty.

SECTION 16. A lieutenant governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant governor. — Lieutenant governor, election of.

SECTION 17. He shall, by virtue of his office, be speaker of the senate; have a right, when in committee of the whole, to debate and vote on all subjects, and when the senate are equally divided, to give the casting vote. — To be speaker of the senate.

SECTION 18. In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant governor shall exercise all the power and authority appertaining to the office of governor, until another be duly qualified, or the governor absent or impeached shall return or be acquitted. — When to act as governor.

SECTION 19. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own members as speaker for that occasion. And if, during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the senate shall, in like manner, administer the government. — When senate to appoint a speaker pro tempore.

SECTION 20. The lieutenant governor, while he acts as speaker to the senate, shall receive for his services the same compensation which shall, for the same period, be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government, as governor, shall receive the same compensation which the governor would have received and been entitled to, had he been employed in the duties of his office. — Lieut. governor, his compensation.

SECTION 21. The speaker *pro tempore* of the senate, during the time he administers the government, shall receive, in like manner, the same compensation which the — Compensation of the speaker pro tempore.

governor would have received had he been employed in the duties of his office.

On the death of Lieut. Governor, the secretary to convene senate.

SECTION 22. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary for the time being to convene the senate for the purpose of choosing a speaker.

Attorney general & other attorneys.

SECTION 23. An attorney general, and such other attorneys for the commonwealth as may be necessary, shall be appointed, whose duty shall be regulated by law. Attorneys for the commonwealth for the several counties shall be appointed by the respective courts having jurisdiction therein.

Secretary of state, appointment and duty.

SECTION 24. A secretary shall be appointed and commissioned during the term for which the governor shall have been elected, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts and proceedings of the governor; and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before either house of the general assembly; and shall perform such other duties as may be enjoined him by law.

Mode of passing bills, dissent of governor, &c.

SECTION 25. Every bill which shall have passed both houses, shall be presented to the governor. If he approve he shall sign it; but if not he shall return it, with his objections, to the house in which it shall have originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be considered, and if approved by a majority of all the members elected to that house, it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting.

Majority of all elected may pass a bill, governor objecting.

When governor to return a bill.

Orders, resolutions, and votes to be approved by the governor.

SECTION 26. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him, or, being disapproved, shall be repassed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

Contested elections for governor

SECTION 27. Contested elections for a governor and lieutenant governor shall be determined by a committee, to be selected from both houses of the general assembly, and

formed and regulated in such manner as shall be directed by law.

Militia—persons scrupulous of bearing arms may pay an equivalent.

SECTION 28. The freemen of this commonwealth, (negroes, mulattoes, and Indians excepted) shall be armed and disciplined for its defense. Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal service.

Staff officers, how appointed.

SECTION 29. The commanding officers of the respective regiments shall appoint the regimental staff; brigadier generals their brigade majors; major generals their aids; and captains the non-commissioned officers of companies.

Commissioned officers, nomination of.

SECTION 30. A majority of the field officers and captains in each regiment shall nominate the commissioned officers in each company, who shall be commissioned by the governor: *Provided*, that no nomination shall be made, unless two at least of the field officers are present; and when two or more persons have an equal and the highest number of votes, the field officer present who may be highest in commission shall decide the nomination.

Sheriffs, appointment of.

SECTION 31. Sheriffs shall be hereafter appointed in the following manner: When the time of a sheriff for any county may be about to expire, the county court for the same (a majority of all its justices being present) shall, in the months of September, October, or November next preceding thereto, recommend to the governor two proper persons to fill the office, who are then justices of the county court; and who shall, in such recommendation, pay a just regard to seniority in office and a regular rotation. One of the persons so recommended shall be commissioned by the governor, and shall hold his office for two years, if he so long behave well, and until a successor be duly qualified. If the county court shall omit, in the months aforesaid, to make such a recommendation, the governor shall then nominate, and by and with the advice and consent of the senate, appoint a fit person to fill such office.

ARTICLE IV.

Concerning the Judicial Department.

Judicial power vested in court of appeals and inferior courts.

SECTION 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one supreme court, which shall be styled the Court of Appeals, and in such inferior courts as the general assembly may, from time to time, erect and establish.

Jurisdiction of court of appeals.

SECTION 2. The court of appeals, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law.

Judges, tenure of office.

SECTION 3. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; but for any reasonable cause, which shall not be sufficient ground of impeachment, the governor shall remove any of

May be removed by address.

them, on the address of two-thirds of each house of the general assembly: *Provided, however*, that the cause or causes for which such removal may be required shall be stated at length in such address, and on the journal of each house. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law.

Their salaries.

SECTION 4. The judges shall, by virtue of their office, be conservators of the peace throughout the state. The style of all process shall be "The Commonwealth of Kentucky." All prosecutions shall be carried on in the name and by the authority of the commonwealth of Kentucky, and conclude, against the peace and dignity of the same.

All judges conservators of peace

Process and prosecutions to be in the name of the commonwealth.

SECTION 5. There shall be established in each county now or which may hereafter be erected within this commonwealth, a county court.

County courts.

SECTION 6. A competent number of justices of the peace shall be appointed in each county; they shall be commissioned during good behavior, but may be removed on conviction of misbehavior in office, or of any infamous crime, or on the address of two-thirds of each house of the general assembly: *Provided, however*, that the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house.

Justices of the peace, tenure of office; may be removed by address.

SECTION 7. The number of the justices of the peace to which the several counties in this commonwealth now established, or which may hereafter be established, ought to be entitled to, shall, from time to time, be regulated by law.

Number of justices

SECTION 8. When a surveyor, or coroner, or a justice of the peace shall be needed in any county, the county court for the same, a majority of all its justices concurring therein, shall recommend to the governor two proper persons to fill the office; one of whom he shall appoint thereto: *Provided, however*, that if the county court shall, for twelve months, omit to make such recommendation, after being requested by the governor to recommend proper persons, he shall then nominate, and by and with the advice and consent of the senate, appoint a fit person to fill such office.

Surveyors, coroners, and justices of the peace, how appointed.

SECTION 9. When a new county shall be erected, a competent number of justices of the peace, a sheriff, and coroner therefor shall be recommended to the governor, by a majority of all the members of the house of representatives from the senatorial district or districts in which the county is situated; and if either of the persons thus recommended shall be rejected by the governor, or the senate, another person shall immediately be recommended as aforesaid.

Officers of new counties, how appointed.

SECTION 10. Each court shall appoint its own clerk, who shall hold his office during good behavior; but no person shall be appointed clerk, only *pro tempore*, who shall not produce to the court appointing him, a certificate from a majority of the judges of the court of appeals, that he hath been examined by their clerk, in their presence, and

Clerks of courts, how appointed.

under their direction, and that they judge him to be well qualified to execute the office of clerk to any court of the same dignity with that for which he offers himself. They shall be removable for breach of good behavior, by the court of appeals only, who shall be judges of the fact as well as of the law. Two-thirds of the members present must concur in the sentence.

How to be removed.

SECTION 11. All commissions shall be in the name and by the authority of the state of Kentucky, and sealed with the state seal, and signed by the governor.

Commissions, style of.

SECTION 12. The state treasurer, and printer or printers for the commonwealth, shall be appointed annually by the joint vote of both houses of the general assembly: *Provided*, that, during the recess of the same, the governor shall have power to fill vacancies which may happen in either of the said offices.

Treasurer and Printer, appointment of.

ARTICLE V.

Concerning Impeachments.

SECTION 1. The house of representatives shall have the sole power of impeaching.

Impeachments.

SECTION 2. All impeachments shall be tried by the senate; when sitting for that purpose, the senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

To be tried by senate, and how.

SECTION 3. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under this commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial, and punishment according to law.

Who liable to, and effect of judgment on.

ARTICLE VI.

General Provisions.

SECTION 1. Members of the general assembly, and all officers, executive and judicial, before they enter upon the execution of their respective offices, shall take the following oath or affirmation: "I do solemnly swear, (or affirm, as the case may be,) that I will be faithful and true to the commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of ——— according to law."

General oath of office.

SECTION 2. Treason against the commonwealth shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Treason defined.

SECTION 3. Every person shall be disqualified from serving as a governor, lieutenant governor, senator, or repre-

Bribing and treating.

sentative, for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat to procure his election.

What to exclude from office and suffrage.

Free suffrage secured.

SECTION 4. Laws shall be made to exclude from office and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practices.

Public money—how to be drawn and accounted for.

SECTION 5. No money shall be drawn from the treasury but in pursuance of appropriations made by law, nor shall any appropriations of money for the support of an army be made for a longer time than one year; and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

Suits against the state.

SECTION 6. The general assembly shall direct, by law, in what manner, and in what courts, suits may be brought against the commonwealth.

Oaths—manner of administering.

SECTION 7. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the general assembly the most solemn appeal to God.

Certain laws continued in force

SECTION 8. All laws which, on the first day of June, one thousand seven hundred and ninety-two, were in force in the state of Virginia, and which are of a general nature, and not local to that state, and not repugnant to this constitution, nor to the laws which have been enacted by the legislature of this commonwealth, shall be in force within this state, until they shall be altered or repealed by the general assembly.

Compact incorporated.

SECTION 9. The compact with the state of Virginia, subject to such alterations as may be made therein agreeably to the mode prescribed by the said compact, shall be considered as part of this constitution.

Arbitrations.

SECTION 10. It shall be the duty of the general assembly to pass such laws as shall be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment.

Officers—where to reside, & where to keep offices.

SECTION 11. All civil officers for the commonwealth at large, shall reside within the state, and all district, county, or town officers within their respective districts, counties, or towns, (trustees of towns excepted,) and shall keep their respective offices at such places therein as may be required by law; and all militia officers shall reside in the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong.

Tenure of certain offices.

SECTION 12. The attorney general and other attorneys for this commonwealth, who receive a fixed annual salary from the public treasury, judges and clerks of courts, justices of the peace, surveyors of lands, and all commissioned militia officers, shall hold their respective offices during good behavior, and the continuance of their respective

courts, under the exceptions contained in this constitution.

When absence shall not be a forfeiture, or an exclusion from office

SECTION 13. Absence on the business of this state, or the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under this commonwealth, under the exceptions contained in this constitution.

Deduction from salaries.

SECTION 14. It shall be the duty of the general assembly to regulate, by law, in what cases, and what deduction from the salaries of public officers shall be made, for neglect of duty in their official capacity.

Election returns, where made.

SECTION 15. Returns of all elections for governor, lieutenant governor, and members of the general assembly, shall be made to the secretary for the time being.

Votes, viva voce.

SECTION 16. In all elections by the people, and also by the senate and house of representatives, jointly or separately, the votes shall be personally and publicly given, viva voce.

Who ineligible to an office.

SECTION 17. No member of congress, nor person holding or exercising any office of trust or profit under the United States, or either of them, or under any foreign power, shall be eligible as a member of the general assembly of this commonwealth, or hold or exercise any office of trust or profit under the same.

Securities for officers.

SECTION 18. The general assembly shall direct, by law, how persons who now are or who may hereafter become securities for public officers, may be relieved or discharged on account of such securityship.

ARTICLE VII.

Concerning Slaves.

Slaves not to be emancipated without consent of the owners.

SECTION 1. The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money, for the slaves so emancipated. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state. They shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a charge to any county in this commonwealth. They shall have full power to prevent slaves being brought into this state as merchandise. They shall have full power to prevent any slaves being brought into this state from a foreign country, and to prevent those from being brought into this state who have been, since the first day of January, one thousand seven hundred and eighty-nine, or may hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such

Emigrants may bring their slaves

Owners may emancipate.

Introduction of slaves may be restricted.

May provide for well treatment of slaves.

laws as may be necessary to oblige the owners of slaves to treat them with humanity, to provide for them necessary clothing and provision, to abstain from all injuries to them, extending to life or limb; and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold, for the benefit of their owner or owners.

Grand jury not necessary in prosecutions of slaves

SECTION 2. In the prosecution of slaves for felony, no inquest by a grand jury shall be necessary, but the proceedings in such prosecutions shall be regulated by law; except that the general assembly shall have no power to deprive them of the privilege of an impartial trial by a petit jury.

ARTICLE VIII.

Frankfort to be the seat of government.

The seat of government shall continue in the town of Frankfort, until it shall be removed by law: *Provided, however*, that two-thirds of all the members elected to each house of the general assembly shall concur in the passage of such law.

ARTICLE IX.

Mode of revising the Constitution.

How constitution may be amended.

When experience shall point out the necessity of amending this constitution, and when a majority of all the members elected to each house of the general assembly shall, within the first twenty days of their stated annual session, concur in passing a law for taking the sense of the good people of this commonwealth, as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs and other returning officers, at the next general election which shall be held for representatives, after the passage of such law, to open a poll for, and make a return to the secretary for the time being, of the names of all those entitled to vote for representatives who have voted for calling a convention; and if, thereupon, it shall appear that a majority of all the citizens of this state, entitled to vote for representatives, have voted for a convention, the general assembly shall direct that a similar poll shall be opened and taken for the next year; and if, thereupon, it shall appear that a majority of all the citizens of this state entitled to vote for representatives, have voted for a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there shall be in the house of representatives, and no more; to be chosen in the same manner and proportion, at the same places, and the same time, that representatives are, by citizens entitled to vote for representatives; and to meet within three months after the said election, for the purpose of re-adopting, amending, or changing this constitution. But if it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives did not vote for a convention, a convention shall not be called.

Number of members of the convention.

ARTICLE X.

Declaration of rights.

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

Equality of men.

SECTION 1. That all freemen, when they form a social compact, are equal, and that no man, or set of men, are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services.

All power in the people.

SECTION 2. That all power is inherent of the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness. For the advancement of these ends, they have, at all times, an unalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.

Liberty of conscience.

SECTION 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship.

Religion.

SECTION 4. That the civil rights, privileges, or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

Elections.

SECTION 5. That all elections shall be free and equal.

Trial by jury.

SECTION 6. That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate.

Freedom of the press and speech.

SECTION 7. That printing presses shall be free to every person who undertakes to examine the proceedings of the legislature or any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.

To give truth in evidence.

SECTION 8. In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

Jury to be judges of law and fact in libels.

People to be secure from unreasonable seizures and searches.

SECTION 9. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures and searches, and that no warrant to search any place or to seize any person or things, shall issue, without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

Rights of persons prosecuted criminally.

SECTION 10. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; that he cannot be compelled to give evidence against himself; nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

Informations.

SECTION 11. That no person shall, for any indictable offense, 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, by leave of the court, for oppression or misdemeanor in office.

Twice in jeopardy, and property not to be taken.

SECTION 12. No person shall, for the same offense, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being previously made to him.

All courts to be open.

SECTION 13. That all courts shall be open, and every person, for an injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial, or delay.

Suspending laws.

SECTION 14. That no power of suspending laws shall be exercised, unless by the legislature or its authority.

Excessive bail.

SECTION 15. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Prisoners, when bailable.

SECTION 16. That all prisoners shall be bailable by sufficient securities, unless for capital offenses, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Habeas corpus.

Imprisonment of debtors.

SECTION 17. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

Ex post facto laws

SECTION 18. That no *ex post facto* law, nor any law impairing contracts, shall be made.

Attainder.

SECTION 19. That no person shall be attainted of treason or felony by the legislature.

SECTION 20. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth.

Felos de se and forfeiture.

SECTION 21. That the estates of such persons as shall destroy their own lives shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Right of petition.

SECTION 22. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

Right to bear arms

SECTION 23. That the rights of the citizens to bear arms in defense of themselves and the state, shall not be questioned.

Standing armies.

SECTION 24. That no standing army shall, in time of peace, be kept up, without the consent of the legislature: and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Soldiers not to be quartered.

SECTION 25. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Nobility, and limitation of office

SECTION 26. That the legislature shall not grant any title of nobility, or hereditary distinction, nor create any office, the appointment to which shall be for a longer term than during good behavior.

Emigration.

SECTION 27. That emigration from the state shall not be prohibited.

Exception out of the general powers.

SECTION 28. To guard against transgressions of the high powers which we have delegated, WE DECLARE, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this constitution, shall be void.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments made in the constitution of this commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained,

Laws and rights continued.

SECTION 1. That all laws of this commonwealth, in force at the time of making the said alterations and amendments, and not inconsistent therewith, and all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if the said alterations and amendments had not been made.

Officers continued

SECTION 2. That all officers now filling any office or appointment, shall continue in the exercise of the duties of their respective offices or appointments, for the terms therein expressed, unless by this constitution it is otherwise directed.

Oaths, by whom administered.

SECTION 3. The oaths of office herein directed to be taken, may be administered by any justice of the peace, until the legislature shall otherwise direct.

First apportionment of representation.

SECTION 4. The general assembly, to be held in November next, shall apportion the representatives and senators, and lay off the state into senatorial districts, conformable to the regulations prescribed by this constitution. In fixing those apportionments, and in establishing those districts, they shall take for their guide the enumeration di-

rected by law to be made in the present year by the commissioners of the tax; and the apportionments thus made, shall remain unaltered until the end of the stated annual session of the general assembly, in the year eighteen hundred and three.

First election of governor and lieutenant governor.

SECTION 5. In order that no inconvenience may arise from the change made by this constitution, in the time of holding the general election, it is hereby ordained that the first election for governor, lieutenant governor, and members of the general assembly, shall commence on the first Monday in May, in the year eighteen hundred. The persons then elected shall continue in office during their several terms of service prescribed by this constitution, and until the next general election which shall be held after their said terms shall have respectively expired. The returns for the said first election of governor and lieutenant governor, shall be made to the secretary within fifteen days from the day of election; who shall, as soon as may be, examine and count the same in the presence of at least two judges of the court or appeals, or district courts, and shall declare who are the persons thereby duly elected, and give them official notice of their election; and if any person shall be equal and highest on the poll, the said judges and secretary shall determine the election by lot.

SECTION 6. This constitution, except so much thereof as is therein otherwise directed, shall not be in force until the first day of June, in the year one thousand eight hundred: on which day the whole thereof shall take full and complete effect.

Done in Convention, at Frankfort, the seventeenth day of August, one thousand seven hundred and ninety-nine, and of the independence of the United States of America, the twenty-fourth.

ALEXANDER S. BULLITT,

President of Convention, and member from Jefferson.

Bourbon.—John Allen, Charles Smith, Robert Wilmot, James Duncan, William Griffith, Nathaniel Rogers.

Bracken.—Philip Buckner.

Campbell.—Thomas Sandford.

Clarke.—Robert Clarke, R. Hickman, William Sudduth.

Christian.—Young Ewing.

Fayette.—John Breckinridge, John McDowell, John Bell, H. Harrison, B. Thruston, Walter Carr.

Franklin.—Harry Innis, John Logan.

Fleming.—George Stockton.

Garrard.—William M. Bledsoe.

Green.—Will. Casey.

Harrison.—Henry Coleman, Wm. Elliott Boswell.

Jefferson.—Richard Taylor.

Jessamine.—John Price.

Lincoln.—Wm. Logan, N. Huston.

Logan.—John Bailey, Reuben Ewing.

Mason.—Philemon Thomas, Thomas Marshall, jr., Joshua Baker.

Mercer.—Peter Brunner, John Adair, Thos. Allin, Samuel Taylor.

Madison.—Green Clay, Thomas Clay, Will. Irvine.

Montgomery.—Jilson Payne.

Nelson.—John Rowan, Richard Prather, Nicholas Minor.

Shelby.—Benjamin Logan, Abraham Owen.

Scott.—Wm. Henry, Robert Johnson.

Woodford.—Caleb Wallace, Wm. Steele.

Washington.—Felix Grundy, Robert Abell.

Warren.—Alexander Davidson.

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THE NEW CONSTITUTION OF KENTUCKY.

PREAMBLE.

Preamble.

We, the Representatives of the People of the State of Kentucky, in Convention assembled, to secure to all the citizens thereof the enjoyment of the rights of life, liberty, and property, and of pursuing happiness, do ordain and establish this Constitution for its government.

ARTICLE I.

Concerning the distribution of the powers of government.

Division of the powers of government into three departments.

Section 1. The powers of the government of the state of Kentucky, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to-wit: Those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another.

Powers to be kept separate.

Section 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others; except in the instances hereinafter expressly directed or permitted.

ARTICLE II.

Concerning the Legislative Department.

Of the legislative power.

Section 1. The legislative power shall be vested in a House of Representatives and Senate, which together, shall be styled the General Assembly of the Commonwealth of Kentucky.

House of representatives, term of service of members.

Section 2. The members of the house of representatives shall continue in service for the term of two years from the day of the general election, and no longer.

When to be chosen, and how.

Section 3. Representatives shall be chosen on the first Monday in August in every second year; and the mode of holding the elections shall be regulated by law.

Qualifications of members.

Section 4. No person shall be a representative, who at the time of his election is not a citizen of the United States, has not attained the age of twenty-four years, and who has not resided in this state two years next preceding his election, and the last year thereof in the county, town, or city for which he may be chosen.

Places of election

Section 5. The general assembly shall divide each county of this commonwealth into convenient election precincts, or may delegate power to do so to such county authorities as may be designated by law; and elections for representatives for the several counties shall be held at the

places of holding their respective courts, and in the several election precincts into which the counties may be divided: *Provided*, that when it shall appear to the general assembly that any city or town hath a number of qualified voters equal to the ratio then fixed, such city or town shall be invested with the privilege of a separate representation, in either or both houses of the general assembly, which shall be retained so long as such city or town shall contain a number of qualified voters equal to the ratio which may, from time to time, be fixed by law; and thereafter elections for the county in which such city or town is situated, shall not be held therein; but such city or town shall not be entitled to a separate representation unless such county, after the separation, shall also be entitled to one or more representatives. That whenever a city or town shall be entitled to a separate representation in either house of the general assembly, and by its numbers shall be entitled to more than one representative, such city or town shall be divided, by squares which are contiguous, so as to make the most compact form, into representative districts, as nearly equal as may be, equal to the number of representatives to which such city or town may be entitled; and one representative shall be elected from each district. In like manner shall said city or town be divided into senatorial districts, when, by the apportionment, more than one senator shall be allotted to such city or town; and a senator shall be elected from each senatorial district; but no ward or municipal division shall be divided by such division of senatorial or representative districts, unless it be necessary to equalize the elective, senatorial, or representative districts.

Cities and towns may have separate representation.

How cities and towns to be divided when entitled to more than one representative.

SECTION 6. Representation shall be equal and uniform in this commonwealth, and shall be forever regulated and ascertained by the number of qualified voters therein. In the year 1850, again in the year 1857, and every eighth year thereafter, an enumeration of all the qualified voters of the state shall be made; and to secure uniformity and equality of representation, the state is hereby laid off into ten districts. The first district shall be composed of the counties of Fulton, Hickman, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, Union, Hopkins, Caldwell, and Trigg. The second district shall be composed of the counties of Christian, Muhlenburg, Henderson, Daviess, Hancock, Ohio, Breckinridge, Meade, Grayson, Butler, and Edmonson. The third district shall be composed of the counties of Todd, Logan, Simpson, Warren, Allen, Monroe, Barren, and Hart. The fourth district shall be composed of the counties of Cumberland, Adair, Green, Taylor, Clinton, Russell, Wayne, Pulaski, Casey, Boyle, and Lincoln. The fifth district shall be composed of the counties of Hardin, Larue, Bullitt, Spencer, Nelson, Washington, Marion, Mercer, and Anderson. The sixth district shall be composed of the counties of Garrard, Madison, Estill, Owsley, Rockcastle, Laurel, Clay, Whitley,

Apportionment of representation.

Knox, Harlan, Perry, Letcher, Pike, Floyd, and Johnson. The seventh district shall be composed of the counties of Jefferson, Oldham, Trimble, Carroll, Henry, and Shelby, and the city of Louisville. The eighth district shall be composed of the counties of Bourbon, Fayette, Scott, Owen, Franklin, Woodford, and Jessamine. The ninth district shall be composed of the counties of Clarke, Bath, Montgomery, Fleming, Lewis, Greenup, Carter, Lawrence, Morgan, and Breathitt. The tenth district shall be composed of the counties of Mason, Bracken, Nicholas, Harrison, Pendleton, Campbell, Grant, Kenton, Boone, and Gallatin. The number of representatives shall, at the several sessions of the general assembly next after the making of the enumerations, be apportioned among the ten several districts, according to the number of qualified voters in each; and the representatives shall be apportioned, as near as may be, among the counties, towns, and cities in each district; and in making such apportionment the following rules shall govern, to-wit: Every county, town, or city having the ratio, shall have one representative; if double the ratio, two representatives, and so on. Next, the counties, towns, or cities having one or more representatives, and the largest number of qualified voters above the ratio, and counties having the largest number under the ratio shall have a representative, regard being always had to the greatest number of qualified voters: *Provided*, that when a county may not have a sufficient number of qualified voters to entitle it to one representative, then such county may be joined to some adjacent county or counties, which counties shall send one representative. When a new county shall be formed of territory belonging to more than one district, it shall form a part of that district having the least number of qualified voters.

When new counties are formed, where to be attached.

SECTION 7. The house of representatives shall choose its speaker and other officers.

To choose its officers.

SECTION 8. Every free white male citizen, of the age of twenty-one years, who has resided in the state two years, or in the county, town, or city, in which he offers to vote, one year next preceding the election, shall be a voter; but such voter shall have been, for sixty days next preceding the election, a resident of the precinct in which he offers to vote, and he shall vote in said precinct, and not elsewhere.

Qualifications of electors of representatives.

SECTION 9. Voters, in all cases except treason, felony, breach or surety of the peace, shall be privileged from arrest during their attendance at, going to, and returning from elections.

Electors, when exempt from arrest.

SECTION 10. Senators shall be chosen for the term of four years; and the senate shall have power to choose its officers biennially.

Term of service of senators.

SECTION 11. Senators and representatives shall be elected, under the first apportionment after the adoption of this constitution, in the year 1851.

Senators & representatives to be elected in 1851.

SECTION 12. At the session of the general assembly, next after the first apportionment under this constitution, the

Senators to be classed.

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 two years from the day of the election, and those of the second class, at the end of four years, so that one-half shall be chosen every two years.

Number of representatives and senators.

SECTION 13. The number of representatives shall be one hundred, and the number of senators thirty-eight.

Senatorial districts, how to be formed.

SECTION 14. At every apportionment of representation, the state shall be laid off into thirty-eight senatorial districts, which shall be so formed as to contain, as near as may be, an equal number of qualified voters, and so that no county shall be divided in the formation of a senatorial district, except such county shall be entitled, under the enumeration, to two or more senators; and where two or more counties compose a district they shall be adjoining.

Qualifications of electors of senator

SECTION 15. One senator for each district shall be elected by the qualified voters therein, who shall vote in the precincts where they reside, at the places where elections are by law directed to be held.

Qualifications of senators.

SECTION 16. No person shall be a senator, who, at the time of his election, is not a citizen of the United States; has not attained the age of thirty years, and who has not resided in this state six years next preceding his election, and the last year thereof in the district for which he may be chosen.

Time of electing senators.

SECTION 17. The election for senators, next after the first apportionment under this constitution, shall be general throughout the state, and at the same time that the election for representatives is held; and thereafter, there shall be a biennial election for senators to fill the places of those whose term of service may have expired.

Time of meeting of the legislature.

SECTION 18. The general assembly shall convene on the first Monday in November after the adoption of this constitution, and again on the first Monday in November, 1851, and on the same day of every second year thereafter, unless a different day be appointed by law; and their sessions shall be held at the seat of government.

Quorum of the senate and house.

SECTION 19. Not less than a majority of the members of each house of the general assembly shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and shall be authorized by law to compel the attendance of absent members, in such manner, and under such penalties as may be prescribed thereby.

Elections, how judged.

SECTION 20. Each house of the general assembly shall judge of the qualifications, elections, and returns of its members; but a contested election shall be determined in such manner as shall be directed by law.

Rules of proceedings, & power to punish.

SECTION 21. Each house of the general assembly may determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

Journals by each house.

SECTION 22. Each house of the general assembly shall keep and publish, weekly, a journal of its proceedings,

and the yeas and nays of the members, on any question, shall, at the desire of any two of them, be entered on their journal.

Adjournment.

SECTION 23. Neither house, during the session of the general assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Compensation of members, and length of session.

SECTION 24. The members of the general assembly shall severally receive, from the public treasury, a compensation for their services, which shall be three dollars a day, during their attendance on, and twelve and a half cents per mile for the necessary travel in going to, and returning from, the sessions of their respective houses: *Provided*, that the same may be increased or diminished by law; but no alteration shall take effect during the session at which such alteration shall be made; nor shall a session of the general assembly continue beyond sixty days, except by a vote of two-thirds of all the members elected to each house, but this shall not apply to the first session held under this constitution.

Privileges of the members.

SECTION 25. The members of the general assembly shall, in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest, during their attendance at the sessions of their respective houses, and in going to, and returning from the same; and for any speech or debate, in either house, they shall not be questioned in any other place.

To what offices members shall be appointed.

SECTION 26. No senator or representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit under this commonwealth, which shall have been created, or the emoluments of which shall have been increased during the said term, except to such offices or appointments as may be filled by the election of the people.

Who ineligible to the Legislature.

SECTION 27. No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, nor while he holds or exercises any office of profit under this commonwealth, or under the government of the United States, shall be eligible to the general assembly, except attorneys at law, justices of the peace, and militia officers: *Provided*, that attorneys for the commonwealth, who receive a fixed annual salary, shall be ineligible.

Collector of tax ineligible until quietus is obtained.

SECTION 28. No person, who at any time may have been a collector of taxes or public moneys for the state, or the assistant or deputy of such collector, shall be eligible to the general assembly unless he shall have obtained a *quietus* six months before the election, for the amount of such collection, and for all public moneys for which he may have been responsible.

Bills, their formalities.

SECTION 29. No bill shall have the force of a law, until, on three several days, it be read over in each house of the general assembly, and free discussion allowed thereon; unless, in cases of urgency, four-fifths of the house where

the bill shall be depending, may deem it expedient to dispense with this rule.

Revenue bills—where they are to originate.

SECTION 30. All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments as in other bills: *Provided*, that they shall not introduce any new matter, under color of amendment, which does not relate to raising revenue.

Writs of election.

SECTION 31. The general assembly shall regulate, by law, by whom, and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

Shall not grant divorces, change names, or direct sales of infants' estates, &c.

SECTION 32. The general assembly shall have no power to grant divorces, to change the names of individuals, or direct the sales of estates belonging to infants, or other persons laboring under legal disabilities, by special legislation; but by general laws shall confer such powers on the courts of justice.

Credit of the state not to be given or loaned.

SECTION 33. The credit of this commonwealth shall never be given or loaned in aid of any person, association, municipality, or corporation.

Resources of the sinking fund not to be diminished.

SECTION 34. The general assembly shall have no power to pass laws to diminish the resources of the sinking fund, as now established by law, until the debt of the state be paid, but may pass laws to increase them; and the whole resources of said fund, from year to year, shall be sacredly set apart and applied to the payment of the interest and principal of the state debt, and to no other use or purpose, until the whole debt of the state is fully paid and satisfied.

For what purposes debts may be contracted by the state.

SECTION. 35. The general assembly may contract debts to meet casual deficits or failures in the revenue, but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed five hundred thousand dollars; and the moneys arising from loans creating such debts, shall be applied to the purposes for which they were obtained, or to repay such debts: *Provided*, that the state may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense.

Under what circumstances may contract debts on behalf of state.

SECTION 36. No act of the general assembly shall authorize any debt to be contracted on behalf of the commonwealth, except for the purposes mentioned in the thirty-fifth section of this article, unless provision be made therein to lay and collect an annual tax sufficient to pay the interest stipulated, and to discharge the debt within thirty years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it: *Provided*, that the general assembly may contract debts, by borrowing money to pay any part of the debt of the state, without submission to the people, and without making provision in the act authorizing the same for a tax to discharge the debt so contracted, or the interest thereon.

No law shall relate to more than one subject.

SECTION 37. No law enacted by the general assembly, shall relate to more than one subject, and that shall be expressed in the title.

Changes of venue, how to be provided for.

SECTION 38. The general assembly shall not change the venue in any criminal or penal prosecution, but shall provide for the same by general laws.

Writs of error in criminal and penal cases.

SECTION 39. The general assembly may pass laws authorizing writs of error in criminal or penal cases, and regulating the right of challenge of jurors therein.

Appropriation of money to be voted on by yeas and nays.

SECTION 40. The general assembly shall have no power to pass any act, or resolution, for the appropriation of any money, or the creation of any debt, exceeding the sum of one hundred dollars, at any one time, unless the same, on its final passage, shall be voted for by a majority of all the members then elected to each branch of the general assembly; and the yeas and nays thereon entered on the journal.

ARTICLE III.

Concerning the Executive Department.

The executive power.

SECTION 1. The supreme executive power of the commonwealth shall be vested in a chief magistrate, who shall be styled the Governor of the Commonwealth of Kentucky.

Governor elected for four years.

SECTION 2. The governor shall be elected for the term of four years, by the qualified voters of the state, at the time when, and places where they shall respectively vote for representatives. The person having the highest number of votes, shall be governor; but if two or more shall be equal and highest in votes, the election shall be determined by lot, in such manner as the general assembly may direct.

Ineligible for succeeding 4 years.

SECTION 3. The governor shall be ineligible for the succeeding four years after the expiration of the term for which he shall have been elected.

Qualifications for governor.

SECTION 4. He shall be at least thirty-five years of age, and a citizen of the United States, and have been an inhabitant of this state at least six years next preceding his election.

Commencement and termination of his service.

SECTION 5. He shall commence the execution of the duties of his office on the fifth Tuesday succeeding the day of the general election on which he shall have been chosen, and shall continue in the execution thereof until his successor shall have taken the oaths, or affirmations, prescribed by this constitution.

Who ineligible.

SECTION 6. No member of congress, or person holding any office under the United States, or minister of any religious society, shall be eligible to the office of governor.

Compensation.

SECTION 7. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he was elected.

Military powers and restrictions.

SECTION 8. He shall be commander-in-chief of the army and navy of this commonwealth, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the

field, unless advised so to do by a resolution of the general assembly.

May fill vacancies.

SECTION 9. He shall have power to fill vacancies that may occur, by granting commissions, which shall expire when such vacancies shall have been filled according to the provisions of this constitution.

Powers of the governor.

SECTION 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In cases of treason, he shall have power to grant reprieves until the end of the next session of the general assembly, in which the power of pardoning shall be vested; but he shall have no power to remit the fees of the clerk, sheriff, or commonwealth's attorney, in penal or criminal cases.

May require information from executive officers.

SECTION 11. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

Shall give information to the general assembly.

SECTION 12. He shall, from time to time, give to the general assembly information of the state of the commonwealth, and recommend to their consideration such measures as he may deem expedient.

May convene the general assembly.

SECTION 13. He may, on extraordinary occasions, convene the general assembly, at the seat of government, or at a different place, if that should have become, since their last adjournment, dangerous, from an enemy, or from contagious disorders; and in case of disagreement between the two houses, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not exceeding four months.

General duty.

SECTION 14. He shall take care that the laws be faithfully executed.

Lieutenant governor, election of.

SECTION 15. A lieutenant governor shall be chosen at every regular election for governor, in the same manner, to continue in office for the same time, and possess the same qualifications as the governor. In voting for governor and lieutenant governor, the electors shall state for whom they vote as governor, and for whom as lieutenant governor.

To be speaker of the senate.

SECTION 16. He shall, by virtue of his office, be speaker of the senate; have a right, when in committee of the whole, to debate and vote on all subjects, and when the senate are equally divided, to give the casting vote.

When to act as governor.

SECTION 17. Should the governor be impeached, removed from office, die, refuse to qualify, resign, or be absent from the state, the lieutenant governor shall exercise all the power and authority appertaining to the office of governor, until another be duly elected and qualified, or the governor absent or impeached shall return or be acquitted.

When senate to appoint a speaker pro tempore.

SECTION 18. Whenever the government shall be administered by the lieutenant governor, or he shall fail to attend as speaker of the senate, the senators shall elect one of their own members as speaker for that occasion. And if, during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state,

the speaker of the senate shall, in like manner, administer the government: *Provided*, that whenever a vacancy shall occur in the office of governor, before the first two years of the term shall have expired, a new election for governor shall take place to fill such vacancy.

Lieut. governor, his compensation.

SECTION 19. The lieutenant governor, or speaker *pro tempore* of the senate, while he acts as speaker of the senate, shall receive for his services the same compensation which shall, for the same period, be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government, as governor, shall receive the same compensation which the governor would have received had he been employed in the duties of his office.

On the death of Lieut. Governor, the secretary to convene senate.

SECTION 20. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state, during the recess of the general assembly, it shall be the duty of the secretary of state, for the time being, to convene the senate for the purpose of choosing a speaker.

Secretary of state, appointment and duty.

SECTION 21. The governor shall nominate, and, by and with the advice and consent of the senate, appoint a secretary of state, who shall be commissioned during the term for which the governor was elected, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts of the governor, and shall, when required, lay the same, and all papers, minutes, and vouchers, relative thereto, before either house of the general assembly; and shall perform such other duties as may be required of him by law.

Mode of passing bills, dissent of governor, &c.

SECTION 22. Every bill which shall have passed both houses, shall be presented to the governor. If he approve he shall sign it; but if not he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be considered, and if approved by a majority of all the members elected to that house, it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill, shall be entered upon 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, it shall be a law, in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting.

Majority of all elected may pass a bill, governor objecting.

When governor to return a bill.

Orders, resolutions, and votes to be approved by the governor.

SECTION 23. Every order, resolution, or vote, in which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the gov-

ernor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

Contested elections for governor

SECTION 24. Contested elections for governor and lieutenant governor shall be determined by both houses of the general assembly, according to such regulations as may be established by law.

Treasurer, auditor, register, and attorney general, election of, and term of office.

SECTION 25. A treasurer shall be elected by the qualified voters of the state, for the term of two years; and an auditor of public accounts, register of the land office, and attorney general, for the term of four years. The duties and responsibilities of these officers shall be prescribed by law: *Provided*, that inferior state officers, not specially provided for in this constitution, may be appointed, or elected, in such manner as shall be prescribed by law, for a term not exceeding four years.

State officers, first election of, when to be held.

SECTION 26. The first election, under this constitution, for governor, lieutenant governor, treasurer, auditor of public accounts, register of the land office, and attorney general, shall be held on the first Monday in August in the year 1851.

ARTICLE IV.

Concerning the Judicial Department.

Judicial power vested in court of appeals and inferior courts.

SECTION 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one supreme court, (to be styled the Court of Appeals,) the courts established by this constitution, and such courts, inferior to the supreme court, as the general assembly may, from time to time, erect and establish.

CONCERNING THE COURT OF APPEALS.

Jurisdiction of court of appeals.

SECTION 2. The court of appeals shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law.

Judges, how to be chosen—term of office.

SECTION 3. The judges of the court of appeals shall, after their first term, hold their offices for eight years, from and after their election, and until their successors shall be duly qualified, subject to the conditions hereinafter prescribed; but for any reasonable cause, the governor shall remove any of them, on the address of two-thirds of each house of the general assembly: *Provided, however*, that the cause or causes for which such removal may be required shall be stated at length in such address, and on the journal of each house. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during the time for which they shall have been elected.

May be removed by address.

Their salaries.

To consist of four judges, to be elected by districts.

SECTION 4. The court of appeals shall consist of four judges, any three of whom may constitute a court for the transaction of business. The general assembly, at its first

session after the adoption of this constitution, shall divide the state, by counties, in four districts, as nearly equal in voting population, and with as convenient limits as may be, in each of which the qualified voters shall elect one judge of the court of appeals: *Provided*, that whenever a vacancy shall occur in said court, from any cause, the general assembly shall have the power to reduce the number of judges and districts; but in no event shall there be less than three judges and districts. Should a change in the number of the judges of the court of appeals be made, the term of office and number of districts shall be so changed as to preserve the principle of electing one judge every two years.

Number may be reduced.

When districts to be changed.

SECTION 5. The judges shall, by virtue of their offices, be conservators of the peace throughout the state. The style of all process shall be "The Commonwealth of Kentucky." All prosecutions shall be carried on in the name and by the authority of the commonwealth of Kentucky, and conclude, "against the peace and dignity of the same."

Judges to be conservators of peace

Process and prosecutions to be in the name of the commonwealth.

SECTION 6. The judges first elected shall serve as follows, to-wit: one shall serve until the first Monday in August, 1852; one until the first Monday in August, 1854; one until the first Monday in August, 1856; and one until the first Monday in August, 1858. The judges, at the first term of the court succeeding their election, shall determine, by lot, the length of time which each one shall serve; and at the expiration of the service of each, an election in the proper district shall take place to fill the vacancy. The judge having the shortest time to serve shall be styled the chief justice of Kentucky.

Judges first elected, how long to serve.

SECTION 7. If a vacancy shall occur in said court from any cause, the governor shall issue a writ of election to the proper district to fill such vacancy for the residue of the term: *Provided*, that if the unexpired term be less than one year, the governor shall appoint a judge to fill such vacancy.

Vacancies, how to be filled.

SECTION 8. No person shall be eligible to the office of judge of the court of appeals, who is not a citizen of the United States, a resident of the district for which he may be a candidate two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall not be equal to eight years.

Qualifications of judge of the court appeals.

SECTION 9. The court of appeals shall hold its sessions at the seat of government, unless otherwise directed by law; but the general assembly may, from time to time, direct that said court shall hold its sessions in any one or more of said districts.

Where sessions to be held.

SECTION 10. The first election of the judges and clerk or clerks of the court of appeals shall take place on the second Monday in May, 1851, and thereafter, in each district as a vacancy may occur, by the expiration of the term of

When first election of judges and clerk to take place

office; and the judges of the said court shall be commissioned by the governor.

Clerk or clerks to be elected, term of service, duties, &c.

SECTION 11. There shall be elected, by the qualified voters of this state, a clerk of the court of appeals, who shall hold his office, from the first election, until the first Monday in August, 1858, and thereafter for the term of eight years from and after his election; and should the general assembly provide for holding the court of appeals in any one or more of said districts, they shall also provide for the election of a clerk by the qualified voters of such district, who shall hold his office for eight years, possess the same qualifications, and be subject to removal in the same manner as the clerk of the court of appeals; but if the general assembly shall, at its first or any other session, direct the court of appeals to hold its session in more than one district, a clerk shall be elected by the qualified voters of such district. And the clerk, first provided for in this section, shall be elected by the qualified voters of the other district or districts. The same principle shall be observed whenever the court shall be directed to hold its sessions in either of the other districts. Should the number of judges be reduced, the term of the office of clerk shall be six years.

Qualifications of clerk, &c.

SECTION 12. No person shall be eligible to the office of clerk of the court of appeals, unless he be a citizen of the United States, a resident of the state two years next preceding his election, of the age of twenty-one years, and have a certificate from a judge of the court of appeals, or a judge of the circuit court, that he has been examined by the clerk of his court, under his supervision, and that he is qualified for the office for which he is a candidate.

Vacancies in clerkship, how to be filled.

SECTION 13. Should a vacancy occur in the office of clerk of the court of appeals, the governor shall issue a writ of election, and the qualified voters of the state, or of the district in which the vacancy may occur, shall elect a clerk of the court of appeals, to serve until the end of the term for which such clerk was elected: *Provided*, that when a vacancy shall occur from any cause, or the clerk be under charges upon information, the judges of the court of appeals shall have power to appoint a clerk *pro tem.*, to perform the duties of clerk until such vacancy shall be filled, or the clerk acquitted: *And, provided further*, that no writ of election shall issue to fill a vacancy unless the unexpired term exceed one year.

Mode of conducting elections and making returns to secretary of state.

SECTION 14. The general assembly shall direct, by law, the mode and manner of conducting and making due returns to the secretary of state, of all elections of the judges and clerk or clerks of the court of appeals, and of determining contested elections of any of these officers.

How special court of appeals shall be provided for.

SECTION 15. The general assembly shall provide for an additional judge or judges, to constitute, with the remaining judge or judges, a special court for the trial of such cause or causes as may, at any time, be pending in the court of appeals, on the trial of which a majority of the

judges cannot sit, on account of interest in the event of the cause, or on account of their relationship to either party, or when a judge may have been employed in or decided the cause in the inferior court.

CONCERNING THE CIRCUIT COURTS.

Circuit courts shall be established

SECTION 16. A Circuit Court shall be established in each county now existing, or which may hereafter be erected in this commonwealth.

Jurisdiction.

SECTION 17. The jurisdiction of said court shall be and remain as now established, hereby giving to the general assembly the power to change or alter it.

Appeals.

SECTION 18. The right to appeal or sue out a writ of error to the court of appeals shall remain as it now exists, until altered by law, hereby giving to the general assembly the power to change, alter, or modify said right.

General assembly to divide state into 12 districts.

SECTION 19. At the first session after the adoption of this constitution, the general assembly shall divide the state into twelve judicial districts, having due regard to business, territory, and population: *Provided*, that no county shall be divided.

Circuit judges to be elected—when and how.

SECTION 20. They shall, at the same time that the judicial districts are laid off, direct elections to be held in each district, to elect a judge for said district, and shall prescribe in what manner the elections shall be conducted. The first election of judges of the circuit court shall take place on the second Monday in May, 1851; and afterwards on the first Monday in August, 1856, and on the first Monday in August in every sixth year thereafter.

Who may vote for judges.

SECTION 21. All persons qualified to vote for members of the general assembly, in each district, shall have the right to vote for judges.

Who shall be eligible as circuit judge.

SECTION 22. No person shall be eligible as judge of the circuit court who is not a citizen of the United States, a resident of the district for which he may be a candidate two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall not be equal to eight years.

Circuit judges—their term of office—to be commissioned—how removed.

SECTION 23. The judges of the circuit court shall, after their first term, hold their office for the term of six years from the day of their election. They shall be commissioned by the governor, and continue in office until their successors be qualified, but shall be removable from office in the same manner as the judges of the court of appeals; and the removal of a judge from his district shall vacate his office.

When additional districts may be established.

SECTION 24. The general assembly, if they deem it necessary, may establish one additional district every four years, but the judicial districts shall not exceed sixteen until the population of this state shall exceed one million five hundred thousand.

Compensation of circuit judges.

SECTION 25. The judges of the circuit courts shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall be equal and uniform throughout the state, and which shall not be diminished during the time for which they were elected.

Vacancies, how to be filled.

SECTION 26. If a vacancy shall occur in the office of judge of the circuit court, the governor shall issue a writ of election to fill such vacancy, for the residue of the term: *Provided*, that if the unexpired term be less than one year, the governor shall appoint a judge to fill such vacancy.

When judicial districts may be changed.

SECTION 27. The judicial districts of this state shall not be changed, except at the first session after an enumeration, unless when a new district may be established.

Special circuit courts to be provided for by law.

SECTION 28. The general assembly shall provide by law for holding circuit courts, when, from any cause, the judge shall fail to attend, or, if in attendance, cannot properly preside.

CONCERNING COUNTY COURTS.

County courts to be established and of whom to consist.

SECTION 29. A County Court shall be established in each county now existing, or which may hereafter be erected within this commonwealth, to consist of a presiding judge, and two associate judges, any two of whom shall constitute a court for the transaction of business: *Provided*, the general assembly may at any time abolish the office of the associate judges, whenever it shall be deemed expedient; in which event they may associate with said court any or all of the justices of the peace for the transaction of business.

County court judges to be elected—term of office.

SECTION 30. The judges of the county courts shall be elected by the qualified voters in each county, for the term of four years, and shall continue in office until their successors be duly qualified, and shall receive such compensation for their services as may be provided by law.

When first election of county court judges to be held, &c.

SECTION 31. The first election of county court judges shall take place at the same time of the election of judges of the circuit court. The presiding judge, first elected, shall hold his office until the first Monday in August, 1854. The associate judges shall hold their offices until the first Monday in August, 1852, and until their successors be qualified; and afterwards elections shall be held on the first Mondays in August, in the years in which vacancies regularly occur.

Who shall be eligible as county court judge.

SECTION 32. No person shall be eligible to the office of presiding or associate judge of the county court, unless he be a citizen of the United States, over twenty-one years of age, and shall have been a resident of the county in which he shall be chosen, one year next preceding the election.

Jurisdiction of county court.

SECTION 33. The jurisdiction of the county court shall be regulated by law; and, until changed, shall be the same now vested in the county courts of this state.

Justices' districts to be laid off

SECTION 34. Each county in this state shall be laid off into districts of convenient size, as the general assembly

may, from time to time, direct. Two justices of the peace shall be elected in each district, by the qualified voters therein, at such time and place as may be prescribed by law, for the term of four years, whose jurisdiction shall be co-extensive with the county; no person shall be eligible as a justice of the peace, unless he be a citizen of the United States, twenty-one years of age, and a resident of the district in which he may be a candidate.

—two to be elected in each district—their qualifications.

SECTION 35. Judges of the county court, and justices of the peace, shall be conservators of the peace. They shall be commissioned by the governor. County and district officers shall vacate their offices by removal from the district or county in which they shall be appointed. The general assembly shall provide, by law, the manner of conducting and making due return of all elections of judges of the county court and justices of the peace, and for determining contested elections, and provide the mode of filling vacancies in these offices.

County judges and justices to be conservators of the peace—how vacancies shall be filled.

SECTION 36. Judges of the county court and justices of the peace, sheriffs, coroners, surveyors, jailers, county assessor, attorney for the county, and constables, shall be subject to indictment or presentment for malfeasance or misfeasance in office, or willful neglect in the discharge of their official duties, in such mode as may be prescribed by law, subject to appeal to the court of appeals; and, upon conviction, their offices shall become vacant.

All county officers liable to indictment, &c., for neglect of duty, &c.

SECTION 37. The general assembly may provide, by law, that the justices of the peace in each county shall sit at the court of claims and assist in laying the county levy and making appropriations only.

Justices to sit at court of claims, &c.

SECTION 38. When any city or town shall have a separate representation, such city or town, and the county in which it is located, may have such separate municipal courts, and executive and ministerial officers as the general assembly may, from time to time, provide.

When cities and towns may have separate municipal courts.

SECTION 39. The clerks of the court of appeals, circuit and county courts, shall be removable from office by the court of appeals, upon information and good cause shown. The court shall be judges of the fact as well as the law. Two-thirds of the members present must concur in the sentence.

For cause the clerks of courts may be removed by court of appeals

SECTION 40. The Louisville chancery court shall exist under this constitution, subject to repeal, and its jurisdiction to enlargement and modification by the general assembly. The chancellor shall have the same qualifications as a circuit court judge, and the clerk of said court as a clerk of a circuit court, and the marshal of said court as a sheriff; and the general assembly shall provide for the election, by the qualified voters within its jurisdiction, of the chancellor, clerk, and marshal of said court, at the same time that the judge and clerk of the circuit court are elected for the county of Jefferson, and they shall hold their offices for the same time, and shall be removable in the same manner: *Provided*, that the mar-

Louisville chancery court shall exist—qualifications of chancellor and other officers.

shal of said court shall be ineligible for the succeeding term.

City courts of Louisville & Lexington, and all police courts to remain, until changed by law, &c.

SECTION 41. The city court of Louisville, the Lexington city court, and all other police courts established in any city or town, shall remain until otherwise directed by law, with their present powers and jurisdictions; and the judges, clerks, and marshals of such courts shall have the same qualifications, and shall be elected by the qualified voters of such cities or towns, at the same time, and in the same manner, and hold their offices for the same term as county judges, clerks, and sheriffs, respectively, and shall be liable to removal in the same manner. The general assembly may vest judicial powers, for police purposes, in mayors of cities, police judges, and trustees of towns.

In whom general assembly may vest judicial power.

ARTICLE V.

Concerning Impeachments.

Impeachments.

SECTION 1. The house of representatives shall have the sole power of impeachment.

To be tried by senate, and how.

SECTION 2. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

Who liable to, and effect of judgment on.

SECTION 3. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit under this commonwealth; but the party convicted shall nevertheless be subject and liable to indictment, trial, and punishment by law.

ARTICLE VI.

Concerning Executive and Ministerial Officers for Counties and Districts.

Commonwealth's attorney, circuit and county court clerks, county attorney, surveyor, coroner, and jailer to be elected terms of office.

SECTION 1. A commonwealth's attorney for each judicial district, and a circuit court clerk for each county, shall be elected, whose term of office shall be the same as that of the circuit judges; also, a county court clerk, an attorney, surveyor, coroner, and jailer, for each county, whose term of office shall be the same as that of the presiding judge of the county court.

Who eligible, & qualifications.

SECTION 2. No person shall be eligible to the offices mentioned in this article, who is not at the time twenty-four years old, (except clerks of county and circuit courts, sheriffs, constables, and county attorneys, who shall be eligible at the age of twenty-one years,) a citizen of the United States, and who has not resided two years next preceding the election, in the state, and one year in the county or district for which he is a candidate. No person shall be eligible to the office of commonwealth's or county attorney, unless he shall have been a licensed practicing attorney for two years. No person shall be eligible to the of-

fice of clerk unless he shall have procured from a judge of the court of appeals, or a judge of the circuit court, a certificate that he has been examined by the clerk of his court, under his supervision, and that he is qualified for the office for which he is a candidate.

When and how to be elected.

SECTION 3. The commonwealth's attorney and circuit court clerk shall be elected at the same time as the circuit judge—the commonwealth's attorney by the qualified voters of the district, the circuit court clerk by the qualified voters of the county. The county attorney, clerk, surveyor, coroner, and jailer, shall be elected at the same time, and in the same manner, as the presiding judge of the county court.

Sheriffs shall be elected, term of office, &c.

SECTION 4. A sheriff shall be elected in each county, by the qualified voters thereof, whose term of office shall, after the first term, be two years, and until his successor be qualified; and he shall be re-eligible for a second term; but no sheriff shall, after the expiration of the second term, be re-eligible, or act as deputy, for the succeeding term. The first election of sheriffs shall be on the second Monday in May, 1851; and the sheriffs, then elected, shall hold their offices until the first Monday in January, 1853, and until their successors be qualified; and on the first Monday in August, 1852, and on the first Monday of August in every second year thereafter, elections for sheriff shall be held: *Provided*, that the sheriffs, first elected, shall enter upon the duties of their respective offices on the first Monday in June, 1851, and after the first election on the first Monday in January next succeeding their election.

Constables to be elected—term of office, jurisdiction &c.

SECTION 5. A constable shall be elected in every justices' district, who shall be chosen for two years, at such time and place as may be provided by law, whose jurisdiction shall be co-extensive with the county in which he may reside.

Officers of towns and cities to be elected.

SECTION 6. Officers for towns and cities shall be elected for such terms, and in such manner, and with such qualifications as may be prescribed by law.

Vacancies, how to be filled.

SECTION 7. Vacancies in offices under this article shall be filled, until the next regular election in such manner as the general assembly may provide.

When new county is erected officers to be elected.

SECTION 8. When a new county shall be erected, officers for the same, to serve until the next stated election, shall be elected or appointed in such way and at such times as the general assembly may prescribe.

What officers to give bond.

SECTION 9. Clerks, sheriffs, surveyors, coroners, constables, and jailers, and such other officers as the general assembly may, from time to time, require, shall, before they enter upon the duties of their respective offices, and as often thereafter as may be deemed proper, give such bond and security as shall be prescribed by law.

General assembly may provide for election of other officers.

SECTION 10. The general assembly may provide for the election or appointment, for a term not exceeding four years, of such other county or district ministerial and ex-

ecutive officers as shall, from time to time, be necessary and proper.

County assessor to be elected, term of office.

SECTION 11. A county assessor shall be elected in each county at the same time and for the same term that the presiding judge of the county court is elected, until otherwise provided for by law. He shall have power to appoint such assistants as may be necessary and proper.

ARTICLE VII.

Concerning the Militia.

Militia, of whom to consist.

SECTION 1. The militia of this commonwealth shall consist of all free, able-bodied male persons (negroes, mulattoes, and indians excepted,) resident in the same, between the ages of eighteen and forty-five years; except such persons as now are, or hereafter may be, exempted by the laws of the United States or of this state; but those who belong to religious societies, whose tenets forbid them to carry arms, shall not be compelled to do so, but shall pay an equivalent for personal services.

Staff officers, how appointed.

SECTION 2. The governor shall appoint the adjutant general, and his other staff officers; the major generals, brigadier generals, and commandants of regiments shall, respectively, appoint their staff officers; and commandants of companies shall appoint their non-commissioned officers:

All other militia officers to be elected, and by whom.

SECTION 3. All militia officers, whose appointment is not herein otherwise provided for, shall be elected by persons subject to military duty, within their respective companies, battalions, regiments, brigades, and divisions, under such rules and regulations, and for such terms, not exceeding six years, as the general assembly may, from time to time, direct and establish.

ARTICLE VIII.

General Provisions.

General oath of office.

SECTION 1. Members of the general assembly, and all officers, before they enter upon the execution of the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take the following oath or affirmation: I do solemnly swear, (or affirm, as the case may be,) that I will support the constitution of the United States and the constitution of this state, and be faithful and true to the commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of ——— according to law; and I do further solemnly swear (or affirm,) that since the adoption of the present constitution, I, being a citizen of this state, have not fought a duel, with deadly weapons, within this state nor out of it, with a citizen of this state; nor have I sent or accepted a challenge to fight a duel with deadly weapons, with a citizen of this state; nor have I acted as second in carrying a challenge, or aided or assisted any person thus offending—so help me God.

Treason defined.

SECTION 2. Treason against the commonwealth shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

Bribing and treating.

SECTION 3. Every person shall be disqualified from holding any office of trust or profit for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat to procure his election.

What to exclude from office and suffrage.

SECTION 4. Laws shall be made to exclude from office and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery, or other crimes or high misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practices.

Free suffrage secured.

Public money—how to be drawn and accounted for.

SECTION 5. No money shall be drawn from the treasury but in pursuance of appropriations made by law, nor shall any appropriations of money for the support of an army be made for a longer time than two years; and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

Suits against the state.

SECTION 6. The general assembly may direct, by law, in what manner, and in what courts, suits may be brought against the commonwealth.

Oaths—manner of administering.

SECTION 7. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the general assembly the most solemn appeal to God.

Certain laws continued in force

SECTION 8. All laws which, on the first day of June, one thousand seven hundred and ninety-two, were in force in the state of Virginia, and which are of a general nature, and not local to that state, and not repugnant to this constitution, nor to the laws which have been enacted by the general assembly of this commonwealth, shall be in force within this state, until they shall be altered or repealed by the general assembly.

Compact incorporated.

SECTION 9. The compact with the state of Virginia, subject to such alterations as may be made therein agreeably to the mode prescribed by the said compact, shall be considered as part of this constitution.

Arbitrations.

SECTION 10. It shall be the duty of the general assembly to pass such laws as shall be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment.

Officers—where to reside, & where to keep offices.

SECTION 11. All civil officers for the commonwealth at large, shall reside within the state, and all district, county, or town officers within their respective districts, counties, or towns, (trustees of towns excepted,) and shall keep their offices at such places therein as may be required by law; and all militia officers shall reside in the bounds of the

division, brigade, regiment, battalion, or company, to which they may severally belong.

When absence shall not be a forfeiture, or an exclusion from office

SECTION 12. Absence on the business of this state, or the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under this commonwealth, under the exceptions contained in this constitution.

Deduction from salaries.

SECTION 13. It shall be the duty of the general assembly to regulate, by law, in what cases, and what deductions from the salaries of public officers shall be made, for neglect of duty in their official capacity.

Election returns, where made.

SECTION 14. Returns of all elections by the people shall be made to the secretary of state, for the time being, except in those cases otherwise provided for in this constitution, or which shall be otherwise directed by law.

Votes, viva voce, except dumb persons.

SECTION 15. In all elections by the people, and also by the senate and house of representatives, jointly or separately, the votes shall be personally and publicly given, viva voce: *Provided*, that dumb persons entitled to suffrage may vote by ballot.

Hours of election.

SECTION 16. All elections by the people shall be held between the hours of six o'clock in the morning and seven o'clock in the evening.

When officers shall enter upon their duties.

SECTION 17. The general assembly shall, by law, prescribe the time when the several officers authorized or directed by this constitution to be elected or appointed, shall enter upon the duties of their respective offices, except where the time is fixed by this constitution.

Who ineligible to an office.

SECTION 18. No member of congress, nor person holding or exercising any office of trust or profit under the United States, or either of them, or under any foreign power, shall be eligible as a member of the general assembly of this commonwealth, or hold or exercise any office of trust or profit under the same.

Securities for officers.

SECTION 19. The general assembly shall direct, by law, how persons who now are or who may hereafter become securities for public officers, may be relieved or discharged on account of such securityship.

Persons who give, accept, or carry a challenge deprived of right to hold office.

SECTION 20. Any person who shall, after the adoption of this constitution, either directly or indirectly, give, accept, or knowingly carry a challenge to any person or persons, to fight in single combat, with a citizen of this state, with any deadly weapon, either in or out of the state, shall be deprived of the right to hold any office of honor or profit in this commonwealth, and shall be punished otherwise in such manner as the general assembly may prescribe by law.

Governor shall have power, after five years, to pardon persons engaged in a duel.

SECTION 21. The governor shall have power, after five years from the time of the offense, to pardon all persons who shall have in any wise participated in a duel, either as principals, seconds, or otherwise, and to restore him or them to all the rights, privileges, and immunities to which he or they were entitled before such participation.

And upon the presentation of such pardon, the oath prescribed in the first section of this article shall be varied to suit the case.

General assembly to appoint persons to revise the statute laws, and to prepare a code of practice.

SECTION 22. At its first session after the adoption of this constitution, the general assembly shall appoint not more than three persons, learned in the law, whose duty it shall be to revise and arrange the statute laws of this commonwealth, both civil and criminal, so as to have but one law on any one subject; and also, three other persons, learned in the law, whose duty it shall be to prepare a code of practice for the courts, both civil and criminal, in this commonwealth, by abridging and simplifying the rules of practice and laws in relation thereto; all of whom shall, at as early a day as practicable, report the result of their labors to the general assembly, for their adoption or modification.

President of the board of internal improvement to be elected—term of office, &c.

SECTION 23. So long as the board of internal improvement shall be continued, the president thereof shall be elected by the qualified voters of this commonwealth, and hold the office for the term of four years, and until another be duly elected and qualified. The election shall be held at the same time, and be conducted in the same manner, as the election of governor of this commonwealth under this constitution; but nothing herein contained shall prevent the general assembly from abolishing said board of internal improvement, or the office of president thereof.

Contested election of certain officers to be provided for.

SECTION 24. The general assembly shall provide, by law, for the trial of any contested election of auditor, register, treasurer, attorney general, judges of circuit courts, and all other officers not otherwise herein specified.

General assembly to provide for election returns to be made for all officers.

SECTION 25. The general assembly shall provide by law for the making of the returns, by the proper officers, of the election of all officers to be elected under this constitution; and the governor shall issue commissions to the auditor, register, treasurer, president of the board of internal improvement, superintendent of public instruction, and such other officers as he may be directed by law to commission, as soon as he has ascertained the result of the election of those officers respectively.

Vacancies in any of the state offices, how to be filled.

SECTION 26. When a vacancy shall happen in the office of attorney general, auditor of public accounts, treasurer, register of the land office, president of the board of internal improvement, or superintendent of public instruction, the governor, in the recess of the senate, shall have power to fill the vacancy by granting commissions which shall expire at the end of the next session, and shall fill the vacancy for the balance of the time by and with the advice and consent of the senate.

ARTICLE IX.

Concerning the Seat of Government.

Frankfort to be the seat of government.

The seat of government shall continue in the city of Frankfort, until it shall be removed by law: *Provided, however*, that two-thirds of all the members elected to each

house of the general assembly shall concur in the passage of such law.

ARTICLE X.

Concerning Slaves.

Slaves not to be emancipated without consent of the owners.

SECTION 1. The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money, for the slaves so emancipated, and providing for their removal from the state. They shall have no power to prevent immigrants to this state from bringing with them such persons as are deemed slaves by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state. They shall pass laws to permit owners of slaves to emancipate them, saving the rights of creditors, and to prevent them from remaining in this state after they are emancipated. They shall have full power to prevent slaves being brought into this state as merchandise. They shall have full power to prevent slaves being brought into this state who have been, since the first day of January, one thousand seven hundred and eighty-nine, or may hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary to oblige the owners of slaves to treat them with humanity, to provide for them necessary clothing and provision, to abstain from all injuries to them, extending to life or limb; and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold, for the benefit of their owner or owners.

Immigrants may bring their slaves

Owners may emancipate.

Introduction of slaves may be restricted.

May provide for well treatment of slaves.

Free negroes hereafter immigrating to the state deemed guilty of felony.

SECTION 2. The general assembly shall pass laws providing that any free negro or mulatto hereafter immigrating to, and any slave hereafter emancipated in, and refusing to leave this state, or having left, shall return and settle within this state, shall be deemed guilty of felony, and punished by confinement in the penitentiary thereof.

Grand jury not necessary in prosecutions of slaves

SECTION 3. In the prosecution of slaves for felony, no inquest by a grand jury shall be necessary, but the proceedings in such prosecutions shall be regulated by law; except that the general assembly shall have no power to deprive them of the privilege of an impartial trial by a petit jury.

ARTICLE XI.

Concerning Education.

The capital of the common school fund to be held inviolate.

SECTION 1. The capital of the fund called and known as the "common school fund," consisting of one million two hundred and twenty-five thousand seven hundred and sixty-eight dollars and forty-two cents, for which bonds have been executed by the state to the board of education, and seventy-three thousand five hundred dollars of stock in

the bank of Kentucky; also, the sum of fifty-one thousand two hundred and twenty-three dollars and twenty-nine cents, balance of interest on the school fund for the year 1848, unexpended, together with any sum which may be hereafter raised in the state by taxation, or otherwise, for purposes of education, shall be held inviolate, for the purpose of sustaining a system of common schools. The interest and dividends of said funds, together with any sum which may be produced for that purpose by taxation or otherwise, may be appropriated in aid of common schools, but for no other purpose. The general assembly shall invest said fifty-one thousand two hundred and twenty-three dollars and twenty-nine cents in some safe and profitable manner; and any portion of the interest and dividends of said school fund, or other money or property raised for school purposes, which may not be needed in sustaining common schools, shall be invested in like manner. The general assembly shall make provision, by law, for the payment of the interest of said school fund: *Provided*, that each county shall be entitled to its proportion of the income of said fund, and if not called for, for common school purposes, it shall be re-invested from time to time for the benefit of such county.

Provision to be made to pay interest.

Each county to be entitled to its proportion.

SECTION 2. A superintendent of public instruction shall be elected by the qualified voters of this commonwealth, at the same time the governor is elected, who shall hold his office for four years, and his duties and salary shall be prescribed and fixed by law.

Superintendent of public instruction to be elected for four years.

ARTICLE XII.

Mode of revising the Constitution.

SECTION 1. When experience shall point out the necessity of amending this constitution, and when a majority of all the members elected to each house of the general assembly shall, within the first twenty days of any regular session, concur in passing a law for taking the sense of the good people of this commonwealth, as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs and other officers of elections, at the next general election which shall be held for representatives to the general assembly, after the passage of such law, to open a poll for, and make return to the secretary of state, for the time being, of the names of all those entitled to vote for representatives who have voted for calling a convention; and if, thereupon, it shall appear that a majority of all the citizens of this state, entitled to vote for representatives, have voted for calling a convention, the general assembly shall, at their next regular session, direct that a similar poll shall be opened, and return made for the next election for representatives; and if, thereupon, it shall appear that a majority of all the citizens of this state entitled to vote for representatives, have voted for calling a convention, the general assembly

How constitution may be amended.

Number of members of the convention.

shall, at their next session, pass a law calling a convention, to consist of as many members as there shall be in the house of representatives, and no more; to be chosen on the first Monday in August thereafter, in the same manner and proportion, and at the same places, and possessed of the same qualifications of a qualified elector, by citizens entitled to vote for representatives; and to meet within three months after their election, for the purpose of readopting, amending, or changing this constitution; but if it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives did not vote for calling a convention, a convention shall not then be called. And for the purpose of ascertaining whether a majority of the citizens, entitled to vote for representatives, did or did not vote for calling a convention, as above, the general assembly passing the law authorizing such vote shall provide for ascertaining the number of citizens entitled to vote for representatives within the state.

Convention to judge of the election of its members.

SECTION 2. The convention, when assembled, shall judge of the election of its members and decide contested elections, but the general assembly shall, in calling a convention, provide for taking testimony in such cases and for issuing a writ of election in case of a tie.

ARTICLE XIII.

Bill of Rights.

Declaration of rights.

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

Equality of men.

SECTION 1. That all freemen, when they form a social compact, are equal, and that no man, or set of men, are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services.

Absolute power over life, liberty, & property exists nowhere in a republic, &c.

SECTION 2. That absolute, arbitrary power over the lives, liberty, and property of freemen exists no where in a republic—not even in the largest majority.

The right of property.

SECTION 3. The right of property is before and higher than any constitutional sanction; and the right of the owner of a slave to such slave, and its increase, is the same, and as inviolable as the right of the owner of any property whatever.

All power in the people.

SECTION 4. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, happiness, security, and the protection of property. For the advancement of these ends, they have, at all times, an inalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper.

Liberty of conscience.

SECTION 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man shall be com-

pelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship.

Religion.

SECTION 6. That the civil rights, privileges, or capacities of any citizen shall in no wise be diminished or enlarged on account of his religion.

Elections.

SECTION 7. That all elections shall be free and equal.

Trial by jury.

SECTION 8. That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this constitution.

Freedom of the press and speech.

SECTION 9. That printing presses shall be free to every person who undertakes to examine the proceedings of the general assembly, or any branch of government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty.

To give truth in evidence.

SECTION 10. In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

Jury to be judges of law and fact in libels.

People to be secure from unreasonable seizures and searches.

SECTION 11. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures and searches, and that no warrant to search any place or to seize any person or thing, shall issue, without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

Rights of persons prosecuted criminally.

SECTION 12. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; that he cannot be compelled to give evidence against himself; nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

Information.

SECTION 13. That no person shall, for any indictable offense, 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.

Twice in jeopardy, and property not to be taken.

SECTION 14. No person shall, for the same offense, be twice put in jeopardy of his life or limb; nor shall any

man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being previously made to him.

All courts to be open.

SECTION 15. That all courts shall be open, and every person, for an injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial, or delay.

Suspending laws.

SECTION 16. That no power of suspending laws shall be exercised, unless by the general assembly, or its authority.

Excessive bail.

SECTION 17. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

Prisoners, when bailable.

Habeas corpus.

SECTION 18. That all prisoners shall be bailable by sufficient securities, unless for capital offenses, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Imprisonment of debtors.

SECTION 19. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

Ex post facto laws

SECTION 20. That no *ex post facto* law, nor any law impairing contracts, shall be made.

Attainder.

SECTION 21. That no person shall be attainted of treason or felony by the general assembly.

SECTION 22. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth.

Felos de se and forfeiture.

SECTION 23. That the estates of such persons as shall destroy their own lives shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

Right of petition.

SECTION 24. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

Right to bear arms

SECTION 25. That the rights of the citizens to bear arms in defense of themselves and the state, shall not be questioned; but the general assembly may pass laws to prevent persons from carrying concealed arms.

Standing armies.

SECTION 26. That no standing army shall, in time of peace, be kept up, without the consent of the general assembly; and the military shall, in all cases and at all times, be in strict subordination to the civil power.

Soldiers not to be quartered.

SECTION 27. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Nobility, and limitation of office

SECTION 28. That the general assembly shall not grant any title of nobility, or hereditary distinction, nor create any office, the appointment to which shall be for a longer time than for a term of years.

Emigration.

SECTION 29. That emigration from the state shall not be prohibited.

Exception out of the general powers.

SECTION 30. To guard against transgressions of the high powers which we have delegated, WE DECLARE, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this constitution, shall be void.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments made in the constitution of this commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained:

Laws and rights continued.

SECTION 1. That all the laws of this commonwealth, in force at the time of the adoption of this constitution, and not inconsistent therewith, and all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if this constitution had not been adopted.

Oaths, by whom administered.

SECTION 2. The oaths of office herein directed to be taken may be administered by any judge or justice of the peace, until the general assembly shall otherwise direct.

No office shall be superseded by the adoption of this constitution.

SECTION 3. No office shall be superseded by the adoption of this constitution, but the laws of the state relative to the duties of the several officers, legislative, executive, judicial, and military, shall remain in full force, though the same be contrary to this constitution, and the several duties shall be performed by the respective officers of the state, according to the existing laws, until the organization of the government, as provided for under this constitution, and the entering into office of the officers to be elected or appointed under said government, and no longer.

Duty of general assembly that convenes in 1850.

SECTION 4. It shall be the duty of the general assembly which shall convene in the year 1850, to make an apportionment of the representation of this state, upon the principle set forth in this constitution; and until the first apportionment shall be made as herein directed, the apportionment of senators and representatives among the several districts and counties in this state, shall remain as at present fixed by law: *Provided*, that on the first Monday in August, 1850, all senators shall go out of office, and on that day an election for senators and representatives shall be held throughout the state, and those then elected shall hold their offices for one year, and no longer: *Provided further*, that at the elections to be held in the year 1850, that provision in this constitution which requires voters to vote in the precinct within which they reside, shall not apply.

Recognizances heretofore taken.

Criminal prosecutions.

SECTION 5. All recognizances heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain as valid as though this constitution had not been adopted, and may be prosecuted in the name of the commonwealth. All criminal prosecutions and penal actions which have arisen, or may arise before the re-organization of the judicial department under this constitution, may be prosecuted to judgment and execution, in the name of the commonwealth.

"We, the representatives of the freemen of Kentucky, in convention assembled, in their name, and by the authority of the commonwealth of Kentucky, and in virtue of the powers vested in us, as delegates from the counties respectively affixed to our names, do ordain and proclaim the foregoing to be the constitution of the commonwealth of Kentucky from and after this day.

"Done at Frankfort this eleventh day of June, in the year of our Lord one thousand eight hundred and fifty, and in the fifty-ninth year of the commonwealth."

JAMES GUTHRIE,
President of the Convention, and member from city of Louisville.

ATTEST:
THO. J. HELM, *Secretary of the Convention.*
THO. D. TILFORD, *Assistant Secretary.*

From the county of *Adair*—Nathan Gaither.

From the county of *Allen*—George W. Mansfield.

From the county of *Anderson*—George W. Kavanaugh.

From the counties of *Ballard* and *McCracken*—Richard D. Gholson.

From the county of *Barren*—John T. Rogers, Robert D. Maupin.

From the county of *Bath*—James M. Nesbit.

From the county of *Boone*—Charles Chambers.

From the county of *Bourbon*—Geo. W. Williams, Richard H. Hanson.

From the county of *Boyle*—Albert G. Talbott.

From the county of *Bracken*—William C. Marshall.

From the counties of *Breathitt* and *Morgan*—John Hargis.

From the county of *Breckinridge*—Daniel J. Stephens.

From the county of *Bullitt*—William R. Thompson.

From the counties of *Butler* and *Edmonson*—Vincent S. Hay.

From the county of *Caldwell*—Willis B. Machen.

From the counties of *Calloway* and *Marshall*—Edward Curd.

From the county of *Campbell*—Ira Root.

From the counties of *Carroll* and *Gallatin*—John T. Robinson.

From the counties of *Carter* and *Lawrence*—Thomas J. Hood.

From the county of *Casey*—Jesse Coffey.

From the county of *Christian*—John D. Morris, Ninian E. Gray.

From the county of *Clarke*—Andrew Hood.

From the counties of *Clay*, *Letcher*, and *Perry*—James H. Garrard.

From the counties of *Cumberland* and *Clinton*—Michael L. Stoner.

From the county of *Crittenden*—Henry R. D. Coleman.

From the county of *Daviess*—Philip Triplett.

From the counties of *Estill* and *Owsley*—Luther Brawner.

From the county of *Fayette*—James Dudley, Robert N. Wickliffe.

From the county of *Fleming*—Will. W. Blair.

From the counties of *Floyd*, *Pike*, and *Johnson*—James M. Lackey.

From the county of *Franklin*—Thomas N. Lindsey.

From the county of *Grant*—William Hendrix.

From the county of *Graves*—Richard L. Mayes.

From the county of *Grayson*—John J. Thurman.

From the county of *Green*—Thomas W. Lisle.

From the county of *Greenup*—Henry B. Pollard.

From the county of *Hardin*—Thomas D. Brown, James W. Stone.

From the county of *Harrison*—Hugh Newell, Lucius Desha.

From the county of *Hart*—Benjamin Copelin.

From the county of *Henderson*—Archibald Dixon.

From the county of *Henry*—Elijah F. Nuttall.

From the counties of *Hickman* and *Fulton*—Thomas James.

From the county of *Hopkins*—William Bradley.

From the county of *Jefferson*—David Meriwether, William C. Bullitt.

From the county of *Jessamine*—Alexander K. Marshall.

From the county of *Kenton*—John W. Stevenson.

From the counties of *Knox* and *Harlan*—Silas Woodson.

From the county of *Larue*—James P. Hamilton.

From the counties of *Laurel* and *Rockcastle*—Jonathan Newcum.

From the county of *Lewis*—Larkin J. Proctor.

From the county of *Lincoln*—John L. Ballinger.

From the county of *Livingston*—William Cowper.

From the county of *Logan*—William K. Bowling, James W. Irwin.

From the city of *Louisville*—James Rudd, William Preston.

From the county of *Madison*—Squire Turner, William Chenault.

From the county of *Marion*—Green Forrest.

From the county of *Mason*—Peter Lashbrooke, John D. Taylor.

From the county of *Meade*—Thomas J. Gough.

From the county of *Mercer*—Thomas P. Moore.
From the county of *Monroe*—John S. Barlow.
From the county of *Montgomery*—Richard Apperson.
From the county of *Muhlenburg*—Alfred M. Jackson.
From the county of *Nelson*—Ben. Hardin, Charles A. Wickliffe.
From the county of *Nicholas*—Benjamin F. Edwards.
From the county of *Owen*—Howard Todd.
From the counties of *Ohio* and *Hancock*—John H. McHenry.
From the county of *Pendleton*—John Wheeler.
From the county of *Pulaski*—James D. Allcorn.
From the county of *Russell*—Nathan McClure.
From the county of *Scott*—William Johnson.
From the county of *Simpson*—Beverly L. Clarke.
From the county of *Shelby*—Andrew S. White, George W. Johnston.
From the county of *Spencer*—Mark E. Huston.
From the county of *Taylor*—William N. Marshall.
From the county of *Todd*—Francis M. Bristow.
From the county of *Trigg*—Alfred Boyd.
From the county of *Trimble*—Wesley J. Wright.
From the county of *Union*—Ignatius A. Spalding.
From the county of *Warren*—Chasteen T. Dunavan.
From the county of *Wayne*—James S. Chrisman.
From the county of *Whitley*—Thomas Rockhold.
From the county of *Woodford*—John L. Waller.
From the county of *Washington*—Charles Cooper Kelly.

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THE ARTICLES OF CONFEDERATION.*

IN CONGRESS, JULY 9, 1778.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION,

Between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ARTICLE 1. The style of this confederacy shall be "THE UNITED STATES OF AMERICA." July 9, 1778.

ART. 2. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in congress assembled.

ART. 3. The said states hereby severally enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ART. 4. § 1. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states (paupers, vagabonds, and fugitives from justice excepted,) shall be entitled to all privileges and immunities of free citizens in the several states, and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state, of which the owner is an inhabitant; provided also, that no imposition, duties, or restriction, shall be laid by any state on the property of the United States, or either of them.

§ 2. If any person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from justice, and be found in any of the United States, he shall, upon the demand of the governor or executive pow-

* The Articles of Confederation should have been printed in this volume next preceding the Constitution; but it was not decided to print them until after a portion of the work was in press.

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er of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offense.

§ 3. Full faith and credit shall be given in each of these states, to the records, acts, and judicial proceedings of the courts and magistrates of every other state.

ART. 5. § 1. For the more convenient management of the general interests of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in congress on the first Monday in November, of every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

§ 2. No state shall be represented in congress by less than two, nor more than seven members: and no person shall be capable of being a delegate for more than three years, in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or any other for his benefit, receives any salary, fees, or emolument of any kind.

§ 3. Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of these states.

§ 4. In determining questions in the United States in congress assembled, each state shall have one vote.

§ 5. Freedom of speech and debate in congress shall not be impeached or questioned in any court or place out of congress, and the members of congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

ART. 6. § 1. No state, without the consent of the United States in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty, with any king, prince, or state, nor shall any person, holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state; nor shall the United States, in congress assembled, or any of them, grant any title of nobility.

§ 2. No two or more states shall enter into any treaty, confederation, or alliance whatever, between them, without the consent of the United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

§ 3. No state shall lay any imposts or duties which may interfere with any stipulations in treaties, entered into by the United States in congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by congress to the courts of France and Spain.

§ 4. No vessels of war shall be kept up in time of peace by any state, except such number only as shall be deemed

necessary by the United States in congress assembled, for the defense of such state, or its trade; nor shall any body of forces be kept up, by any state, in time of peace, except such number only as, in the judgment of the United States in congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage. July 9, 1778.

§ 5. No state shall engage in any war without the consent of the United States in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of delay till the United States in congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in congress assembled shall determine otherwise.

ART. 7. When land forces are raised by any state for the common defense, all officers of or under the rank of colonel shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

ART. 8. All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in congress assembled shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in congress assembled.

ART. 9. § 1. The United States in congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article, of sending and receiving ambassa-

July 9, 1778.

dors; entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas; and establishing courts for receiving and determining finally appeals in all cases of captures; provided that no member of congress shall be appointed a judge of any of the said courts.

§ 2. The United States in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more states concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority or lawful agent of any state in controversy with another, shall present a petition to congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven nor more than nine names, as congress shall direct, shall, in the presence of congress, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges, who shall hear the cause, shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or being present, shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nev-

ertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress, for the security of the parties concerned: provided, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward:" provided also, that no state shall be deprived of territory for the benefit of the United States. July 9, 1778.

§ 3. All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdiction, as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

§ 4. The United States, in congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the states; provided that the legislative right of any state, within its own limits, be not infringed or violated; establishing and regulating post offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same, as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

§ 5. The United States, in congress assembled, shall have authority to appoint a committee, to sit in the recess of congress, to be denominated, "*A Committee of the States*," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one of their number to preside; provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States,

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and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state, which requisition shall be binding; and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm, and equip them, in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States, in congress assembled; but if the United States, in congress assembled, shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared, and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled.

§ 6. The United States, in congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless nine states assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in congress assembled.

§ 7. The congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months, and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state, on any question, shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or

any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states. July 9, 1778.

ART. 10. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the United States, in congress assembled, by the consent of nine states, shall, from time to time, think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states, in the congress of the United States assembled, is requisite.

ART. 11. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ART. 12. All bills of credit emitted, moneys borrowed, and debts contracted by or under the authority of congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

ART. 13. Every state shall abide by the determination of the United States, in congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislature of every state.

And whereas, it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in congress to approve of, and to authorize us to ratify the said articles of confederation and perpetual union, Know ye, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do, by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained. And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in congress assembled, on all questions which by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In witness whereof, we have hereunto set our hands, in congress.

July 9, 1778. Done at Philadelphia, in the state of Pennsylvania, the ninth day of July, in the year of our Lord one thousand seven hundred and seventy-eight, and in the third year of the Independence of America.

On the part and behalf of the state of New Hampshire.—Josiah Bartlett, John Wentworth, jr. (August 8, 1778.)

On the part and behalf of the state of Massachusetts Bay.—John Hancock, Samuel Adams, Elbridge Gerry, Francis Dana, James Lovell, Samuel Holten.

On the part and behalf of the state of Rhode Island and Providence Plantations.—William Ellery, Henry Marchant, John Collins.

On the part and behalf of the state of Connecticut.—Roger Sherman, Samuel Huntington, Oliver Wolcott, Titus Hosmer, Andrew Adams.

On the part and behalf of the state of New York.—James Duane, Francis Lewis, William Duer, Gouv. Morris.

On the part and behalf of the state of New Jersey.—John Witherspoon, Nath. Scudder, (November 26, 1778.)

On the part and behalf of the state of Pennsylvania.—Robert Morris, Daniel Roberdeau, Jona. Bayard Smith, William Clingan, Joseph Reed, (July 22, 1778.)

On the part and behalf of the state of Delaware.—Thomas McKean, (February 12, 1779,) John Dickinson, (May 5, 1779,) Nicholas Van Dyke.

On the part and behalf of the state of Maryland.—John Hanson, (March 1, 1781,) Daniel Carroll, (March 1, 1781.)

On the part and behalf of the state of Virginia.—Richard Henry Lee, John Banister, Thomas Adams, Jno. Harvie, Francis Lightfoot Lee.

On the part and behalf of the state of North Carolina.—John Penn, (July 21, 1778,) Corns. Harnett, John Williams.

On the part and behalf of the state of South Carolina.—Henry Laurens, William Henry Drayton, Jno. Matthews, Richard Hutson, Thos. Heyward, jr.

On the part and behalf of the state of Georgia.—Jno. Walton, (July 24, 1778,) Edwd. Telfair, Edward Langworthy.

WASHINGTON'S FAREWELL ADDRESS.

SEPTEMBER 17, 1796.

Friends and Fellow-Citizens:—

September 17, 1796

THE period for a new election of a citizen to administer the executive government of the United States being not far distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprize you of the resolution I have formed, to decline being considered among the number of those out of whom a choice is to be made.

I beg you, at the same time, to do me the justice to be assured, that this resolution has not been taken without a strict regard to all the considerations appertaining to the relation which binds a dutiful citizen to his country; and that, in withdrawing the tender of service, which silence in my situation might imply, I am influenced by no diminution of zeal for your future interest—no deficiency of respect for your past kindness; but am supported by a full conviction that the step is compatible with both.

The acceptance of, and continuance hitherto in, the office to which your suffrages have twice called me, have been a uniform sacrifice of inclination to the opinion of duty, and to a deference for what appeared to be your desire. I constantly hoped that it would have been much earlier in my power, consistently with motives which I was not at liberty to disregard, to return to that retirement from which I had been reluctantly drawn. The strength of my inclination to do this, previous to the last election, had even led to the preparation of an address to declare it to you; but mature reflection on the then perplexed and critical posture of affairs with foreign nations, and the unanimous advice of persons entitled to my confidence, impelled me to abandon the idea.

I rejoice that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty or propriety; and am pursuaded, whatever partiality may be retained for my services, that in the present circumstances of our country, you will not disapprove of my determination to retire.

The impressions with which I first undertook the arduous trust, were explained on the proper occasion. In the

September 17, 1796

discharge of this trust, I will only say, that I have, with good intentions, contributed toward the organization and administration of the government, the best exertions of which a very fallible judgment was capable. Not unconscious, in the outset, of the inferiority of my qualifications, experience in my own eyes, perhaps still more in the eyes of others, has strengthened the motives to diffidence of myself; and every day the increasing weight of years admonishes me more and more that the shade of retirement is as necessary for me as it will be welcome. Satisfied that, if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe that, while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

In looking forward to the moment which is to terminate the career of my political life, my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude which I owe to my beloved country, for the many honors it has conferred upon me; still more for the steadfast confidence with which it has supported me; and for the opportunities I have thence enjoyed, of manifesting my inviolable attachment, by services faithful and persevering, though in usefulness unequal to my zeal. If benefits have resulted to our country from these services, let it always be remembered to your praise, and as an instructive example in our annals, that under circumstances in which the passions, agitated in every direction, were liable to mislead, amid appearances sometimes dubious, vicissitudes of fortune often discouraging, in situations in which, not unfrequently, want of success has countenanced the spirit of criticism, the constancy of your support was the essential prop of the efforts, and a guaranty of the plans by which they were effected. Profoundly penetrated with this idea, I shall carry it with me to my grave, as a strong incitement to unceasing wishes, that Heaven may continue to you the choicest tokens of its beneficence; that your union and brotherly affection may be perpetual; that the free constitution, which is the work of your hands, may be sacredly maintained; that its administration, in every department, may be stamped with wisdom and virtue; that, in fine, the happiness of the people of these states, under the auspices of liberty, may be made complete by so careful a preservation, and so prudent a use of this blessing, as will acquire to them the glory of recommending it to the applause, the affection, and adoption of every nation which is yet a stranger to it.

Here, perhaps, I ought to stop; but a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger natural to that solicitude, urge me, on an occasion like the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments, which are the result of much reflection, of no inconsiderable observation, and which appear to me all-important to the permanency of your felicity as a peo-

ple. These will be offered to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend who can possibly have no personal motive to bias his counsel; nor can I forget as an encouragement to it, your indulgent reception of my sentiments on a former and not dissimilar occasion. September 17, 1796

Interwoven as is the love of liberty with every ligament of our hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

The unity of government which constitutes you one people, is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real independence; the support of your tranquility at home, your peace abroad; of your safety; of your prosperity; of that very liberty which you so highly prize. But as it is easy to foresee, that from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken, in your minds, the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed, it is of infinite moment that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as a palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can, in any event, be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest. Citizens by birth or choice of a common country, that country has a right to concentrate your affections. The name of *American*, which belongs to you in your national capacity, must always exalt the just pride of patriotism, more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have, in a common cause, fought and triumphed together; the independence and liberty you possess are the work of joint councils and joint efforts, of common dangers, sufferings, and success.

But these considerations, however powerfully they address themselves to your sensibility, are greatly outweighed by those which apply more immediately to your interest; here every portion of our country finds the most commanding motives for carefully guarding and preserving the union of the whole.

The north, in an unrestrained intercourse with the south, protected by the equal laws of a common govern-

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ment, finds in the productions of the latter, great additional resources of maritime and commercial enterprise, and precious materials of manufacturing industry. The south, in the same intercourse, benefitting by the same agency of the north, sees its agriculture grow, and its commerce expand. Turning partly into its own channels the seamen of the north, it finds its particular navigation invigorated; and while it contributes, in different ways, to nourish and increase the general mass of the national navigation, it looks forward to the protection of a maritime strength, to which itself is unequally adapted. The east, in like intercourse with the west, in the progressive improvment of interior communications by land and water, will more and more find a valuable vent for the commodities which it brings from abroad, or manufactures at home. The west derives from the east supplies requisite to its growth and comfort; and what is perhaps of still greater consequence, it must, of necessity, owe the secure enjoyment of the indispensable outlets for its own productions, to the weight, influence, and future maritime strength of the Atlantic side of the union, directed by an indissoluble community of interest as one nation. Any other tenure by which the west can hold this essential advantage, whether derived from its own separate strength, or from an apostate and unnatural connexion with any foreign power, must be intrinsically precarious.

While, then, every part of our country thus feels an immediate and particular interest in union, all the parts combined cannot fail to find, in the united mass of means and efforts, greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their peace by foreign nations; and what is of inestimable value, they must derive from union, an exemption from those broils and wars between themselves, which so frequently afflict neighboring countries, not tied together by the same government, which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments, and intrigues, would stimulate and embitter. Hence, likewise, they will avoid the necessity of those overgrown military establishments, which under any form of government, are inauspicious to liberty, and which are to be regarded as particularly hostile to republican liberty; in this sense it is, that your union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.

These considerations speak a persuasive language to every reflecting and virtuous mind, and exhibit the continuance of the UNION as a primary object of patriotic desire. Is there a doubt whether a common government can embrace so large a sphere? Let experience solve it. To listen to mere speculation in such a case, were criminal. We are authorized to hope, that a proper organization of the whole, with the auxiliary agency of governments for

the respective subdivisions, will afford a happy issue of the experiment. It is well worth a fair and full experiment. With such powerful and obvious motives to union, affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who, in any quarter, may endeavor to weaken its bands. September 17, 1796

In contemplating the causes which may disturb our union, it occurs as matter of serious concern, that any ground should have been furnished for characterizing parties by geographical discriminations; northern and southern, atlantic and western; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts is, to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart-burnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection. The inhabitants of our western country have lately had a useful lesson on this head; they have seen in the negotiation by the executive, and in the unanimous ratification by the senate, of the treaty with Spain, and in the universal satisfaction at that event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them, of a policy in the general government, and in the atlantic states, unfriendly to their interests, in regard to the Mississippi; they have been witnesses to the formation of two treaties: that with Great Britain, and that with Spain, which secure to them every thing they could desire in respect to our foreign relations, toward confirming their prosperity. Will it not be their wisdom to rely for the preservation of these advantages, on the UNION by which they were procured? Will they not henceforth be deaf to those advisers, if such there are, who would sever them from their brethren and connect them with aliens?

To the efficacy and permanency of your union, a government for the whole is indispensable. No alliances, however strict, between the parts, can be an adequate substitute; they must inevitably experience the infractions and interruptions which alliances, in all times, have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a constitution of government better calculated than your former, for an intimate union, and for the efficacious management of your common concerns. This government, the offspring of your own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself provision for its own amendment, has a just claim to your confidence and your support. Respect

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for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political system is, the right of the people to make and to alter their constitutions of government; but the constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government, presupposes the duty of every individual to obey the established government.

All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency. They serve to organize faction, to give it an artificial and extraordinary force, to put in the place of the delegated will of the nation, the will of party, often a small but artful and enterprising minority of the community, and according to the alternate triumphs of different parties, to make the public administration the mirror of the ill-concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans, digested by common councils, and modified by mutual interests.

However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the reins of government, destroying, afterward, the very engines which have lifted them to unjust dominion.

Toward the preservation of your government, and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular opposition to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be, to effect, in the forms of the constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing constitutions of a country; that facility in changes, upon the credit of mere hypothesis and opinion, exposes to perpetual change, from the endless variety of hypothesis and opinion; and remember especially, that from the efficient management of your common interests, in a country so extensive as ours, a government of as much vigor as is consistent with the perfect security of liberty, is indispensable.

Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name, where the government is too feeble to withstand the enterprises of faction, to confine each member of society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property. September 17, 1796

I have already intimated to you the danger of parties in the state, with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view, and warn you, in the most solemn manner, against the baneful effects of the spirit of party generally.

This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists, under different shapes, in all governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness, and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which, in different ages and countries, has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual, and, sooner or later, the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation on the ruins of the public liberty.

Without looking forward to an extremity of this kind, (which, nevertheless, ought not to be entirely out of sight,) the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.

It serves always to distract the public councils, and enfeeble the public administration. It agitates the community with ill-founded jealousies and false alarms; kindles the animosity of one part against another, foments occasional riot and insurrection. It opens the door to foreign influence and corruption, which finds a facilitated access to the government itself, through the channels of party passion. Thus the policy and will of one country are subjected to the policy and will of another.

There is an opinion, that parties in free countries are useful checks upon the administration of the government, and serve to keep alive the spirit of Liberty. This, within certain limits, is probably true; and in governments of a monarchical cast, patriotism may look with indulgence, if not with favor, upon the spirit of party. But in those of popular character, in governments purely elective, it is a spirit not to be encouraged. From the natural tendency, it is certain there will always be enough of that spirit

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for every salutary purpose. And, there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming, it should consume.

It is important, likewise, that the habits of thinking in a free country should inspire caution, in those entrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding, in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power, and proneness to abuse it, which predominate in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions of the other, has been evinced by experiments, ancient and modern; some of them in our country, and under our own eyes. To preserve them, must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way in which the constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil, any partial or transient benefit, which the use can at any time yield.

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness—these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connexion with private and public felicity. Let it be simply asked, where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition, that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles.

It is substantially true, that virtue or morality is a necessary spring of popular government. The rule indeed extends with more or less force, to every species of free government. Who that is a sincere friend to it, can look

with indifference upon attempts to shake the foundation of the fabric? September 17, 1796

Promote then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

As a very important source of strength and security, cherish public credit. One method of preserving it, is to use it as sparingly as possible; avoiding occasions of expense, by cultivating peace, but remembering, also, that timely disbursements to prepare for danger, frequently prevent much greater disbursements to repel it; avoiding, likewise, the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions in time of peace, to discharge the debts which unavoidable wars have occasioned, not ungenerously throwing upon posterity the burden which we ourselves ought to bear. The execution of these maxims belongs to your representatives, but it is necessary that public opinion should co-operate. To facilitate to them the performance of their duty, it is essential you should practically bear in mind, that, toward the payment of debts, there must be revenue; that to have revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleasant; that the intrinsic embarrassment, inseparable from the selection of the proper objects, (which is always a choice of difficulties,) ought to be a decisive motive for a candid construction of the conduct of the government in making it, and for a spirit of acquiescence in the measures for obtaining revenue, which the public exigencies may at any time dictate.

Observe good faith and justice toward all nations; cultivate peace and harmony with all. Religion and morality enjoin this conduct; and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and, at no distant period, a great nation to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt that in the course of time and things the fruits of such a plan would richly repay any temporary advantages that might be lost by a steady adherence to it? Can it be that Providence has connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! it is rendered impossible by its vices.

In the execution of such a plan, nothing is more essential than that permanent, inveterate antipathies against particular nations, and passionate attachments for others, should be excluded; and that in the place of them, just and amicable feelings toward all should be cultivated. The nation which indulges toward another an habitual hatred or an habitual fondness, is in some degree a slave.

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It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable when accidental or trifling occasions of dispute occur.

Hence, frequent collisions and obstinate, envenomed, and bloody contests. The nation, prompted by ill-will and resentment, sometimes impels to war the government contrary to the best calculations of policy. The government sometimes participates in the national propensity, and adopts through passion what reason would reject. At other times, it makes the animosity of the nation subservient to the projects of hostility, instigated by pride, ambition, and other sinister and pernicious motives. The peace often, sometimes perhaps the liberty, of nations has been the victim.

So, likewise, a passionate attachment of one nation for another, produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and the wars of the latter, without adequate inducements or justification. It leads, also, to concessions to the favorite nation of privileges denied to others, which are apt doubly to injure the nation making the concessions, by unnecessarily parting with what ought to have been retained, and by exciting jealousy, ill-will, and a disposition to retaliate, in the parties from whom equal privileges are withheld; and it gives to ambitious, corrupt, or deluded citizens, who devote themselves to the favorite nation, facility to betray or sacrifice the interests of their own country without odium, sometimes even with popularity, gilding with the appearances of a virtuous sense of obligation to a commendable deference for public opinion, or a laudable zeal for public good, the base or foolish compliances of ambition, corruption, or infatuation.

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many opportunities do they afford to tamper with domestic factions, to practice the arts of seduction, to mislead public opinion, to influence or awe the public councils! Such an attachment of a small or weak nation toward a great and powerful one, dooms the former to be the satellite of the latter. Against the insidious wiles of foreign influence, I conjure you to believe me, fellow-citizens, the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government. But that jealousy, to be useful, must be impartial, else it becomes the instrument of the very influence to be avoided, in-

stead of a defense against it. Excessive partiality for one foreign nation, and excessive dislike for another, cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots, who may resist the intrigues of the favorite, are liable to become suspected and odious, while its tools and dupes usurp the applause and confidence of the people to surrender their interests. September 17, 1796

The great rule of conduct for us in regard to foreign nations is, in extending our commercial relations, to have with them as little political connexion as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop.

Europe has a set of primary interests which to us have none or a very remote relation. Hence, she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities.

Our detached and distant situation invites and enables us to pursue a different course. If we remain one people, under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation; when we may choose peace or war as our interests, guided by justice, shall counsel.

Why forego the advantages of so peculiar a situation? Why quit our own to stand on foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?

It is our true policy to steer clear of permanent alliances with any portion of the foreign world, so far, I mean, as we are now at liberty to do it; for let me not be understood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs, that honesty is always the best policy. I repeat, therefore, let those engagemants be observed in their genuine sense. But in my opinion, it is unnecessary and would be unwise to extend them.

Taking care always to keep ourselves by suitable establishments on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony and liberal intercourse with all nations are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand; neither seeking nor granting exclusive

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favors or preferences; consulting the natural course of things; diffusing and diversifying by gentle means the stream of commerce, but forcing nothing; establishing with powers so disposed (in order to give trade a stable course, to define the rights of our merchants, to enable the government to support them) conventional rules of intercourse, the best that present circumstances and natural opinion will permit, but temporary and liable to be from time to time abandoned or varied as experience and circumstances shall dictate; constantly keeping in view that it is folly in one nation to look for disinterested favors from another—that it must pay with a portion of its independence for whatever it may accept under that character—that by such acceptance it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not having given more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard.

In offering to you, my countrymen, these counsels of an old affectionate friend, I dare not hope that they will make the strong and lasting impression I could wish—that they will control the usual current of the passions, or prevent our nation from running the course which has hitherto marked the destiny of nations. But if I may even flatter myself that they may be productive of some partial benefit, some occasional good—that they may now and then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign intrigue to guard against the impostures of pretended patriotism—this hope will be a full recompense for the solicitude for your welfare by which they have been dictated.

How far in the discharge of my official duties I have been guided by the principles which have been delineated, the public records and the other evidences of my conduct must witness to you and to the world. To myself, the assurance of my own conscience is, that I have at least believed myself to be guided by them.

In relation to the still subsisting war in Europe, my proclamation of the 22d of April, 1793, is the index to my plan. Sanctioned by your approving voice, and by that of your representatives in both houses of congress, the spirit of that measure has continually governed me, uninfluenced by any attempts to deter or divert me from it.

After deliberate examination, with the aid of the best lights I could obtain, I was well satisfied that our country, under all the circumstances of the case, had a right to take, and was bound in duty and interest to take, a neutral position. Having taken it, I determined, as far as should depend upon me, to maintain it with moderation, perseverance, and firmness.

The considerations which respect the right to hold this conduct, it is not necessary on this occasion to detail. I

will only observe, that according to my understanding of the matter, that right, so far from being denied by any of the belligerent powers, has been virtually admitted by all. September 17, 1796

The duty of holding a neutral conduct may be inferred, without anything more, from the obligation which justice and humanity impose on every nation, in cases in which it is free to act, to maintain inviolate the relations of peace and amity toward other nations.

The inducements of interest for observing that conduct, will best be referred to your own reflections and experience. With me, a predominant motive has been, to endeavor to gain time to our country to settle and mature its yet recent institutions, and to progress without interruption, to that degree of strength and constancy which is necessary to give it, humanly speaking, the command of its own fortunes.

Though, in reviewing the incidents of my administration, I am unconscious of intentional error, I am nevertheless too sensible of my defects, not to think it probable that I may have committed many errors. Whatever they may be, I fervently beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope, that my country will never cease to view them with indulgence, and that, after forty-five years of my life dedicated to its service, with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

Relying on its kindness in this, as in other things, and actuated by that fervent love toward it, which is so natural to a man, who views in it the native soil of himself and his progenitors, for several generations, I anticipate, with pleasing expectations, that retreat, in which I promise myself to realize, without alloy, the sweet enjoyment of partaking, in the midst of my fellow-citizens, the benign influence of good laws under a free government, the ever favorite object of my heart, and the happy reward, as I trust, of our mutual cares, labors, and dangers.

GEORGE WASHINGTON.

UNITED STATES, September 17th, 1796.

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LAWS OF THE UNITED STATES.

NATURALIZATION.

CHAP. XXVIII.—*An act to establish an uniform rule of Naturalization, and to repeal the acts heretofore passed on that subject.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That 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:

An alien may become a citizen of the United States.

On what conditions.

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, three 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 whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof such alien may, at the time, be a citizen or subject.

To declare on oath or affirmation in the supreme or superior court, or district or circuit court of some of the states or of the U. States 3 years before his admission, his intention to renounce forever his allegiance to any sovereign or state of which he is a subject.

Secondly. That he 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 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; which proceedings shall be recorded by the clerk of the court.

To swear or affirm that he will support the constitution of U. S.

Thirdly. That the court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that during that time, he has behaved as a man of a 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: *Provided*, that the oath of the applicant shall, in no case, be allowed to prove his residence.

That he shall have resided in the U. States 5 years before he shall be admitted a citizen

Shall prove that he is a man of good moral character, and attached to the constitution of the United States.

Fourthly. That in case the alien, applying to be admitted 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, he shall, in addition to the above requisites, make an express renunciation of his title or or-

Shall renounce every title of nobility held by him.

der of nobility in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, that no alien who shall be a native citizen, denizen, or subject of any country, state, or sovereign with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States: *Provided, also*, that 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 one 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 any 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 constitution of the United States, and well disposed to the good order and happiness of the same; and where 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 the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof: and provided also, that any alien who was residing within the limits, and under the jurisdiction of the United States at any time between the said twenty-ninth day of January, one thousand seven hundred and ninety-five, and the eighteenth day of June, one thousand seven hundred and ninety-eight, may, within two years after the passing of this act, be admitted to become a citizen, without a compliance with the first condition above specified.

On what conditions an alien may be naturalized, who resided in the U. States after the 29th January, 1795.

Proceedings to be recorded by the clerk of the court.

Provision in favor of persons residing in the U. S. between the 29th January, 1795, and the 18th June, 1798

SEC. 2. *Provided also, and be it further enacted*, That in addition to the directions aforesaid, all free white persons, being aliens, who may arrive in the United States after the pasisng of this act, shall, in order to become citizens of the United States, make registry, and obtain certificates, in the following manner, to-wit: every person desirous of being naturalized shall, if of the age of twenty-one years, make report of himself; or if under the age of twenty-one years, or held in service, shall be reported by his parent, guardian, master, or mistress, to the clerk of the district court of the district where such alien or aliens shall arrive, or to some other court of record of the United States, or of either

Mode of naturalization prescribed

Free white persons arriving in the United States to be registered.

Form of register.

of the territorial districts of the same, or of a particular state: and such report shall ascertain the name, birthplace, age, nation, and allegiance of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement: and it shall be the duty of such clerk, on receiving such report, to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever he shall be required, a certificate under his hand and seal of office of such report and registry; and for receiving and registering each report of an individual or family, he shall receive fifty cents; and for each certificate granted pursuant to this act, to an individual or family, fifty cents; and such certificate shall be exhibited to the court by every alien who may arrive in the United States, after the passing of this act, on his application to be naturalized, as evidence of the time of his arrival within the United States.

What courts are to be considered as capable of naturalizing aliens.

SEC. 3. *And whereas*, doubts have arisen whether certain courts of record in some of the states, are included within the description of district or circuit courts: *Be it further enacted*, that 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 this act; and every alien who may have been naturalized in any such court, shall enjoy, from and after the passing of the act, the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.

Children of persons naturalized under certain laws to be citizens of the United States.

SEC. 4. *And be it further enacted*, That 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 said 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, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: *Provided*, that the right of citizenship shall not descend to persons whose fathers have never resided within the United States: *Provided also*, that no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain, during the late war, shall be admitted a citizen, as aforesaid, without the consent of the legislature of the state in which such person was proscribed.

Privilege of citizenship not to extend to children of persons who have never resided in the United States.

Or to persons proscribed.

Repeal of former acts.

SEC. 5. *And be it further enacted*, That all acts heretofore passed respecting naturalization, be and the same are hereby repealed.

Approved April 14, 1802.

CHAP. XLVII.—*An act in addition to an act entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."*

Certain aliens permitted to become citizens of the United States who resided in the U. States between the 18th June, 1798 and April 14, 1802.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That 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, may be admitted to become a citizen of the United States, without a compliance with the first condition specified in the first section of the act, entitled "An act to establish an uniform rule of naturalization: and to repeal the acts heretofore passed on that subject."

After an alien shall have complied with certain directions, his widow and children made citizens of the United States.

SEC. 2. *And be it further enacted*, That when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the second section of the said act, may die, before he is actually naturalized, the widow and 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.

Approved March 26, 1804.

CHAP. XLII.—*An act for the regulation of seamen on board the public and private vessels of the United States.*

Residence of 5 years in the U. S. necessary to qualify a person to become a citizen.

SEC. 12. *And be it further enacted*, That no person who shall arrive in the United States, from and after the time when this act shall take effect, 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 as aforesaid have resided within the United States, without being at any time during the said five years, out of the territory of the United States.

Approved March 3, 1813.

CHAP. LXXII.—*An act to amend the act entitled "An act for the regulation of seamen on board the public and private vessels of the United States," passed the third of March, eighteen hundred and thirteen.*

Repeal of clause requiring a continued residence of 5 years in the U. S. previous to naturalization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last clause of the twelfth section of the act hereby amended, consisting of the following words, to-wit: "without being at any time during the said five years out of the territory of the United States," be and the same is hereby repealed.

Approved June 26, 1848.

CHAP. XXXVI.—*An act supplementary to the acts heretofore passed on the subject of an uniform rule of naturalization.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration according to law, of their intentions to become citizens of the United States, or who by the existing laws of the United States, were on that day entitled to become citizens, without making such declaration, may be admitted to become citizens thereof, notwithstanding they shall be alien enemies, at the times and in the manner prescribed by the laws heretofore passed on that subject: *Provided*, that nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Persons authorized to become citizens who were resident in the U. States on the 18th June, 1812, and who had made a declaration of intention to become citizens of the U. States.

Proviso.

Approved July 30, 1813

CHAP. XXXII.—*An act relative to evidence in cases of naturalization.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the certificate of report and registry, required as evidence of the time of arrival in the United States, according to the second section of the act of the fourteenth of April, one thousand eight hundred and two, entitled, "an act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on this subject;" and also a certificate from the proper clerk or prothonotary, of the declaration of intention, made before a court of record, and required as the first condition, according to the first section of said act, shall be exhibited by every alien on his application to be admitted a citizen of the United States, in pursuance of said act, who shall have arrived within the limits, and under the jurisdiction of the United States since the eighteenth day of June, one thousand eight hundred and twelve, and shall each be recited at full length, in the record of the court, admitting such alien; otherwise he shall not be deemed to have complied with the conditions requisite for becoming a citizen of the United States, and any pretended admission of an alien, who shall have arrived within the limits and under the jurisdiction of the United States, since the said eighteenth day of June, one thousand eight hundred and twelve, to be a citizen after the promulgation of this act, without such recital of each certificate at full length, shall be of no validity or effect under the act aforesaid.

Evidence to be exhibited by aliens to become citizens of the U. States.

Admissions without a recital of the proceedings, of no validity.

Sec. 2. *Provided, and be it enacted*, That nothing herein contained shall be construed to exclude from admission to citizenship, any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the 18th day of June, one thousand

Rights of persons heretofore settled in the U. States between the 18th June, 1798, & 14th April, 1802.

seven hundred and ninety-eight, and the 14th day of April, one thousand eight hundred and two, and who, having continued to reside therein without having made any declaration of intention before a court of record as aforesaid, may be entitled to become a citizen of the United States according to the act of the twenty-sixth of March, one thousand eight hundred and four, entitled "an act in addition to an act, entitled 'an act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject.'" Whenever any person without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted 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 in the record of the court admitting the applicant: otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

Residence of the applicant to be naturalized.

Certificate of naturalisation.

Approved March 22, 1816.

CHAP. CLXXXVI.—*An act in further addition to "An act to establish an uniform rule of Naturalization, and to repeal the acts heretofore passed on that subject."*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That 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 arriving 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 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 first condition of the first section of the act to which this is in addition, three years previous to his admission: *Provided*, 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

Conditions on which an alien, being a free white person and a minor, may become a citizen of the U. S.

Proviso.

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.

No certificate of citizenship or naturalization heretofore obtained from any court to be deemed invalid.

SEC. 2. *And be it further enacted*, That no certificates of citizenship, or naturalization, heretofore obtained from any court of record within the United States, shall be deemed invalid, in consequence of an omission to comply with the requisition of the first section of the act, entitled "an act relative to evidence in cases of naturalization," passed the twenty-second day of March, one thousand eight hundred and sixteen.

Declaration required by the first section of the former act to be valid on certain conditions.

SEC. 3. *And be it further enacted*, That the declaration required by the first condition specified in the first section of the act, to which this is in addition, shall, if the same has been bona fide made before the clerks of either of the courts in the said condition named, be as valid as if it had been made before the said courts, respectively.

A declaration of intention made 2 years before his admission shall be sufficient.

SEC. 4. *And be it further enacted*, That a declaration by any alien, being a free white person, of his intended application to be admitted a citizen of the United States, made in the manner and form prescribed in the first condition specified in the first section of the act to which this is in addition, two years before his admission, shall be a sufficient compliance with said condition; any thing in the said act, or in any subsequent act, to the contrary notwithstanding.

Approved May 26, 1824.

CHAP. CXVI.—*An act to amend the acts concerning naturalization.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second section of the act, entitled "an act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," which was passed on the fourteenth day of April, one thousand eight hundred and two, and the first section of the act, entitled "an act relative to evidence in cases of naturalization," passed on the twenty-second day of March, one thousand eight hundred and sixteen, be and the same are hereby repealed.

Any alien, being a free white person, who was residing within the limits, &c., of the United States, between April 14th, 1802, and June 18, 1812, to become a citizen.

SEC. 2. *And be it further enacted*, That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen: *Provided*, that whenever any person, without a certificate of such declaration of intention, shall make application to be admitted 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

Proviso.

States, before the eighteenth day of June, one thousand eight hundred and twelve, 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, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

Approved May 24, 1828.

FUGITIVES FROM JUSTICE AND FROM LABOR.

CHAP. VII.—*An act respecting fugitives from justice, and persons escaping from the service of their masters.*

Fugitives from justice, how to be apprehended and secured.

§ 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whenever the Executive authority of any state in the Union, or of either of the territories north-west or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled, and shall, moreover, produce the copy of an indictment found,

Copy of indictment, or affidavit charging the commission of crime to be produced.

or an affidavit made before a magistrate of any state or territory as aforesaid, charging the person, so demanded, with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority, appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent, when he shall appear; but if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

Notice of the arrest to be given to the executive authority making the demand.

Fugitive to be delivered to the agent of the executive, or if no agent be appointed within six months to be discharged.

Expenses of apprehending.

§ 2. *And be it further enacted*, That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the

Agent to transport the fugitives.

state or territory from which he or she shall have fled. And if any person or persons shall, by force, set at liberty or rescue the fugitive from such agent, while transporting as aforesaid, the person or persons, so offending, shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

Penalty on persons rescuing fugitive.

SEC. 3. *And be it also enacted*, That when a person held to labor in any of the United States, or in either of the territories on the north west or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territory, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the state, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor, to the state or territory from which he or she fled.

Proceedings to be had on escape of persons held to labor.

May be arrested on proof as required, and may be removed to place from whence he fled.

SEC. 4. *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney when so arrested pursuant to the authority herein given or declared; or shall harbor or conceal such person after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offenses, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving moreover to the person claiming such labor or service, his right of action for or on account of the said injuries or either of them.

Penalty on obstructing claimants of fugitives from labor.

Approved February 12, 1793.

FUGITIVES FROM LABOR.

CHAP. LX.—*An act to amend, and supplementary to, the act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelfth, one thousand seven hundred and ninety-three.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the persons who have been, or may hereafter be appoint-

Commissioners.

ed commissioners, in virtue of any act of congress, by the circuit courts of the United States, and who, in consequence of such appointment, are authorized to exercise the powers that any justice of the peace, or other magistrate of any of the United States, may exercise in respect to offenders for any crime or offense against the United States, by arresting, imprisoning, or bailing the same under and by virtue of the thirty-third section of the act of the twenty-fourth of September, seventeen hundred and eighty-nine, entitled "An act to establish the judicial courts of the United States," shall be and are hereby authorized and required to exercise and discharge all the powers and duties conferred by this act.

To be appointed by superior court of each territory.

SEC. 2. *And be it further enacted*, That the superior court of each organized territory of the United States shall have the same power to appoint commissioners to take acknowledgments of bail and affidavits, and to take depositions of witnesses in civil causes, which is now possessed by the circuit court of the United States; and all commissioners who shall hereafter be appointed for such purposes by the superior court of any organized territory of the United States, shall possess all the powers, and exercise all the duties, conferred by law upon the commissioners appointed by the circuit courts of the United States for similar purposes, and shall moreover exercise and discharge all the powers and duties conferred by this act.

Powers and duties

Courts athorized to enlarge the number of commissioners.

SEC. 3. *And be it further enacted*, That the circuit courts of the United States, and the superior courts of each organized territory of the United States, shall from time to time enlarge the number of commissioners, with a view to afford reasonable facilities to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by this act.

Jurisdiction of commissioners concurrent with that of judges, and shall grant certificates to take fugitives from service.

SEC. 4. *And be it further enacted*, That the commissioners above named shall have concurrent jurisdiction with the judges of the circuit and district courts of the United States, in their respective circuits and districts within the several states, and the judges of the superior courts of the territories, severally and collectively, in term-time and vacation; and shall grant certificates to such claimants, upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, to the state or territory from which such persons may have escaped or fled.

Duty of marshals and deputies.

SEC. 5. *And be it further enacted*, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant, or other process, when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of such claimant, on the motion of such claimant, by the circuit or district court for the district of such mar-

Penalty for refusing to execute the same.

shal; and after arrest of such fugitive, by such marshal or his deputy, or whilst at any time in his custody under the provisions of this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable, on his official bond, to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive in the state, territory, or district whence he escaped: and the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the constitution of the United States and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid, to summon and call to their aid the by-standers, or *posse comitatus* of the proper county, when necessary to ensure a faithful observance of the clause of the constitution referred to, in conformity with the provisions of this act; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid, for that purpose: and said warrants shall run, and be executed by said officers, any where in the state within which they are issued.

Liable for value of a fugitive escaping after arrest.

Commissioners authorized to appoint persons to execute warrants issued by them.

Citizens to render aid.

SEC. 6. *And be it further enacted*, That when a person held to service or labor in any state or territory of the United States, has heretofore or shall hereafter escape into another state or territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized, by power of attorney, in writing, acknowledged and certified under the seal of some legal officer or court of the state or territory in which the same may be executed, may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district, or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive, where the same can be done without process, and by taking, or causing such person to be taken, forthwith, before such court, judge or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be taken and certified by such court, judge, or commissioner, or by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions under the laws of the state or territory from which such person owing service or labor may have escaped, with a certifi-

Fugitives from service may be reclaimed for the owner or authorized agent by warrant of the court, judge, or commissioner for apprehension.

Duties of court, judge, or commissioner in cases of trial.

cate of such magistracy or other authority, as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the state or territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the state or territory in which such service or labor was due, to the state or territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary, under the circumstances of the case, to take and remove such fugitive person back to the state or territory whence he or she may have escaped as aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first [fourth] section mentioned, shall be conclusive of the right of the person or persons in whose favor granted, to remove such fugitive to the state or territory from which he escaped, and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

Testimony of fugitive not admitted.

SEC. 7. *And be it further enacted*, That any person who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid, or shall rescue, or attempt to rescue, such fugitive from service or labor, from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as aforesaid, when so arrested, pursuant to the authority herein given and declared; or shall aid, abet, or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid; or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall, for either of said offenses, be subject to a fine not exceeding one thousand dollars, and imprisoned not exceeding six months, by indictment and conviction before the district court of the United States for the district in which such offense may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized territories of the United States; and shall moreover forfeit

Any person knowingly hindering the arrest of a fugitive, or attempting to rescue one from custody, or aiding to escape or harboring, shall be fined and imprisoned.

Penalties.

Additional damages.

and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars, for each fugitive so lost as aforesaid, to be recovered by action of debt, in any of the district or territorial courts aforesaid, within whose jurisdiction the said offense may have been committed.

Fees for services of marshals, deputies, &c.

SEC. 8. *And be it further enacted*, That the marshals, their deputies, and the clerks of the said district and territorial courts, shall be paid, for their services, the like fees as may be allowed to them for similar services in other cases; and where such services are rendered exclusively in the arrest, custody, and delivery of the fugitive to the claimant, his or her agent or attorney, or where such supposed fugitive may be discharged out of custody for the want of sufficient proof as aforesaid, then such fees are to be paid in the whole by such claimant, his agent or attorney; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificate to the claimant, his or her agent or attorney; or a fee of five dollars in cases where the proof shall not, in the opinion of such commissioner, warrant such certificate and delivery, inclusive of all services incident to such arrest and examination, to be paid, in either case, by the claimant, his or her agent or attorney. The person or persons authorized to execute the process to be issued by such commissioners for the arrest and detention of fugitives from service or labor as aforesaid, shall also be entitled to a fee of five dollars each, for each person he or they may arrest and take before any such commissioner as aforesaid, at the instance and request of such claimant, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them; such as attending at the examination, keeping the fugitive in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner; and, in general, for performing such other duties as may be required by such claimant, his or her attorney or agent, or commissioner in the premises, such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid by such claimants, their agents or attorneys, whether such supposed fugitives from service or labor be ordered to be delivered to such claimants by the final determination of such commissioners or not.

Commissioners' fees.

Fee for executing process.

Additional fees.

When claimant or his agent apprehends a rescue, the officer making the arrest is to remove the fugitive to the state whence he fled. If necessary, to employ aid.

SEC. 9. *And be it further enacted*, That upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the state in which the arrest is made, it shall be the duty of the officer making the arrest to re-

tain such fugitive in his custody, and to remove him to the state whence he fled, and there to deliver him to said claimant, his agent or attorney. And to this end, the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary to overcome such force, and to retain them in his service so long as circumstances may require. The said officer and his assistants, while so employed, to receive the same compensation, and to be allowed the same expenses, as are now allowed by law for transportation of criminals, to be certified by the judge of the district within which the arrest is made, and paid out of the treasury of the United States.

Compensation of officer.

SEC. 10. *And be it further enacted*, That when any person held to service or labor in any state or territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make satisfactory proof to such court, or judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matter so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of the said court, being produced in any other state, territory, or district in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence if necessary, either oral or by affidavit, in addition to what is contained in the said record of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the state or territory from which he escaped: *Provided*, that nothing herein contained shall be construed as requiring the production of a transcript of such record as evidence as aforesaid. But in its absence the claim shall be heard and determined upon other satisfactory proofs, competent in law.

Evidence necessary to obtain arrest and delivery of fugitives.

Proviso.

Approved September 18, 1850.

AUTHENTICATION OF RECORDS.

☞The act of Congress in relation to the authentication of records is incorporated in the chapter on "EVIDENCE," in this Revision of the Statutes.

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THE

REVISED STATUTES OF KENTUCKY.

AN ACT TO ADOPT THE REVISED STATUTES.

Take effect July 1, 1852.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the following chapters of the revised statutes of this commonwealth be adopted, and become the law of the land, and take effect on the first of July, 1852.

Other general statutes repealed.

§ 2. That all statutes of a general nature, whether of this state, of Virginia, or of England, adopted prior to the first of November, 1851, other than the revised statutes adopted at the last session of the general assembly, shall stand repealed when the revised statutes take effect, except as follows:

Exceptions.

Vacant lands.

1. All statutes of Virginia or this state in relation to former appropriation of the vacant lands of the commonwealth.

Counties, cities, asylums, &c.

2. All statutes of mere local relation to any county, city, or town, or relating to the powers, privileges, or franchise of any corporation, and all statutes in relation to the deaf and dumb asylum at Danville, and the institution for the education of the blind at Louisville.

Certain courts.

3. All statutes in relation to the Louisville chancery court, Jefferson county court, or any city, town, or police court, or the officers thereof; and all statutes prescribing the terms of courts; also, the act abolishing the general court.

Code of Practice.

4. The code of practice in civil cases adopted at the last session of the general assembly, so far as the same is consistent with the revised statutes. The provisions of such code, inconsistent with the revised statutes, are repealed.

Civil, penal, and criminal cases.

5. The statutes regulating proceedings in civil, criminal, and penal cases, not repealed by the code of practice or the revised statutes.

No retro-active effect.

§ 3. Such repeal shall not affect any offense or act committed or done, or any penalty or forfeiture incurred, or

any right established, accrued or accruing before the revised statutes take effect; or any prosecution, suit or proceeding that may be pending, except that the proceedings hereafter shall conform, as far as practicable, to the revised statutes, and except that where any penalty, forfeiture, or punishment is mitigated by those statutes, they may be applied, with the consent of the party to be affected, to any judgment thereafter pronounced.

§ 4. The following portions of the charter of any city or town are repealed:

Town licenses.

1. So much thereof as requires a license for or authorizes the levying a tax upon any road wagon or other vehicle for the transportation of produce or merchandise, plying to or from such city or town.

State licenses.

2. So much thereof as may be construed to dispense with a state license in any case required by the revised statutes.

Auction licenses.

3. So much thereof as requires a license to or authorizes a tax upon the owner of property grown or raised by himself, or sent by the producer for sale, and sold by him or his carrier, at auction or public outcry in any city or town.

Coffee-house licenses, Louisville, &c.

§ 5. The act concerning the tax on licenses to coffee-houses, &c., in Louisville and Jefferson county, approved 20th March, 1851, is repealed.

CHAPTER I.

ACTIONS IN CERTAIN CASES, ALLOWED.

To charge a woman with adultery, &c.

§ 1. A charge of incest, fornication, or adultery against a female, shall be actionable; and in such cases the plaintiff shall not be held to allege or prove special damage.

Seduction without loss of service.

§ 2. An action for seduction may be maintained without any allegation or proof of the loss of service of the female, by reason of the wrongful act of the defendant.

Wrongful distraint of property.

§ 3. If property be distrained or attached without good cause for suing out such distress or attachment, the owner of such property may, in an action against the party suing out the distress or attachment, recover damages for the wrongful seizure; and if the property be sold, also damages for the sale thereof. In such cases, the plaintiff shall not be held to allege or prove malice on the part of the defendant.

CHAPTER II.

ADVERTISEMENTS.

Circuit court may authorize newspapers.

L. 29.

§ 1. When the proprietor of any newspaper printed in this state, desires authority to insert therein such advertisements as are required by law to be published in a newspaper, he may ap ply to the circuit court of the county in which his paper is published, and present to the court the title thereof, with the names of the printers and publishers; whereupon the court may, by order entered of record, authorize advertisements to be published in such paper.

Affidavit of editor, &c., evidence.

§ 2. The affidavit of the editor, printer, publisher, or proprietor of a paper authorized to publish advertisements, stating that an advertisement has been published in his paper, and the length of time it has been so published, attached to a copy thereof, shall be *prima facie* evidence that the publication was made as stated in the affidavit.

CHAPTER III.

ARBITRATION AND AWARDS.

What cases submitted.

M. & B. 143.
M. R. 670.

§ 1. All controversies which might be the subject of a suit or action may be submitted to the decision of one or more arbitrators, or to two and their umpire, in the manner provided in this chapter.

Submission by rule.

V. R. 611.

1. Parties may make such submission by rule of any court having jurisdiction of the subject matter.

By agreement filed.

M. & B. 144-5.

2. The parties making such submission shall, where there is no suit or action pending, by written agreement filed, and noted on the record, or by an entry on the record, state what matter is submitted.

Rule to state time.

3. The rule of court shall state the time in which the award is to be made and returned.

May be enlarged.

4. The court may enlarge the time for making and returning an award.

Oath.

M. & B. 145.

§ 2. Arbitrators and the umpire, if there be one, before they proceed to act, shall take an oath to decide the controversy to them submitted according to law and evidence and the equity of the case, to the best of their judgment, without favor or affection; and a certificate of such oath shall be returned to court with the award.

They shall have power to examine either party on oath at the request of his adversary.

Party may be examined.

§ 3. Any one of the arbitrators shall have power to issue subpœnas for witnesses to attend their sittings and give evidence touching the matters referred to them, to which all sheriffs and other like officers shall give obedience.

Subpœnas.

M. & B. 145.

Witnesses failing to attend before arbitrators at the time and place designated, or who shall refuse to give evidence when they do attend, shall be reported to the court by the arbitrators, and proceeded against and punished as if the case had been pending in court.

Witnesses failing to attend, or refusing to testify.

§ 4. The personal representative of a decedent, guardian of an infant, committee of an idiot or lunatic, or any trustee, may make a submission, as herein provided for, touching the estate of such decedent, infant, or insane person, or in respect to which he is trustee.

Personal representative, guardian, committee, or trustee.

M. & B. 143.
V. R. 611.

1. Any such submission, so made in good faith, and the award made thereupon shall be binding, and entered as the judgment or decree of the court.

Effect of submission and award.

2. No such fiduciary shall be responsible for any loss sustained by an award adverse to the interest he represents, unless the same be caused by his fault or neglect.

Fiduciary not responsible for loss.

§ 5. If any arbitrator shall fail or refuse to act, the court may set aside the order of reference.

Arbitrators failing, &c.

§ 6. The arbitrators and umpire, if there be one, shall meet at such convenient times and places as may be necessary, (of which the parties shall have reasonable notice,) and hear such evidence as either party may adduce.

Meeting, &c.

M. & B. 145.

1. They shall have power to administer oaths.

Oaths.

2. They shall make their award in writing, stating therein the time when it is made, and sign the same.

Award.

3. When the award is made out, one copy thereof shall be delivered to each of the contending parties, and the original returned to the court, on which the arbitrators shall note the time of delivering a copy to each party.

Copy to each party; original returned to court.

§ 7. If such award be made out and returned, and copies delivered ten days before the term of the court next succeeding such delivery, the same shall be entered of record and made the judgment or decree of the court, unless on exceptions filed the award shall be set aside.

Record of award.

M. & B. 146.

§ 8. No award shall be set aside for the want of form. But courts of chancery shall have power over awards on equitable principles as heretofore.

Setting aside award.

M. & B. 147.

§ 9. Matters within the jurisdiction of a justice of the peace may be submitted to arbitrators, by an order, rule,

Cases within jurisdiction of justices of the peace.

or agreement entered on his record book in the same manner, and the proceedings under it shall be the same in every respect, as are authorized and required in other courts. M. & B. 694.

Either party may appeal to the circuit court from the judgment of the justice on the award, as in other cases. Appeal.

CHAPTER IV.

ATTORNEYS.

ART. 1. Attorneys at Law.
ART. 2. Non-resident Attorneys.
ART. 3. County Court Attorneys.
ART. 4. Attorney for the Commonwealth.
ART. 5. Attorney General.

ARTICLE I.

Attorneys at Law.

§ 1. No person shall be licensed to practice as an attorney at law who shall not be, at the time, twenty-one years old. Age of attorney. V. R. 633. M. R. 541.

No person convicted of treason or felony shall be permitted to practice in any court as counsel or attorney at law. Guilty of crime, not to practice. M. & B. 173.

§ 2. Before a license shall be granted to any person to practice as an attorney at law, he shall obtain a certificate from the county court of the county in which he resides, that he is a person of honesty, probity, and good demeanor, which may be granted upon its own personal knowledge, or on evidence. Certificate of county court as to character. M. & B. 172. M. R. 511.

§ 3. Upon the production of such certificate to any two judges of the court of appeals, or any two circuit judges, or a circuit judge and the chancellor of the Louisville chancery court, it shall be their duty to examine the applicant thoroughly, touching his qualifications as a lawyer, and if, thereupon, they believe that he is qualified to practice as an attorney at law, they shall grant him a license accordingly, otherwise they shall refuse such license. Only those qualified to be licensed. M. & B. 172.

§ 4. Any judge who shall knowingly grant a license to practice law to any person not qualified, and whom he has not properly examined to ascertain the fact, shall be considered guilty of a high misdemeanor. Judge who grants license improperly guilty of a misdemeanor.

§ 5. No person shall practice as an attorney at law in any court until he has obtained a license to do so, and ta- No one to practice without a license. M. & B. 172.

ken the oath in such court enjoined by the constitution. But a person who is not a licensed attorney may attend to his own case.

Penalty.

§ 6. Any person not having such license, who shall attempt to practice law in any court, in any other than his own case, shall be liable to be presented and imprisoned, at the discretion of a petit jury.

Liable for neglect of duty.

M. & B. 174.

§ 7. When an attorney at law shall be employed to attend to any professional business, and shall neglect to attend to the same, and his client shall, by such neglect, be damaged, or if such attorney shall attend to the business so unskillfully that his client shall be damaged, such attorney shall be liable to the party injured for all costs and damages he shall have sustained.

Commonwealth attorney to prosecute suit.

M. & B. 174.

§ 8. Upon the request of the party so injured, it shall be the duty of the attorney for the commonwealth to institute and prosecute his suit. If it be taken to the court of appeals, the attorney general shall attend to it for the party injured.

To refund fee paid.

M. & B. 174.

§ 9. An attorney who shall be employed in any professional business and receive his fee, and shall not attend to such business, may be sued in any court having jurisdiction of the amount, and made to refund the same.

Delinquent attorney suspended on notice.

M. & B. 178.

§ 10. If any attorney at law shall collect the money of his client, and on demand wrongfully neglect or refuse to pay over the same, the circuit court of the county in which the money may be collected, may, after notifying the attorney to show cause against the same, suspend him from practice in any court for twelve months, and until the money shall be paid.

M. & B. 179.

§ 11. Before any such motion shall be entertained, a demand of the money shall be made of such attorney in the county of his residence, and no such proceeding shall take place unless it is commenced within two years next after the collection of the money.

Commonwealth attorney to prosecute motion.

§ 12. It shall be the duty of the commonwealth's attorney for the district to attend to the proceedings in the circuit court under the tenth and eleventh sections, and the duty of the attorney general to attend to the same in the court of appeals.

ARTICLE II.

Non-resident Attorneys.

May practice law in this state. M. & B. 176.

§ 1. Attorneys at law of any of the United States, who have been regularly admitted to practice in the superior

courts of such states, may be admitted to practice law in any of the courts of this state.

They shall be under the same responsibility for the faithful discharge of their duties, as are imposed on attorneys resident in this state.

ARTICLE III.

County Court Attorneys.

Their duties in county court.

§ 1. Each county court attorney shall attend all county courts held in his county, and shall superintend and conduct all cases and business in the court, touching the rights or interests of the county.

Advise public officers when required.

M. & B. 168.

§ 2. He shall give the court and each of its members, the jailer and each of the justices and constables of his county, legal advice concerning any county business within the jurisdiction of any of them. He shall conduct suits, motions and prosecutions of every description within the jurisdiction of the county court, in which the county shall be interested.

Attend court of claims and oppose improp'r demands M. & B. 169.

§ 3. He shall attend the court of claims, and oppose the allowance of all claims that are not legally presented, or are unjust.

Oppose improper grant of tavern license.

§ 4. It shall be his duty to oppose the improper grant of tavern license, and to prosecute an appeal to the circuit court, without security, if he thinks a license is improperly granted.

Prosecute all cases of riots, &c., in the county.

M. & B. 169.

§ 5. He shall attend to the prosecution of all riots, routs, and breaches of the peace in his county, except in the circuit court, and shall in no instance take a fee in the defense of such case, or act as counsel in any case in opposition to the interest of the county.

Oppose the wrongful alteration or discontinuance of roads.

§ 6. He shall oppose the wrongful alteration or discontinuance of any public road.

How paid. M. & B. 169.

§ 7. He shall be allowed annually, at the court of claims, a reasonable salary out of the county levy.

ARTICLE IV.

Attorney for the Commonwealth.

To prosecute all offenders in his district.

§ 1. He shall attend each circuit court held in his district, and prosecute all infractions of the criminal and penal laws therein, and he shall discharge all other duties assigned to him by law.

Salary.

§ 2. Each commonwealth's attorney shall receive annually a salary of three hundred dollars, payable quarterly

out of the public treasury, commencing from the time of his qualification under his commission.

When absent, court to appoint a substitute.

M. & B. 166-7.

§ 3. In the absence of the commonwealth's attorney, at any term, or part of a term of a circuit court in his judicial district, the judge of such court shall appoint some suitable attorney to act in his place during his absence. He shall enter up an order making a reasonable allowance to be paid out of the public treasury to the person so appointed and the same shall be deducted from the annual salary of the commonwealth's attorney; a copy of which order shall be forwarded by the clerk of the court to the auditor of public accounts.

His fees of office

M. & B. 544.

§ 4. He shall have no taxed fee in any case in which the right of trial by jury is not guarantied by law. When any law gives an attorney for the commonwealth a part of what is recovered in a prosecution, the part so given shall be held to be his fee in that case.

ARTICLE V.

Attorney General.

His duties.

M. & B. 165.

§ 1. It shall be the duty of the attorney general, on the application of the governor, register, auditor of public accounts, the treasurer of the state, the president of the board of internal improvement, or of any attorney for the commonwealth, to give such officer his opinion in writing touching any of the duties of his office.

§ 2. The attorney general shall attend to all cases in behalf of the commonwealth, in which she may be interested, in the general court, in the federal court for the district of Kentucky, or in the court of appeals. (*a*)

Salary.

§ 3. He shall receive for his services an annual salary of three hundred dollars, to be paid quarterly out of the public treasury, and he shall be allowed a taxed fee of five dollars in each case to which he attends in either of said courts, in which the commonwealth shall prove successful, to be taxed in the bill of costs, and collected from the opposite party.

Prosecute suits for the state.

M. & B. 165.

§ 4. It shall be the duty of the attorney general to institute the appropriate procedure, to coerce the payment of all debts, dues, and demands of the commonwealth, payable at the state treasury, which shall not be discharged in proper time.

(*a*) After this chapter was adopted, the legislature abolished the general court and constituted the Franklin circuit court the fiscal court of the state, and the word general should be substituted by the words Franklin circuit

§ 5. In all cases which have or may be decided by any of the inferior courts against the interest of the commonwealth, it shall be lawful for the attorney general to prosecute a writ of error to the court of appeals, which he may do without security. Writs of error. M. & B. 172.

§ 6. He shall, when requested by any of the executive or state officers, prepare proper drafts of contracts, obligations, and other instruments of writing, which may be wanted for the public use. To prepare bonds, &c. for public officers. N. Y. R. 179-80.

CHAPTER V.

AUDITOR.

ART. 1. Auditor, his Assistant and Clerks, appointment and duties of.
ART. 2. Auditor's duties in relation to the Sinking, Internal Improvement, and School Funds.

ARTICLE I.

Auditor, his Assistant and Clerks, appointment and duties of.

§ 1. No person shall be elected or appointed auditor of public accounts unless he be a citizen of the United States, at least twenty-four years of age, nor unless he has resided within the state of Kentucky two years next preceding his election or appointment. Qualifications.

§ 2. The auditor shall enter upon the duties of his office on the first Monday in January next succeeding his election or appointment; he shall, on or before that day, take the oaths of office, and execute bond to the commonwealth, with surety worth at the time, jointly or separately, one hundred thousand dollars, to be approved by the governor, and filed in the office of secretary of state, for the faithful discharge of the duties of his office; upon which, for any breach thereof, suit may be instituted from time to time, and recovery had to the extent of the damages sustained by the commonwealth or by others. If any appointment of auditor be made by the governor under the 26th section of the 8th article of the constitution, he shall, upon the execution of bond and taking the oaths of office, forthwith enter on the discharge of the duties of his office. When to enter upon duties. Bond and oath.

§ 3. The auditor shall receive an annual salary of two thousand dollars, payable quarterly at the treasury upon the requisition of the governor. He shall have pow- Salaries.

Assistant, clerks, &c.

A. 1851, 380.

er to appoint one assistant, whose salary shall be nine hundred dollars per annum, and the further sum of one thousand nine hundred dollars per annum is hereby appropriated to enable the auditor to appoint and pay such clerks as he may deem necessary for the discharge of the business of his office; also, one hundred dollars per annum as compensation for a porter to the treasurer and auditor, which several sums the auditor is authorized to draw, quarterly, from the treasury.

Terms of office.

Must be citizens.

Oath and bond.

A. 1849, 10.

§ 4. The term of office of assistant auditor and clerks shall be four years. No one shall be appointed to said offices who is not a citizen of the United States, and resided in the state of Kentucky two years. They shall severally take the oaths of office, and may be required by the auditor to execute to him bond, with surety, for the faithful discharge of the duties of the office. They may be removed from office by the auditor for neglect of duty, malfeasance in office, incompetency, intemperance, idleness, or other good cause. The auditor and his sureties shall be liable on their bond for the acts of the assistant auditor and clerks of his office.

To reside and keep office at seat of government.

M. & B. 181.

§ 5. The auditor and his assistant shall reside and keep his office at the seat of government. Upon his resignation or the expiration of his term of office, he shall, with the aid of the secretary of state, make an inventory of the books, stationery, and implements belonging to the office, file the same in the office of secretary of state, and deliver the books, furniture, stationery, and implements of office over to his successor.

Assistant, when to act as auditor.

§ 6. If the auditor be absent, or for any cause is rendered incapable of performing the duties of his office, or if a vacancy in the office of auditor occurs, the assistant auditor shall perform the duties of auditor until the vacancy be filled, the auditor returns, or is restored to his official duties.

Warrant.

§ 7. A warrant of the auditor upon the treasury shall state upon its face the date, amount, and the name of the person to whom payable, and on what account, and out of what fund to be paid; and shall not be issued unless the money to pay the same has been appropriated by law.

Account of taxes, balances due, &c.

M. & B. 180.

§ 8. The auditor shall keep a separate account of all taxes collected, so as to exhibit the amount collected under each law. He shall keep a correct list of all balances due by the government to individuals, and by individuals to the commonwealth, and report the same to the legisla-

ture at every regular session thereof; and he shall also report to the general assembly, when required, all and any information connected with the business of his office.

Accounts with general government and other states.

§ 9. The auditor shall keep an account of all claims of debt or credit which may exist between the general government and this state, between this state and any other state. He shall keep an account between the commonwealth and all her civil officers whose salary or wages are payable out of the public treasury; the pay and compensation to members of the legislature and the officers thereof; such pay and allowance to be kept in separate books by the clerk of each house, certified by him, and deposited with the auditor.

Demands payable at treasury.

§ 10. He shall audit and enter in account all other demands payable at the treasury, all accounts of the collection of the revenue or other tax, or public money, and of all public debts. All public officers or public debtors who fail to render their accounts at the proper time, or to pay the money in their hands, due the commonwealth, into the public treasury, the auditor shall report to the attorney general, and cause proceedings to be instituted against them, and faithfully prosecuted, to enforce the performance of such duty and the payment of the money into the treasury. If, upon any such judicial procedure, it shall appear that nothing is due the commonwealth, the defendant shall, nevertheless, pay the cost.

Delinquents reported.

M. & B. 182.

Auditor may require information on oath.

§ 11. The auditor shall have power to require information, on oath, from any person, party, or privy touching any matter relative to any account which he is required to state, audit, or settle, and may administer the oath himself, or have it done by any officer authorized to administer an oath. If a person, when required by the auditor to be sworn for such purpose, shall refuse, he shall be guilty of a misdemeanor, and fined, upon indictment and conviction thereof, not exceeding one hundred dollars, at the discretion of the jury.

M. & B. 182.

To call upon attorney general for advice.

§ 12. The auditor shall call upon the attorney general for advice and counsel, whenever he shall deem it necessary, upon all questions of doubt or difficulty connected with his official duties.

M. & B. 182.

Grant permits to the treasurer to receive money.

§ 13. He shall grant written permits or authority to the treasurer to receive money from public officers or other persons, due to the commonwealth, stating the person, the amount to be paid in, and on what account paid, and charge

the same to the treasurer, in an appropriate book, under its proper head.

Keep accounts of moneys paid into treasury, &c.

§ 14. He shall so keep the accounts that they will truly and clearly exhibit the amount of all moneys paid into the treasury, by whom, and for what account paid; and also, in like manner, exhibit the amount of public expenditures, and each item therefor. He shall keep an accurate account in books of all warrants and certificates by him drawn or issued, showing in due succession the date, number, and amount of the warrant, for what and to whom issued.

Furnish information to governor.

§ 15. The auditor shall, when required, furnish the governor any information in his power concerning the condition of the treasury, the state of the public finances, and such other information concerning the business of his office which the good of the public service may demand; and the books and papers of his office shall at all times be subject to the inspection of the governor.

Report to general assembly.

§ 16. The auditor, on or before the sixth day of every regular session of the general assembly, shall faithfully report the annual income and expenses of the government for the two years preceding the tenth of October, of each year, in such a manner as to exhibit the sources of the income, and objects of expenditure, in detail and in the aggregate; and also an estimate of the revenue and expenditures for each of the succeeding two years, commencing and ending the fiscal year on the 10th day of October. He shall report all deficiencies of revenue to meet the expenditures of government; and also a statement of all sums due the commonwealth, when, for what, and from whom due.

Warrants to be numbered from 1st January to 31st of December.

M. & B. 182.

§ 17. The auditor, in numbering and dating his warrants, shall begin the 1st day of January and end the 31st of December, inclusive, in each year, so as to exhibit the number, date, and amount of each warrant, for what issued, and to whom payable. He shall transfer the entries of such warrants into the book of general accounts, under separate and distinct heads, exhibiting the total amount of issues for each department of the public service.

Warrants for salary.

§ 18. Warrants for the quarter salary due to public officers shall not be issued before the last day of March, June, September, and December. A warrant may be issued to any officer of the government for the portion of salary due for a fractional part of a quarter in which the officer shall have served.

§ 19. The amount of payment of taxes into the public treasury, and the expenditures thereof, shall be kept so as to exhibit truly the amount received from and expended in each county. Taxes, &c., of each county. M. & B. 183.

§ 20. A book of transfers of non-residents' lands shall be provided by the auditor. A non-resident who may have conveyed his lands, which have been entered with the auditor for taxation, shall have the right to transfer the lands so conveyed, and have the same charged for taxes in the name of the alienee, upon the production of the legal evidence of conveyance. A fee of ten cents shall be paid the auditor by the person requiring the transfer for each separate tract transferred, which shall be paid into the treasury by the auditor at the end of each fiscal year. Transfers of non-residents' lands. M. & B. 183.

§ 21. A book shall be kept by the auditor, in which shall be entered all receipts by the treasurer for money paid into the treasury within each year. Treasurer's receipts. M. & B. 183.

§ 22. The auditor shall provide by contract, and furnish all the paper necessary for the public printing, for the use of the public offices at the seat of government, and for the legislature, including ink, wafers, and all other stationery. Paper for public printer and stationery. A. 1846, 33.

1. He may advertise for contracts to supply the above articles, or may purchase them at private contract, as he shall deem most advantageous to the interest of the state.

2. Before he receives any paper under a public or private contract, he shall submit the same to the public printer, or such other competent judges as he may deem necessary, for their approval.

3. He shall, in like manner, contract for the binding of journals, acts, and legislative reports, at the lowest price for which they can be done. He shall communicate to the legislature, at its regular sessions, copies of the contracts above, the amount and cost of paper and binding for the two fiscal years next preceding the report. Binding.

4. He shall have a sufficient number of the reports of the auditor, treasurer, and president of the board of internal improvement printed, for the use of the legislature and such public officers as are required to be furnished with them. Reports, &c.

5. The auditor shall examine and settle the accounts of the public printer once in each year, and report the result to the legislature. Public printer's account.

ARTICLE II.

Auditor's duties in relation to the Sinking, Internal Improvement, and School Funds.

Auditor to keep separate accounts.

L. 53.
A. 1845, 67.

§ 1. The auditor shall keep separate accounts of all money paid into the treasury, and all disbursements of the same on account of internal improvements, the sinking fund, and the common school fund, and see that no part of the ordinary revenue, not specifically devoted to said funds, shall be drawn from the treasury, and applied to the one or the other.

Accounts with banks.

§ 2. Accounts shall be kept by the auditor with all of the banks and other monied institutions required by law to pay tax or money into the treasury.

With turnpike companies.

§ 3. Accounts shall be kept with all turnpike road companies, railroads, and other incorporations or bodies politic, in which the state may own stock, or which are required to pay a tax or money to the commonwealth.

Auditor & treasurer to make monthly settlements.

§ 4. The auditor and treasurer shall, once in each month, make a settlement of the receipts and disbursements of the money at the treasury, of every description, under appropriate heads, and file the same with the secretary of state, whose duty it shall be to report them to the general assembly within the first ten days of each regular session. And the auditor shall, once in each month, ascertain whether the money on hand in the treasury agrees with the balance shown by the books of the treasurer. The result of such investigation he shall immediately report to the governor.

List of acts appended to report.

L. 54.

§ 5. The auditor shall append to the statement made in the month of December in each year, to accompany his biennial report, a list of the acts of the general assembly under which he has drawn his warrants for the preceding twelve months.

Paying interest upon state bonds.

§ 6. Before the auditor issues a warrant for the interest due upon any bond of this state, made payable at the treasury, the bond with the coupon due, shall be produced to him. The number, date, amount, and payee of said bond shall be entered in a well bound book provided for that purpose, the amount of the interest due, and to whom and when paid. The coupon shall be detached from the bond, and a receipt taken from the person to whom he has paid the interest, and to whom he has issued the warrant, specifying the time for which the interest was paid; and he shall indorse on the bond the time to which the interest

has been paid; which receipt he shall preserve. Monthly reports of all such payments, exhibiting the amount paid, when and to whom paid, shall be made to the secretary of state, who shall record the same in a well bound book, and file and preserve said reports; and, within the first twelve days of each regular session, report the amount of each monthly payment to the general assembly.

CHAPTER VI.

BASTARDY.

Who deemed a bastard. N. Y. R. 641.

§ 1. Every child shall be deemed a bastard, within the meaning of this chapter, who shall be begotten and born out of lawful wedlock.

How the father of, to be accused. M. & B. 238. V. R. 528.

§ 2. Any unmarried white woman may go before a judge of the county court of the county in which she has been delivered of a bastard child, and accuse any person of being the father of the child. Such judge shall examine her under oath, and reduce her statement to writing, and sign it.

Warrant to issue &c. M. & B. 228. V. R. 528.

§ 3. On such examination, if the child appear to be less than three years old, a warrant may be issued, requiring the person accused to be apprehended and brought before a judge of the county court of the county in which he may be found, who shall require him to enter into a recognizance, with good surety, in the sum of three hundred dollars, to appear in the county court of the county in which the warrant issued, on the first day of the next term thereof, and to abide by and perform the judgment of said court.

Who may execute warrant. M. & B. 241.

§ 4. Warrants for bastardy may be directed to and executed by a sheriff or constable, or, in a proper case, by the coroner or jailer.

Accused may be committed. M. & B. 239.

§ 5. If the person accused shall refuse to give such recognizance, the judge shall forthwith commit him to the jail of his county, there to remain until he give a recognizance, or be otherwise discharged by due course of law.

V. R. 529.

§ 6. Should the case be continued at any term of the court, the recognizance may be respited, or a new one given, or, on the failure of the accused to give a recognizance, he may be committed to jail.

Mother and party accused may be witnesses. V. R. 529.

§ 7. On the trial, the mother of the child may be a witness, unless she be otherwise incompetent. If the party accused desire it, and be otherwise competent, he may be

examined on oath; and other evidence may be adduced by either party.

Verdict and jury. N. Y. R. 644.

§ 8. If the finding of the jury be in favor of the defendant, he shall be discharged, unless for good cause a new trial be granted.

Judgment.

M. & B. 239. N. Y. R. 645.

§ 9. If the finding of the jury be against the defendant, judgment shall be rendered thereon; and the court shall make such order for the keeping, maintenance, and education of the child as may be proper, by charging the father, annually, with such sum and for such period as may have been fixed by the verdict of the jury.

Bond to be given, or accused committed.

M. & B. 240.

§ 10. The person adjudged to be the father of the child shall thereupon enter into bond, with good surety, to be approved by the court, for paying the sum adjudged, in such installments as the court may order. In case of his failure, the court shall commit him to jail, there to remain until he shall give such bond, or pay the money, or be discharged as an insolvent debtor.

Remedy on bond.

M. & B. 240.

§ 11. If such bond be given, and any installment shall not be paid according to the stipulations thereof, ten days notice may be given to the party and his sureties, or either one of them, and a judgment awarded by the county court against such as are notified, for the sum, with interest and costs.

Death of bastard.

M. & B. 240.

§ 12. If a bastard child shall die, after the person accused has been adjudged to be its father, the father, upon paying what may be due up to the death of the child, shall be discharged from the residue of what he had been adjudged to pay.

Appeals.

N. Y. R. 647.

§ 13. If the person adjudged to be the father of a bastard child shall appeal, or prosecute a writ of error with a supersedeas, from the decision of the county court, and the decision shall be affirmed, the sureties in the appeal or supersedeas bond shall be liable for all the father had been adjudged to pay, and also the costs and damages on the appeal.

CHAPTER VII.

BOATS AND NAVIGATION.

Who entitled to lien on Boats.
Liability for carrying Slaves out of the State.
Compensation for taking up Boats.
Navigation, and mode of running Boats to avoid collisions.

Lien on boats.

L. 112.

§ 1. Except the captain, all the officers and hands, and owners of hands employed on board a steamboat, or any ship, brig, schooner, or sloop, shall have a lien on the boat or vessel, her engine, tackle, furnishing, and apparel, for their wages, whether contracted for or earned in or out of the state, with a preference or priority therefor over any other debt due from the owner of the boat or vessel, and over all other liens thereon.

Mechanics, tradesmen, and others shall also have a like lien for work, supplies, materials, stores, and provisions, done or furnished on or towards the building, repairing, fitting, furnishing, or equipping the boat or vessel in this state, with a preference or priority therefor over any other debt of the owner, except to the officers and hands, and over all other liens thereafter created. When so done or furnished out of the state, there shall be a like lien therefor, which shall have precedence next after that given when done or furnished in this state; but if done or furnished out of the state subsequent to that done or furnished in this state, the liens shall be joint and equal.

Boatmen liable for damages to other boats.

§ 2. A steamboat, or other vessel in the last section named, and owner, shall also be liable to indemnify the party injured, for any damage unlawfully done by her to any other boat, vessel, or river craft, or to any other property, through the willful or negligent conduct of her officers or crew, and for any other damage willfully or negligently committed by her officers or crew, whilst acting for her as such.

To pay for slaves wrongfully conveyed out of state

§ 3. A steamboat, or any other boat or vessel, shall also be liable to indemnify the owner of any slave, for any damage he may sustain by reason of the conveying or attempting to convey the slave thereon out of the state, or from one part of the state to another, without the consent, in writing, of the owner of the slave, or unless the owner or person having the rightful control of the slave be also a passenger on the boat or vessel. This section shall also

apply when the slave is taken on board of the boat or vessel at any place out of this state.

The captain and owner of the boat shall also be personally liable to the owner for such slave.

The captain, or other officer of a boat or vessel, who shall permit a slave to be so carried on board thereof, or any other person employed on the boat or vessel who shall assist in secreting a slave on board, for the purpose of being so carried, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both.

Chancellor to award jury.

§ 4. The damage sustained by the owner shall be ascertained in any proceeding in chancery, under the second or third section, by a jury impanneled in the court where the proceeding is instituted.

How lien enforced

§ 5. The lien given in the first section, and the liability mentioned in the second and third sections, may be enforced by attachment out of chancery, in any county where the boat or vessel may be found at the time of the issuing or service of the process. The attachment of the boat, or of any of her furniture, tackle, or apparel, taken from on board of her by the officer serving the attachment, shall stand in lieu of all service of process, or other notice, to the owner of the boat.

Bond to be given.

§ 6. Before issuing an attachment under this chapter, bond, with good surety, shall be given to the "owners of the boat," by that designation, to indemnify the owners for all damages and costs incurred thereby, if it shall appear that the attachment has been wrongfully obtained; on which bond suit may be brought, and recovery had by any person injured by the attachment. But nothing herein shall vitiate a bond taken in any other mode.

Boats, &c., may be replevied.

§ 7. The boat, vessel, or other property attached under this chapter, may be replevied by bond with good surety, to the complainant, in a penalty to be named in the order for the attachment, conditioned to have the property attached forthcoming, if the court shall so order, or otherwise perform the decree of the court.

Persons having liens may join in suit.

§ 8. All persons having liens under this chapter against any boat or vessel, may unite in a suit to enforce the same; and any person having a lien, who is not so united, may, by petition filed with leave of court, become a co-complainant in any suit pending to enforce a lien, without the issuing of any other or additional process on such petition.

Lien lost in one year, unless notice beactual or attached to enrollment.

§ 9. The liens given by this chapter shall not be enforced against a purchaser, without actual notice thereof, unless suit be instituted within one year from the time the cause

of action accrued, or unless notice thereof be indorsed on, or attached to, the enrollment of the boat or vessel.

Boat, &c., adrift, may be taken up.

§ 10. Any person finding any boat, vessel, or water craft gone or going adrift, or lodged after having been adrift, in any river, may take up and secure the same. He shall, within six days thereafter, cause her and her contents to be viewed and valued by three housekeepers, not related to himself, who shall certify, over their signatures, a full description, with the value thereof; which certificate he shall, within six days of its date, deliver to some justice of the peace of the county, who shall, within fifteen days thereafter, after entering it in his stray book, deliver the same to the clerk of the county court, to be retained by him, and entered in the county stray book.

M. & B. 260. L. 109.

Compensation for.

§ 11. The taker up of such boat, vessel, or water craft, shall, in addition to the cost of entering the certificate of apprisement, be entitled to the following compensation: For each steam boat, ship, brig, schooner, or sloop, twenty dollars; for each horse-boat, six dollars; for each flat boat, if full, or more than half loaded, fifteen dollars; if half, or less than half loaded, ten dollars; and if unloaded, five dollars; for each barge or keel boat, loaded in whole or in part, ten dollars; if unloaded, five dollars; for each wood flat, three dollars, and ferry flat, two dollars; for each skiff, canoe or pirogue, seventy-five cents; for each raft of logs, timber, or plank, one dollar for each platform thereof.

The taker up shall also be entitled to a reasonable compensation, by the day, to be ascertained by a justice of the county, for taking care of the same.

When and how vested in taker up.

§ 12. If the appraised value of the thing so taken up does not exceed two dollars, and the owner does not appear within two months, from the time of taking up, and pay, or tender to the taker up what he is entitled to, the right to the thing shall vest in the taker up. If the value exceed two dollars, and the owner does not appear within the two months, and pay, or tender to the taker up what he is entitled to, then the thing shall be delivered to some constable of the county, who, after ten days' notice, by advertisements posted at the court house door and two other public places in the county, shall sell the same to the highest bidder. The constable shall, out of the proceeds of sale, after deducting his own commission, first pay the claim of the taker up, and the residue pay over, within ten days, to the clerk of the county court. If the owner do, within one year from the sale, appear and establish his

When and how to be sold, & proceeds disposed of.

claim, to the satisfaction of the clerk, the proceeds of sale shall be paid over to him, otherwise they shall be paid to the taker up.

Penalty for wrongful taking boat.

§ 13. Whoever, without consent of the owner, shall take away any boat or vessel, shall pay the owner seven dollars, in addition to the amount of damage the boat or vessel may thereby sustain, and the costs of the owner in bringing her back.

§ 14. The first and second sections of the act of 20th December, 1794, entitled, "an act concerning boatmen," are repealed.

Rules by which boats shall be run to avoid collisions

L. 110.

§ 15. To avoid collision between steamboats, in a river, the following rules shall be observed:

1. In ordinary stages of water, and where there is room enough, the descending boat shall generally keep the middle of the channel, and leave room for the ascending boat to pass on either side.

2. The ascending boat shall, in all stages of water, generally keep to the bar or shore nearest to her at the time of meeting another boat, until they shall have cleared each other, and shall not attempt to cross the channel in front of the descending boat, so as to endanger her by collision.

3. If there be apparent danger of collision, the descending boat shall keep her position, wherever that may be at the time of meeting, stop her engine, and permit the ascending boat to do whatever may be necessary to avoid the collision.

4. If the danger of collision be imminent, both boats shall back their engines.

5. If either boat be out of its proper position, that shall not justify the other in running against her, if by reasonable care and vigilance on the part of such other boat, the collision can be avoided.

6. When two boats meet in the night, in fog, or in narrow channels, the descending boat shall keep the middle of the channel, and stop her engine until the following signals have been given and answered, and the boats have cleared each other:

First. The ascending boat shall, as soon as the other boat is in sight and hearing, toll her bell once if she wishes to pass on the side of the channel to her right, or twice if she wishes to pass on the left side. This signal the descending boat shall answer, by one stroke of the bell. If not so answered, the bell of the ascending boat shall be tolled repeatedly, at short intervals, until answered.

Second. If the ascending boat make no such signal in proper time, the descending boat may make it.

Third. Should a signal be given, which cannot be safely complied with, a negative answer shall be immediately given, by ringing the bell five or six times, in quick succession.

Fourth. When such negative answer is given, the descending boat shall stop her engine, and the ascending boat reduce her speed, so as merely to keep her headway, until the boats have cleared each other.

Fifth. When a channel is too narrow to pass with safety, the boat first in it shall have the preference, and the other shall wait until she has passed. But if both boats are about to enter such channel at the same time, the ascending boat shall wait.

7. During the night, steamboats and other vessels, flatboats, and rafts, whether fastened to the shore, anchored, or under way, shall keep a light burning, in some visible position.

Liability of boats when two are in fault.

§ 16. If the collision between two boats be the result of mutual and equal fault, or if it cannot be ascertained which was in fault, the loss or damage ensuing from the collision shall be apportioned between the two boats according to their relative values, exclusive of cargo.

Steamboats not to run races—liability therefor.

§ 17. It shall not be lawful for steamboats to run races, or make trial of speed with each other; and if any damage occur during any such contest, from the bursting of a boiler or cylinder, the presumption shall be, in favor of a passenger, owner, or insurer of property on board, that the damage was occasioned by the misconduct of the officers of the boat.

Duty of master when powder on board.

§ 18. It shall be the duty of the master and other officers of a steamboat carrying gunpowder as freight or cargo to stow the same in some safe part of the boat, not near to any articles liable to spontaneous combustion, and where it will not be necessary to carry a light in discharging cargo. Every boat carrying gunpowder as freight or cargo, shall give notice thereof, by advertisement printed in large letters, and kept suspended or posted in some public position in the cabin, so as to be visible and easily legible at the distance of ten feet.

Penalty for not giving notice.

The master or other officer in charge of a boat, who shall fail to comply with this section, shall be fined one hundred dollars, and be personally liable for all damage that may ensue from carrying powder in the boat.

Penalty for placing powder on board without the consent of master.

§ 19. Any person who shall place or keep gunpowder on board a steamboat, to be carried as freight or cargo, without giving notice thereof and obtaining the consent of the master or some other officer of the boat, shall be fined one hundred dollars, and be liable for all damage that may ensue from the carrying of the powder in the boat.

Copies of part of chapter to be posted in cabin, &c. of every steamboat.

Penalty for failure

§ 20. A printed copy of this and the last five sections of this chapter shall be kept visibly posted or suspended in some public position in the cabin of every steamboat, whilst navigating the Mississippi, Ohio, or other river in this state; and for failure to do the same, the master and owner, or either, shall be fined one hundred dollars for each week that the same is omitted.

Penalty for obstructing by dams, &c., navigable streams.

M. & B. 1225.

§ 21. Whoever shall erect or cause to be erected, or aid in erecting, in or across any navigable river or stream, a fish dam, slope, stop-wire, or hedge, or any other obstruction to the passage of fish or the navigation of such river or stream, shall be imprisoned not less than thirty nor more than ninety days, and fined not less than ten nor more than fifty dollars.

But this section shall not embrace mill-dams or bridges erected in or across navigable streams pursuant to law.

M. & B. 1224.

§ 22. Every continuance of an erection or obstruction, prohibited by the last section, for five days, shall be deemed a distinct offense within the same; and the persons living on either or both sides of the stream, nearest to the obstruction, shall be severally liable for the continuance thereof, in the same manner as if he or they were proved guilty of making the same.

Duty and power of county court in removing obstructions in navigable streams.

§ 23. The several county courts of the counties through or adjoining which runs any navigable stream, may lay it off into precincts, and appoint an overseer for each, whose duty it shall be to cause the riffles within his precinct to be cleared out, and the trees and brush therein, at the points of islands or the bends, to be cut away and removed.

The court shall allot the overseer a competent number of hands, from the laboring male tithables living nearest to his precinct, who shall be exempt from working on roads, during the year for which they are allotted to work on the stream.

A copy of the appointment of the overseer, with a list of the hands assigned him, shall be made out by the clerk of the court and delivered to the sheriff, who shall deliver the same to the overseer, under the rules, and subject to

the fines, in relation to the same duty in regard to overseers of roads.

Overseers & hands

Penalty, &c.

§ 24. The overseer so appointed, and the hands so allotted to him, shall be subject to the same penalty for failing or refusing to work, or otherwise to do their duty as such, as is prescribed for a like failure or refusal as to a highway.

Duty of county courts when a navigable stream is the dividing line between counties.

§ 25. When a navigable stream is a boundary between two counties, their respective county courts shall designate what part of the stream shall be kept in repair by each, by dividing the stream as equally as may be between them, according to distance and amount of the work to be done.

The county court first making the order for laying off precincts, shall elect which end to take, and immediately transmit a copy of that order to the court of the other county; in which order there shall be designated the limits which that county takes upon itself to work. The remainder of the co-terminous stream, the other county shall, in like manner, work and keep in repair. But the court of the latter may, before the expiration of a year after such notice, notify the court of the former that, for the ensuing year, the two counties shall change districts; and they shall thereafter, from year to year, alternate the districts to be worked by each, until an umpire, mutually agreed upon by the two courts, or by a circuit judge not a resident of either county, shall permanently divide and fix the respective districts of each; and thenceforth each shall work its district so assigned.

No pier or dock to be erected within the influence of slack water navigation.

§ 26. If any person shall build, erect, or place, or cause to be built, erected, or placed, or aid therein, in the Kentucky, Green, or Barren river, within the influence of slackwater, any pier, dock, wharf, or embankment, or any other kind of obstruction, so that the current or channel of the river shall be changed or affected thereby, or that the same shall form a lodgment for the accumulation of drift, sediment, or deposit, that may change or affect the channel or current, he shall be fined three dollars for every day any such obstruction shall exist.

Penalty therefor. A. 1850, 49.

Duty of the owners of bridges over navigable streams

§ 27. The president, directors, agents, and managers of every bridge now built, or which may hereafter be allowed to be built across either of those rivers, shall keep their abutments, piers, pillars, and other works free from drift and all other obstructions tending to alter or change the channel or current; and either of such persons, failing so

Penalty, &c.

to do, shall be fined five dollars, for every day any such drift or obstruction shall be permitted to remain, and furthermore liable to any person whose property may be injured thereby.

Neither this nor the last section shall apply to works temporarily erected in the construction of a bridge, nor to works to prevent the washing away of the river bank, nor to the making of landing places which do not change or alter the current or channel.

CHAPTER VIII.

BOUNDARY, SOVEREIGNTY, AND JURISDICTION OF THE STATE OF KENTUCKY.

ART. 1. Historical sketch of the manner the boundary was formed and finally fixed.
ART. 2. The seal of the Commonwealth declared.

ARTICLE I.

Historical sketch of the manner the boundary was formed and finally fixed.

How boundary ascertained.

The boundary of the state of Kentucky is to be ascertained—*First.* By reference to the deed of cession of territory north-west of the Ohio river by the commonwealth of Virginia, to the congress of the United States, dated the first day of March, 1784. *Second.* By the act of the Virginia legislature, known as the "compact with Virginia," entitled, "an act concerning the erection of the district of Kentucky into an independent state," passed the 18th day of December, 1789. *Third.* By the act of the Virginia legislature of 1776, by which the county of Fincastle was divided, and three additional counties established, viz: Kentucky, Washington, and Montgomery; and *Fourth.* By reference to arrangements made between Virginia and Kentucky, and between Kentucky and the state of Tennessee. (*a*) (*b*) (*c*)

M. & B. 45, 266, 268.

(*a*) The state of Kentucky covers a portion of the territory, that under the colonial system constituted the county of Augusta, in Virginia.

The county of Augusta was formed in 1738, in the 12th year of George II, by an act of the colonial legislature, then held at the capitol in Williamsburg. For the boundary of the same, see Hening's Statutes at Large, volume 5, page 79.

The legislature of Virginia, in the organization of counties on the western border of the state, prior to the act of cession, never gave them a definite boundary westwardly,

Western boundary.

Cong. Jour, vol. 4, 334.

In 1769, in the 10th year of George III, the county of Augusta was divided, and the county of Botetourt carved out of the same. For the boundary of Botetourt county, see Hening's Statutes at Large, volume 1, page 395.

In 1772, in the 12th year of George III, the county of Botetourt was divided, and the county of Fincastle carved out of the same. For the boundary of the county of Fincastle, see Hening's Statutes at Large, volume 8, page 600.

In 1776, in the first year of the commonwealth of Virginia, the county of Fincastle was divided into the three counties, Kentucky, Washington, and Montgomery. The boundary of Kentucky, as given in the act, is as follows: "All that part thereof which lies to the south and westward of a line beginning on the Ohio, at the mouth of Great Sandy creek, and running up the same and the main and north-easterly branch thereof to the Great Laurel Ridge or Cumberland Mountain, thence south-westerly along the said mountain to the line of North Carolina, shall be one distinct county, and called and known by the name of KENTUCKY." See Hening's Statutes at Large, volume 9, page 257. 1 Litt. Laws of Kentucky, page 626.

(*b*) AN ACT establishing the boundary line between the state of Virginia and this Commonwealth. Approved December 12th, 1799.—2 *Litt.* 276.

WHEREAS, Commissioners appointed by the state of Virginia and this commonwealth, did, in order to ascertain and establish the boundary line between the said states, on the fourteenth day of October last, enter into a written agreement under their hands and seals, which is in the following words, to-wit:

"The commissioners for ascertaining and adjusting the boundary lines between the states of Virginia and Kentucky, appointed pursuant to the act of separation between the two states, to-wit: Archibald Stewart, General Joseph Martin and Creed Taylor, Esquires, on the part of the former, and John Coburn, Robert Johnson and Buckner Thruston, Esquires, on the part of the latter, having this day met at the forks of Great Sandy river, according to appointment, and taken into consideration the said act of separation, have, and by these presents do unanimously agree and declare, that the boundary line between the said states, is and shall be and remain as followeth, to-wit: To begin at the point where the Carolina, now Tennessee, line crosses the top of the Cumberland mountain, near Cumberland Gap; thence north-eastwardly along the top, or highest part of the said Cumberland mountain, keeping between the head waters of Cumberland and Kentucky rivers, on the west side thereof, and the head waters of Powell's and Guest's rivers, and the Pond fork of Sandy, on the east side thereof, continuing along the said top, or highest part of said mountain, crossing the road leading over the same at the Little Paint Gap, where by some it is called the Hollow mountain, and where it terminates at the west fork of Sandy, commonly called Russell's fork; thence with a line to be run north forty-five degrees east till it intersects the other great principal branch of Sandy, commonly called the north-eastwardly branch; thence down

but left them to be bounded by the western limits of the charter granted by the British sovereign. This deed of cession, for the first time, marked the western boundary of the

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the said north-eastwardly branch to its junction with the main west branch, and down main Sandy to its confluence with the Ohio. And whereas doubts have heretofore prevailed which of the main branches of Sandy the act for dividing the county of Fincastle, (which is the act referred to for the line between the two states,) meant and intended that the line should run up, and locators have been led into errors in entering their land warrants; it is therefore unanimously further agreed between the said commissioners, that no land claims founded on entries within the forks of Sandy, or east of the Cumberland mountain on the waters of Sandy, previous to the first day of October, one thousand seven hundred and ninety-nine, on either side of the before mentioned line to be run from the end of the said Cumberland mountain to intersect the said main north-eastwardly branch of Sandy, ought to be in any wise affected by said doubts which have existed respecting the said line; but that the said claims ought to remain valid and secure as if no such doubts had existed, or as if the said territory had been within the acknowledged limits of either state, that is to say, that all entries of land made in the offices of either state, which by this adjustment of the line falls into the other, shall be as valid as if made in the offices of that state, which by this adjustment of the line falls into the other, shall be as valid as if made in the offices of that state in which the land lies; and that it be recommended to the said states to pass mutual laws for the ratification of the said claims pursuant to the meaning and intent of this agreement between us; and that until such laws shall be passed, this instrument shall not be in force, but shall take full effect immediately after the passage of such laws."

And whereas this commonwealth does approve of and is willing to ratify and confirm the said agreement on its part.

Be it therefore enacted by the General Assembly, That the boundary line, as ascertained and described in the said agreement, is hereby ratified and confirmed; and all entries for lands made in the offices in the state of Virginia, previous to the first day of October, 1799, lying in the forks of the Sandy or east of the Cumberland mountain on the waters of Sandy, which by the establishment of the boundary line as aforesaid, do fall within the limits of this state, shall be as good and valid as if they had been made in the proper offices of this commonwealth.

This act shall commence and be in force so soon as the state of Virginia shall, in conformity to the aforesaid agreement, on its part, pass a similar law.

(*c*) An Act to ratify and confirm the adjustment of the boundary line between this State and the State of Tennessee, according to the articles of stipulation entered into by the Commissioners appointed by both States. Approved Feb. 11. 1820.—*Session Acts, p.* 922.

Whereas, commissioners appointed by the state of Tennessee, with full powers to settle and adjust the boundary line between said state and this commonwealth, have entered into an agreement with commissioners appointed on the part of this state to confer with said commissioners appointed by the state of Tennessee,

state. By that instrument she ceded to the United States, for the common use and benefit of all the states, Virginia inclusive, "all right, title, and claim, as well of soil as of

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which agreement, reduced to writing, bearing date the second day of February, one thousand eight hundred and twenty, and signed with the names, and under the seals of the commissioners of both states, in the words and figures following, to-wit:

The states of Kentucky and Tennessee, desirous of terminating the controversy which has so long subsisted between said states in relation to their common boundary, and of restoring the most perfect good understanding and harmony between them, have, for that purpose, appointed their respective commissioners, that is to say: The state of Kentucky on her part has appointed Jno. J. Crittenden and Robert Trimble; and the state of Tennessee on her part has appointed Felix Grundy and William L. Brown, who, after a reciprocal communication of their respective powers, have agreed upon the following articles and stipulations:

ARTICLE I.

The line of boundary and separation between the states of Kentucky and Tennessee, shall be as follows, to-wit: The line run by the Virginia commissioners, in the year seventeen hundred and seventy-nine, and seventeen hundred and eighty, commonly called Walker's line, as the same is reputed, understood, and acted upon by the said states, their respective officers and citizens, from the south-eastern corner of Kentucky to the Tennessee river; thence with and up said river to the point where the line of Alexander and Munsell, run by them in the last year, under the authority of an act of the legislature of Kentucky, entitled, "An act to run the boundary line between this state and the state of Tennessee, west of the Tennessee river, approved February 8th, 1819," would cross said river; and thence with the said line of Alexander and Munsell, to the termination thereof on the Mississippi river below New Madrid.

ARTICLE II.

It is agreed and understood, that from the point where Walker's line strikes the Tennessee river, to the point where the line of Alexander and Munsell would cross the same, the said Tennessee river shall be the common boundary of said states, and subject to their common use and concurrent jurisdiction. Any island or islands in that part of the river Tennessee, which forms the common boundary between the two states, shall be within the exclusive jurisdiction of Kentucky; but any appropriations thereof by individuals, heretofore made under the laws of North Carolina or Tennessee, shall be valid.

ARTICLE III.

Whenever the governor of either state shall deem it expedient to have the boundary between the two states, which is east of the Tennessee river, or any part thereof, run and plainly marked, he shall cause a notification thereof to be communicated to the governor of the other state, and thereupon with all convenient dispatch, two surveyors shall be appointed for that purpose, one by

jurisdiction, which the said commonwealth had to the territory or tract of territory within the limits of the Virginia charter, situated, lying, and being to the north-west of the

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the governor of each state; and the surveyors so appointed shall have power to employ a competent number of chain-carriers and assistants, and they shall ascertain, survey, and mark said line plainly and durably, having due respect to the provisions of the first article hereof; and it shall be the duty of said surveyors to make out and sign duplicate plats and reports of their surveys and proceedings to be communicated by each surveyor to the governor of his respective state, to be deposited and preserved in the office of secretary of state, for a testimony and memorial of the boundary between said states. And all cost and expense that may be incurred under the provisions of this article, and in surveying and marking said boundary line, shall be paid by said states, jointly and equally.

ARTICLE IV.

The claims to lands lying west of the Tennessee river, and north of Alexander's and Munsell's line, derived from North Carolina or Tennessee, shall be considered null and void; and claims to lands lying south of said line and west of Tennessee river, derived from Virginia or Kentucky, shall in like manner be considered null and void.

ARTICLE V.

All lands now vacant and unappropriated by any person or persons claiming to hold under the states of North Carolina or Tennessee, east of the Tennessee river, and north of the parallel of latitude thirty-six degrees thirty minutes north, shall be the property of, and subject to the disposition of the state of Kentucky, which state may make all laws necessary and proper for disposing of and granting said lands, or any part thereof, and may, by herself or officers, do any acts necessary and proper for carrying the foregoing provisions of this article into effect; and any grant or grants she may make therefor, or any part thereof, shall be received in evidence in all the courts of law and equity in the state of Tennessee, and be available to the party deriving title under the same; and the land referred to in this article, shall not be subject to taxation by the state of Tennessee for five years, except so far as the same may, in the meantime, be appropriated by individuals.

ARTICLE VI.

Claims to lands east of the Tennessee river between Walker's line and the latitude of thirty-six degrees thirty minutes north, derived from the state of Virginia in consideration of military services, shall not be prejudiced in any respect by the establishment of Walker's line; but such claims shall be considered as rightfully entered or granted, and the claimants may enter upon said lands, or assert their rights in the courts of justice without prejudice by lapse of time, or from any statute of limitations for any period prior to the settlement of the boundary between the two states; saving, however, to the holders and occupants of conflicting claims, if any there be, the right of showing such entries or grants to be

Ohio river." This act of cession limited the western boundary and jurisdiction of Virginia to the north-west bank of the Ohio river. Virginia retained the sovereign right and

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invalid and of no effect, or that they have paramount or superior titles to the land covered by such Virginia claims.

ARTICLE VII.

All private rights and interests of lands between Walker's line from the Cumberland river near the mouth of Obey's river to the south-eastern corner of Kentucky, at the point where the boundary line between Virginia and Kentucky intersects Walker's line on the Cumberland mountain, and the parallel of thirty-six degrees thirty minutes north latitude, heretofore derived from Virginia, North Carolina, Kentucky, or Tennessee, shall be considered as rightfully emanating from either of those states; and the states of Kentucky and Tennessee reserve to themselves, respectively, the power of carrying into grant, claims not yet perfected; and in case of conflicting claims, if any there be, the validity of each claim shall be tested by the laws of the state from which it emanated, and the contest shall be decided as if each state, respectively, had possessed the jurisdiction and soil, and full power and right to authorize the location, survey, or grant, according to her own rules and regulations.

ARTICLE VIII.

It is agreed that the foregoing articles shall receive the most liberal construction for effecting the objects contemplated, and should any disagreement arise as to the interpretation, or in the execution thereof, two citizens of the United States, but residents of neither Kentucky nor Tennessee, shall be selected, one by the executive of each state, with power to choose an umpire in case of disagreement, whose decisions shall be final on all points to them submitted.

ARTICLE IX.

Should any further legislative acts be requisite to effectuate the foregoing articles and stipulations, the faith of the two states is hereby pledged, that they will unite in making such provisions, and respectively pass such laws as may be necessary to carry the same into full and complete effect.

ARTICLE X.

The foregoing articles and stipulations, if ratified by the legislature of Kentucky during their present session, shall forever be obligatory and binding on both states, and take effect from this day.

In faith whereof, we, the respective commissioners, have signed these articles, and have hereunto affixed our seals. Done in duplicate, at Frankfort, the second day of February, one thousand eight hundred and twenty.

JOHN J. CRITTENDEN, [SEAL.]
ROBERT TRIMBLE, [SEAL.]
FELIX GRUNDY, [SEAL.]
WILLIAM L. BROWN, [SEAL.]

jurisdiction over the entire bed of the Ohio river within her chartered lines.

County of Kentucky.

The act establishing the county of Kentucky, above referred to, thus describes the boundary of the same: "All that part thereof, (that is, of the county of Fincastle,) which lies to the south, and westward of a line beginning on the Ohio river, at the mouth of Great Sandy creek, and running up the same, and the main and north-easterly branch thereof, to the great Laurel ridge, or Cumberland mountain, and thence south-westerly along the said mountain to the line of North Carolina." This boundary constituted what was the district of Kentucky on the 18th of December, 1789, as limited on the north-western boundary by the act of cession by Virginia to the United States, in 1784. What was the main and north-easterly branch of Great Sandy, and what was the particular line of the great Laurel ridge, or Cumberland mountains, subsequent to the admission of Kentucky into the union as an independent state, became matter of dispute between Virginia and Kentucky. To settle and adjust this dispute, the two states appointed commissioners with full powers to settle all questions of doubt and difficulty as to the boundary between the two states. The commissioners agreed upon the following line: To begin at the point where the Carolina (now Tennessee) line crosses the Cumberland mountains, keeping between the head waters of Cumberland and Kentucky rivers, on the west side thereof, and the head waters of Powell's and Guest's rivers, and the Pond fork of Sandy on the east thereof, continuing along the top or highest point of said mountain, crossing the road leading over the same at the Little Paint gap, where by some it is called the Hollow mountain, and where it terminates at the west fork of

Disputes.

Agreed lines.

And whereas, this commonwealth does approve and is willing to ratify and confirm each and every article and stipulation of the said agreement. Therefore,

SEC. 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the boundary line between the state of Tennessee and this commonwealth, as described in said agreement, subject to be run and marked as therein provided, shall be and the same is hereby ratified and confirmed.

SEC. 2. *Be it further enacted*, That each and every article and stipulation of said agreement, either relating to the boundary line between the said states, or to the land claims of individuals, or to vacant and unappropriated lands, or to any other subject matter in said agreement contained, shall be and the same are hereby ratified and confirmed, and shall be regarded in all courts of justice in this commonwealth, as the law of the land.

Sandy, commonly called Russell's fork; thence with a line to be run north, forty-five degrees east, till it intersects the other great principal branch of Sandy, commonly called the north-eastwardly branch thereof; thence down the said north-eastwardly branch to its junction with its main west branch, and down main Sandy to its junction with the Ohio.

Line of Virginia & North Carolina.

The line which divided Virginia and North Carolina was the southern boundary of the state of Kentucky. Virginia and North Carolina, prior to the creation of the states of Kentucky and Tennessee, appointed commissioners, Messrs Walker and Henderson, to run and mark the line on the parallel of latitude thirty-six degrees thirty minutes. From a point on the top of the Cumberland mountains, now the south-eastern corner of the state of Kentucky, the commissioners jointly did not run the line west. One of the commissioners (Mr. Walker) run and marked the line to a point on the Tennessee river. This line, called Walker's line, was regarded for many years as the dividing line between the states of Kentucky and Tennessee. It was ascertained, however, that the line as run and marked by Walker was north of latitude thirty-six degrees thirty minutes. After the Indian title to the land west of the Tennessee river was extinguished by the treaty of 1819, the legislature of Kentucky appointed Robert Alexander and Luke Munsell to ascertain the true point of latitude thirty-six degrees thirty-minutes on the Mississippi river, and to run and mark a line east upon that parallel. This was done as far east as the Tennessee river. The two states subsequently appointed commissioners, vested with full powers to settle and adjust all matters concerning the boundary between them. The commissioners entered into an agreement, which was subsequently ratified by the legislatures of the two states, and the line therein described has been ever since the southern boundary of the state of Kentucky. The supreme court in the case of Handley's lessee *vs.* Anthony, 5 Wheaton, 375, and the court of appeals in the case of Fleming *vs.* Kenny, 4 J. J. M., 158, have decided that the boundary and jurisdiction of the state of Kentucky extend to low water mark on the western or north-western side of the river Ohio. What effect the 11th section of the compact with Virginia has upon the question of concurrent jurisdiction of the states of Ohio, Indiana, and Illinois over that portion of the Ohio river which forms the common boundary between them

Walker's line.

Line settled.

Boundary on Ohio river.

and Kentucky, has not been declared by any legislative act or judicial decision of the court of Kentucky.

Boundary declared.

§ 1. The boundary of the state of Kentucky is declared to be as follows: Beginning at seven pines and two black oaks on the top of Cumberland mountain, on the Tennessee line, where it crosses said mountain, one mile and a half and twelve poles southwardly of the Cumberland gap; thence with Walker's old marked line south 86 deg. west, by the magnetic meridian, crossing the Left-Hand fork of Yellow creek at one mile, crossing Mingo mountain, and then crossing Bennett's fork of Yellow creek at five miles; then Log mountain, crossing Bowman's fork of the Clear fork of Cumberland at nine miles; the Trace fork at twelve miles; Buffalo at fifteen; the Laurel fork at eighteen miles; Tom's creek at nineteen miles; and Primroy at twenty-one miles; then crossing Pine mountain, and the Clear fork of Cumberland river, in the Lot at twenty-five miles; then crossing the Hackle knob to the Elk fork at twenty-eight miles; Indian creek at twenty-nine miles; then Gillico mountain and Gillico creek at thirty-three miles; and the Right-Hand fork of Gillico at thirty-six miles; Rock creek at forty-one miles; Marsh creek at forty-seven miles; the Roaring Ponch at forty-nine miles; Bear creek at fifty-four miles; the Big South fork of Cumberland at fifty-eight miles; Rock creek at sixty-eight miles; the Left-Hand fork of the Little South fork at seventy six miles; passing the Chimney or Pilot rock at seventy-eight miles; crossing the Poplar mountain into Stockton's valley at eighty-seven miles; and Pike's turnpike road at ninety miles; then crossing Wolf river six times; then Sulphur Lick creek at one hundred and four miles; Kettle creek at one hundred and twelve miles; in all, one hundred and fourteen miles, to three hackberry trees on the bank of Cumberland river, opposite the point where Walker's old line strikes the west bank of Cumberland river, and about twenty-four poles above the house occupied by John Kerr in 1821; thence west with Walker's old line to the Tennessee river; thence with and up said river to the point where the line run by Alexander and Munsell, in 1819, strikes said river; the river being the common boundary between the two states, and subject to their common use and concurrent jurisdiction; and thence with the line run by Alexander and Munsell, on the parallel of lat. 36 deg. 30 min., to the middle of the channel of the Mississippi river, opposite the point on the Mississippi below New Madrid, fixed, marked,

and ascertained by them as the point of intersection of said parallel of latitude and said river; thence up said river to the mouth of the Ohio river; thence crossing the Ohio river to the north-west bank, at low water mark; thence up the north-western bank of said river at low water mark, to a point opposite the mouth of the Big Sandy river; thence across the Ohio river, and up the said Sandy river, to the mouth of the main western branch of Sandy; thence up the north-eastwardly branch to a point on said branch from which a line drawn south 45 deg. west, will strike the road over the Cumberland mountains at the Little Paint gap, by some called the Hollow mountain, where it terminates at the west fork of Sandy, commonly called Russell's fork; and thence, continuing on the top or highest point of said mountain, keeping between the head waters of the Kentucky and Cumberland rivers on the right, and the head waters of Powell's and Guest's rivers on the left, to the beginning on the said Cumberland mountain.

Power and jurisdiction.

§ 2. The sovereign power and jurisdiction of the commonwealth of Kentucky extends to and over the entire soil and water within the limits described in the preceding section, except so far as she may have ceded jurisdiction to the United States for national purposes.

Counties bordering on the Ohio and Mississippi.

§ 3. Each county in this commonwealth, whose boundary is described in part by the Mississippi and Ohio rivers, shall be considered as bounded in that particular by the state line; and the islands thereof shall be within the respective counties holding the main land opposite thereto, within this state; and the several counties and tribunals thereof shall hold and exercise jurisdiction accordingly.

ARTICLE II.

The Seal of the Commonwealth declared.

Great Seal.

§ 1. The great seal of the commonwealth of Kentucky shall have upon it the device two friends embracing each other, with the word "*Kentucky*" over their heads, and round about them the words "*United we stand, divided we fall.*"

CHAPTER IX.

CATTLE, HORSES, AND DOGS.

Mischievous and noxious animals to be restrained or destroyed.
Bulls, Jacks, and Horses running at large may be altered.
Dogs guilty of killing Sheep, or bitten by mad Dogs, may be killed.

Unaltered horses, &c. running at large to be taken up, and gelded.

M. & B. 781-2.

§ 1. If any unaltered horse or jackass over one year old, is permitted by its owner to run at large outside of his inclosure, such horse or jack may be taken up and confined by any person; and if the owner be known, notice in writing of such confinement shall be given him, whose duty it shall be forthwith to take such horse or jack into his possession, and pay to the taker up two dollars. If such horse or jack be not called for by the owner, allowing him twenty-five miles for each day he may necessarily have to travel after the service of such notice, the taker up, at the expiration of the time, shall take the said horse before a justice of the peace, within the district where he resides, who shall, upon the proof of the facts, order said horse or jack to be gelded by some one skilled in the art.

Fees, &c.

§ 2. The fee for gelding shall be one dollar. The taker up, besides the fee for gelding, shall be allowed two dollars for his trouble, and twenty cents per day for each day he may keep the horse or jack, to be paid by the owner, and may retain the possession and have a lien thereon till paid. If the horse or jack dies or escapes, the owner shall nevertheless be liable for the expenses.

When owner not known.

§ 3. When the owner of such horse or jack is unknown to the taker up, and so verified by his oath, he shall take the same before a justice of the peace within his district, who shall cause the horse or jack to be appraised and dealt with as an estray, except that a notice in writing of the description of the horse or jack, and residence of the taker up, shall be posted up at the door of the court house, and at one or more public places in the county; and if the horse or jack be not called for by the owner, and his property proved, as required in the case of other estrays, within two weeks, the taker up shall again take the horse or jack before the justice of the peace, who shall cause him to be gelded, as provided in the first section of this chapter. The taker up shall be allowed two dollars for his trouble, and all reasonable charges paid; and if the horse or jack be not proven and taken by the owner, he shall, after one

year, become the absolute property of the taker up. The owner may, at any time within three years, by proving his property, recover the valuation of said horse or jack.

Bulls.

§ 4. If bulls known to be mischievous and breachy are permitted by their owners to run at large outside of their inclosures, they may be taken up and proceeded with, and altered, as provided in cases of horses or jacks in the preceding article; and the liability of the owners shall be the same.

Penalty for allowing distempered cattle to run at large.

M. & B. 277.

§ 5. If the owner of any distempered cattle shall permit them to run at large outside of his inclosure, or shall drive the same into or through any part of the state, unless it be from one portion of his own inclosure to another, he shall forfeit and pay the sum of ten dollars for each head; and when any such cattle shall die, the owner thereof shall cause them to be burned or buried; and if he fail, he shall be fined five dollars for each offense.

Justice to issue order commanding owner to impound.

§ 6. If a justice of the peace be informed, by affidavit, that the owner of such cattle as are described in the preceding section, has violated its provisions, it shall be his duty to issue his order to such owner, commanding him to impound them; and if he fail or refuse to do so, or permit them to escape, or to be taken from the pound before the disease has been removed, he shall have power to order the cattle to be killed and burned at the expense of the owner.

Sheep killing & mad dogs to be killed.

§ 7. A justice of the peace, on proof that any dog is mad, or has been bitten by a mad dog, or has killed or wounded any sheep, shall order such dog to be killed.

Penalty for concealing.

§ 8. If the owner of any dog so ordered to be killed, shall conceal him, or order him to be concealed, to prevent the execution of such order, he shall forfeit five dollars for every day said dog shall be concealed.

Fees, &c.

§ 9. The constable or other person who may execute the order of any justice, as described in the fifth and sixth sections of this chapter, shall be paid by the owner of such cattle or dog, the following fees: for killing and burying a horse, jack, jennet, or mule, three dollars; other cattle, two dollars for each head; and for killing a dog, one dollar; and if he fail or refuse to execute the order, he shall forfeit and pay an amount equal to the fees allowed in each case.

Mischievous dogs going at large may be killed.

§ 10. Sheep killing, ravenous, or mischievous dogs shall not be permitted to go at large outside of the inclosure of the owner or keeper.

1. Such dogs, so going at large, may be killed by any person.

2. The person who kills such dog may be a competent witness to make out his justification for so doing.

Redress by action.

§ 11. Any person injured by the horse, cattle, or dog of another, such as is described in this chapter, shall have redress by civil action.

CHAPTER X.

CAUSES OF ACTION WHICH SURVIVE.

M. & B. 86. L. 573.

§ 1. No right of action for personal injury, or injury to real or personal estate, shall cease or die with the person injuring or the person injured, except actions for assault and battery, slander, criminal conversation, and so much of the action for malicious prosecution as is intended to recover for the personal injury; but for any injury other than those excepted, an action may be brought or revived by the personal representative, or against the personal representative, heir, or devisee, in the same manner as causes of action founded on contract.

CHAPTER XI.

CAVEAT.

When a caveat may be entered.

M. & B. 278.

§ 1. If any person obtains a survey of land to which another claims a better right, such other may enter a caveat with the register to prevent the issuing of a grant until the right is determined.

What it shall state

1. The caveat shall state the plaintiff's claim, and the reasons why the grant should not issue.

To be verified.

2. It shall be verified by his affidavit, or by that of his agent, and declare that it is entered in good faith, with the intention of procuring the land for the plaintiff, and not for the benefit of the person against whom it is entered.

Summons issued thereon.

3. A copy of the caveat, certified by the register, shall, within fifteen days from the time it was entered, be handed to the clerk of the circuit court of the county where the land, or the greater part thereof, lies, who shall immediately issue a summons thereon, returnable to the first day of

the next term of the court, against the defendant, and renew the same from term to term, if required.

When dismissed. 4. If the summons be not returned, or be returned not executed, the caveat shall be dismissed at the costs of the plaintiff, unless it appear that the non-return or non-execution was not occasioned by the neglect of the plaintiff.

When tried. 5. If the summons is executed fifteen days before the first day of the term, the caveat shall stand for trial at that term, and the defendant shall, on or before its call, file his written response thereto, verified by his affidavit. If the summons be not so executed, it shall stand for trial at the next term after it is so executed.

Jury. 6. All issues of fact made by the caveat and the response shall be tried by a jury, if required by either party.

Non-resident. 7. If the defendant be a non-resident of this state, he may be proceeded against, and with the like effect, as is permitted against a non-resident in any other suit.

Depositions. 8. Upon service of the summons, or upon notice to plaintiff of the filing of defendant's response in the clerk's office during vacation, either party, respectively, may proceed to take depositions.

Amendment. 9. The court may permit an amendment of the statement contained in the caveat or response, and may give time for further preparation.

When the caveat deemed to be abandoned. 10. If the copy of the caveat be not lodged with the clerk within the fifteen days, it shall be deemed to be abandoned; and upon certificate from the clerk that none such has been left with him, the register may proceed in disregard of the caveat.

Security for costs. 11. The court may, in its discretion, require the plaintiff to give security for costs, and on his failure to give the same, dismiss his suit.

Appeals, &c. § 2. The judgment upon a caveat shall be liable to revision in the court of appeals, by appeal or writ of error, in the same manner, in all respects, as any other judgment of the circuit court.

Judgment delivered to land office. § 3. A copy of the judgment, if in favor of the defendant, must be delivered into the land office within three months from the time it is rendered, or a new caveat may, for that cause, be entered against the grant. If the judgment be for the plaintiff, and a copy thereof not delivered into the land office within six months from the time it was rendered, any other person may, for that cause, enter another caveat against the grant.

No grant, caveat pending.

§ 4. No grant shall issue to the land in contest to the plaintiff in the caveat, or to another for his use, until the caveat is dismissed or decided; and any such grant, to the extent of such land, shall be void.

Second caveat not allowed.

§ 5. Where the plaintiff does not prosecute his caveat as herein required, or the same is dismissed or decided against him, neither he nor any other for his use, shall have another caveat against the same grant.

CHAPTER XII.

CHAMPERTY AND MAINTENANCE.

Certain contracts void.

§ 1. All contracts, agreements, and conveyances made in consideration of the services to be rendered in the prosecution or defense, or the aiding in the prosecution or defense, in or out of court, of any suit by any person not a party on record in such suit, whereby the thing sued for or in controversy, or any part thereof, is to be taken, paid, or received, by such person, for his services or assistance, shall be null and void.

Sales of land in adverse possession, void.

M. & B. 286.

§ 2. All sales or conveyances, including those made under execution, of any lands, or the pretended right or title to the same, of which any other person, at the time of such sale, contract or conveyance, has adverse possession, shall be null and void. Nothing in this section shall render void a devise of land in adverse possession. A petition in equity by a judgment creditor, after a return of execution of no property found, may be filed to subject the title of the defendant to any real estate to which he may have title, legal or equitable, though the same may be in the adverse possession of another, to which procedure the person in possession shall be made a defendant.

Title subjected in equity.

Title forfeited by champertous contract.

§ 3. All contracts to prosecute a suit for the recovery of any lands in the adverse possession of another, for the whole or part of the land thus possessed, or for the whole or any part of the profits thereof, shall be null and void; and the parties to such contract shall forfeit all right, interest, or claim, in or to the land claimed under such pretended right or title; also, all right to maintain any suit at law, or in equity, upon such pretended right or title; and such right, title, or claim shall vest in the commonwealth, and inure to the benefit of the person in possession, without office found.

Defendant may prove such contract, in bar of suit

§ 4. The person in the adverse possession, according to the provisions of the second and third sections of this chapter, his personal representatives, heirs, or assigns, or the person under whom such occupant claims or holds, his personal representatives, heirs, or assigns, may give in evidence, under the general issue, or may plead the sale or purchase of any pretended right or title in violation of the second section of this chapter, or any contract or agreement made in violation of the third section of this chapter, in bar of any suit or action against them to recover the possession or title to the land so held.

Parties may be sworn.

§ 5. The parties in possession, or their representatives or assigns, or the person under whom the occupant claims or holds the land, or his representatives, may, the better to avail themselves of the provisions of this chapter, swear the parties, whether plaintiffs or not, to every such contract, and compel them to give evidence upon the trial, or may compel a discovery on oath by bill in chancery. The person so compelled to give evidence, or to make discovery under this section, shall not be subjected by such discovery to any penal or criminal prosecution, for the offense of champerty and maintenance, nor shall such evidence or discovery be used in any such prosecution.

Persons in possession may purchase adverse title

§ 6. Persons in possession may purchase in the adverse outstanding title or claim, and such purchase shall be good and inure to the benefit of the person making the same, or to the person under whom he claims and holds the lands so possessed.

To whom forfeitures do not apply.

§ 7. None of the forfeitures declared by this chapter shall apply to cases of controversy between lessor and lessee, mortgagor and mortgagee, vendor and vendee, trustee and *cestui que trust*.

§ 8. Neither party to any contract made in violation of the provisions of this chapter, shall have any right of action or suit thereon.

CHAPTER XIII.

CHANGE OF VENUE.

In penal cases.
In civil cases.

When granted in penal and criminal cases.

A. 1850, 52.

§ 1. When a criminal or penal prosecution is pending in any court, the judge thereof may, upon the application of the defendant, order the trial to be had in some other adjoining county, to which there is no valid objection, if it appears that the defendant cannot have a fair and impartial trial in the county where the proceeding is pending.

How application made.

1. Such application must be made by petition in writing, verified by the affidavit of the defendant, and two other credible persons not of kin to, nor of counsel for the defendant; and the attorney for the commonwealth, or, in his absence from the county, the attorney for the county, must have reasonable notice thereof in writing.

When made.

2. The application must be made and determined during the sitting of the court, unless the making it before the meeting of the court will expedite the trial in the county to which it is to be removed, in which case the application and order may be made in vacation.

When applicant in close custody.

§ 2. If the applicant is in close custody, the order for the change of venue shall be accompanied by an order for his removal by the sheriff or jailer, with such sufficient guard as the judge may direct, and his delivery to the jailer of the county where the trial is to be had.

When under recognizance, &c.

§ 3. If the applicant is under recognizance for his appearance, or if he is admitted to bail, he shall, before the order is granted, give sufficient bail for his appearance at the proper court, or be surrendered into custody.

Witnesses recognized.

§ 4. The court or judge may also take recognizances from the witnesses for their appearance at the proper court, and make such orders as may be deemed necessary to a fair, full, and speedy trial upon the merits.

Clerk to transmit papers.

§ 5. When the prosecution is so removed, the clerk of the court shall immediately transmit the original papers, together with a transcript of the record pertaining thereto, to the clerk of the court to which the removal is ordered, after making out and retaining a copy of such original papers. The transfer shall be made by the clerk, his deputy, or some discreet person, for whom the clerk shall be responsible. The applicant shall pay the clerk for making

Mileage paid by applicant.

such copy, and also five cents a mile for necessary travel, going and returning, in the making such transfer, for which he may issue his fee bill as in other cases.

One of several defendants.

§ 6. If one or some only of several defendants charged in the same indictment apply for or be allowed the change of venue, the original indictment shall be retained, and a certified copy sent, which shall serve in lieu of the original.

Jurisdiction of the court to which removed.

§ .7 The court to which the removal is so made shall have the same jurisdiction to dispose of the case as was held by that from which it was removed; and if the indictment be quashed, or a *nolle prosequi* entered, a new indictment may be found from time to time by a grand jury of the county to which the removal is made, and the same prosecuted until the case is finally disposed of as though the offense had been committed in that county.

Only one change allowed.

§ 8. Not more than one change of venue shall be allowed to any person in the same case.

Slave.

§ 9. A slave charged with felony may obtain the change of venue herein allowed, upon the application of his master, or upon the application of any one who will become responsible for the costs of removal.

Exception to judge; proceedings thereon.

§ 10. If a defendant to any criminal or penal prosecution makes and files with the clerk an affidavit stating that he verily believes the judge of the court where the same is pending will not afford him a fair or impartial trial, or will not fairly and impartially decide his application for a change of venue, the substitute for the judge theretofore elected by the members of the bar, shall preside in lieu of the judge at his trial, or on the hearing of his application for a change of venue; or if there be no such substitute, one shall be elected for that purpose; if he make and file an affidavit taking the same exception to the substitute, the clerk shall select three discreet, impartial housekeepers, who shall be sworn truly to try the question of such substitute's impartiality. If they, or a majority of them, decide that he is not impartial, the clerk shall immediately cause another substitute to be elected by the members of the bar for the trial of that case. The person so elected shall preside, and the defendant shall be allowed no exception against him. If the general or special substitute for a judge resign or refuse to act before the final disposition of any such criminal case, another shall be immediately elected in his place.

Change of venue in civil suits.

§ 11. If a party to any civil cause triable by a jury, in a circuit or chancery court, verily believes that he cannot have a fair trial in the county where it is pending, owing to the undue influence therein of his adversary, or to the odium which attends himself or his cause of action or defense, he may, by petition in writing, verified by his affidavit, obtain an order from the judge of the court in which it is pending, for the removal of the cause to the circuit court of some adjacent county.

Notice of application.

1. The adverse party or his attorney must have reasonable notice, in writing, of the time and place of making the application.

Order for removal

2. If made out of court, the order for removal and petition must be lodged with the clerk within five days.

To what county.

3. The removal shall be to that county in the circuit, or to an adjoining county in another circuit, which will best suit the convenience of the parties and their witnesses, in the opinion of the judge making the order, to which there is no valid objection.

May be upon conditions.

4. The order may be made subject to such equitable terms and conditions as safety to the rights of the parties may seem to require, and the judge in his discretion may prescribe.

Void unless expense paid.

5. The order shall be void unless the party obtaining it does, within ten days, pay to the clerk a sum sufficient to cover the expense of travel in making the removal.

Duty of clerk.

§ 12. Immediately on the making or receipt of the order, the clerk shall make out a transcript of the record pertaining to the cause, which, with the original papers therein, he shall, as soon as practicable, carry or send by some discreet person to the clerk of the court to which the cause is removed, the former being responsible for the conduct of the person so employed.

When to be tried.

§ 13. If the papers are transferred ten days before the first day of the next term of the court to which the cause is removed, it shall stand for trial at that term; otherwise, not until the term next succeeding.

Removal by consent.

§ 14. The parties to any suit may, by consent, have an order, in or out of court, for its removal to any other court.

Power of court to which removed

§ 15. The court to which a cause is removed shall have the same power as to its trial and final disposition as that from which it came, and no exception to the original jurisdiction of the latter shall be allowed in favor of the party obtaining the removal.

§ 16. There shall not be more then one order of removal of the same cause, at the instance of the same party. Only one removal allowed.

§ 17. The clerk shall be allowed five cents a mile, going and returning, for traveling expenses in making the removal. Clerk's mileage.

§ 18. The party upon whom notice has been served of an intended application for an order of removal, shall be allowed three cents a mile for traveling expenses, going and returning, if he attend and the applicant does not, or if the latter fails in his application; the payment of which may be coerced by execution or attachment from the court. Party's mileage.

§ 19. At the appearance term of a civil suit, if a party desires a change of venue, he shall state the facts and reasons therefor on oath, which shall be good cause for a continuance, if deemed sufficient by the court. Application at appearance term.

An act regulating changes of venue from County Courts—approved November 19, 1851.

§ 1. That from and after the passage of this act, changes of venue of any and all causes and motions pending in any county court within this commonwealth, or in the court held by the presiding judge of any county at his quarterly or monthly terms, shall and may be granted in the same manner, under the same limitations and restrictions, and for the same causes as are prescribed by "an act to amend the several acts authorizing changes of venue in civil cases," approved February 3d, 1815, and the act amendatory thereof, approved February 6, 1819. The changes of venue authorized by this act shall be made to the circuit court of the county in which the cause or motion may be pending, unless there be a legal ground of objection to the judge of the circuit court, or to the trial of the cause or motion in that county, in which case the change of venue shall be awarded to the circuit court of the nearest county to which the objection does not apply; and the mode of trial and rules of procedure shall be the same prescribed for the trial of such causes or motions in the court from whence the same may be removed, so far as the same are applicable. County courts & presiding judges are authorized to grant changes of venue.

A. 1851, 2.

Change of venue to be made to circuit court on certain conditions.

§ 2. When any change of venue shall be so ordered, the judge or clerk of the county court, as the case may be, shall send the original papers, together with a transcript of all orders which have been made in the cause or motion, to the clerk of the court to which the change of venue When change made, original papers, &c., to be sent also.

is awarded; and upon disposing of the matter, the court, according to the nature of the case, shall direct whether the original papers shall remain, or whether they shall be remanded to the court from whence they came. When they are remanded, the clerk of the circuit court shall retain a special statement of the taxation of costs, and return the original papers, with copies of all orders made in the premises by the circuit court, in the court from whence they came; and when any paper is so returned, which, according to the order or judgment of the circuit court, ought to be recorded in the county court office, it shall be so recorded by the county court clerk, together with so much of the order of the circuit court as shall be necessary to place the same properly on record.

Discretionary with court to retain papers.

CHAPTER XIV.

CHARITABLE USES AND RELIGIOUS SOCIETIES.

The mode and objects for which Charitable Uses may be created. Uses to Religious Societies.

§ 1. All grants, conveyances, devises, gifts, appointments, and assignments, heretofore made, or which shall be hereafter made, in due form of law, of any lands, tenements, rents, annuities, profits, hereditaments, goods, chattels, money, stocks, or choses in action, for the relief or benefit of aged or impotent and poor people, sick and maimed soldiers and mariners, schools of learning, seminaries, colleges, universities, navigation, bridges, ports, havens, causeways, public highways, churches, houses of correction, hospitals, asylums, idiots, lunatics, deaf and dumb persons, the blind, or in aid of young tradesmen, orphans, or for the redemption of prisoners or captives, setting out of soldiers, or for any other charitable or humane purpose, shall be valid, except as hereinafter restricted.

What grants, &c. for charitable uses &c., valid.

M. & B. 306.

§ 2. No charity shall be defeated for the want of a trustee or other person in whom the title may vest; but courts of equity may uphold the same by appointing trustees if there be none, or by taking control of the fund or property, and directing its management, and settling who is the beneficiary thereof.

Not defeated for want of trustee.

§ 3. No church or society of christians shall be capable of taking or holding the title, legal or equitable, to exceeding fifty acres of ground; but may acquire and hold that

Churches, &c., limited to 50 acres M & B. 1347.

quantity for the purpose of erecting thereon houses of public worship, public instruction, a parsonage, a grave yard, and a horse pound.

Trustees to be appointed.

1. The society may, before or after the creation of the charity, appoint not exceeding three trustees, who, and their successors, shall be vested with the title, legal or equitable, to such property, for the use of such society.

Record of appointment. L. 490.

2. The society shall enter such appointment on its record book, a majority concurring therein, and may fill vacancies in like manner.

May prosecute and defend suits.

3. The trustees, or a majority of them, may, in their own names, for the use of the society, institute and prosecute suits to recover any property, real or personal, to which the society has right, and may defend any suit that shall be instituted against the trustees, or society, for or touching its temporalities.

Schisms.

4. In case a schism or division shall take place in a society, the trustees shall permit each party to use the church and appurtenances for divine worship a part of the time, proportioned to the members of each party.

Excommunication.

5. The excommunication of one party by the other, shall not impair such right, except it be done, *bona fide*, on the grounds of immorality.

Dissolution.

§ 4. If any society holding lands shall dissolve, the title to such land and appurtenances shall vest in the trustees of the county seminary in which the land may lie, for the use of such seminary; and if there be no such seminary, then in the county court, for the benefit of common schools in the county. The provisions of this section shall not apply to the society called Shakers, who shall have the same right to acquire and hold real estate, as they have had prior to the passage of this act. (*a*)

M. & B. 1349.

Shakers excepted.

(*a*) The last clause was an amendment by the legislature, made under the apprehension that the society of Shaking Quakers might be embraced by the language of the section. Such was not the opinion or intention of the commissioners.

CHAPTER XV.

CITIZENS, EXPATRIATION, ALIENS.

ART. 1. Who are Citizens.
ART. 2. Expatriation, how effected.
ART. 3. Aliens, certain rights of.

ARTICLE I.

Who are Citizens.

Who are citizens.

V. R. 61.

§ 1. All free white persons born in this state, or in any other state of this union, who may be or become residents of this state, all free white persons naturalized under the laws of the United States, who may be or become residents of this state, all persons who have obtained a right to citizenship, under former laws, and every child, wherever born, whose father or mother was or shall be a citizen of this state at the birth of such child, shall be deemed a citizen of this state.

ARTICLE II.

Expatriation, how effected.

Mode by which a citizen may be expatriated.

M. & B. 667.
V. R. 62.

§ 1. Whensoever any citizen of this state, by deed in writing in the presence of and subscribed by two witnesses, and acknowledged or proved in the county court of the county in which he resides, or by open declaration made in such court and entered of record, shall declare that he relinquishes the character of a citizen of this state, and shall depart out of the same, with the intention, in good faith, to remain absent therefrom, such person shall, from the time of his departure, be considered as having exercised his right of expatriation, so far as regards this state, and shall not thenceforth be deemed a citizen thereof.

Residence in another state.

V. R. 63.

§ 2. When any citizen of this state shall reside elsewhere, and in good faith become a citizen of some other state of this union, or the citizen or subject of a foreign state or sovereign, he shall not, while the citizen of another state, or the citizen or subject of a foreign state or sovereign, be deemed a citizen of this state.

If war exists, all attempts to expatriate void.

V. R. 63.

§ 3. No such act of becoming the citizen or subject of a foreign state or sovereign, and no act under the section but one next preceding, shall have any effect, if done while this state or the United States shall be at war with a foreign power.

ARTICLE III.

Aliens, certain rights of.

An alien friend may, after 2 years residence, hold & pass real estate by descent, &c.

M. & B. 112.

§ 1. An alien, not being an enemy, who shall have actually resided in this state two years, shall, during his residence after that period, be enabled to receive, inherit, hold, and pass by descent, devise, or otherwise, any interest in real or personal property, in the same manner as if he were a citizen of this state.

Estate purchased and sold by an alien who afterwards becomes a citizen, not liable to be escheated.

V. R. 498.

§ 2. Any alien, being a free white person, who shall have purchased, or contracted to purchase, any real estate, or who shall hold or have title thereto; and who shall become a citizen of the United states before the same is escheated by a proper procedure, and any such person, who shall hold or have title to any such estate, who shall sell, lease, or devise the same, or die seized or possessed thereof, before any proceeding shall be instituted for the purpose of escheating the same, such person in the first case, and in the second the purchaser, lessee, heir, or devisee, from him, if a citizen of the United States, shall take and hold the same, free and released from any right or claim of the commonwealth, by reason of such person's having been an alien.

The wife, though an alien, of a citizen of the U States, & the issue of citizens of, though born out of the U. States, may inherit, &c.

V. R. 499.

§ 3. Any woman whose husband is or shall be a citizen of the United States, and any person whose father or mother, at the time of his birth, was or shall be a citizen thereof, although born out of the United States, may take and hold real or personal estate, by devise, purchase, descent or distribution.

Aliens, resident and non-resident, may hold certain estates.

7 & 8 Vic. 302.
V. R. 499.

§ 4. An alien, the subject or citizen of a friendly state, may take and hold any personal property, except chattels real, and any such alien, if he reside within this state, may take and hold any lands for the purposes of residence, or of occupation by him or his servants, or for the purpose of any business, trade, or manufacture, for a term not exceeding twenty-one years.

An alien, so taking and holding, shall have like rights, remedies, and exemptions, touching such property, as if he were a citizen of the United States.

CHAPTER XVI.

CLAIMS UPON THE TREASURY.

ART. 1. The mode of authenticating claims, by the Governor and other state officers, payable at the Treasury.
ART. 2. Claims allowed or approved by court.
ART. 3. Claims of Sheriffs.
ART. 4. Claims of Constables, Coroners, Elisors, and Jailers.
ART. 5. Claims for expenditures in Criminal Prosecutions, and of the Sergeant of the State.
ART. 6. Claims Miscellaneous.

ARTICLE I.

The mode of authenticating claims, by the Governor and other State officers, payable at the Treasury.

How paid.

§ 1. The claims and demands upon the treasury specified in this chapter shall be paid when due, by the treasurer, to the persons entitled to the same; the warrant to be issued by the auditor of public accounts, upon such proof, by vouchers, of the service rendered, or of the justice of the demand, as is herein required.

How mileage computed.

§ 2. When allowance is made for mileage or traveling, the number of miles shall be computed upon that road which is the nearest, and most usually traveled by land.

Expenses of the general assembly.

M. & B. 362.

§ 3. The pay and mileage of the speakers and members of both houses of the general assembly, the compensation to the officers of the two houses, except the chief clerks thereof, upon the certificate of the respective clerks of the amount due; the compensation of the chief clerks upon the order of each house, stating the amount due; all other contingent expenses of the general assembly, upon the production of the vouchers, countersigned by the clerks of the respective houses.

Pay and mileage of presidential electors.

M. & B. 378.

§ 4. To each elector of president and vice president of the United States, three dollars per day for each day he attends at the seat of government as an elector, and three dollars for every twenty-five miles necessarily traveled in going to and returning from the place of meeting.

Rewards.

M. & B. 359.

§ 5. The reward offered by the governor of this state, not exceeding five hundred dollars, for the apprehending and the delivery into the custody of the proper officer named in the proclamation, a fugitive from the justice of this commonwealth, upon the production of the officer's

receipt of the fugitive, approved and certified by the circuit court of the county of his residence.

Express. M. & B. 260.

§ 6. Such allowances, not exceeding six and a fourth cents per mile of necessary travel, as the governor shall certify to be due to any person employed by him as an express, to carry his dispatches to any place in or out of this state.

Notices, &c., by auditor. M. & B. 360.

§ 7. Such sums of money as the governor shall certify to be necessary, and required by the auditor to enable him to give notices and perform other necessary acts and duties to enforce from the sheriffs or other persons in default, the collection of the money due to the commonwealth.

Fuel, stationery, &c. M. & B. 253, 261.

§ 8. The costs of fuel, blank books, stationery, and presses and implements necessary for the use of the public offices of the secretary of state, auditor of public accounts, treasurer, register, state librarian, and board of internal improvement, upon the certificate and approval of the governor, accompanied by the vouchers for the same.

Transportation of books, &c.

§ 9. The costs of transportation and other expenses of books, papers, and other articles transmitted on public account to the executive of this state, from the authorities of the United States, or of any state, or from the government of any foreign state.

Binding.

1. The amount paid or agreed to be paid for the binding of books in the office of secretary of state, and other executive officers at the seat of government.

Postage.

2. The amount of legal postage charged upon the public and official correspondence of the commonwealth.

Repair of public buildings, &c.

3. The costs of all repairs made from time to time by the keeper of the state house, by the directions and advice of the governor, and upon the public buildings and inclosures on the state house square at the seat of government. The amount due for any of the objects aforesaid to be certified and approved by the governor, accompanied by the vouchers.

Salaries

§ 10. The salaries and compensations to public officers or agents, when fixed or prescribed by law, shall be paid on the warrant of the auditor, except the salary of the auditor; that shall be paid upon the warrant of the auditor, when approved by the governor.

ARTICLE II.

Claims allowed or approved by Court.

Claims allowed by court to be certified to auditor by clerk.

§ 1. That within twenty days after the termination of each session of the court of appeals, circuit court, chan-

M. & B. 378-9.

cery court, and county court, their respective clerks shall make out and certify an alphabetical list of all claims payable out of the public treasury, which have been allowed by the court, and transmit the same, by mail or otherwise, to the auditor of public accounts. No warrant for a claim requiring the approval of a court, shall be issued until such list shall have been received by the auditor. The auditor shall keep separate and complete records of all claims allowed in each county, noting the number and amount of each warrant issued therefor.

Auditor's duty in paying & keeping account of.

1. To the clerk of each court named in the first section of this article, such reasonable sums as he may have paid, or contracted to pay for necessary well bound blank books, for the use of his office, and for the necessary presses and cases for the like use, each item to be separately stated.

Blank books for clerks.

2. And, also, a sum not exceeding ten dollars for an official seal, when necessary to obtain one for the use of his office.

Seal of office. M. & B. 365-6.

ARTICLE III.

Claims of Sheriffs.

§ 1. For the execution of the sentence of a court inflicting capital punishment, six dollars.

For sheriffs' duties

1. For summoning and attending a jury in a case of felony, one dollar and fifty cents.

2. For apprehending a person on a charge of felony, or a fugitive from justice, two dollars.

3. For executing process for contempt of court in a criminal case, when the court excuses the contempt, sixty-two and a half cents.

M. & B. 372.

§ 2. When the sheriff or other person has performed the duties of jailer, the same fees and allowances shall be paid to him that are prescribed for jailers.

For jailers' duties. M. & B. 370.

ARTICLE IV.

Claims of Constables, Coroners, Elisors, and Jailers.

§ 1. To a constable, for apprehending a person on a charge of felony, or a fugitive from justice, two dollars.

Constables.

1. Executing a summons upon a witness in behalf of the commonwealth, in a case of felony, ten cents.

M. & B. 361.

2. For conveying a prisoner under a charge of felony to the jail of the county in which he was apprehended, four cents per mile for each mile traveled in going to and returning.

M. & B. 367.

Coroners.

§ 2. To a coroner or an elisor when they have been required to perform the services of sheriff, the same amount for the services performed as if performed by a sheriff. M. & B. 367.

Jailers. M. & B. 268-9.

§ 3. To jailers, for imprisoning and releasing a prisoner charged with felony or contempt, forty cents.

1. Keeping and providing for a prisoner, under like charge, per day, thirty-five cents.

2. Putting a prisoner in irons, besides the costs of the irons, twenty-five cents.

3. For each day he attends the circuit court when in session, one dollar.

4. The amount allowed by the circuit court for fuel and candles furnished for the court during the term.

ARTICLE V.

Claims for expenditures in Criminal Prosecutions, and of the Sergeant of the State.

Sergeant and tipstaff.

§ 1. To the sergeant of the state, for each day he attends the sessions of the court of appeals, two dollars.

To his tipstaff, appointed by him, for the like services, two dollars.

Sergeant to keep account.

§ 2. The sergeant of the state shall keep an account of all fees for services rendered by him for the commonwealth, in judicial proceedings, which he shall verify by his oath, and exhibit the same to the court in relation to whose business the services were rendered; which, if approved by the court, shall be paid out of the public treasury.

Claims to be paid only when allowed by court.

§ 3. The claims designated in the second, third, fourth, and fifth articles of this chapter, are to be paid only when the same shall be approved, allowed, and certified by the court in relation to whose business the services were rendered, or for whose use and benefit the articles were procured.

ARTICLE VI.

Claims Miscellaneous.

Wolves and wild cats.

§ 1. The reward allowed by law for killing wolves and wild cats.

Depositions and costs.

§ 2. The amount, not exceeding two dollars per day, allowed and certified by the court to an attorney of the commonwealth for a county, for taking depositions when required by the auditor, in a case in which the commonwealth is a party interested; also, the legal costs of said suit, when certified by the court in which it may be pending, or in which it has been decided.

Postage.

M. & B. 376-7.

§ 3. Postage may be paid, under the provisions of the first article in this chapter, upon communications by mail, to or from the auditor, upon public business connected with his official duties. Upon official communications to or from the adjutant general, from a major or brigadier general, or packages inclosing militia commissions.

1. Upon letters or packages sent to or from the quartermaster general, upon the business and duties of his office.

2. Letters and packages to or from the secretary of state or the governor, upon public business.

3. Letters and packages to and from the superintendent of common schools or president of the board of internal improvement, upon official business.

Officers to keep account of postage

M. & B. 380.

4. Each of the aforesaid officers shall keep an accurate account of the postage paid or due upon the official business of their respective offices, and verify the same by their affidavit, which shall authorize the governor to issue his requisition to the auditor for his warrant upon the treasury.

Rent of offices.

§ 4. The adjutant and quartermaster general, when there are no offices furnished by the government, may each rent offices, and be paid, upon the certificate of the governor, an amount not exceeding fifty dollars each.

Judge advocate and provost of court martial.

M. & B. 364.
5 Lit. 434, 441.
A. 1821.

§ 5. The judge advocate of any general or brigade division court martial, convened for the trial of militia officers for neglect of duty, disobedience of orders, or ungentlemanly conduct, shall be paid two dollars per day for each day he attends upon the session of said court. The provost of such court, for the like services, shall be paid one dollar: and to each witness summoned on the part of the prosecution, his tolls and mileage as witnesses in other cases, and fifty cents for each day's attendance. The above claims to be allowed by the court, and certified by its president, before paid at the treasury.

Brigade inspector.

M. & B. 365.

§ 6. A brigade inspector shall be paid one dollar and fifty cents for each day he attends upon a regimental muster. His account for services shall, at the end of the year, be produced to the governor, accompanied by the certificate of the general of brigade that the services were well performed; and, if approved by the governor, shall be the authority to the auditor to issue a warrant for the amount.

Slaves executed.

M. & B. 361.

§ 7. The owner of a slave executed or condemned for felony, as prescribed in the chapter on Slaves, &c., shall be paid such sum as shall be certified by the court, and up-

on the evidence being produced to the auditor as is required by law.

§ 8. To the committee of an idiot, by order of a circuit court, for his maintenance and support for a year, a sum not exceeding fifty dollars. Support of idiots. M. & B. 376-7.

§ 9. To the trustees of the institutions of Kentucky for the teaching of the deaf and dumb, or the blind, upon the certificate of the governor, a sum not exceeding one hundred and fifty dollars for each indigent pupil maintained and taught in said institutions per year. No such pupil shall be maintained or paid for out of the public treasury for a longer term than three years, nor shall the whole sum so expended exceed, in any one year, two thousand five hundred dollars. Institutions for deaf and dumb, & blind. M. & B. 377.

CHAPTER XVII.

CLERKS.

ART. 1. Oath, bond, and duties as to records, papers, &c.
ART. 2. Clerk of the Court of Appeals, duties of.
ART. 3. Clerks of inferior courts, duties of.

ARTICLE 1.

Oath, bond, and duties as to records, papers, &c.

§ 1. Every clerk of a court and deputy, in addition to the oaths prescribed by the constitution, shall, in the presence of the court, before entering on the duties of his office, take the following oath: Oath. M. & B. 384.

I, A. B., do swear, that I will well and truly exercise the office of ————, according to the best of my skill and judgment, making due entries and records of all orders, judgments, decrees, opinions, and proceedings of the court, and carefully filing and preserving, in my office, all books and papers which shall be delivered me in charge, or otherwise come to my hands or possession by virtue of my said office, and that I will not, wittingly or willingly, commit any malfeasance of office, and will faithfully execute the duties of said office, without favor, affection, or partiality. So help me God.

The fact that such oath has been administered shall be entered on the record of the court. Record thereof.

§ 2. Every clerk, before he enters on the duties of his office, shall execute an obligation to the commonwealth, Bond. M. & B. 382, 391.

with good security, approved by the court, in substance as follows:

We, A. B., clerk of ——————————, and C. D. and E. F., his sureties, do hereby covenant and agree with the commonwealth of Kentucky that the said A. B. will faithfully discharge all and every duty of said office, and pay over in due time to the proper person any money received by him as clerk. Given under our hands this —— day of ——————.

Record thereof.

1. The bond shall be entered on the records of the court.

Copy to auditor.

2. A copy shall be transmitted by each clerk, within one month, to the auditor of public accounts, to be by him recorded and preserved.

Bonds renewed.

3. Clerks shall renew their bonds every two years, or oftener if required by the court.

Suits.

4. Any person aggrieved may, as relator, institute suit on such bond.

When satisfied.

5. It shall not be satisfied until every person aggrieved has been recompensed.

Records, &c., delivered to successor.

§ 3. Upon the resignation, removal from office, or the expiration of the term of office of a clerk, he shall, immediately upon application, deliver to his successor or such other person as the court may order, all books, records, and other papers belonging to his office.

M. & B. 385.

Penalty for failure

Any clerk who shall fail herein shall forfeit and pay one thousand dollars, and be imprisoned from one to twelve months.

Executions.

§ 4. He shall keep a book in his office in which he shall enter the names of the plaintiffs and defendants, the amount and from what period the same bears interest, the date and return day and to whom delivered, and when returned, of every execution which may issue from his office.

M. & B. 385.

Report to auditor.

§ 5. He shall, immediately after the fall term of his court every year, report to the auditor of public accounts a full statement of the whole number of suits brought in his court the preceding year, verified by oath, designating therein whether the same was in chancery, common law, a criminal prosecution, or for a misdemeanor; the accuracy of which statement the judge of the court shall ascertain and certify.

A. 1844-5, 20.

ARTICLE II.

Clerk of the Court of Appeals, duties of.

§ 1. It shall be the duty of the clerk of the court of appeals — Duty of clerk.

1. To preserve the transcripts of records certified to his court, with the bonds and all papers pertaining thereto. — Transcript. M. & B. 392.

2. He shall make out his docket without regard to the order in which the causes were brought into the court, but so that each cause may stand for trial at the proper term, as if it had been docketed in regular rotation. — Docket. A. 1843-4, 76.

3. The proceeding of each day's sitting shall be drawn up by the clerk, but the mandate of decisions shall alone be entered of record. — Proceedings, mandate.

4. The clerk, at the next sitting of the court, shall make such corrections as ordered by the court, whereupon the presiding judge shall sign the same. — Signed by presiding judge.

5. In cases affirmed, a copy of the mandate alone shall be certified to the inferior court. — Cases affirmed.

6. In cases reversed, a copy of the whole opinion and mandate shall be certified. — Cases reversed.

§ 2. He shall, as often as may be necessary, transmit by mail to the clerks of inferior courts instructions in what manner to make out and certify complete transcripts of records. — Instructions to clerks. M. & B. 401.

1. Such instructions must be first submitted to and approved by a majority of the judges of the court of appeals, and shall be obeyed by clerks of inferior courts. — Submitted to judges.

2. He shall keep his office at the seat of government. — Office.

3. At the termination of every cause he shall, on some paper attached to or filed in the record, tax the costs of each party. — Taxing costs.

ARTICLE III.

Clerks of inferior Courts.

§ 1. The clerk of every inferior court shall keep a docket of all causes pending in his court. — Docket.

1. Each civil cause shall be docketed in the succession in which it is brought. — Civil causes.

2. Chancery and other civil causes shall be docketed separately. — Chancery causes.

3. As many common law, penal, or criminal cases only as can probably be tried shall be set for any one day. — Set for trial.

4. Criminal and penal prosecutions are to be placed first on the docket in the succession in which they are filed in his office. — Criminal and penal prosecutions.

§ 2. The proceedings of each day shall be drawn up by the clerk from his minutes in a plain, legible manner, which, after being corrected as ordered by the court, shall be signed by the presiding judge.

Proceedings signed.

M. & B. 382.

1. The clerk of no inferior court shall permit the records or papers of his office to be removed or taken out of the county in which his office is kept, except in case of invasion or insurrection, and then he shall return them as soon as the danger ceases, and except in obedience to a summons, or order of a court.

Records, &c., not to be taken from the county.

M & B. 385.

2. Any clerk offending herein shall be fined five hundred dollars.

Penalty.

3. He shall keep his office within two hundred yards of the court house, and for every twenty-four hours he fails to do so he shall be fined ten dollars.

Office.

§ 3. He shall, in all suits, actions, or motions now pending, or which may be hereafter instituted, promptly and regularly indorse on an inner invelope, to be filed with the papers of the cause, the day of filing the procedure, with the names of each plaintiff and defendant, the list of every subpœna and other process issued, the return day thereof, the parties named therein, the return of such process, and the persons on whom the same is served, and the date and substance of each order made and step taken in the cause.

To indorse time of filing of procedure, and steps in the suit.

L. 126.

1. He shall receive no compensation for the services named in this section.

No compensation therefor.

A. 1844-5, 20.

2. All his fees shall be void in each cause in which he fails to render the above required services at the proper time, and in a proper manner.

Fees void for failure.

3. He may administer oaths in or out of court touching any matter pertaining to his office or pending in court.

Oaths.

4. He must keep his office open, free, and accessible, at all times, except the Sabbath day, to every person having a right or claim to business therein, under the penalty of five dollars far each failure.

Office to be kept open, &c.

M. & B. 404.

§ 4. He shall certify and affix the seal of his office to soldiers' claims on the government for services rendered, or to any power of attorney or other writing concerning the same, without any fee or charge therefor.

Soldiers' claims.

M. & B. 406.

§ 5. He shall keep a book in which he shall enter the names of each witness who attends the trial of any case in court upon legal summons, the number of days he attends, the number of ferries he necessarily has to cross, and of toll gates he has to pass through, with the distance

Witnesses.

M. & B. 383.

he has to travel, if he resides out of the county, or more than twenty-five miles from the court house, and on whose behalf he was summoned.

Furnish copy of claim.

1. He shall, on request, deliver to each witness a copy of such claim, stating the amount he is entitled to.

Taxing costs.

M. & B. 306.

2. He shall, at the termination of every suit, tax on some paper filed with the record thereof, in words at length, the costs of each party, which shall be subject to the supervision and correction of the court.

CHAPTER XVIII.

COMMISSIONERS OF FOREIGN DEEDS.

Governor may appoint.

A. 1843, 13.
A. 1849, 6.

§ 1. The governor of the commonwealth may appoint and commission one or more commissioners of deeds in each state, district, or territory of the United States.

Term of office.

1. The commissioners so appointed shall remain in office for the term of four years, and the commissions of those now in office shall expire on the first day of January, 1854.

Vacancies.

2. The governor may, from time to time, fill vacancies in the office.

Affidavit.

3. Each commissioner, before he enters on the duties of his office, shall make and subscribe an affidavit, before an officer authorized to administer an oath, well and truly to execute and perform all the duties of his station.

4. Which affidavit must be transmitted to and filed in the office of the secretary of state for this commonwealth.

Commissioners' authority.

§ 2. Any commissioner appointed and qualified as above directed, shall have the authority to take the acknowledgment or proof of any instrument of writing, (except wills,) which, by the laws of this state, is required to be recorded.

1. He shall also have the power to examine and take the acknowledgment of married women to any such instrument.

Instruments admitted to record.

2. The examination, acknowledgment, or proof of any such instrument taken by a commissioner and certified under his official seal, in the manner required by the laws of this state, shall authorize the same to be admitted to record in the proper office.

Oaths.

3. A commissioner of deeds may administer any oath or take any affirmation necessary to the discharge of his official duties.

Depositions.

§ 3. Commissioners appointed under this chapter may take and certify depositions to be read on the trial of any suit which may be pending in any of the courts of this commonwealth.

Commissioners heretofore appointed.

§ 4. Commissioners heretofore appointed may, during their continuance in office, act under this chapter.

CHAPTER XIX.

CONFESSION OF JUDGMENT.

Power of attorney to confess judgment, &c void

M. & B. 412.

§ 1. A power of attorney to confess judgment, or to suffer judgment to pass by default or otherwise, and every release of errors, given before an action is instituted, are declared to be null and void.

Penalty for appearing under.

1. If any attorney or other person shall appear under such power for any defendant, in any court in this state, such attorney or other person shall forfeit and pay one thousand dollars to such defendant.

Also liable to damages.

2. He shall be, moreover, liable to damages, at the suit of the party aggrieved.

CHAPTER XX.

CONSTABLES.

ART. 1. Bond and oath of office.
ART. 2. What process they may execute.
ART. 3. May collect his own fee bills, &c.
ART. 4. Remedies against, for defalcation.
ART. 5. May be ruled to give additional surety.
ART. 6. Miscellaneous provisions.

ARTICLE I.

Bond and oath of office.

Constable's bond.

M. & B. 415.

§ 1. Every person who shall be elected or appointed to the office of constable shall, before he enters on the duties of his office, give an obligation, payable to the commonwealth of Kentucky, with good surety, in the county court of his county, in substance as follows:

We, A. B., constable, and C. D. and E. F., his sureties, do hereby covenant with the commonwealth of Kentucky, that the said A. B., as constable of ——— county, shall well and truly collect all officers' fees and dues put into his hands to collect, and account for and pay the same in such time and manner as is directed by law: and shall well and truly execute and due return make of all process and precepts to him directed, and to him delivered, and of all notices and orders of justices or other tribunals, given to him to execute, and will pay and satisfy all sums of money by him received upon any such process or precept, or any note, account, fee bill, or other claim placed in his hands for collection, to the person entitled thereto, or to his order; and in all other things shall faithfully and truly execute and perform the said office of constable during his continuance therein. Given under our hands — day of —.

Sureties.

§ 2. The sureties shall be approved by the court.

Oath. M. & B. 417.

§ 3. He shall, also, previous to entering on the duties of his office, besides the oaths prescribed by the constitution, take an oath before the county court in substance—

1. That he will do right as well to poor as rich, in all things belonging to his office; that he will do no wrong to any man for any gift or reward, nor for favor or hatred, and in all cases that he will truly and faithfully execute the duties of his office according to the best of his knowledge and power.

Bond and oath noted on record.

2. It shall be noted on the records of the court that such bond and surety had been given and approved by the court, and that the oaths of office had been administered.

Office to be vacated for failure to give bond, &c.

§ 4. If any constable fails to give bond and surety, and to take the oaths of office herein required for sixty days after his election or appointment, the county court shall enter up an order stating such failure, and that his office is thereby vacated.

ARTICLE II.

What process they may execute.

What process he may execute.

§ 1. Constables may execute attachments issued by a justice, warrants in civil, penal, or criminal cases, distress warrants, serve notices, and shall return on all such process the time of serving the same.

Whip slaves.

1. Shall whip slaves under orders of justices of the peace.

Summon witnesses.

2. Summons witnesses to attend arbitrations, or trials before a justice or court, or on any legal procedure.

3. May execute any original or mesne process from the county or circuit court, where the sheriff, coroner, and jailer cannot act, or cannot be procured to act in proper time.

Process from county or circuit court.

§ 2. No constable shall return any precept directed to him, that the defendant is not found—

When return defendant not found.

1. Unless he shall have been actually at the place of residence of such defendant, and has not found him, and has left a copy of the precept, if the defendant is a resident of the county.

M. & B. 417.

2. Or, unless such defendant's place of residence is unknown to such constable.

§ 3. He shall not be compelled to receive a precept, fee bill, or order for witness attendance, or other claim against any person who is known to be and to reside out of his district, except

What precepts, &c. not compelled to receive.

1. Such precept is in behalf of the commonwealth, or is a precept against property in his district.

2. But if a constable shall voluntarily receive such precept, fee bill, order for witness attendance, or other claim, he and his sureties shall be accountable for the same in like manner as if the person it is against resided or was in his district, or had property therein.

When voluntarily received.

§ 4. It shall be the duty of a constable to return every warrant or attachment and subpœna placed in his hands, on or before the return day thereof, under the penalty of five dollars, to be recovered on motion before a justice of the peace, upon proper notice.

Penalty for failing to return process.

M. & B. 417.

§ 5. Every warrant or attachment in a civil case returnable before a justice, shall be returned in the justice's district within which the defendant resides.

Where return to be made.

M. & B. 422, 424.

1. Unless there are several defendants, and then in the district of one of them.

When several defendants.

2. Or, unless the defendant resides out of the county in which process is executed.

When defendant resides out of the county.

3. Or, unless the plaintiff or defendant are of kin to both the justices in the district.

When party is of kin to justice.

4. Or, unless with the consent of the parties.

By consent.

§ 6. A constable may exercise the duties of his office in any part of the county.

May exercise office any where in county.

§ 7. He shall not act on any process in which he is personally interested, under the penalty of ten dollars for each offense.

Where personally interested.

1. He shall not levy on or sell land, or any interest therein.

Not to levy on land.

ARTICLE III.

May collect his own fee bills.

§ 1. A constable may distrain for his own fees, or may place the same in another officer's hands for collection. When he may distrain for fees.

1. He may distrain for other officers' fees placed in his hands for collection. M. & B. 420.

2. He shall account for officers' fees six months after so placed in his hands. When account therefor.

ARTICLE IV.

Remedies against, for defalcation.

§ 1. Any person injured by a breach of a constable's bond may, at his costs, prosecute an action thereon. The bond shall not be void on the first or on any other recovery, but may be put in suit and a recovery had thereon by every person who is injured by the acts or omissions of the constable. Suits on bond. M. & B. 416.

§ 2. A motion may be made or suit prosecuted against a constable and his sureties, or any one of them, or the personal representatives, heirs, and devisees of any one or more of them, jointly with the survivors, for any money collected by him on an execution or order of sale or fee bill, or on any note or account, or other claim put into his hands to collect, and which, on demand, he neglects to pay. Motion for money collected.

1. Ten days' previous notice specifying the grounds of such motion shall be given. If not executed on all, the motion may proceed against such as are notified. Notice.

2. In such cases the plaintiff shall be entitled to recover the amount collected by the officer, and interest from the time of a demand, and neglect to pay, and ten per centum damages thereon, and the costs of his motion. What recovered.

§ 3. A constable and his sureties, or any one of them, may, by like motion, be rendered liable for the amount of any execution placed in his hands for collection, and ten per centum on the amount thereof, for not returning such execution to the justice's office who issued the same, within twenty days after the return day thereof, without reasonable excuse for such failure. Motions for not returning execution. M. & B. 420.

§ 4. In actions or motions against a constable and his sureties, or any of them, for money collected by him, his receipt for the demand shall be presumptive evidence, after the expiration of one hundred and twenty days from its Receipt evidence. A. 1843-4, 88.

date, that such demand has been collected; but such presumption may be rebutted by other evidence.

Fee bills.

§ 5. A constable and his surety shall, in like manner, be liable for any fee bill or other claim placed in his hands for collection, which he does not collect, and fails, on demand, to return to the party entitled thereto, with a proper indorsement thereon, within six months from the time it is so placed in his hands for collection.

1. Also, for any injury for failing to collect the same, when by proper diligence it might have been collected.

Receipt to state amount.

2. He shall state in receipts given by him, the amount paid; for each failure to do so, he shall be fined five dollars.

Illegal charge.

3. For an illegal charge he shall forfeit his fee, and for each offense shall be fined five dollars.

ARTICLE V.

May be ruled to give additional security.

Additional sureties. M. & B. 421.

§ 1. The county court may, at any time, rule a constable to give other or additional sureties.

Counter security.

1. May, on the motion of any of his sureties, rule him to give counter security.

Notice.

2. Ten days notice, specifying the grounds, must be given to a constable, before a final order shall be made in any such case.

Office vacated.

3. If a constable shall not comply with such rule, the court may enter up an order vacating his office.

Constable removed, &c., to account.

§ 2. A constable who may vacate or be removed from office, shall return and account for all claims and papers which are officially in his hands, in the same manner as if he had continued in office.

ARTICLE VI.

Miscellaneous Provisions.

Priority.

M. & B. 717.

§ 1. Executions, fee bills, orders of witness' attendance, and attachments, shall be levied and satisfied by constables, according to the priority of time in which they are placed in their hands; and they shall, in every case, indorse the time of reception.

Constable not to buy claim, &c.

§ 2. No constable shall buy, or become interested by contract, in any claim against another put into his hands for collection; and any such purchase or contract may be relied on by a defendant in bar of a suit on such claim, or as a ground for vacating a judgment or quashing an execution thereon.

An act repealing all acts allowing the appointment of Deputy Constables—approved December 2, 1851.

That all acts and parts of acts allowing the appointment of deputy constables in this commonwealth, be and the same are hereby repealed. A. 1851, 4.

CHAPTER XXI.

CONSTRUCTION OF STATUTES.

In the construction of statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature: V. R. 100.

§ 1. The word "state," when applied to a part of the United States, shall be construed to include the several territories thereof and the district of Columbia. And the words "United States" shall be also construed to include the district and territories aforesaid. State—what it means. V. R. 100.

§ 2. The word "justice," or "justices," shall be construed as if the words "of the peace" followed. Justice or justices

§ 3. Words purporting to give authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons. Authority to three or more, gives power to a majority.

§ 4. The words "personal representatives" shall be construed to include the executor or the administrator, or a sheriff or other officer who is required by law and is ordered by court to act when no person will qualify as executor or administrator. Personal representatives. V. R. 100.

§ 5. The words "unsound mind" shall be construed to include every one who is an idiot, lunatic, *non compos*, or deranged. Unsound mind. V. R. 100.

§ 6. The word "oath" shall be construed to include an affirmation, in all cases in which an affirmation may be substituted for an oath, and in the like cases, the word "sworn" shall be construed to include the word "affirm." Oath. V. R. 100.

§ 7. The word "month" shall be construed to mean a calendar month, and the word "year" a calendar year, and the word "year" alone shall be equivalent to the expression "year of our Lord." Month and year. V. R. 100.

§ 8. When a statute requires a notice to be given, or any other act to be done a certain time before any motion or proceeding, there must be that time exclusive of the day for such motion or proceeding. But the day on which such Notice—what days computed. V. R. 101.

notice is given or such act is done, may be counted as one day and part of the time.

Sabbath not a business day.

V. R. 101.

§ 9. Where any proceeding is directed by law to take place, or any act is directed to be done, on a particular day of a month, if that day happen to be Sunday, the proceeding shall take place, or the act shall be done, on the next day.

Adjournment—Sabbath not computed.

V. R. 101.

§ 10. Where the law authorizes a court, or the proceedings of any tribunal or officer, to be adjourned from day to day, an adjournment from Saturday till Monday shall be legal.

Cattle, meaning of

V. R. 101.

§ 11. "Cattle" includes horse, mule, ass, sheep, hog, or goat, of any age or sex, bull, cow, calf, and ox; cow includes heifer.

Singular and plural number.

§ 12. A word importing the singular number only, may extend and be applied to several persons or things as well as to one person or thing, and a word importing the plural number only, may extend and be applied to one person or thing as well as to several persons or things.

Male and female.

A word importing the masculine gender only, may extend and be applied to females as well as males; and the word "person" may extend and be applied to bodies politic and corporate, societies, communities, and the public generally, as well as individuals.

Persons, bodies corporate.

V. R. 101.

Real estate.

§ 13. The words "real estate," or "land," in the statute law, shall be construed to mean lands, tenements, and hereditaments, and all rights thereto and interests therein, other than a chattel interest; and the words "personal estate" shall include chattels real and other estate as, upon the death of the owner intestate, would devolve upon his personal representative.

Personal estate.

M. R. 60.

Retrospective.

N. Y. R. 1849.

§ 14. No part of this revision is retrospective, unless expressly so declared.

Civil and criminal statutes construed liberally.

§ 15. There shall be no distinction in the construction of statutes, between criminal or civil and penal enactments. All statutes shall be construed with a view to carry out the intention of the legislature.

Revised Statutes, how construed.

N. Y. R. 1849.

§ 16. The rule of the common law, that statutes in derogation thereof are to be strictly construed, is not to apply to this revision; on the contrary, its provisions are to be liberally construed, with a view to promote its objects.

Common and approved use of language.

M. R. 60.

§ 17. All words and phrases shall be construed and understood according to the common and approved usage of language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate

meaning in the law, shall be construed and understood according to such meaning.

Grantor and grantee.

§ 18. The word "grantor" may be construed as including every person from or by whom any freehold, estate, or interest passes in or by any deed, and the word "grantee" as including every person to whom any such estate or interest passes in like manner.

M. R. 60.

Preceding and following.

§ 19. The words "preceding" and "following," when used by way of reference to any section of this code, shall be construed to mean the section next preceding or next following that in which such reference is made, unless when some other is expressly designated.

M. R. 60, 61.

Will and last will

§ 20. The word "will" shall be construed to mean codicils as well as wills, and the words "last will" as meaning last will and testament.

M. R. 61.

Issue.

§ 21. The word "issue," as applied to the descent of real estate, shall be construed to include all the lawful lineal descendants of the ancestor.

M. R. 60.

When a statute is or is not repealed.

§ 22. When a law which may have repealed another shall be repealed, the previous law shall not be revived, unless the law repealing it be passed during the same session.

V. R. 102.
M. & B. 107, 109.

A new law not to repeal former law as to offenses, &c.

§ 23. No new law shall be construed to repeal a former law, as to any offense committed against the former law, nor as to any act done, any penalty, forfeiture, or punishment incurred, or any right accrued or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture, or punishment so incurred, or any right accrued or claim arising before the new law takes effect, save only that the proceedings thereafter had shall conform, so far as practicable, to the laws in force at the time of such proceedings. If any penalty, forfeiture, or punishment be mitigated by any provision of the new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect.

V. R. 101.

A violation of a statute gives cause of action to the party injured.

§ 24. A person injured by the violation of any statute may recover from the offender such damage as he may sustain by reason of the violation, although a penalty or forfeiture for such violation be thereby imposed.

V. R. 539.

Legatee & devisee

§ 25. The words "legatee" and "devisee" shall each be held to convey the same idea, and the words "bequeath" and "devise" to mean the same thing; and the words "bequest" and "legacy" shall each be held to mean the same

Bequest, devise and legacy.

thing, and to embrace and include either real or personal estate, or both.

Writing—what a legal signing of.

§ 26. When the law requires any writing to be signed by a party thereto, it shall not be deemed to be signed unless the signature be subscribed at the end or close of such writing.

CHAPTER XXII.

CONTRACTS.

Parol Contracts.
Written Contracts, Seals, and Scrolls.
Assignments.
Joint obligations.
Obligations to dead persons.
Bills of Exchange.

No action lies upon parol representation.

M. & P. 734.
V. R. 579.
M. R. 472.

§ 1. No action shall be brought to charge any person,

First, for a representation or assurance concerning the character, conduct, credit, ability, trade, or dealings of another, made with intent that such other may obtain thereby credit, money, or goods; nor

On a promise to debt contracted during infancy.
V. R. 579.

Sccondly, upon a promise to pay a debt contracted during infancy, or a ratification of a contract or promise made during infancy; nor

By personal representative.
M. & B. 734.

Thirdly, upon a promise as personal representative to answer any debt or damage out of his own estate; nor

Debt of another.

Fourthly, upon a promise to answer for the debt, default, or misdoing of another; nor

Marriage agreement.

Fifthly, upon any agreement made in consideration of marriage, except mutual promises to marry; nor

Sale of land.

Sixthly, upon any contract for the sale of real estate, or any lease thereof for longer term than one year; nor

Seventhly, upon any agreement which is not to be performed within one year from the making thereof;

Agreement not to be performed within a year, unless in writing.

V. R. 580.
M. R. 472.

Unless the promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, be in writing, and signed at the close thereof by the party to be charged therewith, or by his authorized agent. But the consideration need not be expressed in the writing: it may be proved when necessary, or disproved by parol or other evidence.

Seal or scroll not necessary.

§ 2. A seal or scroll shall in no case be necessary to give effect to a deed or other writing, but a signature with-

out seal shall have the same efficacy for every purpose as if a seal were affixed thereto; and all writings so executed shall stand upon the same footing with sealed writings, having the same force and effect, and upon which the same actions may be founded. But this section shall not apply to an assignment by indorsement on a bond, note, or bill; nor shall it alter any law requiring the state or county seal, or the seal of a court, corporation, or notary, to any writing.

Writings without seal upon the footing of sealed instruments.

Except as to assignment of notes, bills, and bonds.

State or county seal not dispensed with.
M. & B. 749.
A. 1843, 11.

§ 3. The consideration of any writing with or without seal, may be impeached or denied by plea verified by oath.

Consideration may be impeached
M. & B. 731.

§ 4. The execution of a writing on which a suit is founded, or its assignment, shall not be denied but by plea verified by oath.

A plea claiming execution must be on oath.
M. & B. 152, 330.

§ 5. Every contract or assurance made or given in consideration, in whole or in part, of any ticket or share in a lottery, or share in a prize therein, is declared null and void.

Given for lottery tickets, void.

M. & B. 1151.

§ 6. All bonds, bills, or notes, for money or property, shall be assignable, so as to vest the right of action in the assignee; but not to impair the right to any defense, discount, or off-set that the defendant has and might have used against the original, or any intermediate assignor, before notice of the assignment to the plaintiff.

Bonds, &c., assignable.

M & B. 150.

§ 7. In an action on any assignment of a writing, it shall not be necessary to aver the consideration for the assignment.

Actions on the assignment.
M. & B. 153.

§ 8. The heir, devisee, and representative, or either of one jointly bound with another in any contract or agreement, judgment or decree, and dying in the lifetime of such other, may be charged in the same manner as if the contract or agreement had been several as well as joint, and the judgment or decree had been separate as against the decedent.

Joint obligations.

M. & B. 318.

§ 9. A written obligation to a person or persons, who, or some of whom, happen to be dead at the time of its execution, may be proceeded on by the representative of such person, or by the survivor, as if it had been executed in the lifetime of such dead person or persons.

Obligations to dead persons good

V. R. 562.

§ 10. Where any bill of exchange, drawn on any person out of the United States, shall be protested for non-payment or non-acceptance, it shall bear ten per cent. per year interest, from the day of protest, for not longer than eighteen months, unless payment be sooner demanded from the party to be charged. Such interest shall be re-

Interest on foreign bills of exchange.

M. & B. 249, 254.

covered up to the time of the judgment, and the judgment shall bear legal interest thereafter. Damages on all other bills, are disallowed.

Payable in bank notes.

L. 10P.

§ 11. Bills, drafts, or checks, payable in bank notes or currency, or other funds, wheresoever drawn or payable, shall be deemed negotiable, and treated in all respects as if drawn for money, except as to the value of the currency in which they are payable.

Protest evidence.

§ 12. The notarial protest, under the notarial seal, of the non-acceptance or non payment of a bill, shall be evidence of its dishonor; but the protest may be disproved.

All, or a part, liable may be sued

§ 13. Petition and summons or debt may be brought against all or some or any one of the parties to a bill of exchange; and a failure of proof as to one or more defendants, shall not prevent judgment against the others.

CHAPTER XXIII.

CONTRIBUTION.

Between devisees.
As to residuary legatee.
Upon birth of posthumous child.
Between, all jointly liable in civil suit.
How made, if dower is devised or lost.

Same in law and equity.

Pitman on sureties, 14d.

§ 1. The extent of recovery, in cases of contribution, shall be the same in courts of law that it is in a court of equity.

Between devisees.

M. R. 420, 525.

§ 2. When any estate, real or personal, which has or shall be devised, shall be taken from the devisee for the payment of a debt of the testator, or one of the devisees shall pay such debt to save his devise, each of the other devisees shall contribute his proportion of the debt, interest, and costs, to the person so paying the same, according to the value received by him, except as hereinafter provided.

M. R. 420.

§ 3. If the testator shall, by his will, have made any other provision for the payment of his debts, then the preceding section shall not apply or take effect, except to the extent that such provision and the testator's undevised estate shall be deficient. But the remedy of such devisee, in the first instance, shall be against the person holding the provision, and against the undevised estate.

Residuary legatee not entitled to.

§ 4. A residuary legatee, or legatee after or subject to the payment of debts, or a devisee to whom an estate has

or shall be devised to pay debts, shall not, after paying such debts, be entitled to contribution.

As to debts, general and specific devises the same.

§ 5. As respects the payment of the testator's debts, there shall be no distinction between specific and general devises, except as herein provided.

When allowance to an heir at law.

§ 6. When any real or personal estate shall be devised to any one of the heirs at law of the testator, and the title to the same, or any part thereof, shall prove invalid, such devisee shall have contribution from the others, unless it shall appear from the will that such was not the intention of the testator.

Portion of posthumous child, how made up.

M. R. 419.

§ 7. When a testator shall have a posthumous child, the share of such child shall be first taken from the estate not disposed of by the will, if any be left after paying debts and other charges, and the residue shall be made up ratably by the devisees.

M. R. 420.

§ 8. A posthumous child shall be considered a devisee under the law of contribution, and entitled to all his rights, and liable to all his responsibilities.

Insolvency, &c., what effect.

M. R. 420.

§ 9. The insolvency or non-residence of any person liable to contribution shall affect the rights of the others in like manner as the insolvency of one co-obligor affects the others.

Contribution among heirs, &c.

M. R. 449.

§ 10. Contribution shall take place between heirs and distributees, on the same principles as between co-obligors.

Joint liability.

§ 11. Contribution shall take place between all persons who may become jointly liable, by civil action, for any act or omission, in a trust or official capacity, hereafter done or omitted.

The right and obligation survive

§ 12. The same rights and responsibilities shall continue in favor of and against the representatives of a person entitled to or bound to make contribution, who dies, as if he were living when contribution is demanded; and the same principle shall apply, when more than one die.

Allowed devisee when the widow's dower is claimed.

§ 13. When a widow's dower shall be taken, or her portion shall be made up, in whole or in part, from the estate devised to a devisee, such devisee shall have contribution on the principles of this chapter, unless the will otherwise directs, or it is necessarily to be inferred therefrom that the testator intended the same to fall on such devise.

§ 14. When a widow shall lose her jointure, by a defect of title, or shall renounce the same in a legal manner, and shall have her dower or portion assigned her or made up, in whole or in part, from the estate devised to a devisee, such devisee shall have contribution on the principles of this chapter.

When estate is under lien.

§ 15. This chapter shall not be held to affect the provisions of this revision in relation to property devised which may be subject to a lien.

Interest allowed.

§ 16. In all cases of contribution, interest shall be allowed from the time that the right accrues.

CHAPTER XXIV.

CONVEYANCES.

What a valid conveyance.
Deeds transfer the possession.
What constitutes a warranty of title.
What deeds are void as to creditors, &c.
When deeds to be recorded.
Deeds of trust and mortgages.
Powers of attorney.
Deeds of married women.

No seal required. A. 1843, 11.

§ 1. No seal, or scroll, or indentation, shall be necessary to give validity or effect to a deed, except the deed of a state or a corporation, which shall have a seal as heretofore.

What interest in lands may be conveyed.

§ 2. The owner may convey any interest in lands, not in the adverse possession of another.

Writing necessary to pass an estate greater than one year.

V. R. 560. M. & B. 437.

§ 3. No estate of inheritance, or freehold, or for a term of more than one year, in lands, shall be conveyed unless by deed or will; and no gift of a slave shall be valid unless by deed or will, or unless actual possession shall have come to and remained with the donee, or some person claiming under him.

If the donor and donee reside together at the time of the gift, possession of the donee at the place of their residence shall not be a sufficient possession within the meaning of this section.

Possession transferred.

M. & B. 443.

§ 4. Conveyances by deed of bargain and sale, or deed of release, or by covenant to stand seized to use, or deed operating by way of covenant to stand seized to use, or by grant, shall be held to transfer the possession of the bargainor, releasor, covenantor, or grantor, to the bargainee, releasee, grantee, or person entitled to the use, for the estate or interest which he has or shall have in the use and intends to convey.

Deed of release.

§ 5. Every deed of release shall be as effectual for the purposes therein expressed, without the execution of a lease, as if the same had been executed.

What words constitute a warranty general & special.

§ 6. A covenant by a grantor in a deed, "that he will warrant the property hereby conveyed," or words of like import, shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, would forever warrant and defend the said property, unto the grantee, his heirs, personal representatives, and assignees, against the claims and demands of all persons whatever.

V. R. 505.

V. R. 505.

§ 7. A covenant by a grantor, "that he will warrant specially the property thereby conveyed," or words of like import, shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, would forever warrant and defend the said property, unto the grantee, his heirs, personal representatives and assignees, against the claims and demands of the grantor and all persons claiming, or to claim, by, through, or under him.

V. R. 505.

§ 8. The words "with warranty," or "with general warranty," in any deed, shall be deemed to be a covenant by the grantor, "that he will warrant the property thereby conveyed."

The words "with special warranty," in any deed, shall be deemed to be a covenant by the grantor, "that he will warrant specially the property thereby conveyed."

Deeds conveying interest in lands, and marriage agreements, unless recorded, void as to purchasers and creditors, without notice.

M. & B 422.

§ 9. No deed conveying any title to, or interest in, land for a longer time than five years, nor any agreement in consideration of marriage, shall be good against a purchaser, for a valuable consideration, not having had notice thereof, or any creditor, unless the same be acknowledged by the party who shall execute the same, or be proved and lodged for record in the proper office, as prescribed by law.

In what county deeds to be recorded.

A. 1847, 17.

§ 10. All laws authorizing any deed or mortgage to be recorded in the clerk's office of the court of appeals or general court, are hereby repealed.

All deeds and mortgages and other instruments of writing, which are required by law to be recorded, to be effectual against purchasers without notice, or any creditor, shall be recorded in the clerk's office of the court of the county in which the property conveyed, or the greater part thereof, shall be.

Deeds of trust and mortgages unless recorded, &c. not good as to creditors and purchasers, without notice.

§ 11. No deed of trust or mortgage, conveying a legal or equitable title to real or personal estate, shall be valid against a purchaser for a valuable consideration, without notice thereof, or against any creditor, until such deed shall

L. 143, 144.

be acknowledged or proved according to law, and lodged for record.

When and in what order such deeds take effect.

§ 12. All *bona fide* deeds of trust or mortgage shall take effect in the order that the same shall be legally acknowledged or proved and lodged for record.

Release of lien or mortgage on the deed book.

M. B. 468.

§ 13. Liens, by deed or mortgage, may be discharged by an entry acknowledging satisfaction of the same on the margin of the record thereof, signed by the person entitled to the same, or his personal representative, and attested by the clerk or his deputy, which, in the case of a mortgage or deed of trust, shall have the effect to reinvest the title in the mortgagor or grantor, or person entitled thereto.

This provision shall not be held to change the existing law, if no such entry be made.

Powers of attorney to convey real estate.

§ 14. Powers of attorney to convey real or personal property, may be acknowledged or proved in the manner, and lodged for record in the proper office, as prescribed for recording conveyances. If the conveyance, made under a power, is required by law to be recorded, or lodged for record, to make the same valid against creditors and purchasers, then the power must be lodged or recorded in like manner.

Within what times deeds to be lodged for record.

M. & B. 433, 435.

§ 15. Deeds made by residents of Kentucky, other than deeds of trust and mortgages, shall not be good against a purchaser for a valuable consideration not having notice thereof, or any creditor, except from the time the same shall be legally acknowledged or proved and lodged for record, unless the same be so lodged within eight months from the date thereof.

If made by persons residing out of Kentucky, and in the United States, within twelve months.

If out of the United States, within eighteen months.

Deeds executed in Kentucky may be recorded, proof, &c.

§ 16. Deeds executed in this state, by persons other than *femes covert*, may be admitted to record—

1. On the acknowledgment, before the proper clerk, by the party making the deed;

2. Or by the proof of two subscribing witnesses, or by the proof of one subscribing witness, who shall also prove the attestation of the other;

3. Or by proof by two witnesses that the subscribing witnesses are both dead, and also like proof of the signature of one of them and of the grantor;

4. Or by like proof that both of the subscribing witnesses are out of the state, or that one is so absent, and the

other is dead, and also like proof of the signature of one of the witnesses and of the grantor;

5. Or on the certificate of a clerk of a county court of this state that the same had been acknowledged or proved before him as required by this section.

Deeds executed in another state—proof on which they may be recorded.

§ 17. Deeds executed out of the state, and within the United States, by persons other than *femes covert*, may be admitted to record when the same shall be certified, under his seal of office, by the clerk of a court, mayor of a city, or secretary of state, or commissioner to take the acknowledgment of deeds, or by a judge under the seal of his court, to have been acknowledged or proved before him in the manner hereby required.

Deeds executed out of the United States—proof on which they may be recorded.

§ 18. Deeds executed out of the United States, by persons other than *femes covert*, may be admitted to record when the same shall be certified by any foreign minister or consul, or secretary of legation of the United States, or by the secretary of foreign affairs, certified under his seal of office, or the judge of a superior court of the nation where the deed shall be executed, to have been acknowledged or proved before him in the manner prescribed by law.

How certain proof certified.

§ 19. Where a deed is proved by persons other than the subscribing witnesses, the officer shall state the names and residence of such persons in his certificate.

Deeds of married women.

§ 20. Married women may convey any real or personal estate which they own, or in which they have an interest, legal or equitable, in possession, reversion, or remainder.

§ 21. The conveyance may be by the joint deed of husband and wife, or by separate instrument, but in the latter case the husband must first convey, or have theretofore conveyed. The deed as to the husband may be acknowledged or proved and recorded as provided for in the preceding sections.

How acknowledged and authenticated.

§ 22. A deed of a married woman, to be effectual, shall be acknowledged before some of the officers named in the preceding sections, and recorded in the proper office. Previous to such acknowledgment, it shall be the duty of the officer to explain to her the contents and effect of the deed, separately and apart from her husband, and thereupon, if she freely and voluntarily acknowledge the same, and is willing for it to be recorded, the officer shall certify the same as follows:

1. Where the acknowledgment shall be taken by an officer of this state, he shall simply certify that it was acknowledged before him, and when it was done, which shall

be evidence that she had been examined separately and apart from her husband, and the contents explained to her, and that she had voluntarily acknowledged the instrument, and consented that it should be recorded.

2. Where the acknowledgment shall be taken by an officer residing out of this state, the same shall be acknowledged and certified to the effect following:

Commonwealth (or Kingdom) of ——— set:

County (or Town, or City, or Department, or Parish) of ——— set:

I, A. B., (here give his title.) do certify that this instrument of writing from C. D. and wife, E. F., (or from E. F., wife of C. D.,) was this day produced to me by the parties, and the contents and effect of the instrument being explained to the said E. F. by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same, to be her act and deed, and consented that the same might be recorded.

[Seal.] Given under my hand and seal of office.

A. B.

3. If the husband join in the deed with his wife, and acknowledge it before the same officer, his acknowledgment may be certified with that of his wife, immediately succeeding the word "parties," thus, "which was acknowledged by the said C. D. to be his act and deed."

Deed not recorded in due time, good from day of record.

§ 23. Where deeds have been or may be legally executed, but not recorded or lodged for record in proper time, such deeds may be proved or acknowledged and recorded, and be as effectual from the time of so recording, as if recorded in proper time. This section shall not apply to the deed of a married woman, unless re-acknowledged by her, and recorded thereafter in proper time.

M. & B. 453.

Duty of clerk in recording deed.

§ 24. The clerk of each county court shall record all instruments of writing embraced in any section of this chapter, which shall be lodged for record properly certified, or which shall be acknowledged or proved before him as required by law. He shall also record the certificates indorsed on the same, and shall certify the time when the instrument was lodged in his office for record. If acknowledged or proved before him, he shall also certify the time of doing the same, and by whom proved, and that the instrument and the certificates thereon have been duly recorded in his office.

Duty of each succeeding clerk.

§ 25. Where the office of any county court clerk has been or may hereafter be vacated, leaving therein any instruments of writing unrecorded, which, from an official indorsement thereon, shall appear to have been acknowledged or proved ready for record, or that have been acknowledged or proved before another officer, and certified according to law, and lodged in his office for record, the successor of such clerk shall record the same, making his certificate conform to the facts.

L. 144.
A. 1846, 12.

Power of such clerk

§ 26. Where the office of any county court clerk has been or may hereafter be vacated, leaving therein any instrument of writing unrecorded, which, from an official indorsement thereon, shall appear to have been acknowledged or proved in part, the successor may receive the complete acknowledgment or proof according to law, and record the same, making his certificate conform to the facts.

L. 145.

May correct error, if any, by the original, if found in his office, and may sign name of his predecessor.

§ 27. Where the office of any county court clerk has been or may hereafter be vacated, leaving therein any instrument of writing recorded in his office, the original of which has never been taken therefrom, and in the record of which, or the authentication thereof, there is an error or omission, by deviation from the original, it shall be the duty of the successor to correct such record, by making it an exact copy of the original instrument and authentication.

A. 1846, 12, 13.

And whenever the clerk who has vacated his office, shall have failed to put his name to the certificate on any instrument of writing which he has recorded, or to the record thereof, and the original shall not have been removed from his office, the successor shall sign the name of the deceased clerk to the same, and shall make a note on the record, at the foot of the certificate, of any act done as aforesaid.

No commission to take acknowledgment.

§ 28. No commission shall be necessary to take the acknowledgment or proof of any instrument of writing, preparatory to the recording of the same.

Copies evidence.

§ 29. Certified copies of all instruments legally recorded shall be *prima facie* evidence, in all courts and tribunals of this state.

Original to be delivered to person entitled.

§ 30. Instruments which have been or may be recorded, shall be delivered to the party entitled to the same.

Certain privy acknowledgments prima facie evidence.
A. 1849, 20.

§ 31. Where any married woman shall heretofore, jointly with her husband, have executed a deed for any property, with a view to pass her estate therein, and shall have

acknowledged the same, separately and apart from her husband, before any officer having the power to take and certify the acknowledgment or proof of deeds, and the same has been recorded in the proper office in due time, as required by law, the deed so recorded, or a copy from the record thereof, shall be *prima facie* evidence, in all courts and tribunals, that the deed was freely and voluntarily executed and acknowledged.

But this provision shall not be held to embrace a certificate which on its face shows that only a relinquishment of dower was intended.

Tax not paid, effect of.

§ 32. No deed shall be held to be legally lodged for record until the tax be paid thereon.

Unrecorded deeds to be advertised by clerk.

L. 145.

§ 33. It shall be the duty of each county court clerk, once in each year, at the April or May term, to advertise, in writing, at the court house of his county, a list of all deeds in his office unrecorded, and the reason why each one has not been recorded.

Cross index to be made to all deeds heretofore and hereafter recorded.

L. 147.

§ 34. The clerk of each county court shall make and keep an alphabetical cross index of all conveyances heretofore or hereafter recorded in his office; and he shall, when a mortgage or deed of trust is lodged in his office for record, forthwith place the names of the parties to such mortgage or deed of trust upon the cross index of his office.

§ 35. Nothing contained in this chapter shall be held to enlarge the powers of infants or persons of unsound mind.

CHAPTER XXV.

COSTS.

Poor person.

V. R. 704.
M & B. 327.

§ 1. A poor person residing in this state may be allowed by a court to sue or defend a suit therein, without paying fees or cost, whereupon he shall have any counsel that the court may assign him; and from all officers all needful services and process, without any fees to them therefor, except what may be included in the costs recovered from the opposite party.

Law, how construed.

§ 2. The law of costs shall not be interpreted as penal laws.

Non-residents to give surety.

§ 3. When a non-resident or any corporation, except a bank incorporated by this state, shall institute a suit or

action in any court or before any justice of the peace, whether suing in his own right or as the representative of another, he shall, before the commencement thereof, give an obligation, with good security resident in the state, in the clerks's office of the court, or in the office of the justice of the peace, as the case may be, payable to the defendant, binding the plaintiff to pay all costs that may accrue in consequence thereof, either to the opposite party or to any of the officers of such justice of the peace or court.

M. & B. 262, 264, 265, 900.

§ 4. When any resident of this state, in his own right or in his representative character, shall institute a suit or action in any court, or before any justice of the peace, and shall, pending such suit or action, remove from the state, such person shall give good surety for the costs of the suit, as provided in the preceding section.

Plaintiff removing to give surety.

M. & B. 263.

§ 5. If any action or suit shall be instituted by any person without previously giving an obligation with surety, as provided in the section next preceding the last, it shall not be a ground for abating the suit or action, if such surety be given on or before the calling of the cause for trial, at the first term of the court after the institution thereof. If the plaintiff fail to give surety for costs, as required by the provisions of this chapter, his suit shall be dismissed.

When surety may be given.

Suit dismissed for failure.

§ 6. When the commonwealth shall be unsuccessful in any case prosecuted in her own right, no judgment for costs shall be rendered for the opposite party.

No costs against commonwealth.

§ 7. When a party to a suit or action shall pray for and obtain a continuance thereof, he shall pay the costs accruing at that term of the court; and the costs of the opposite party shall accordingly be adjudged to him, and may be coerced by execution.

Costs on continuance.

M. & B. 317, 467.

§ 8. When a plaintiff in any suit or action shall be nonsuited, he shall be adjudged to pay the defendant his costs, and two dollars besides; and if the defendant's abode be more than twenty-five miles from the place of holding the court, the plaintiff shall also be adjudged to pay the defendant seven cents for each mile over twenty-five.

On nonsuit.

M. & B. 224, 468.

§ 9. When a judgment shall be arrested, the party committing the error shall be adjudged to pay the costs occasioned thereby.

On arrest of judgment.

M. & B. 329, 472.

§ 10. When the pleadings in any suit or action shall be amended by either party, and such amendment shall be

On amendment and continuance.

M. & B. 473.

the ground of a continuance, the party making such amendment shall pay the costs of the term.

On attachment of witness.

M. & B. 702.

§ 11. When a witness shall be attached for alleged contempt in a civil case, he shall pay the costs of such attachment, unless it shall appear that he was wholly free from neglect or blame. The party moving the attachment, or the commonwealth, may, on the trial, introduce evidence. If the witness appear free from neglect or blame, the party moving the attachment shall be adjudged to pay the costs thereof.

In prosecutions for misdemeanors.

M. & B. 1285-88.

§ 12. The defendant, in all prosecutions for a misdemeanor, shall, if convicted, be adjudged to pay the costs of the proceedings against him.

In civil suits.

M. & B. 467-8.

§ 13. The party succeeding in any civil suit or action, on the merits or otherwise, shall recover costs, unless differently provided in this chapter. In actions at law, if the plaintiff shall succeed against part of the defendants, and not against others, he shall recover his costs from the former, and the latter shall recover their costs against the plaintiff.

In chancery.

§ 14. In chancery suits, the party succeeding, on the merits or otherwise, shall recover his costs, except against nominal defendants. But when the complainant succeeds against a part of the defendants, he shall recover his costs against such only. Defendants who are necessary nominal parties to a suit, and against whom the complainant does not succeed, shall not recover their costs, but each party shall be decreed to pay his own costs. Defendants who are not necessary parties to a suit in chancery, shall recover their costs. But in chancery suits between parceners, tenants in common, joint tenants, and for settling the distribution and division of deceased persons' estates, suits to settle partnerships, and to settle or enforce trusts, courts shall have a judicial discretion in decreeing or not decreeing costs.

Garnishees.

M. & B. 163.

§ 15. Garnishees in common law or chancery cases who make only a just defense shall not be adjudged to pay costs, but shall be allowed the legal costs properly expended in their defense.

On appeals and writs of error.

M. & B. 130.

§ 16. The party prosecuting an appeal or writ of error to the court of appeals, shall recover his costs on the same if he succeed in whole or in part in reversing the decision of the inferior court. If the decision of the inferior court be affirmed, the appellee or defendant in the appellate court shall recover his costs. If the decision of the inferior

court be reversed as to part of the appellees or defendants, and affirmed as to others, the appellant or plaintiff in error shall recover his costs, against the defendants in error as to whom the case shall be reversed, and shall be adjudged to pay the defendants in error, as to whom it is affirmed, their costs.

On appeals, &c. in circuit court.

A. 1847-8, 61. M. & B. 472-3.

§ 17. When an appeal or writ of error or traverse shall be prosecuted in the circuit court to a judgment of the county court or a justice of the peace, or in the county court from the judgment of a justice of the peace, and the defendant, before the appeal or traverse is taken, shall tender to the plaintiff the amount he is willing to pay, and the same shall be refused, and the amount recovered upon the appeal shall not exceed the amount tendered, the original plaintiff, if he is the appellant or plaintiff in error or traverser, shall not recover his costs, but shall pay the costs in the court trying the appeal or writ of error or traverse; but if the decision on such appeal, writ of error, or traverse is more favorable to the party prosecuting the same than the decision of the inferior tribunal, he shall recover his costs on the same if no such tender be made, or not enough shall be tendered.

When party succeeds in part.

§ 18. If the party appealing or prosecuting a writ of error or traverse from the judgment of the county court or of a justice of the peace to the circuit court, or from a judgment of a justice of the peace to the county court, shall succeed in part in the same, but shall not succeed as to the whole controversy, the costs in the county court or before the justice shall be adjudged to be paid as if the same decision had been given there which the circuit or county court shall give on the appeal, writ of error, or traverse.

Personal representatives.

M. & B. 673-4. A. 1847-8, 10.

§ 19. A personal representative, plaintiff, or defendant in any case shall, if unsuccessful, be adjudged to pay costs as other litigants. The judgment or decree for costs in such case shall only be against the assets which have or may come to his hands.

Prosecutor, next friend, &c.

M. & B. 467, 472.

§ 20. A prosecutor, next friend, or relator, shall, upon the failure of the prosecution, suit, or action, be adjudged to pay to the person prosecuted or sued his costs. If the plaintiff succeed, the prosecutor, next friend, or relator shall be adjudged his costs against the defendant.

On injunctions.

M. & B. 471.

§ 21. When an injunction shall be dissolved, the plaintiff shall be decreed to pay the costs occasioned by the same.

Party obtaining further time, &c. M. & B. 472.

§ 22. When a party to a suit or action shall obtain further time to plead or to amend his pleadings, the court shall adjudge him to pay the costs occasioned thereby.

Application for passway, &c.

§ 23. Any person applying for a passway, or to remove a passway, whether successful or not, shall pay the costs of the procedure in the inferior court.

Failure to attend to take depositions.

M. & B 551.

§ 24. When a party to a suit or action shall give the opposite party notice to take a deposition, and shall fail to take the same accordingly, unless such failure be on account of the non-attendance of the witness, not occasioned by the party giving the notice, or some other unavoidable cause, the party notified; if he shall attend himself, or by agent, agreeably to the notice, shall be entitled to one dollar per day for each day he may attend under such notice, and to six cents per mile for every mile that he shall necessarily travel in going to and returning from the place designated to take the deposition, to be allowed by the court where the suit shall be pending, and for which execution may issue.

On proceedings to remove officer.

M. & B. 418.

§ 25. Any person who shall take steps in any court to remove any officer from office, and from any cause fail in so doing, shall pay such officer his costs expended in the defense of such procedure. If the officer shall be removed by such procedure, then the person instituting and carrying on the same shall be adjudged his costs against such officer.

Costs adjudged by court giving final decision.

§ 26. When by any procedure a cause shall be taken from one tribunal to another, and the latter shall give final judgment, or decree, and proceed to execute the same without remanding the cause to the inferior tribunal, the court rendering such final decision shall adjudge costs agreeably to the provisions of this chapter, and issue execution therefor.

Taxation of costs.

M. & B. 396.

§ 27. The clerk of each court shall, after the termination of a suit or action, or any other procedure therein, tax the costs of the successful party on a paper filed among the other papers in the cause, for the inspection of the parties, which taxation shall be subject to revision and correction by the court, by rule or motion, due notice thereof being first given.

Continuances at cost of party.

§ 28. When a cause is continued at the cost of either party, a like taxation of the costs of that term shall take place and be subject to the same revision and correction.

Motion or rule.

§ 29. A motion or rule of court shall be considered an action, but when made in a pending suit or action, an at-

torney's fee shall not be paid or recovered as a part of the costs of the motion or rule.

Suits for the benefit of another.

§ 30. Where a suit or action is in the name of one person for the benefit of any other, and that fact appears on the record, if there be a judgment or decree for the defendant's costs, it shall be against the plaintiff and the person for whose benefit such suit is prosecuted. In such suits or actions the officers' and other fees shall be charged to and paid by the plaintiff and the person for whose benefit the same is prosecuted.

V. R. 706.

New trial.

§ 31. The party to whom a new trial is granted upon the payment of costs shall, previous to such new trial, pay the costs of the former trial. If he fail to pay the same at or before the time the cause is reached for trial at the next term of the court after the new trial is granted, the court may, on the motion of the opposite party, set aside the order granting a new trial, and enter judgment on the verdict rendered in the case.

V. R. 705.

Alimony and divorce.

§ 32. In suits for alimony and divorce the husband shall pay the costs of each party, unless it shall be made to appear in the cause that the wife is in fault, and has ample estate to pay the same.

When either party is insolvent.

§ 33. Whenever either party to a suit or action in any court shall be insolvent, or in doubtful circumstances, and such party shall recover a judgment or decree for the costs of a suit or action, or for a continuance thereof, the court, on motion of any person interested, shall indorse the costs so recovered, or so much thereof as may be necessary, for the benefit of the officers and witnesses who shall have rendered service in the case, so far as the same are embraced in the judgment or decree then rendered, and thereupon they shall be entitled to so much of the costs as will satisfy and pay such of their respective fees. The indorsement shall secure the officers and witnesses a preference to all transfers or sets-off. The indorsement shall be copied on the execution that issues for the costs, and shall show what part each officer and witness is entitled to, and authorize each to receive the amount so indorsed when the costs are collected.

M. & B. 477.

Habeas corpus.

§ 34. In proceedings by *habeas corpus*, the judge or court before whom the same shall be returned may award costs to be paid, including pay for transporting the prisoner, as shall seem right.

V. R. 614.

Settlement of insolvent estates.

§ 35. In the settlement of insolvent estates, a party who shall present a claim against the estate of the deceased

which is not allowed shall pay the costs occasioned thereby, except an attorney's fee. No attorney's fee shall be allowed any claimant in any case against an insolvent estate, unless the same shall be contested before a jury, and be allowed on final decision.

Attorney's fees.

V. R. 706.

§ 36. The clerk shall tax one attorney's fee only in the bill of costs of the successful party at the termination of the cause, and the tax on process and all fees of officers which the party appears to be chargable with in the case, including postage on depositions. One copy of any of the pleadings or exhibits obtained shall he taxed as costs, and the costs of any copies made exhibits; also, the allowance to witnesses, which the court may, by order, confine to not exceeding two, to any one point.

Costs of copies.

Allowance to witnesses.

Applies to justices' courts.

§ 37. The provisions of this chapter shall apply to justices' courts and other like tribunals.

CHAPTER XXVI.

COUNTY LEVY

ART. 1. How and upon whom imposed.
ART. 2. Mode of collecting and accounting for county levy.
ART. 3. General provisions.

ARTICLE I.

How and upon whom imposed.

Who tithable.

M. & B. 1113.

§ 1. All male persons over twenty-one years of age, and all slaves over sixteen years of age, shall be tithable and chargable for levies imposed for county purposes. The county court authorized to impose levies may exempt persons on account of age, infirmity, or other charitable reasons, from the payment of the county levy.

Assessor to demand list of tithables.

§ 2. The assessor of tax in each county, at the time he assesses the taxable estate, shall demand from each person being tithable a written list of such persons as are tithable in his family, including slaves owned by him, on the tenth of January preceding; which list the assessor shall return to the office of the county court at the same time he returns his assessment of the taxable estate in his county.

List to be given on oath.

§ 3. The master of a family or owner of slaves who are tithable, when called upon for that purpose by the assessor, in the mode and manner prescribed for calling upon the

owner of estate to list the same for taxation, shall give in, upon oath, to the assessor, a list of all the tithables owned by him within this state, including himself, on the tenth day of January preceding. If he fail and refuse, when legally called upon to give in such list, or if he give a false and fraudulent list, he shall, upon conviction, be fined in a sum not exceeding one hundred dollars, and subjected to the payment of three times the levy imposed upon a tithable within the county, to be recovered in the same mode prescribed for the recovery of fines against persons who fail and refuse to list their property for taxation, or who give in a false and fraudulent list of taxable estate. It shall be the duty of the assessor to report all such delinquents to the county court, and also to make, from the best evidence he can obtain, a true list of all tithables owned by such delinquents, and report the same to the court.

Penalty for refusing, or giving false list.

§ 4. Any person who has, from sickness or absence, failed to render to the assessor a list of his tithables at the proper time, may return said list at any time to the county court before judgment against him for such failure, and, by the payment of all costs, be exempted from the fine imposed. The assessor shall not return any person delinquent under this chapter until he has called at the residence of the party, or made to him a personal application for his list.

Failure from sickness or absence.

§ 5. The assessor, at the time he returns his book to the clerk of the county court, shall, upon oath, give in to the clerk a list of all tithables owned by him, including himself. If he fail or refuse to give in such list, or give a false or fraudulent list, he shall be subjected to the same penalties and tax prescribed against like delinquents in the third section of this article.

Assessor to give in his own list to clerk.

ARTICLE II.

Mode of collecting and accounting for county levy.

§ 1. The county levy shall not exceed one dollar and fifty cents on each tithable, in any one year. If a sum be due by the county greater than can be met by a levy limited to one dollar and fifty cents in any year, the same shall be divided into installments, and payment provided for in the subsequent annual county levies.

Levy not to exceed $1 50 per tithable.

M. & B. 1121.

§ 2. At the time when the county court imposes the levy, the claims against, and the expenses incurred by said county, under the authority of any law, and legally chargeable upon the county levy, to whom and for what due, shall

What shall be stated on order book.

M. & B. 1114.

be stated on the order book of said court; also, the amount of all moneys or credits on hand, or due or owing the county, applicable to the payment of the demands against the county, shall be ascertained and stated on the record. For any balance due by the county thus ascertained, the court shall assess on the tithables, equally, a sum sufficient to pay such balance, including the expenses of collection, subject to the limitations in the first section of this article. The court shall specify in its orders the amount to be paid to each individual county creditor, and out of what fund to be paid.

Sheriff to collect; to give bond with surety.

§ 3. The sheriff, by virtue of his office, shall be collector of the county levy, and he shall, at the term of the court when the county levy is imposed, or at any subsequent term of said court, before he proceeds to collect the county levy, execute bond, payable to the commonwealth of Kentucky, with one or more sureties, whose aggregate estate, after the payment of all their debts and liabilities, shall be equal to double the amount of the whole levy ordered to be collected, in the form substantially as follows:

Form of bond.

We, A. B., sheriff of ——— county, and C. D., his surety, jointly and severally bind and oblige ourselves to the commonwealth of Kentucky, that the said A. B., as sheriff, shall well and truly collect, account for, and pay over, to the person entitled to receive the same, according to law, the county levy and public dues of the county of ———, for the year ——; and that he shall, when called upon by the county court, settle his accounts, and pay over the amount, if any, of public money in his hands belonging to said county; and that the said A. B. shall, in all things, well and truly demean himself, and perform the duties of collector of the county levy of said county. Witness our signatures this —— day of ———.

Suits thereon.

Which bond may be sued upon in the name of the commonwealth, for the use and at the costs of any person aggrieved by a violation of the same.

When sheriff fails or refuses to give bond.

§ 4. If the sheriff shall fail or refuse to give such bond, when required by the county court, he shall forfeit and vacate his office of sheriff; and in such case, the county court may appoint a collector of the county levy, who shall give bond with surety, in such form, suited to the occasion, as is prescribed in the preceding section, and whose powers and liabilities shall be the same as those of the sheriff, acting as such.

Clerk to furnish tax list and list of creditors.

M. & B. 1115.

§ 5. The clerk of the county court shall, within ten days after the execution of bond by the sheriff or collector, as required in this article, deliver to such sheriff or collector a list of the persons chargeable with the payment of county levy, and the sum to be paid by each; a list of the sums due, and from whom due, to the county; and also a list of persons to whom the county is indebted, and the amount to be paid by the sheriff or collector to each one. The sheriff or collector shall immediately proceed to collect from the persons chargeable with county levy, or otherwise indebted, the amount due, with the same powers, duties, responsibilities, and for the same commissions given and allowed the collectors of the public revenue; and shall pay the same to the county creditors, according to their respective demands, and in obedience to the requirements of law.

Sheriff failing to pay creditors.

M. & B. 1115.

Motion.

Notice.

§ 6. If the sheriff or collector of county levy shall fail to pay or satisfy the county creditors whose names are upon the list furnished him by the clerk, the claims due them respectively on or before the first day of October in each year, if demanded of him, he and his sureties, their heirs, devisees, and personal representatives, shall be jointly and severally liable to such county creditor for his demand, with ten per centum upon the amount due; which sum may be recovered by a suit on the bond in the circuit court, or by motion in the county court. Notice in writing of such motion shall be given to each party sued, and served at least ten days before the day of trial; and if not fully served, other notices shall be issued by the clerk to the next term, and the motion continued from court to court, until the parties originally named in the return shall all be before the court, unless the plaintiff abates as to those upon whom the notice is not served.

Sheriffs refusing to settle accounts.

The like remedies are given to the county court when the sheriff or collector shall refuse to settle his accounts, or pay over any money in his hands belonging to the county; and the county court shall be a good and sufficient relator in any suit or motion upon the bond of the sheriff, or collector of the county levy, or any other money collected by a sheriff or other officer in the course of his official duties.

Clerk failing in duty.

§ 7. If the clerk fail to perform the duty required of him in the fifth section of this article, he shall forfeit and pay for the use of the county, the sum of thirty dollars for each offense, to be recovered by a presentment in a circuit court

of the county having jurisdiction of the offense, or by suit before a justice of the peace.

Collector may appoint deputies.

M. & B. 1116.

§ 8. A collector of county levy appointed by the county court may appoint one or more deputies; he and his sureties shall be liable for their acts as such, and their liabilities to him shall be the same as the liabilities of deputy sheriffs to their principals.

Returning delinquents.

§ 9. It shall be the duty of the sheriff, or the collector of the county levy, at the same term of the court, and in the same manner that the sheriff is required to do in relation to the return of his delinquent list of the public revenue, to return to the county court all delinquents in the payment of the county levy; and he shall, for all such as are allowed by the county court, be credited in his settlement with said court.

Court may re-list.

§ 10. The county court may re-list the delinquents returned, or place the collection of the same in the hands of other persons; and in cases where the delinquents have removed to other counties, cause them to be listed with the sheriffs of such counties, who shall collect and account for the same as other public dues placed in their hands for collection.

Return of delinquents re-listed.

§ 11. The sheriff of each county shall, at the county court next preceding the expiration of his office, make a return in writing, verified by his oath, of delinquents relisted with him by said court, and the amount collected of the same during the time he was in office; and where he has not collected the money from any delinquent, he shall, if known to him, state his residence.

ARTICLE III.

General Provisions.

Majority of justices necessary to an appropriation over fifty dollars

A. 1850, 41.
M. & B. 1119.

§ 1. The county court, except for the county of Jefferson, unless composed of a majority of the justices of the peace of said county in commission, shall not have power to make appropriations of the county revenue, or to make any charge thereon greater than fifty dollars for any one object; nor shall any such appropriations or charges exceed, at any one term, the sum of one hundred dollars in the aggregate.

Allowance for deficit.

§ 2. The court, in imposing the levy, may add a sum, over and above the claims allowed and debts due by the county, which, in their opinion, will be sufficient to meet the probable deficit or loss in collection.

Suit by county creditor.

§ 3. A county creditor, though his claim is ordered to be paid by the court, after the county levy for the year has been imposed, may, nevertheless, sue for and recover his claims of the sheriff or collector, or their respective sureties, as other county creditors, if there be in the hands of the sheriff or collector a sufficient sum to pay him, after deducting the previously allowed claims.

Slaves hired in another county. M. & B. 1112.

§ 4. Slaves hired or resident in another county, shall be listed as tithables by the owner, and the levy paid in that county in which he shall reside.

Poor.

§ 5. The inhabitants of every city and town whose corporate authorities, by law, have power to provide for their poor, to keep their streets and alleys in order, and who do the same, shall not be deemed tithables, or required to pay county levy under the provisions of this chapter.

Settlement of the sheriff's or collector's account.

§ 6. The county court shall, in the month of September, in each year, and oftener if it be advisable, cause a settlement of the sheriff's or collector's accounts concerning the county levy to be made and reported to the court; and for that purpose shall appoint some competent person as commissioner; and upon receipt and approval of said report, shall make such order concerning the remainder of the money, if any, due to the county, as they may deem necessary for its safe-keeping.

Allowance to jailer. M. & B. 1112.

§ 7. When a jailer or constable may have rendered services to the commonwealth, the payment of which is not, by law, made at the treasury, the court shall allow the same as a charge upon the county levy.

CHAPTER XXVII.

COURTS.

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ARTICLE 1.

Court of Appeals, jurisdiction of.

Jurisdiction.

§ 1. The court of appeals shall have jurisdiction, by appeal or writ of error, in matters of law, from the final order, judgment, or decree of any inferior court, except as otherwise provided in this chapter.

No appeal shall lie unless where the order, judgment, or decree relates to an office, franchise, or freehold, or is against a divorce, if the matter in controversy does not amount, in value, to one hundred dollars, exclusive of interest and costs. Cases under $100.

1. No writ of error or appeal shall lie in cases of felony; nor from a judgment under the acts concerning riots, routs, unlawful assemblies, and disturbances of religious worship; nor from a judgment, order, or decree from which an appeal is allowed to the circuit or county court; nor to a judgment of the county court disposing of an appeal thereto; nor from an order or judgment of any court punishing a contempt; nor from the judgment of a justice of the peace, or the presiding judge of a county; nor from the judgments in any case of any tribunal not having jurisdiction in such cases beyond that of a justice. Cases in which no appeal or writ of error lies.

2. No writ of error shall lie to a bond having the force of a judgment.

ARTICLE II.

General Provisions.

§ 1. The court of appeals has power to administer oaths, punish contempts, make rules for the government of its proceedings, not contrary to law or the constitution. Oaths, contempts, &c. M. & B. 479.

§ 2. A judge of the court of appeals shall have the power to reinstate attachments, injunctions, and restraining orders. Reinstating injunctions, &c.

ARTICLE III.

Appellate Judicial Districts.

§ 1. The state is divided into four appellate judicial districts, as follows: Four districts. New Con. art 4.

1. The first district shall be composed of the counties of Mason, Nicholas, Bourbon, Clarke, Madison, Rockcastle, Lewis, Fleming, Bath, Montgomery, Estill, Laurel, Whitley, Harlan, Knox, Clay, Owsley, Letcher, Perry, Breathitt, Morgan, Lawrence, Carter, Greenup, Johnson, Floyd, Pike, and Pulaski. (*a*) First.

2. The second district shall be composed of the counties of Bracken, Pendleton, Campbell, Kenton, Boone, Galla- Second.

(*a*) The county of *Powell* was formed out of counties embraced in this district, by act of January 7, 1852, but no express provision of law made attaching it to any appellate district.

tin, Carroll, Trimble, Henry, Owen, Grant, Harrison, Scott, Fayette, Jessamine, Garrard, Boyle, Mercer, Anderson, Franklin, Woodford, Shelby, and Oldham.

Third.

3. The third district shall be composed of the counties of Jefferson, Bullitt, Nelson, Spencer, Hardin, Meade, Larue, Hart, Barren, Monroe, Cumberland, Clinton, Wayne, Russell, Casey, Lincoln, Washington, Marion, Taylor, Green, and Adair.

Fourth.

4. The fourth district shall be composed of the counties of Fulton, Hickman, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, Union, Hopkins, Caldwell, Trigg, Todd, Logan, Simpson, Warren, Allen, Christian, Henderson, Muhlenburg, Daviess, Ohio, Butler, Edmonson, Hancock, Grayson, and Breckinridge.

ARTICLE IV.

Special Judges of the Court of Appeals.

Governor to select special judge.

New Con. art. 4.

§ 1. Whenever a majority of the judges cannot sit on the trial of a cause or causes pending in said court, for the reasons prescribed in the constitution, the governor shall select a judge or judges from the members of the bar, or circuit judges of the state, to act with the other judges, as the court, in hearing and deciding such cause or causes; the court shall appoint a day for the trial of such cause or causes; and the court, so organized, may meet and adjourn from day to day, until it disposes of its business.

Failure to act.

§ 2. If any of the special judges, so selected, refuse or fail to act, the vacancy may be supplied in like manner.

Selection entered of record.

§ 3. When it becomes necessary to select judges, as provided in the preceding sections, the court shall make an entry of the fact on its record, and cause a copy of it to be delivered to the governor, who shall, thereupon, select and commission special judges for the occasion, and cause their commissions to be delivered to them; and the clerk shall notify the persons selected of the time fixed for the trial of the cause or causes.

Parties may select

§ 4. The parties may select the judge or judges provided for in the preceding section, or permit any one of the judges of the court of appeals to make the selection; and the judges so selected may proceed to act without commissions.

Oath.

M. & B. 478.

§ 5. Every judge of the court of appeals, and every person selected for the trial of special causes, before he enters on the discharge of his duties, must, in addition to the

oaths prescribed in the constitution, take the following oath:

I, A B, do solemnly swear, (or affirm,) that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and I will faithfully and impartially discharge all the duties incumbent on me as a judge of the court of appeals, according to the best of my ability.

Entries on order book.

§ 6. The commissions of judges, the selection of temporary judges, the reason for such selection, and the fact that the requisite oaths have been taken, must be entered on the order book of the court.

ARTICLE V.

Mode and manner of proceeding in Court of Appeals.

Writs, process, &c. M. & B. 479.

§ 1. The writs and process, and mode of proceeding in the court of appeals, as now established, shall remain until changed or abolished by rule or order of court.

No discontinuance for want of quorum. M. & B. 478.

§ 2. No suit, process, matter, or thing returned to or pending in the court of appeals, shall be discontinued, although a quorum of judges may fail to attend at the commencement, or on any other day of a term.

Adjournments. M. & B. 480.

§ 3. If a quorum of the judges do not attend on the first day of the term, the court shall stand adjourned from day to day for ten days, unless a quorum sooner attend. If, for any cause, the court does not sit on any day of a term, the court shall not be thereby adjourned, but may meet again and proceed to business on another day prior to the next succeeding term.

M. & B. 481.

§ 4. The court may adjourn from time to time to suit its convenience, not beyond the commencement of the next regular term; and if, for any cause, a quorum be not present, the judge or judges in attendance may so adjourn. The period of such adjournment shall not be computed under the rules of the court a part of the term.

Teste. M. & B. 481-2.

§ 5. All process issued from the court shall bear teste in the name of the clerk.

Decisions.

§ 6. The decisions of the court must be so written as to show the governing principle thereof, except in cases involving matters of fact only.

Written opinions.

The court must deliver written opinions on all motions made in the court, which involve any principle of law or rule of practice not previously settled by the court, and reported.

§ 7. The court shall annually appoint one of the judges thereof to inspect the clerk's office of the court, and to report its condition to the next term thereof; which report shall be placed on the records of the court, and such action taken thereon as may seem proper.

Inspection of clerk's office.

M. & B. 472.

§ 8. If the court is equally divided in the decision of a cause, the judgment, decree, or order of the inferior court is to stand affirmed.

Court divided.

M. & B. 479.

§ 9. The court shall annually hold two terms, commencing on the first Mondays in June and December, and shall sit forty-eight juridical days at each term, and longer if the business require it.

Two terms annually.

L. 155.
A. 1847-8.

ARTICLE VI.

Decisions to be reported.

§ 1. The court of appeals shall, biennially, appoint a reporter of its decisions.

Reporter.

M. & B. 486.

1. The appointment must be entered on its records.

2. The court shall direct what decisions, delivered by it, are to be published.

§ 2. The reporter shall have the decisions of the court printed in letters and on paper of proper size and of superior quality.

Reports, how printed.
M. & B. 486.

§ 3. The reporter shall be allowed by the state after the rates of one dollar for every one hundred pages of the decisions, tables, and indexes so printed and well bound in calf skin, with good indexes and marginal notes.

Compensation.

M. & B. 486.

1. The court must certify that the work meets their approbation, and was published by their consent.

Court's certificate.

2. Upon the deposit of two hundred copies of a volume of reports so published with the secretary of state, the secretary shall draw an order on the auditor of public accounts for the price, which shall authorize the auditor to issue a warrant on the public treasury for such price.

Deposit with secretary.

ARTICLE VII.

Circuit Courts, their appellate jurisdiction.

§ 1. Appeals and writs of error lie from the decisions of county courts to the circuit court of the same county, in all controversies concerning the establishing, alteration, or discontinuance of ferries, roads, and passways, and in all cases concerning the probate of wills, and from orders concerning mills or water works, and from orders refusing or allowing dams to be built across water courses.

Appeals, &c. from county courts

M. & B. 139, 140, 142.

§ 2. Appeals lie to the circuit court from the decisions of the quarterly courts, and of justices of the peace, and of other tribunals having the like civil jurisdiction as justices of the peace, in all civil cases where the amount in controversy, exclusive of interest and costs, is sixteen dollars and upwards; and in all actions of trespass, and trespass on the case, before justices of the peace, the party aggrieved shall have the right of appeal to the circuit court of the county in which the case is tried. From quarterly courts and justices.

ARTICLE VIII.

Original jurisdiction.

§ 1. The circuit court has original jurisdiction of all matters, both in law and equity, within its county, of which jurisdiction is not, by law, exclusively delegated to some other tribunal; and has all power necessary to carry into effect the jurisdiction given. Original jurisdiction.

ARTICLE IX.

Power of Judges out of Court.

§ 1. Each circuit judge shall be a conservator of the peace throughout the state. Power of judge out of court.

And he may grant writs of error *coram vobis et nobis*.

ARTICLE X.

Judicial Districts.

§ 1. The state shall be divided into twelve circuit court judicial districts, as follows: Twelve districts.

A. 1850-1, 23.

First District—Fulton, Hickman, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, and Ballard.

Second District—Caldwell, Trigg, Christian, Todd, Hopkins, Union, and Henderson.

Third District—Daviess, Hancock, Ohio, Grayson, Breckinridge, Meade, Hardin, Muhlenburg, and Larue.

Fourth District—Butler, Logan, Simpson, Allen, Monroe, Barren, Hart, Edmonson, and Warren.

Fifth District—Cumberland, Clinton, Wayne, Pulaski, Casey, Lincoln, Taylor, Green, Adair, and Russell.

Sixth District—Bullitt, Jefferson, Spencer, and Shelby.

Seventh District—Nelson, Washington, Marion, Mercer, Boyle, Garrard, and Anderson.

Eighth District—Oldham, Henry, Trimble, Carroll, Owen, Gallatin, Boone, Grant, and Kenton.

Ninth District—Campbell, Pendleton, Mason, Bracken, Nicholas, Harrison, Bourbon, and Scott.

Tenth District—Bath, Fleming, Lewis, Greenup, Carter, Lawrence, Montgomery, Morgan, and Powell.

Eleventh District—Franklin, Woodford, Jessamine, Fayette, Madison, Estill, and Clarke.

Twelfth District—Rockcastle, Knox, Harlan, Laurel, Whitley, Clay, Perry, Owsley, Letcher, Breathitt, Floyd, Pike, and Johnson.

ARTICLE XI.

Place and time of holding Circuit Courts.

Time of holding court.

§ 1. A circuit court shall be holden at the court house in each of the counties in the state. It shall be a court of record. The terms shall be holden at the times required by law.

Terms may be extended.

§ 2. When the business of the court may require it, the judge, by order of the court, shall extend the term of such court, when it can be done without interfering with any other term of the court in his district.

A. 1850-1, and 1851-2.

§ 3. The circuit courts for the several counties, in each circuit court judicial district in this commonwealth, shall commence in the counties at the times hereinafter specified, and be held the number of juridical days allotted to each term, if the business of said court shall require it, viz:

First district.

FIRST DISTRICT.

Fulton.

In the county of Fulton, on the first Mondays in March and September, and continue, each, twelve juridical days.

Hickman.

In the county of Hickman, on the third Mondays in March and September, and continue, each, twelve juridical days.

Ballard.

In the county of Ballard, on the first Mondays in April and October, and continue, each, twelve juridical days.

M'Cracken.

In the county of McCracken, on the third Mondays in April and October, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in McCracken, commencing the first Monday in July, and continuing six juridical days.

Marshall.

In the county of Marshall, on the first Mondays in May and November, and continue, each, six juridical days.

Calloway.

In the county of Calloway, on the second Mondays in May and November, and continue, each, twelve juridical days.

In the county of Graves, on the fourth Mondays in May and November, and continue, each, twelve juridical days. Graves.

In the county of Livingston, on the second Mondays in June and December, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Livingston, commencing the fourth Monday in July, and continuing six juridical days. Livingston.

In the county of Crittenden, on the fourth Monday in June and on the first Monday in January, and continue, each, twelve juridical days. Crittenden.

SECOND DISTRICT. Second district.

In the county of Trigg, on the last Mondays in February and August, and continue, each, twelve juridical days. Trigg.

In the county of Caldwell, on the second Monday in March, and continue eighteen juridical days, and on the second Monday in September, and continue twelve juridical days. There shall, also, be held a chancery term, in Caldwell, commencing the second Monday in July, and continuing two weeks. Caldwell.

In the county of Christian, on the first Monday in April and the last Monday in September, and continue, each, eighteen juridical days. There shall, also, be held a chancery term, in Christian, commencing the first Monday in August, and continuing two weeks. Christian

In the county of Union, on the fourth Monday in April and the third Monday in October, and continue, each, twelve juridical days—unless there are five Mondays in said months, and then eighteen juridical days each. Union.

In the county of Hopkins, on the second Monday in May and the first Monday in November, and continue, each, twelve juridical days. There shall, also, be held a chancery term, in Hopkins, commencing the first Monday in July, and continuing six juridical days. Hopkins.

In the county of Henderson, on the fourth Monday in May and the third Monday in November, and continue, each, twelve juridical days. Henderson.

In the county of Todd, on the second Monday in June and the first Monday in December, and continue, each, twelve juridical days. Todd.

THIRD DISTRICT. Third district

In the county of Daviess, on the first Mondays in March and September, and continue, each, twelve juridical days. Daviess.

There shall, also, be held a term for the trial of chancery and criminal causes, in Daviess, commencing on the Monday succeeding the fourth Monday in May, and continue twelve juridical days.

Hancock. In the county of Hancock, on the last Mondays in August and February, and continue, each, six juridical days.

Breckinridge. In the county of Breckinridge, on the fourth Mondays in March and September, and continue, each, six juridical days.

Meade. In the county of Meade, on the first Mondays in April and October, and continue, each, twelve juridical days.

Hardin. In the county of Hardin, on the third Mondays in April and October, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes only, in Hardin, commencing the second Monday in July, and continuing twelve juridical days.

Larue. In the county of Larue, on the first Mondays in May and November, and continue, each, six juridical days.

Grayson. In the county of Grayson, on the second Mondays in May and November, and continue, each, six juridical days.

Ohio. In the county of Ohio, on the third Mondays in May and November, and continue, each, six juridical days.

Muhlenburg. In the county of Muhlenburg, on the third Mondays in March and September, and continue, each, six juridical days.

Fourth district. FOURTH DISTRICT.

Logan. In the county of Logan, on the first Monday in March and second Monday in August, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Logan, commencing the second Monday in July, and continuing two weeks.

Simpson. In the county of Simpson, on the third Monday in March and fourth Monday in August, and continue, each, twelve juridical days.

Allen. In the county of Allen, on the first Monday in April and second Monday in September, and continue, each, twelve juridical days.

Monroe. In the county of Monroe, on the third Monday in April and fourth Monday in September, and continue, each, six juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Monroe, com-

mencing the fourth Monday in July, and continuing six juridical days.

In the county of Barren, on the fourth Monday in April and first Monday in October, and continue, each, eighteen juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Barren, commencing the second Monday in January, and continuing two weeks. Barren.

In the county of Edmonson, on the third Monday in May and fourth Monday in October, and continue, each, six juridical days. Edmonson.

In the county of Butler, on the fourth Monday in May and first Monday in November, and continue, each, six juridical days. Butler.

In the county of Hart, on the first Monday in June and second Monday in November, and continue, each, twelve juridical days. Hart.

In the county of Warren, on the fourth Mondays in June and November, and continue, each, eighteen juridical days. Warren.

FIFTH DISTRICT. Fifth district.

In the county of Green, on the second Mondays in February and August, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes only, in Green, commencing the second Monday in June, and continuing six juridical days. Green.

In the county of Taylor, on the fourth Mondays in February and August, and continue, each, twelve juridical days. Taylor.

In the county of Casey, on the second Mondays in March and September, and continue, each, six juridical days. Casey.

In the county of Lincoln, on the third Mondays in March and September, and continue, each, twelve juridical days. Lincoln.

In the county of Pulaski, on the first Mondays in April and October, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes only, in Pulaski, commencing the second Monday in July, and continuing six juridical days. Pulaski.

In the county of Wayne, on the third Mondays in April and October, and continue, each, six juridical days. There shall, also, be held a term for the trial of chancery and Wayne.

criminal causes only, in Wayne, commencing the first Monday in July, and continuing six juridical days.

Russell. In the county of Russell, on the fourth Mondays in April and October, and continue, each, six juridical days.

Adair. In the county of Adair, on the first Mondays in May and November, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes only, in Adair, commencing the third Monday in June, and continuing six juridical days.

Cumberland. In the county of Cumberland, on the third Mondays in May and November, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes only, in Cumberland, commencing the fourth Monday in June, and continuing six juridical days.

Clinton. In the county of Clinton, on the first Mondays in June and December, and continue, each, six juridical days.

Sixth district.

SIXTH DISTRICT.

Jefferson. In the county of Jefferson, on the second Monday in January, and continue forty-eight juridical days; on the fourth Monday in May, and continue forty-two juridical days; on the third Monday in July and continue twelve juridical days; on the first Monday in November, and continue forty-two juridical days.

Shelby. In the county of Shelby, on the third Mondays in March and September, and continue, each, twelve juridical days.

Bullitt. In the county of Bullitt, on the second Mondays in April and October, and continue, each, twelve juridical days.

Spencer. In the county of Spencer, on the third Monday in May and fourth Monday in October, and continue, each, six juridical days.

Seventh district.

SEVENTH DISTRICT.

Boyle. In the county of Boyle, on the second Mondays in February and August, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Boyle, commencing the fourth Monday in November, and continuing one week.

Nelson. In the county of Nelson, on the last Mondays in February and August, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of

chancery and criminal causes, in Nelson, commencing the second Monday in June, and continuing two weeks.

Washington. In the county of Washington, on the second Mondays in March and September, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Washington, commencing the fourth Monday in June, and continuing two weeks.

Marion. In the county of Marion, on the fourth Mondays in March and September, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Marion, commencing the first Monday in June, and continuing one week.

Mercer. In the county of Mercer, on the second Mondays in April and October, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Mercer, commencing the third Monday in July, and continuing one week.

Anderson. In the county of Anderson, on the fourth Mondays in April and October, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Anderson, commencing the second Monday in July, and continuing one week.

Garrard. In the county of Garrard, on the second Mondays in May and November, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Garrard, commencing the fourth Monday in July, and continuing one week.

EIGHTH DISTRICT.

Eighth district.

Kenton. In the county of Kenton, at Covington, on the first Mondays in March and October, and continue, each, eighteen juridical days; and at Independence, on the second Monday in June and the first Monday in December, and continue, each, six juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, at Covington, in Kenton county, commencing the first Monday in July, and continuing twelve juridical days.

Carroll. In the county of Carroll, on the fourth Mondays in March and August, and continue, each, six juridical days.

Henry. In the county of Henry, on the first Monday in April, and continue twelve juridical days; and on the first Monday in September, and continue six juridical days.

Grant. In the county of Grant, on the third Monday in April, and continue six juridical days; and on the second Monday in September, and continue twelve juridical days.

Owen. In the county of Owen, on the first Monday in May, and continue twelve juridical days; and on the second Monday in November, and continue six juridical days.

Gallatin. In the county of Gallatin, on the fourth Mondays in April and September, and continue, each, six juridical days.

Boone. In the county of Boone, on the third Monday in May and fourth Monday in October, and continue, each, twelve juridical days.

Oldham. In the county of Oldham, on the first Monday in June and third Monday in November, and continue, each, six juridical days.

Trimble. In the county of Trimble, on the third Monday in June and fourth Monday in November, and continue, each, six juridical days.

Ninth district.

NINTH DISTRICT.

Scott. In the county of Scott, on the fourth Mondays in February and August, and continue, each, twelve juridical days.

Bourbon. In the county of Bourbon, on the second Mondays in March and September, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Bourbon, commencing the second Monday in July, and continuing one week.

Nicholas. In the county of Nicholas, on the fourth Mondays in March and September, and continue, each, twelve juridical days.

Mason. In the county of Mason, on the second Mondays in April and October, and continue, each, eighteen juridical days.

Bracken. In the county of Bracken, on the first Mondays in May and November, and continue, each, twelve juridical days.

Harrison. In the county of Harrison, on the third Mondays in May and November, and continue, each, twelve juridical days. There shall, also, be held terms for the trial of chancery and criminal causes, in Harrison, commencing the third Monday in July, and continue one week; and the second Monday in February, and may continue twelve juridical days.

In the countyof Pendleton, on the first Monday in June,

and continue twelve juridical days; and on the first Monday in December, and continue six juridical days. Pendleton.

In the county of Campbell, on the third Monday in June and second Monday in December, and continue, each, twelve juridical days. Campbell.

TENTH DISTRICT. Tenth district.

In the county of Montgomery, on the first Mondays in March and September, and continue, each, twelve juridical days. Montgomery.

In the county of Bath, on the third Mondays in March and September, and continue, each, twelve juridical days. Bath.

In the county of Fleming, on the first Mondays in April and October, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Fleming, commencing the second Monday in August, and continue one week. Fleming.

In the county of Morgan, on the third Mondays in April and October, and continue, each, twelve juridical days. Morgan.

In the county of Carter, on the first Mondays in May and November, and continue, each, six juridical days. Carter.

In the county of Lawrence, on the second Mondays in May and November, and continue, each, six juridical days. Lawrence.

In the county of Greenup, on the third Mondays in May and November, and continue, each, six juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Greenup, commencing the third Monday in July, and continuing one week. Greenup.

In the county of Lewis, on the fourth Mondays in May and November, and continue, each, six juridical days. Lewis.

In the county of Powell, on the fourth Mondays in February and August. The length of time to continue, left discretionary with judge. Powell.

ELEVENTH DISTRICT. Eleventh district.

In the county of Fayette, on the first Mondays in February and August, and continue, each, twenty-four juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Fayette, commencing the second Monday in June, and continuing twelve juridical days. Fayette.

In the county of Woodford, on the first Mondays in March and September, and continue, each, twelve juridical days. Woodford.

Madison. In the county of Madison, on the third Mondays in March and September, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Madison, commencing the third Monday in July, and continuing six juridical days.

Franklin. In the county of Franklin, on the second Monday in April, and continue twelve juridical days; on the fourth Monday in July, and continue twelve juridical days; and on the first Monday in October, and continue eighteen juridical days.

Clarke. In the county of Clarke, on the fourth Mondays in April and October, and continue, each, twelve juridical days. There shall, also, be held a term for the trial of chancery and criminal causes, in Clarke, commencing the second Monday in July, and continuing six juridical days.

Estill. In the county of Estill, on the first Mondays in April and December, and continue, each, six juridical days.

Jessamine. In the county of Jessamine, on the third Mondays in May and November, and continue, each, twelve juridical days.

Twelfth district. TWELFTH DISTRICT.

Rockcastle. In the county of Rockcastle, on the first Monday in March and second Monday in August, and continue, each, six juridical days.

Laurel. In the county of Laurel, on the second Monday in March and third Monday in August, and continue, each, six juridical days.

Whitley. In the county of Whitley, on the third Monday in March and fourth Monday in August, and continue, each, six juridical days.

Knox. In the county of Knox, on the fourth Monday in March, and continue twelve juridical days; and on the first Monday in September, and continue six juridical days.

Clay. In the county of Clay, on the second Mondays in April and September, and continue, each, six juridical days.

Harlan. In the county of Harlan, on the third Mondays in April and September, and continue, each, six juridical days.

Perry. In the county of Perry, on the fourth Mondays in April and September, and continue, each, six juridical days.

Letcher. In the county of Letcher, on the Mondays succeeding the Perry circuit courts, in each year, and continue six juridical days.

In the county of Pike, on the Mondays succeeding the Letcher circuit courts, in each year, and continue six juridical days. Pike.

In the county of Floyd, on the Mondays succeeding the Pike circuit courts, in each year, and continue six juridical days. Floyd.

In the county of Johnson, on the Mondays succeeding the Floyd circuit courts, in each year, and continue six juridical days. Johnson.

In the county of Breathitt, on the Mondays succeeding the Johnson circuit courts, in each year, and continue six juridical days. Breathitt.

In the county of Owsley, on the Mondays succeeding the Breathitt circuit courts, in each year, and continue six juridical days. Owsley.

ARTICLE XII.

Special Terms.

§ 1. When the business requires it, a circuit judge may hold a special term in any county in his district for the trial of chancery, penal, or criminal causes, or either. Preparatory steps and interlocutory orders may be taken in any civil cause, at any stated or special term for the trial of chancery, criminal, or penal causes. Special chancery and criminal terms. A. 1850-1, 166.

1. The judges may, in term time, or in vacation, order a grand and petit jury to be impanneled at any special term. Jury.

2. If the order be made in vacation for a special term, notice thereof shall be posted up at the court house door ten days before its commencement, and parties to a suit may agree that the court may hold a special term for the trial of such suit without notice. Notice.

3. All orders for or concerning a special term must be entered on the records of the court. Orders.

ARTICLE XIII.

Election of Special Judges.

§ 1. When, from any cause, the judge of the circuit court fails to attend, or if in attendance, cannot properly preside in a cause or causes pending in such court, the attorneys of the court who are present, shall elect one of its members then in attendance, to hold the court for the occasion, who shall accordingly preside and adjudicate. Election of special judge. New Con. art. 4.

1. The election shall be held by the clerk, and in case of a tie, he shall give the casting vote. Held by clerk.

Powers, &c.

2. The person elected shall, during the period that he acts, have all the powers and be liable to all the responsibilities of a circuit judge.

Compensation.

3. He shall be paid for his services a sum bearing the same proportion to the salary of the circuit judge as the time he may serve shall bear to the whole number of juridical days in said circuit.

Certificate of service.

4. The period of service must be certified by the clerk to the auditor of public accounts, who shall ascertain the amount and draw his warrant on the treasury therefor; and the same shall be deducted from the judge's salary.

Failure to act.

5. If the person first elected to act as judge *pro tempore* fails or refuses to act, or cannot properly preside, another election shall be held, in like manner, from time to time, until a suitable person is chosen who can and will preside.

Selection by the parties.

6. Or the parties may agree upon an individual to preside, and the person agreed on shall have the same power and be paid in the same manner as if elected by the bar.

Oath.

§ 2. Every judge of the circuit court, and every special judge, before entering on the discharge of his duties, must, in addition to the oaths prescribed by the constitution, take an oath as follows:

I, A. B., do solemnly swear, (or affirm,) that I will administer justice, without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge all the duties incumbent upon me as a judge, according to the best of my abilities.

Entries on order book.

§ 3. The commissions of judges, the selection of temporary judges, the reason of such selection, and the fact that the requisite oaths have been taken, must be entered on the order book of the court.

ARTICLE XIV.

Duties of Court in general continuances of cases not tried.

Continuances of causes.

M. & B. 491.

§ 1. If a court does not sit at any term, or does not continue to sit the whole term, or shall not, before the end of the term, have heard and determined all the causes pending in court, the causes on the docket, or such of them as are not disposed of, shall stand continued until the succeeding term, without any special order or fee to the clerk for such continuance.

No discontinuance from failure of court to sit. M. & B. 491.

§ 2. If, after a court has been opened at any term, it does not, from any cause, sit on any day of the term, there shall be no discontinuance of the court, or of the suits pending in the court: but so soon as the cause is removed

the court may proceed to business until the end of the term, if the business require it.

ARTICLE XV.

The Franklin Circuit Court made the Fiscal Court of the Commonwealth.

Franklin circuit court, special jurisdiction.

§ 1. The Franklin circuit court shall have jurisdiction, in behalf of the commonwealth, of all causes, suits, and motions against clerks of courts, collectors of public money, and all public debtors or defaulters of any denomination, and others claiming under them; and for this purpose its jurisdiction shall be co-extensive with the state.

M. & B. 517.

Special term for suits in behalf of commonwealth.

§ 2. The judge of the Franklin circuit court shall hold a term on the last Monday in January in each year for the trial of suits and motions in behalf of the commonwealth, and continue in session for six days or longer, if the business require it.

A. 1850-1, 380.

May be tried at regular terms.

§ 3. The court may try such causes at its regular terms; motions may be set for trial on any day of the special or other terms.

ARTICLE XVI.

Quarterly Courts, original jurisdiction of.

Jurisdiction.

§ 1. The quarterly court of the presiding judge of each county shall have concurrent original jurisdiction, both in law and equity, with justices of the peace, in all civil cases.

A. 1850-1.

Trial in defendant's distr.ct.

But this section shall not authorize the trial of a cause of which a justice has jurisdiction, out of the justice's district in which all the defendants reside, if any of the defendants reside in the county, without the consent, in writing, of the defendant or defendants; and unless such consent be given, the officer executing the warrant shall return the same for trial before a justice of the peace in the district of the defendant's residence.

Proceedings against constables.

§ 2. It shall have jurisdiction throughout the county in proceedings against constables for defalcation in office.

Cases not exceeding $100.

§ 3. It shall have concurrent jurisdiction with the circuit court in all civil cases where the amount in controversy does not exceed one hundred dollars, exclusive of interest and costs, and where the right to or boundary of real estate is not drawn in question.

Jury.

§ 4. It has power to impannel a jury.

ARTICLE XVII.

Powers of Presiding Judge of County Court.

Judge conservator of peace. A. 1850-1.

§ 1. The presiding judge of the county court shall be a conservator of the peace within his county.

Penal and criminal cases.

He shall, also, have all the powers of a justice in penal and criminal proceedings, and in a court of inquiry in such proceedings.

Injunctions, &c. A. 1850-1.

§ 2. The presiding judge of the county court is authorized to grant injunctions, and attachments at common law or in chancery, from his own court or the circuit court of his county.

Idiots and lunatics.

1. He shall have jurisdiction to hold inquests upon idiots and lunatics.

To keep record, &c.

2. He shall keep a record of all his official acts out of court, and in or out of court he shall have power to administer oaths.

ARTICLE XVIII.

When and where Quarterly Courts to be held, and their duties.

Quarterly terms. A. 1850-1.

§ 1. The presiding judge of the county, in each county, shall hold a quarterly term at the court house thereof, at the times prescribed by law.

How long.

§ 2. The court shall remain in session at each term until it disposes of all the business on docket.

Process, to whom directed. A. 1850-1, 268.

§ 3. Process returnable to the quarterly court may, at the discretion of the plaintiff, be directed to the sheriff or coroner, or to a constable.

Judge to act as clerk. A. 1850-1, 40.

§ 4. The presiding judge of the quarterly court shall act as clerk of his own court, and issue all process returnable thereto. He shall keep a docket, order book, and execution book.

Docket.

1. In making out his docket, and drawing up the proceedings of the court, in keeping an execution book, and in every other ministerial act done by him, he shall be governed by the laws prescribing the duties of clerks.

Return of executions.

2. The court must, by rule, fix a monthly return day of executions, and other rules to govern its proceedings.

Tax.

3. When the sum in controversy is over fifty dollars, a tax of fifty cents shall be paid to the presiding judge, by the plaintiff in each cause, before suing out the original process therein, which shall be annually accounted for and paid into the treasury in the same manner that clerks of circuit courts are required to account for and pay over similar taxes.

4. Copies of records in the quarterly county court, certified by the judge, shall be evidence. Copies of records.

§ 5. In controversies over fifty dollars, the fees of the presiding judge and officer executing the process shall be the same that the circuit court clerk and sheriff are entitled to for similar services, shall be due at the same time, and collectable in the same manner. Fees, cases over $50.

1. In controversies not exceeding fifty dollars, the presiding judge and other officers' fees shall be the same, and be due at the same time, and collectable in the same manner, that justices' and constables' fees are due and collectable for similar services. Cases under $50.

2. The presiding judge shall be liable to the same penalties, in the same manner, for issuing an illegal fee bill or making an illegal charge, that justices of the peace are now liable to in similar cases. Illegal fee bills, &c.

§ 6. In cases before the quarterly court, where the sum in controversy is over sixteen dollars, exclusive of interest and costs, either party may have a change of venue to the circuit court of the same county, by the order of a circuit judge, upon the person desiring the change making affidavit that he does not believe he can obtain a fair trial before the presiding judge. Change of venue.

ARTICLE XIX.

County Courts, their original jurisdiction. (*a*)

§ 1. In addition to the jurisdiction given to the county courts by the revised statutes, or any statute of a local character, they shall severally have jurisdiction within their respective counties—

1. To lay and superintend the collection and disbursement of the county levy. County levy.

2. To erect, superintend, and repair all needful public county buildings and structures. County buildings.

3. To superintend and control the fiscal affairs and property of the county, and to make provision for the maintenance of the poor. Fiscal affairs, &c.

(*a*) No power is given by the revised statutes to county courts to entertain jurisdiction in the sale and disposition of real estate for the payment of the debts of a decedent; that power is exclusively given to circuit courts; consequently, the act, entitled, "an act to amend the act to organize county courts," approved December 2, 1851—acts 1851-2, p. 4—is inoperative, and not transferred to this chapter.

Bastardy.

§ 2. The county court may impannel a jury of bystanders, if either party requires it, on the trial of cases in bastardy; such juries shall receive no compensation for their services.

Incidental power.

§ 3. It shall have all incidental power necessary to carry into effect its jurisdiction.

ARTICLE XX.

Appellate jurisdiction of.

Appeals.

§ 1. It has jurisdiction of all civil cases by appeal from the decision of justices of the peace, where the amount in controversy, exclusive of interest and costs, is over four dollars, and is under sixteen dollars.

ARTICLE XXI.

Who compose a County Court, and the duties, powers, &c., of same.

M. & B. 504.

§ 1. The office of associate judge of the county court is abolished.

Court held by presiding judge.

§ 2. A county court shall be held in each county, at the seat of justice thereof, by the presiding judge of the court, on the days prescribed by law.

Court of claims.

1. But at the court of claims, which shall be held in October of each year, the justices of the peace of the county shall sit with the presiding judge, and constitute the court. If the circuit court of any county is held in October, then the court of claims for such county must he held in November.

Quorum.

2. A majority of the justices in commission in the county, and the presiding judge, shall constitute a quorum to do business.

Justices may be summoned.

3. The presiding judge may cause the justices of the county to be summoned to attend at other terms of the court, if he thinks proper.

When to compose part of court.

4. But justices of the peace shall only compose a part of the court when it is engaged in laying the county levy, and in appropriating money, and in transacting other financial business of the county.

Pay.

5. The justices who attend court and assist in transacting business shall each be allowed one dollar per day for his services, to be paid out of the county levy.

Failure of justices to attend.

6. If a majority of the justices of the county do not attend at a court of claims, or at any other court, when summoned to attend, the court may be adjourned from day

to day, until a quorum shall attend; and an attachment may be awarded against defaulters to coerce their attendance.

Oath of presiding judge.

§ 3. The presiding judge of the court, before he enters on the duties of his station, must, in addition to the oaths required by the constitution, take an oath or affirm to administer justice without respect to persons, and to do equal right to the poor and the rich, and that he will faithfully and impartially discharge the duties of his office to the best of his skill and judgment.

Records of old county court.

§ 4. The records and official papers of the county courts heretofore existing, and of the clerks' offices of such courts, shall be kept by the clerks in their offices, and held and regarded as the records and official papers of the county courts and clerks' offices of the court hereby organized in the same counties.

Official copies.

1. Official copies, certified by the clerks of the courts hereby organized, shall be evidence.

Restrictions on clerk.

2. No county court clerk shall practice law in the court of which he is clerk.

3. Nor shall any practicing lawyer keep his office in any room in which the records of the clerk are kept.

Court of record.

§ 5. The county court is a court of record.

Minutes.

1. Before every adjournment, the minutes of the proceedings of the court shall be publicly read by the clerk, and corrected, if necessary, and then the same shall be signed by the judge or presiding justice.

2. The minutes signed shall be taken in a book and carefully preserved among the records; and no proceedings of the court shall be valid until the same be so read and signed.

County and quarterly court the same day.

§ 6. When a county court and a quarterly court are to be held on the same day, the former may complete its business first, or may adjourn a part of it to accommodate parties, and proceed with the business of the quarterly court.

Adjournment.

The county court has power to adjourn from time to time until it disposes of all the business on the docket. But no adjournment shall be to a time beyond the commencement of the next regular term of the court.

To erect and keep jail. M. & B. 505.

§ 7. It shall be the duty of the county court of levy and disbursements to erect and to keep a sufficient county jail.

Fine for failure.

1. On a failure to do so, each member of the court shall be liable to be indicted and fined not less than fifty nor

more than one hundred dollars and costs, and shall stand committed until the same is paid. No member shall be liable if it shall appear that he did not oppose the erection and keeping a good and sufficient jail.

Liable for damages.

2. They and their representatives shall, moreover, be liable, jointly and severally, for damages to any one injured by such failure.

What record must show.

§ 8. The records of the county court shall, at all times, show by whom the court is holden; when justices of the peace compose a part of the court, the records must state the names of such who take their seats, and when a member leaves the bench his absence must be noted.

Levy, when made. M. & B 507.

§ 9. If a levy be not made at the time prescribed, it may be made at a subsequent time.

Allowance to judge.

§ 10. The court, at the court of claims, shall make an allowance to the presiding judge out of the county levy, for his services in holding the monthly courts.

ARTICLE XXII.

Concerning the settlement of the accounts of fiduciaries, &c.

Settlements with guardians, &c. A. 1850-1.

§ 1. The presiding judge of the county court shall make settlements with personal representatives and guardians in his county.

Compensation.

1. He shall be allowed one dollar and fifty cents for each settlement. If the same occupies him more than one day, then one dollar and fifty cents per day, to be paid out of the estate settled.

Commissioners—law repealed.

2. The law requiring three commissioners to be appointed to make such settlements is hereby repealed.

When judge cannot act.

3. If, in any case, the judge cannot make such settlement with propriety, then the clerk of the county court may make the same. If he cannot act with propriety, the judge may appoint some discreet person, not of kin to either party, to make the settlement.

Standing commissioner.

4. The judge may, if he thinks proper, appoint a standing commissioner to make such settlements.

Duty of judge to make settlements. M. & B. 510.

§ 2. It shall be the duty of the presiding judge of each county, when called on by a personal representative or guardian, or committee, or any person interested, to state and settle the accounts of such fiduciary.

To hear evidence.

1. He shall have power to hear testimony on such settlement in support or in opposition to any item.

2. He must reduce to writing all verbal evidence adduced before him.

3. He is in all cases to be governed by law and justice, and shall give no credit to a fiduciary, for disbursements or for services, without evidence to justify the same.

Report.

4. His report, in writing, he shall return to the clerk of the county court. The report shall show the result, giving items of debit and credit, and he shall return therewith all vouchers and evidence adduced before him on the settlement.

Exceptions thereto. M. & B. 511.

5. The clerk shall indorse on the report the time of filing the same, and it shall lay over one term for exceptions to be filed by any person interested.

6. If no exceptions are filed by the second term of the court, the report shall, if approved, be recorded.

May be amended. L. 187.

7. If exceptions are taken, other evidence besides that reported may be heard, and the court shall, upon the whole case, alter or amend the report and order it to be recorded, or so order it without altering or amending it, as shall appear right and legal. The vouchers accompanying the report shall not be recorded, but must be carefully kept on file in the clerk's office.

New evidence.

8. Any new evidence given in court must be reduced to writing and filed with the report.

Settlement evidence.

9. Settlements so made and recorded shall be *prima facie* evidence between the parties interested.

Notice—fine for failure to attend.

10. Notice of the time and place of such settlement must be given to all parties interested, if resident in the county. Any fiduciary failing to settle when so notified, without good excuse, shall, on notice thereof, be fined by the county court twenty dollars.

Witnesses.

11. Witnesses may be summoned at the instance of either party, to give evidence before the judge on the settlement, or on the trial of exceptions by the court, and their attendance may be coerced by attachment and fine.

Judge may adjourn.

12. In making settlements the judge may adjourn from day to day, so long as the business requires it.

May interrogate fiduciary on oath.

13. He may interrogate personal representatives and guardians, on oath, touching any matter drawn in question in making a settlement, and their statements, when so interrogated, must be reduced to writing and returned with the report.

Evidence reported

14. No evidence shall be presumed to have been given on a settlement except such as is reported.

ARTICLE XXIII.

Justices of the Peace, their jurisdiction in criminal and penal cases.

§ 1. Every justice of the peace shall be a conservator of the peace in his county.

Conservator of peace. M. & B. 897.

Every justice of the peace, before he enters on the duties of his office, shall take the oaths prescribed by the constitution.

Oath. M. & B. 887.

§ 2. He shall have jurisdiction in all penal cases where the fine or penalty is so regulated by law that it cannot exceed sixteen dollars, except where the jurisdiction thereof is otherwise specially conferred.

Jurisdiction in penal cases.

§ 3. Two justices have jurisdiction to examine into all infractions of the penal and criminal laws, the final trial of which is cognizable in the circuit court, and when proper to send the accused on for further trial, to commit him to jail, or to allow and take bail.

Examining court.

§ 4. A justice shall have jurisdiction to try persons for routs, riots, breaches of the peace, and disorderly conduct.

Jurisdiction in routs, riots breaches of the peace, &c

1. To bind persons to keep the peace, and for their appearance at the proper court.

2. He may have a jury impanneled at the request of either party, in any case where a jury is allowed by law.

3. He may grant a new trial or re-hearing of any case, civil or penal.

New trials.

4. The power to grant a new trial or re-hearing expires after ten days from the date of the verdict or judgment.

ARTICLE XXIV.

Jurisdiction in civil matters.

§ 1. A justice of the peace has original common law jurisdiction in all cases of contract, written or verbal, express or implied, where the debt or damages claimed, exclusive of interest, does not exceed fifty dollars. (*a*)

Cases not exceeding $50. M. & B. 902.

(*a*) In the report of the commissioners, as made to the legislature, this section, in conformity to the existing statute, gave to justices of the peace *exclusive* original jurisdiction in all cases of contract where the amount in controversy did not exceed fifty dollars, and the like *exclusive* original jurisdiction, in law and equity, where the amount in controversy does not exceed sixteen dollars. The legislature amended the section by striking out the word "*ex-*

1. He has original jurisdiction, in law and equity, of all cases where the amount in controversy does not exceed sixteen dollars. Law and equity cases not exceeding $16.

2. He has power to issue original or final process in any case within his jurisdiction, or which any statute may make it his duty to issue. Process.

3. To issue subpœnas for witnesses. Subpœnas.

4. To administer an oath in all cases where it is required by law, or necessary in the exercise of his jurisdiction. Oaths.

§ 2. A justice has jurisdiction of motions against constables for failing to make proper returns, and for failing to pay over money under process from a justice. Motions against constables. A. 1842-3, 78.

§ 3. The jurisdiction of justices of the peace in cases of idiocy and lunacy is hereby repealed. Idiots and lunatics.

ARTICLE XXV.

Chancery jurisdiction of a Justice of the Peace.

§ 1. He has jurisdiction, by attachment in behalf of the plaintiff in a judgment for less than fifty dollars, upon which execution issues and is returned as to any part thereof no property found, against any person indebted to the defendant in the judgment. By attachment. L. 376, 378.

1. He has jurisdiction of cases to subject the choses in action and personal property of non-residents, or persons who have been absent from the state four months, to the payment of demands over which a justice has legal jurisdiction. Against non-residents.

2. The jurisdiction given by this article, (except for sums under sixteen dollars,) is concurrent with the circuit courts and quarterly courts. Concurrent.

§ 2. A justice has all power necessary to carry into execution the jurisdiction conferred on him. All power necessary.

ARTICLE XXVI.

Concerning Justices' Courts, &c.

§ 1. Each justice of the peace shall hold a court (for the trial of civil causes,) in his district, on a day to be fixed

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clusive," wherever it appeared in the section. The consequence of which is, that as by the provisions of article viii, defining the original jurisdiction of the circuit courts, which had been previously agreed to, that court now has original concurrent jurisdiction of all matters in controversy, arising on contract, without regard to the amount. (*See Senate Journal, pp.* 284, 295.)

by the presiding judge of the county court, in the months designated by law, and shall continue his court from day to day, until he disposes of all the business returned before him. (*a*)

Court of record. M. & B. 886.

§ 2. Every justice's court is a court of record, and each justice shall, in a book provided by him for that purpose, keep a full and fair record of his judicial proceedings.

Record, how kept

1. He shall make and keep with such book a good index of the names of litigants, referring to the pages in the book of every entry in each cause.

A. 1843-4.

2. All warrants and motions shall be docketed and tried, or continued, by justices, in the succession in which the warrants or notices of the motions are returned before him for trial.

Depositions.

3. Depositions may be taken and read on trials before justices in the same manner and on the same grounds as in the circuit courts, except that the same may be taken before and certified by a justice of the peace.

Process to be served five days before trial. A. 1842-3.

4. No warrant or notice shall stand for trial unless it has been executed five days before the day set for the trial thereof.

Change of venue.

A. 1842-3.

§ 3. A party to a suit pending before a justice shall have a change of venue to another justice, when he shall make oath that he believes he cannot have a fair trial in the justice's court before whom the cause is pending, and the cause may be tried out of term time by the justice to whose court it is removed.

Trial before a different justice.

§ 4. If the justice before whom a cause is returned for trial does not attend, or cannot try the same, any other justice of the same county may attend and try and decide the cause.

Justice about to be absent to deposit records.

§ 5. Any justice who intends to be absent from the county in which he resides for more than a week, or if from any cause he is unable to act, shall deposit his records with

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(*a*) *An act to regulate the times of holding the Courts of Justices of the Peace—approved January* 1, 1852.

§ 1. That the judges of the county courts in each county shall, by appropriate order entered of record from time to time, regulate the times in the months now fixed by law for holding the justices' courts, in such manner that they shall not conflict with each other or with the terms of the county court.

§ 2. The clerk of the county court shall furnish each justice of the peace in the county with a copy of the order, and copies thereof shall be posted by the sheriff at the court house, and at each voting precinct in the county.

some convenient justice, who may grant any appeal, or allow any traverse to be filed, give a certified copy of any judgment, or issue any process which the justice could who rendered the judgment. L. 379.

1. If the books are not deposited with another justice, if he can get possession thereof, he may, at any time during such absence or disability, act as if they were so deposited. When not deposited.

2. If a justice shall vacate his office, the nearest justice to his residence may act, as is provided in the preceding part of this section, until the vacancy is filled. When office vacated.

3. The successor of a justice may act on the judgments and records of his predecessor in the same manner that the latter could do, were he still in office. Successor.

4. When a justice is appointed, the county court shall make an order directing what books of his predecessor shall be placed in his hands. Books of predecessor.

ARTICLE XXVII.

In trials before Justices, parties may be sworn.

§ 1. In trials before a justice of the peace, either party may examine the other, upon oath, touching the matter in controversy, if present at the trial, or a resident of the county. Party may be examined.

M. & B. 891.

1. A summons may issue requiring the appearance of the party whose examination is desired, if he be a resident of the county in which the case is pending. Summons issued for.

2. If such party resides out of the county in which the trial is to be had, the opposite party may file interrogatories with the justice before whom the cause is pending, and swear that if answered truly they are necessary to obtain justice; a copy thereof must be delivered to the party to be interrogated, who shall make out, swear to, and file with the justice a plain direct response to the interrogatories, which may be read on the trial by either party. When out of the county, interrogatories filed.

3. The justice shall render judgment against a party who refuses to make a proper response to interrogatories, or to attend and answer before the justice when called on or summoned for that purpose as herein provided. Judgment against party refusing to respond.

M. & B. 903.

§ 2. The three preceding subsections shall apply to the trial of appeals from justices' courts. Appeals.

ARTICLE XXVIII.

Lost Judgments.

§ 1. When the records of a justice are destroyed or lost, and a judgment so destroyed or lost remains unsatisfied, he New judgment for judgment destroyed.

M. & B. 899. may, on proper notice, render a new judgment for whatever is due.

1. If, on the trial, the judgment appears to be satisfied, such justice shall give judgment for the defendant's cost.

2. The justice shall state in his record of such trials that the proceedings are founded on a judgment which has been lost or destroyed. An appeal lies from such judgments as in other cases.

ARTICLE XXIX.

Miscellaneous Provisions.

Blank warrants not to be signed. M. & B. 890.

§ 1. No justice shall sign or knowingly permit his name to be signed to a blank warrant, under pain of being presented and fined ten dollars.

Copy of record. M. & B. 890.

§ 2. On request, a justice shall give to any person desiring the same a certified copy of any record and proceedings in his custody, which copy shall be legal evidence.

Court at any time for criminal or penal cases.

§ 3. Justices may hold a court at any time for the trial of criminal or penal causes of which they have jurisdiction.

An act to prohibit certain officers from trafficking in claims on county treasuries—approved December 20, 1851.

A. 1851-2, 9.

That from and after the passage of this act, it shall not be lawful for any county judge, justice of the peace, or county attorney, to traffic for, purchase, or speculate in any claim or claims, to be allowed by the court of claims of the county of which he or they may be said judge, justice of the peace, or attorney; and that, for any violation of the provisions of this act, he or they may be punished by fine in a sum twice the amount of the claim so bought as aforesaid, upon the presentment or indictment of a grand jury.

An act to authorize Justices of the Peace to hold inquests in certain cases—approved December 20, 1851.

Justices of the peace may act as coroner in certain cases.

A. 1851-2, 10.

§ 1. That whenever the dead body of any person may be found, in any of the counties of this state, and the coroner of such county shall be absent therefrom, or at such distance as would render his attendance inconvenient, and the situation of such body be such as to require its immediate interment, it shall and may be lawful for any justice of the peace, in the vicinity where such body may be found, to summon a jury and hold an inquest thereon, in the same manner as coroners are by law authorized to do;

and the said justice shall be allowed the same fees as are now allowed to coroners for similar services.

§ 2. That the provisions of this act shall only apply to the counties bordering the Ohio and Mississippi rivers.

CHAPTER XXVIII.

CRIMES AND PUNISHMENTS.

ART. 1. General Provisions.
ART. 2. Jurisdiction.
ART. 3. Treason and Willful Murder.
ART. 4. Voluntary Manslaughter, Rape, and Abduction.
ART. 5. Robbery and Burglary.
ART. 6. Maiming, or other crimes against the person.
ART. 7. Arson, and burning of buildings, &c.
ART. 8. Perjury.
ART. 9. Forgery and Counterfeiting.
ART. 10. Bank Notes, Bank Paper, &c.
ART. 11. Larceny.
ART. 12. Embezzlement.
ART. 13. Destroying a will—obtaining money, &c., by false pretenses.
ART. 14. Destroying and obstructing public works and corner trees.
ART. 15. Offenses by convicts, &c.
ART. 16. Escape and rescue of prisoners charged with crime.
ART. 17. Penal offenses and punishments.
ART. 18. Riots, routs, and breaches of the peace.
ART. 19. Duelling.
ART. 20. Racing on the highway, &c.
ART. 21. Lotteries.
ART. 22. Actions popular, or suits for penalty.
ART. 23. Usurpation of office and bribery of officers.
ART. 24. Contempts.
ART. 25. Trespass and injury to property.
ART. 26. Surety for the peace.

ARTICLE I.

General Provisions.

Felonies and misdemeanors.

§ 1. Offenses are either felonies or misdemeanors. Such offenses as are punishable with death or confinement in the penitentiary, are felonies. Offenses committed by slaves, and punishable alone by stripes, are, as to them, misdemeanors. All other offenses, whether at common law or made so by statute, are misdemeanors.

Punishment.

§ 2. No crime shall be punished with death unless it be directed by statute.

§ 3. A common law offense, for which punishment is prescribed by statute, shall be punished only in the mode so prescribed.

Felony no merger of civil remedy

§ 4. The commission of a felony shall not stay or merge any civil remedy of the party aggrieved against the felon.

Where offenses to be tried.

§ 5. All offenses shall be tried in the courts, or by the tribunals of that county or city having jurisdiction of them, in which they were committed, except in cases otherwise provided for.

When doubtful where offense was committed.

§ 6. When it is a matter of doubt in the opinion of the court, in which of two or more counties the offense was committed, the court of either in which the indictment is found, shall have jurisdiction of the offense.

Where wounding or poisoning in one county and death in another.

§ 7. If a mortal wound or other violence or injury be inflicted, or poison be administered, in one county or corporation, and death ensues in another, the offense may be prosecuted in either.

When second trial after acquittal.

M. & B. 536.

§ 8. A person acquitted of an offense on the ground of a variance between the allegations and the proof, or upon an exception to the form or substance of the indictment or accusation, may be arraigned again upon a new indictment, or other proper accusation, and tried and convicted, notwithstanding such previous acquittal. At any time before a jury is sworn in a criminal prosecution, the commonwealth, by her attorney, by leave of court, may enter a *nolle prosequi*.

Nolle prosequi.

No approvers.

§ 9. Approvers shall not be admitted in any case.

Accessories before the fact.

§ 10. In all felonies, accessories before the fact shall be liable to the same punishment as the principals, respectively, and may be prosecuted jointly with those principals, or severally, though their principals be not taken or tried.

Accessories after the fact.

§ 11. Accessories after the fact, not otherwise punished, shall be guilty of high misdemeanors, and fined and imprisoned at the discretion of the jury, and may be tried, though their principals be not taken or tried. But no person in the relation of husband and wife, parent or grandparent, child or grandchild, brother or sister, or servant, to the offender, who, after the commission of the felony, shall aid or assist a principal felon or accessory before the fact, to avoid or escape from prosecution or punishment, without forcibly breaking a prison in which such felon may be confined, or taking him by force from an officer or guard, shall be deemed an accessory after the fact.

Second and third convctions for felony.

§ 12. Every person convicted a second time of felony, the punishment of which is confinement in the penitentiary, shall be confined in the penitentiary not less than double the time of the first conviction; and if convicted a third time of felony, he shall be confined in the penitentiary during his life. Judgment in such cases shall not be given for the increased penalty, unless the jury shall find, from record and other competent evidence, the fact of former convictions for felony committed by the prisoner, in or out of this state.

Continuance of prosecutions.

M. & B. 1295.

§ 13. Prosecutions for felony may be continued at the discretion of the court, as often as good grounds for such continuance shall be made out. No number of such continuances shall operate a discharge of the prisoner.

Evidence in cases of forgery.

M. & B. 1303.

§ 14. Persons by whom a forged instrument of writing purports to have been executed, shall be competent witnesses on the trial of any prosecution for such forgery. Judgment of conviction for forgery shall not destroy the legal validity of the writing charged to have been forged, or be used as evidence in any civil controversy relative to the same.

Restitution of property stolen, &c.

M. & B. 537, 1276.

§ 15. In all cases of conviction of felony, the party convicted shall restore the property stolen or destroyed, or make reparation in damages therefor. The court in which such conviction may be had, if applied to at the same term in which the sentence was pronounced, by petition verified by affidavit, may order restitution or give judgment against the convict for reparation in damages, and enforce the collection of the same by execution or other process.

How value, &c., ascertained.

§ 16. In motions for restitution or reparation, the court shall cause the prisoner to be set within the bar, and demand of him if he has any defense to make to the motion. And if the convict consents to such restitution or reparation in damages, the court shall give judgment accordingly, if the damages are agreed. Otherwise a jury shall be impanneled to try the facts, and ascertain the amount and value of the property, or assess the damages, as the case may be. A failure to pursue the remedy hereby given shall not deprive the party aggrieved of his civil action for the injury sustained. The party injured shall have a lien on the estate of the criminal from the time of his arrest.

Jury to fix punishment.

M. & B. 1266.

§ 17. The jury by whom any offender may be tried, shall fix by their verdict the quantum of punishment to be in-

flicted, within the periods or amount prescribed by law as the punishment for the offense.

Benefit of clergy abolished.

§ 18. All claims to dispensation of punishment by benefit of clergy, are hereby abolished.

Punishment in penitentiary.

M. & B 1262.

§ 19. Persons sentenced to punishment by a confinement in the penitentiary, shall be kept at hard labor and solitary confinement.

Mode and time of punishment by death.

§ 20. Persons sentenced to suffer death shall be hung by the neck until dead, at such time and place as the court shall order, by the sheriff of the county or other person designated by the court. The time fixed for the execution of the sentence shall not be less than twenty nor more than ninety days, unless the public peace and safety, in the opinion of the court, require a shorter time.

Expenses of execution.

The expenses of the execution and burial, when certified by the court, shall be paid out of the public treasury.

What prosecutions barred by time, and when.

M. & B. 1284, 1139.

§ 21. Prosecutions by the commonwealth for felony shall not be barred by lapse of time or any statute of limitations. Prosecutions by the commonwealth to recover a penalty for a violation of any penal statute or law, and a suit or procedure at the instance of any person, to recover any such penalty, shall be commenced within one year after such penalty or forfeiture has occurred, and not after, unless a different time is allowed by the statute imposing the fine or penalty. Prosecutions for profane swearing, cursing, or being drunk, or sabbath-breaking, and against surveyors of public highways, shall be made within six months after the offense is committed, and not after.

Offer of rewards by governor.

L. 447.

§ 22. In aggravated cases of murder and other felonies against the person, when the accused shall flee from justice, the governor of the commonwealth of Kentucky, on a petition of the county judge or circuit judge of the county, shall be authorized to issue his proclamation, and offer a reward, not exceeding five hundred dollars, for the apprehension of the accused.

Imprisonment in county jail.

§ 23. In all cases where the party convicted of an offense, is punished by fine and imprisonment, or by imprisonment alone, the imprisonment shall be by close confinement in the jail of the county in which the defendant was tried.

Fines and forfeitures, to whom enure.

§ 24. All fines and forfeitures which may be imposed by law, shall enure and vest in the commonwealth, except in cases where, by law, the whole or a part thereof shall be given to a person or to some particular object.

Proportion allowed to commonwealth's attorney.

Attorneys for the commonwealth in the several districts shall be entitled, as fees for their services, to one-fourth of the fines assessed against persons for permitting gaming in or at any place prohibited by law. One-half of all fines assessed against persons for keeping a tippling house; twenty per cent. of all fines assessed against persons for standing horses, jacks, and bulls without license; and twenty per cent. of all judgments on forfeited recognizances in favor of the commonwealth.

How recovered.

§ 25. Fines or forfeitures imposed may be recovered by civil procedure, before any judicial tribunal having jurisdiction, or upon indictment or presentment of a grand jury.

When provisions apply to slaves & free negroes.

§ 26. The provisions of this chapter shall not apply to slaves, except where slaves are specifically named, nor shall they apply to free negroes, when the punishment of a free negro for the same offense is provided for elsewhere in the revised statutes.

ARTICLE II.

Jurisdiction.

Concurrent jurisdiction of counties over river, &c. being common boundary.

M. & B. 885, 332.

§ 1. In all cases where any part of a river, water, watercourse, highway, road, or street, shall be the boundary line between two counties, the courts, and judges, and justices, and all circuit and county officers of both such counties, shall have concurrent jurisdiction in all cases over the whole extent of such parts of said river, water, watercourse, highway, road, or street.

Counties bordering on the Mississippi, Ohio, &c.

M. & B. 886.

§ 2. The circuit court of each county bordering on the Mississippi, Ohio, Big Sandy, or Tennessee rivers, shall have concurrent jurisdiction of any treason or felony committed on any of said rivers.

No person to be twice punished or put in jeopardy for same offense.

§ 3. No person shall be twice punished or put in jeopardy for the same offense, under the provisions of the two preceding sections.

ARTICLE III.

Treason and willful murder.

Treason punished with death.

M. & B. 1265.

§ 1. If any person be guilty of treason against the commonwealth of Kentucky, he shall be punished with death, or be confined in the penitentiary not less than ten nor more than twenty years, at the discretion of the jury.

§ 2. All distinction between petit treason and willful murder is abolished.

Conspiracy of white person with negro.

§ 3. If any free white person advise, counsel, or conspire with a negro, bond or free, and cause him to rebel or make insurrection against the authority of his master or the laws of the land, he shall be punished with death, or confined in the penitentiary not less than six nor more than ten years, at the discretion of the jury.

Willful murder.

§ 4. If any person be guilty of willful murder, he shall be punished with death.

ARTICLE IV.

Voluntary manslaughter, rape, and abduction.

Voluntary manslaughter. M. & B. 129, 1266.

§ 1. Whoever shall be guilty of voluntary manslaughter, shall be confined in the penitentiary not less than two nor more than ten years.

Stabbing, shooting, &c.

M. & B. 1294.

§ 2. Any person who shall willfully strike, stab, thrust, or shoot another, not designing thereby to produce or cause his death, and which is not done in self-defense, or in an attempt to keep and preserve the peace, or in the lawful arrest or attempt to arrest a person charged with felony or misdemeanor, or in doing any other legal act, so that the person struck, stabbed, thrust, or shot, shall die thereof within six months next thereafter, shall be confined in the penitentiary not less than one nor more than six years.

Rape on infant under 12 years. M. & B. 1289.

§ 3. If any person shall be convicted of the crime of rape upon the body of an infant under the age of twelve years, he shall be punished with death.

Rape.

§ 4. Whoever shall unlawfully and carnally know any white woman, against her will or consent, or by force, or whilst she is insensible, shall be guilty of rape, and shall be confined in the penitentiary from ten to twenty years.

Carnally knowing white girl under 10 years, or an idiot.

§ 5. Whoever shall carnally know a white girl under the age of ten years, or an idiot, shall be confined in the penitentiary not less than ten nor more than twenty years.

Abducting unmarried white girl under 14 years.

M. & B. 1271.

§ 6. Whoever, being above the age of fourteen years, shall unlawfully take, without her consent, any unmarried white girl under the age of fourteen years out of the possession of her father, mother, or other person having the lawful custody and charge of her, against the will and consent of such person, shall be confined in the penitentiary from one to two years, or fined from one hundred to five hundred dollars, at the discretion of the jury.

Taking away, decoying, or detaining child under 10 years.

§ 7. Whoever, being above the age of fourteen years, shall unlawfully lead, or take away, or decoy, or entice away, or detain any child under the age of ten years, with

intent to deprive the parent, or other person having the lawful care, charge, or possession of such child, or with intent to steal any article of value upon or about the person of such child, or shall, with any such intention, receive, conceal, or harbor such child, knowing it to have been so taken or enticed away, shall be confined in the penitentiary not less than one nor more than three years. But no person claiming in good faith to be the parent of such child, or to have the right to its possession, shall incur the penalty prescribed in this or the next preceding section.

Taking or detaining white woman against her will, with intent to marry or carnally know.

§ 8. Whoever shall unlawfully take or detain any white woman against her will, with intent to marry such woman, or have her married to another, or with intent to have carnal knowledge with her himself, or that another shall have such knowledge, shall be confined in the penitentiary not less than two nor more than seven years.

M & B. 1269.

Bigamy.

§ 9. Whoever being married, the first husband or wife, as the case may be, being alive, shall marry any person, shall be confined in the penitentiary not less than three nor more than nine years. Persons whose husband or wife shall have absented themselves, and continually remained beyond the seas, or in any state of the United States, not having been heard of for the period of five years preceding the last marriage, the one not knowing the other to be alive; persons who at the time of such marriage shall be lawfully divorced and permitted to marry, or whose former marriage hath been or hereafter may be declared void; and persons whose former marriage was had or made within the age of consent, are not embraced in this section.

M. & B. 1268.

First wife of offender to be endowed on his conviction.

§ 10. If such offender be a man, his first wife shall, on his conviction, be endowed of one-third part of his real estate and slaves for life, and in fee of one-third part of his other estate, to be allotted and recovered as dower in other cases. And if the offender be a woman, she shall forfeit her claim to dower in her first husband's estate.

M. & B. 1269.

Sodomy or buggery.

§ 11. Whoever shall be convicted of the crime of sodomy or buggery with man or beast, he shall be confined in the penitentiary not less than two nor more than five years.

M. & B. 1265. V. R. 740.

Incest.

§ 12. Whoever shall commit adultery or fornication with, or carnally know his or her father, mother, child, sister, or brother, shall be guilty of felony, and confined in the penitentiary not less than two nor more than six years.

Destroying or concealing birth of bastard child.

M. & B. 1268.

§ 13. If any woman, not being a slave, be delivered of any issue of her body, which being born alive would be a bastard, shall endeavor privately, by drowning or secretly burying the same, or in any other way, directly or indirectly, to conceal the birth thereof, so that it may not be known whether it were born alive or not, she shall be confined in the penitentiary not less than two nor more than seven years.

ARTICLE V.

Robbery and burglary.

Punishment.

§ 1. Every person guilty of robbery or burglary shall be confined in the penitentiary not less than three nor more than ten years.

Assault &c. with intent to rob.

§ 2. If any person, with an offensive weapon or instrument, shall unlawfully and maliciously assault, or shall by menace, or in or by any forcible and violent manner, demand any money, goods, or chattels, bond, bill, deed, or will, or other evidences of right, or any thing of value, of or from any other person, with a felonious intent to rob or commit robbery upon such person, he shall be confined in the penitentiary not less than one nor more than two years.

Robbery or larceny of bonds, notes, &c., &c., deemed felony.

M. & B. 1261.

§ 3. Robbery or larceny of obligations, bonds, deeds, wills, bills obligatory or bills of exchange, promissory notes for the payment of money, lottery tickets, paper bills of credit, certificates of deposit of money with any bank or other person, or certificates or obligations granted by the authority of this commonwealth, that of the United States, or of any of them, or of account books or receipts, shall be felony, and punished in the same manner as robbery or larceny of goods and chattels.

Larceny from churches, school houses, dwelling houses, court houses, &c.

M. & B. 1270.

§ 4. If any person shall feloniously take any goods or chattels, or other thing of value out of or from any church, chapel, or meeting house, school house, court house, or other public building, which goods and chattels, or other thing belong thereto, or shall rob any person in his dwelling house or place, or in any booth or tent in a fair or market, he, his wife, children, or servants, or other person then being within, or shall feloniously break any dwelling house or any part thereof, or any out house belonging to or used with any dwelling house, by day, and feloniously take away any thing of value although the owner or any person may not be there, he shall be confined in the penitentiary not less than one nor more than two years.

ARTICLE VI.

Maiming, or other crimes against the person.

Maiming, &c.

M. & B. 1266.
M. & B. 1268.

§ 1. If any person shall unlawfully pull or put out an eye, cut, or bite off, or slit the tongue, nose, ear, or lip, or any part thereof, or cut or bite off any other limb or member, by fighting or otherwise, of another person, except the same be done in self-defense, or in doing some lawful act, he shall be confined in the penitentiary not less than one nor more than five years.

Malicious shooting, stabbing, or poisoning.

M. & B. 1281.
A. 1850, 61.

§ 2. If any person shall willfully and maliciously shoot at and wound another, with an intention to kill him, so that he does not die thereby, with a gun or other instrument loaded with a leaden bullet, or other hard substance, or shall willfully and maliciously cut, strike, or stab another, with a knife, sword, or other deadly weapon, with intention to kill, if the person so stabbed, cut, or bruised, die not thereby, or shall willfully and maliciously administer poison or attempt to poison or administer poison to another, if death do not ensue in consequence thereof, he shall be confined in the penitentiary not less than one nor more than five years.

Sending threatening letters, with intent to extort.

M. & B. 1281.

§ 3. If any person shall knowingly send any letter, with or without a name signed thereto, or with a fictitious name, threatening to kill another, or to do him or his wife or child harm, or to burn or destroy his house or other property, or to accuse him or his wife or child of a felony, with the intention to extort or gain money, goods, wares, or merchandise, or a deed, will, or other instrument of writing, from the person so threatened or from any other, he shall be confined in the penitentiary not less than one nor more than ten years.

Feloniously breaking into store houses, &c.

M. & B. 1278.

§ 4. If any person shall feloniously, in the night or day, break any warehouse, storehouse, office, shop, or room in a steam, wharf, or other boat, whether such place be or be not a depository for goods, wares, or merchandise, and whether the goods, wares, and merchandise be or be not exposed for sale in such place, with intent to steal, or shall feloniously take therefrom or destroy any goods, wares, or merchandise, or other thing of value, whether the owner or other person be or not in such house, office, room, or shop, he shall be confined in the penitentiary not less than one nor more than seven years.

ARTICLE VII.

Arson and burning of buildings, &c.

Punishment of arson. M. & B. 1265.

§ 1. If any person shall be guilty of arson, he shall be confined in the penitentiary not less than five nor more than twelve years.

Burning public buildings, &c. M. & B. 1270.

§ 2. If any person shall willfully burn any court house, county or public prison, or the office of any clerk of a court, or the capitol of the commonwealth, or any office therein, or upon the capitol or public grounds, or any surveyor's office, or other public office within this state, or the office or depot of any railroad or canal company, he shall be confined in the penitentiary not less than seven nor more than twenty-one years.

Burning warehouses, churches, stacks, bridges, mills, &c., &c. M. & B. 1270.

§ 3. If any person shall willfully and unlawfully burn a tobacco-house, warehouse, storehouse, or any house or place where wheat, corn, or other grain, grass, fodder, hemp, or hay is usually kept; any stable or outhouse, or any church or meeting house, or any other house whatever, or any stack or shock of hay, fodder, flax, hemp, pile of lumber, plank, cord-wood, tan-bark, wheat, or other grain, or any bridge or causeway upon a street, public highway, railroad, turnpike road, plank road, or canal, or steam saw or grist mill, water grist or saw mill, steamboat or other water craft or vessel, he shall be confined in the penitentiary not less than one nor more than six years.

Attempting to commit such offenses. A. 1850, 61.

§ 4. If any person shall willfully, maliciously, and unlawfully attempt to commit any of the offenses described in the three preceding sections, by trying to set fire to or ignite the same, or any materials therein, though the same or part thereof be not fired or burned, he shall be confined in the penitentiary not less than three months nor more than six years.

Burning penitentiary. M. & B. 1285. A. 1850, 61.

§ 5. If any person shall willfully and maliciously burn the penitentiary house, he shall be punished with death.

If any one so attempt to burn the same, by the means and in the manner described in the fourth section of this article, he shall be confined in the penitentiary not less than one nor more than six years.

ARTICLE VIII.

Perjury.

Punishment of perjury. M. & B. 1290.

§ 1. Every person guilty of perjury shall be punished by confinement in the penitentiary of not less than two nor

more than six years, unless in those cases where a different punishment is prescribed by law.

False evidence.

M. & B. 1273.

§ 2. If any person, in any matter which is or may be judicially pending, or on any subject in which he can legally be sworn, or on which he is required to be sworn, when sworn by a person authorized by law to administer an oath, shall willfully and knowingly swear, depose, or give in evidence that which is untrue and false, he shall be confined in the penitentiary not less than two nor more than six years.

Subornation of perjury.

§ 3. If any person shall unlawfully and corruptly procure another, by any means whatever, to commit any of the offenses described in the two preceding sections, he shall be guilty of subornation of perjury, and confined in the penitentiary not less than two nor more than six years.

Disqualification.

§ 4. If any person be convicted of either of the offenses described in the next three preceding sections, he shall ever afterwards be disqualified from giving evidence in any judicial proceeding, or from being a witness in any case whatever.

Bribing juror.

§ 5. If any person shall procure any juror to take gain or profit for rendering his verdict, or refusing to render his verdict, he shall be confined in the penitentiary not less than one nor more than six years.

ARTICLE IX.

Forgery and counterfeiting.

Punishment for counterfeiting coin

M. & B. 1266.

§ 1. If any person shall forge or counterfeit any gold or siver coin which is, or hereafter shall be passing as current in this state, or shall knowingly and falsely utter, pay or tender in payment, any such counterfeit and forged coin, he shall be confined in the penitentiary not less than five nor more than fifteen years.

Counterfeiting or altering auditor's warrant, treasurer's check, state bond, &c., &c.

M. & B. 1267.

§ 2. If any person shall forge, counterfeit, or alter the warrant of the public auditor, check of the treasurer of the state, or certificate of either, or any other public security, or state bond, or coupon of interest thereon, with intent to defraud the commonwealth or any person; or if he shall be concerned in printing, writing, signing, uttering, or passing any such forged and counterfeit papers as above described, knowing the same to be forged and counterfeited, he shall be confined in the penitentiary not less than two nor more than five years.

Counterfeiting inspector's receipt—altering or using the same.

M. & B. 1271.

§ 3. If any person shall forge, counterfeit, alter, or erase the receipt or certificate of an inspector; or if he shall utter, tender in payment, or pass such receipt or certificate, knowing the same to be forged, counterfeited, altered, or erased, or shall have in his possession such receipt or certificate, knowing the same to be forged and counterfeited, for the period of five days, without giving notice thereof to a justice of the peace; or if he shall knowingly export or ship any hogshead of tobacco, flour, or other commodity, with a forged and counterfeit stamp, receipt, or certificate; or shall receive or demand tobacco, flour, or other commodity, of an inspector or other person, knowing the stamp or certificate to be counterfeit and forged; or shall fraudulently draw or take out a stave, plank, or heading board of any hogshead, cask, or other vessel so stamped, after the same shall have been delivered out of any public warehouse, he shall be confined in the penitentiary not less than one nor more than six years.

Inspector issuing false receipt.

M. & B. 1271.

§ 4. If an inspector shall fraudulently issue to any person his receipt for any hogshead or case of tobacco, flour, or other commodity, which he has not actually received in the warehouse whereof he is an inspector at the time, or shall fraudulently issue more than one receipt for the same article by him received, except when authorized by law so to do, he shall be confined in the penitentiary not less than one nor more than seven years.

Forgery of deeds wills, bonds, notes, &c.

M. & B. 1272.

§ 5. If any person shall forge or counterfeit any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for the payment of money or other thing, or any indorsement or assignment of a bond, writing obligatory, bill of exchange, or promissory note for the payment of money or other thing, or any acquittance or receipt for money, or property, or other thing, with intention to defraud another; or shall knowingly utter or publish as true any such instrument as above described; or shall fraudulently forge, counterfeit, or utter any commission, patent, pardon, or public record, or an attested copy thereof, of any judicial, executive, or legislative officer, or utter as true any of the before described papers, knowing them to be forged, counterfeit, or altered, shall be confined in the penitentiary not less than two nor more than ten years.

Of commissions, patents, pardons, &c.

Counterfeiting seal of the commonwealth, &c.

M. & B. 1273.

§ 6. If any person shall fraudulently make or counterfeit any instrument, stamping an impression in the figure or likeness of the seal officially used by the commonwealth

of Kentucky, or of the United States, or any of the states, or any officer of this state, the United States, or any of the states, or of any court or officer thereof, or of any corporation, or officer thereof, or if he have in his possession any such instrument, and conceal the same, knowing it to be falsely made and counterfeited, or use the false impression made by such instrument, and utter and publish it as true, knowing it to be falsely made and counterfeited, he shall be confined in the penitentiary not less than five nor more than fifteen years.

Forgery of any writing whatever.

§ 7. If any person shall forge or counterfeit any writing whatever, whereby fraudulently to obtain the possession of or to deprive another of any money or property, or cause him to be injured in his estate or lawful rights, or if he shall utter and publish such instrument, knowing it to be forged and counterfeited, he shall be confined in the penitentiary not less than two nor more than ten years.

Giving pass to a slave without the owner's consent.

A. 1850, 48.

§ 8. If any person shall write for and knowingly deliver, or cause to be delivered, to a slave not his own, or under his lawful control, a pass to go from one place to another, and shall affix the name of any one, or a fictitious name thereto, without the consent, express or implied, of the owner or person having the control, he shall be guilty of forgery, and confined in the penitentiary not less than one nor more than five years.

ARTICLE X.

Bank notes, bank paper, &c.

Counterfeiting bank notes, &c.

M. & B. 1279.

§ 1. If any person shall forge or counterfeit a bank bill, or note or check, or draft, upon a bank, or the certificate of deposit of money therein, of any bank or company incorporated by law, in any part of the United States, or any indorsement thereon; or shall erase or alter the same, or any indorsement thereon; or shall tender in payment, utter, vend, exchange, barter, or demand to have exchanged for money, any such forged, erased, altered, or counterfeited bill, note, draft, check, or certificate of deposit, or the indorsement thereon, knowing the same to be forged, counterfeited, erased, or altered, he shall be confined in the penitentiary not less than two nor more than ten years.

Having counterfeit plate in possession.

L. 477.

§ 2. If any person shall have or keep in his possession any counterfeit bank note, or counterfeit gold or silver coin, knowing the same to be forged and counterfeited, with the intention of circulating the same, he shall be confined in

the penitentiary not less than two nor more than ten years.

Having in possession notes on banks not in existence.

§ 3. If any person shall have or keep in his possession promissory notes, purporting to be bank notes on any bank not in existence, or of any unauthorized association of persons for banking, knowing the notes to be such, with the intention of fraudulently circulating the same, or to pass, or offer to pass or circulate the same, he shall be confined in the penitentiary not less than two nor more than ten years.

Making, &c. machine, press, die, &c., for counterfeiting.

§ 4. Whoever shall knowingly make or mend, or proceed to make or mend, or buy or sell, or have in his possession or control, any machine, press, die, tool, plate, or stamp, or other instrument or thing used or intended to be used in counterfeiting, shall be confined in the penitentiary not less than one nor more than four years.

And all such machinery, plates, stamps, die, tools, or other instrument, shall be seized, and may be used on the trial as evidence, and then defaced and destroyed by order of court.

ARTICLE XI.

Larceny.

Punishment of larceny.

§ 1. Persons guilty of larceny of goods and chattels of the value of four dollars, or more, shall be punished by a confinement in the penitentiary of not less than one nor more than five years; and persons guilty of larceny of goods and chattels of less value than four dollars, shall be punished by stripes not exceeding thirty-nine, unless in those cases in which the punishment is specifically prescribed in this chapter.

Selling or stealing a free person as a slave

M. & B. 1268.

§ 2. If any person shall steal and hold, or sell fraudulently, or offer to sell, a free person as a slave, knowing the person so sold or stolen to be free, he shall be confined in the penitentiary not less than five nor more than ten years.

Horse stealing.

M. & B. 1287.

§ 3. If any person shall steal a horse, mule, jack, or jennet, he shall be confined in the penitentiary not less than four nor more than eight years.

Hog stealing.

M. & B. 1285.

§ 4. If any person shall steal a hog, of the value of four dollars or more, he shall be confined in the penitentiary not less than two nor more than four years.

Larceny of the value of $4.

§ 5. If any person shall steal money, goods, or chattels, of the value of four dollars or upwards, either from the person or possession of any one, or from his house, without

violence or putting in fear, he shall be confined in the penitentiary not less than two nor more than four years. M. & B. 1287.

§ 6. If the money, goods, and chattels stolen, as described in the preceding section, be under the value of four dollars, the offender, if a male, shall be punished by any number of stripes, not exceeding thirty-nine, on his bare back; if a female, she shall be imprisoned not exceeding ten days. A male convicted of larceny under this section shall pay the costs of prosecution, and shall be committed to jail until they are paid. After he has remained in jail ten days, and the judge is satisfied that the costs cannot be coerced, the convict shall be discharged. Under value of $4. M. & B. 1292.

§ 7. If any person shall fraudulently steal, destroy, or withdraw the record, or any part thereof, of any judicial proceeding pending or decided, he shall be confined in the penitentiary not less than two nor more than ten years. Stealing or destroying records. M. & B. 1274.

§ 8. If any person shall willfully and fraudulently make a hole in any steamboat or other vessel or water craft in distress, or shall steal or destroy a pump, or other materials or goods belonging to such boat, vessel, or craft; or shall destroy or willfully do any thing tending to the immediate destruction of a steamboat, vessel, or other water craft, though the same be not in distress, whereby human life is endangered, he shall be confined in the penitentiary not less than one nor more than seven years. Injuries to boats, &c. M. & B. 1274.

§ 9. Whoever shall receive any stolen goods, chattels, or other thing, the stealing whereof is punished as a felony or misdemeanor, knowing the same to be stolen, shall be confined in the penitentiary not less than one nor more than six years. Such offenders may be convicted though the principal offender has not been convicted. Receiving stolen goods. M. & B. 1271.

§ 10. If any person shall steal a land warrant or other authority issued by the register of the land office or other person having authority to make such warrant or authority, whereby waste and unappropriated land may be surveyed; or if he forge, erase, or alter the same when rightfully issued, or utter and publish the same, knowing it to be forged, erased, stolen, or altered, he shall be confined in the penitentiary not less than two nor more than ten years. Stealing land warrant, &c. M. & B. 1278.

ARTICLE XII.

Embezzlement.

§ 1. If any director, or officer, or servant, of any incorporated bank, or any officer of public trust in this state, or By officers of banks, companies, &c.

V. R. 729.

any officer, agent, clerk, or servant of any incorporated company, embezzle or fraudulently convert to his own use, bullion, money, bank notes, or other security for money, or evidences of debt or claim, or any effects or property of another person which shall have come to his possession or been placed under his care or management as such officer, he shall be confined in the penitentiary not less than one nor more than ten years.

By carriers, &c.

§ 2. If any carrier, porter, or other person to whom money or other property or thing which may be the subject of larceny, may be delivered, to be carried for hire, or any other person who may be entrusted with such property, embezzle or fraudulently convert to his own use, or secrete with intent to do so, any such property, either in mass or otherwise, before delivery thereof at the place or to the person to whom the same were to be delivered, he shall be confined in the penitentiary not less than one nor more than five years.

Making false entries by clerks of banks, &c.

§ 3. If any clerk or officer of any bank or joint stock company, make or alter or omit to make any entry in any account book kept by him in such bank or by such company, with intention to conceal the true state of such account, or to defraud the bank or company, or any individual, or to enable or assist any person to obtain money to which he was not entitled, he shall be confined in the penitentiary not less than two nor more than ten years.

Frauds by master of boat in regard to inspection, &c.

§ 4. If the master or manager of a boat or other vessel shall fraudulently land and put on shore any hogshead, cask, or package of tobacco or flour, put on board of such boat or vessel to be carried to any public warehouse or other place appointed by law for the inspection of tobacco or flour, or shall fraudulently put the same on board some other vessel, so that the same be not delivered at the point to which it was shipped, or shall fraudulently open any hogshead, cask, or package of tobacco or flour, before the same has been received by the inspector, he shall be confined in the penitentiary not less than one nor more than five years.

ARTICLE XIII.

Destroying a will—Obtaining money, &c., by false pretenses.

Fraudulently destroying or concealing will.
V. R. 731.

§ 1. If any person fraudulently destroy or conceal a will or codicil, with intent to prevent the probate thereof, he shall be confined in the penitentiary not less than two nor more than five years.

Obtaining money &c., by false pretenses.

§ 2. If any person, by any false pretense or token, with intention to commit a fraud, obtain from another money, property, or other thing which may be the subject of larceny, or if he obtain by any false pretense or token, with like intention, the signature of another to a writing, the false making whereof would be forgery, he shall be confined in the penitentiary not less than one nor more than five years.

False personation.

A. 1843, 18.

§ 3. Every person who shall falsely and fraudulently represent or personate another, and in such assumed character shall

1. Marry another.

2. Become bail or surety for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or surety.

3. Confess any judgment.

4. Acknowledge the execution of any conveyance of real estate, or of any other instrument which by law may be recorded, or,

5. Do any other act in the course of any suit, proceeding, or prosecution, whereby the person so personated or represented purports to be made liable, in any event, to the payment of any debt, damages, costs, or sum of money, or his rights or interests may in any manner be affected, shall, on conviction, be punished by confinement in the penitentiary for a term not less than one nor more than five years.

Marrying under false personation; when punished.

§ 4. No indictment for the offense described in the first subdivision of the preceding section, shall be found, unless upon complaint of the injured party, and within two years after the perpetration of the offense.

Receiving money &c., under false personation.

§ 5. Every person who shall falsely and fraudulently represent or personate another, and in such assumed character shall deceitfully receive any money or valuable property of any description, intended to be delivered to the individual so personated, with purpose to appropriate the same to his own use, shall, upon conviction, be confined in the penitentiary not less than one nor more than four years.

ARTICLE XIV.

Destroying and obstructing public works and corner trees.

Maliciously injuring or attempting to injure public works.

M. & B. 1304.

§ 1. If any person shall unlawfully and maliciously blow up or attempt to blow up, with gunpowder or other material, any of the locks of the Louisville and Portland canal,

or any of the works of a railroad company, turnpike or plank road company, or any of the locks and dams now built, or which hereafter may be built by the commonwealth upon any water course; or shall, by any other means, willfully and maliciously destroy or injure any of the locks or dams or works aforesaid, or any bridge over the same, or other public bridge, with intent to impede or injure the navigation or the travel thereon, or the use of any bridge across such canal or lock, or other water-course, he shall be confined in the penitentiary not less than two nor more than four years.

Defacing, &c., corner trees, corner stones, &c.

M. & B. 1226. A. 1850.

§ 2. If any person shall fraudulently and willfully remove, deface, cut down, or destroy a corner tree or corner stone, to the survey of any tract of land, he shall be confined in the penitentiary not less than four nor more than eight years.

Malicious injuries, &c., to salt pipes, springs, &c.

§ 3. If any person shall willfully and maliciously stop the passage of salt water conducted through pipes or troughs from a salt well or spring to a cistern or furnace where salt is made, or wrongfully fill up a salt well or spring, or pump used in either, so as to stop the use and benefit of said well, spring, or pump, he shall be confined in the penitentiary not less than one nor more than three years.

Obstructing or tearing up railroad.

§ 4. If any person shall willfully and maliciously place an obstruction by stones, logs, sticks, or any other thing, on the track of a railroad, or shall tear up or remove any part or portion of a railroad, or the works thereof, with intent to obstruct the passage of cars thereon, or to throw them off the track, he shall be confined in the penitentiary not less than one nor more than ten years. (*a*)

(*a*) The following act was passed, and approved on the 1st January, 1852. The chapter on Crimes and Punishments was approved on the 7th of January, 1852, to take effect the 1st July, 1852. So far as the punishment for the same offense, described in this section and that described in the act, may be different, it will be matter of judicial determination, when the question occurs, to say which shall prevail as the law of the land. The commissioners did not deem it necessary to add, in this article, provisions similar to the two last sections of the act, as they were of opinion that if death was caused by the unlawful act denounced, it would be murder in the person guilty; and, by general provision of law, the third section was unnecessary.

An act to punish persons for endangering life by placing obstructions on railroads—approved January 1, 1852.

A. 1851-2, 11.

§ 1. That any person or persons who shall willfully and maliciously tear up or displace any rail or switch, or break any bridge,

§ 5. If any person shall willfully and maliciously injure, obstruct, or destroy a telegraph line, post, or pier, or the materials or property belonging to or attached to a telegraph, he shall be confined in the penitentiary not less than two nor more than ten years.

Injuring, &c., telegraph lines &c

A. 1847, 34.

§ 6. If any agent, officer, or manager of a telegraph line constructed in this state, or other person, shall knowingly transmit, on or through the same, any false communication or intelligence, with intention to injure any one, or to speculate on any article of merchandise, commerce, or trade, or with intent that another may do so; or if any agent, officer, or manager of a telegraph line, from corrupt or improper motives or willful negligence, shall withhold the transmission of messages or intelligence for which the customary charges have been paid or tendered, he shall be fined not less than ten nor more than five hundred dollars.

Telegraph agent knowingly transmitting false intelligence, or corruptly refusing to transmit dispatches.

ARTICLE XV.

Offenses by convicts, &c.

§ 1. If a person convicted and confined in the penitentiary by the judgment of a court shall escape therefrom, or being out under guard shall escape from custody, he shall

Escapes from penitentiary.

M. & B. 1284. L. 483.

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viaduct, or fixture, on any railroad now in operation in this state, or which may hereafter be put in operation, or who shall place any obstructions thereon, or do any act whereby any locomotive or cars might be upset, arrested, or thrown from the track of any railroad, branch, turnout, or switch, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not less than one nor more than five years.

§ 2. That any person or persons who shall, by any of the unlawful acts enumerated in the first section, cause the life of any person or persons to be put in immediate peril, or shall cause any locomotive or any car to be actually thrown off of the track of any railroad, switch, or turnout, shall, upon conviction, be punished by imprisonment in the penitentiary for not less than two nor more than ten years.

§ 3. That every person or persons who shall, by the commission of any of the aforesaid offenses, cause the death of any person or persons, shall be guilty of murder, and shall be punished with death, as in other cases.

§ 4. That nothing in this act shall be so construed as to prevent such railroad company, or any person injured, from sustaining a civil suit for damages against any person or persons committing the offenses aforesaid.

§ 5. All offenses under this act shall be tried in the circuit court of the county where the offense is committed, upon an indictment of a grand jury.

be punished by a further confinement in the penitentiary of not less than two nor more than six years, to commence after he shall have served out the time for which he was first convicted.

§ 2. The Franklin circuit court shall have jurisdiction of the offense in the preceding section mentioned.

Warrant to be issued by keeper and inspector.

M. & B. 1283.

§ 3. When a convict shall escape from the penitentiary, the keeper and one of the inspectors shall issue their warrant, directed to all sheriffs, constables, and marshals in the state, and to all persons, authorizing and requiring them to retake and convey such convict to the penitentiary. The person recapturing and conveying back to the penitentiary any convict, shall be paid, out of the funds of the penitentiary, by the keeper, a reward of one hundred dollars, and all reasonable expenses. The keeper and one of the inspectors may employ persons to go in pursuit of the convict, and pay them, out of the funds of the penitentiary, a reasonable compensation for their services.

Reward for recapturing.

Persons may be employed for pursuit.

Sheriff or other officer refusing to obey warrant.

§ 4. If a sheriff or other officer shall refuse or willfully neglect to obey such warrant of the keeper and inspector, he shall be guilty of a misdemeanor, and, on conviction, fined not less than ten nor more than one hundred dollars.

Penalty for opposing recapture.

M. & B. 1283.

§ 5. If any person shall, by violence or threats of violence, oppose an officer or other person in the attempt to recapture such fugitive from the penitentiary, or if any person shall rescue or attempt to rescue such fugitive after he is retaken, from the person having him in custody, he shall be confined in the penitentiary not less than one nor more than four years.

No examining court.

§ 6. The convict, after he is retaken, shall remain in the penitentiary until the time of his trial for the escape, without an examining court, and without bail. The acquittal of the convict upon an indictment for the offense of escape from the penitentiary shall not affect the original sentence.

Fine for concealing fugitive, &c.

M. & B. 1283.

§ 7. If any person shall comfort, harbor, or conceal any fugitive from the penitentiary, knowing him to be such, except the husband or wife of the fugitive, he shall be guilty of a misdemeanor, and fined in a sum not less than thirty nor more than two hundred dollars.

ARTICLE XVI.

Escape and rescue of prisoners charged with crime.

Voluntarily suffering an escape.

§ 1. If a jailer, or other officer, or a guard, voluntarily suffer a prisoner in his charge or custody, convicted of or charged with felony, to escape, he shall be confined in the penitentiary not less than one nor more than five years.

Negligently suffering an escape.

§ 2. If any of the persons named in the preceding section negligently suffer a person convicted of or charged with felony, or voluntarily or negligently suffer a person convicted of or charged with an offense not a felony, to escape from his custody, or willfully refuse to receive any one lawfully ordered into his custody, he shall be confined in jail not more than six months, or be fined not less than one hundred and not exceeding four hundred dollars.

Escape from jail.

§ 3. If a person confined in a jail on conviction of a felony, the punishment of which is confinement in the penitentiary, shall escape therefrom, he shall, for such escape, be confined in the penitentiary one year. If a prisoner confined on sentence of imprisonment, or to be whipped, or under a capias, escapes from jail, he shall be confined in jail for such escape six months.

Escapes from arrest.

§ 4. If a person lawfully arrested upon a charge for a violation of the criminal or penal laws, forcibly or by bribery, effects his escape from the officer or guard, he shall be confined in jail not less than six nor more than twelve months.

Aiding escape, rescue, &c.

§ 5. When a person is lawfully detained as a prisoner in any jail, or in custody, if any person shall convey any thing into the jail or county prison, with intent to facilitate the prisoner's escape therefrom, or shall aid him in any way to escape, or in the attempt to escape from such jail or custody, or shall forcibly rescue or attempt to rescue him therefrom, if such rescue or escape be effected, he shall, if the prisoner was detained on a conviction or on a charge of felony, be confined in the penitentiary not less than one nor more than five years; and if the escape be not effected, or if the prisoner was not detained on such conviction or charge, he shall be confined in jail six months and fined not exceeding five hundred dollars.

§ 6. If any person unlawfully and by force arrest, or attempt to arrest, a prisoner from the presence of any judicial tribunal of original or final jurisdiction, while his trial is progressing, or after his conviction, or from the officer or

guard of such tribunal having him in custody, he shall be confined in the penitentiary not less than one nor more than five years.

ARTICLE XVII.

Penal offenses and punishments.

Shooting or stabbing in sudden affray.

§ 1. If any person shall, in a sudden affray, or in sudden heat and passion, without previous malice, and not in self-defense, shoot and wound another person with a gun or other instrument, loaded with ball or other hard substance, without killing such person; or shall, in like manner, cut, thrust, or stab any other person with a knife, dirk, sword, or other deadly weapon, without killing such person, he shall be guilty of a misdemeanor, and fined not less than fifty nor more than five hundred dollars, and imprisoned not less than six months nor more than one year.

Shooting at without wounding.

V. R. 7:4.

If any person unlawfully shoot at another, with intent to kill or wound such person, without inflicting a wound, he shall be fined not exceeding five hundred dollars, and imprisoned not less than six nor more than twelve months.

Disturbing religious worship.

M. & B. 1275.

§ 2. If any person shall willfully and maliciously interrupt or disturb a congregation assembled on or at any place of and for religious worship, or misuse or maltreat any person being there, he shall be fined in a sum not less than ten nor more than fifty dollars, or imprisoned not less than five nor more than twenty days, or both so fined and imprisoned, at the discretion of the jury.

How offender may be arrested.

§ 3. A justice of the peace, or any officer who is by virtue of his office a conservator of the peace, having knowledge of such offense, or being informed thereof by affidavit, as is prescribed in the next preceding section, may come with the sheriff or other officer, and call to his aid the power of the county if need be, and arrest the offender, put him under restraint, or may issue his warrant to an officer for that purpose.

To be committed in default of bail.

§ 4. The person offending, when arrested, shall be kept in custody, unless he will give bond to the commonwealth in the penalty of one hundred dollars, with good surety, that he will appear at a time and place to be fixed by the officer taking such recognizance, and not depart until discharged by due course of law. On failure to give such bond, the person arrested shall be committed to jail for safe-keeping, until the day fixed by the justice for trial. The justice shall fix the day and place of trial, within the county, not beyond ten days from the day of arrest.

How offender to be tried.

§ 5. The justice who shall try the offender shall, if required by the party, cause a jury to be impanneled as often as need be to try the case, and ascertain the penalty and punishment within the limits prescribed herein; and if the defendant be found guilty, enforce the judgment by such process or order as may be necessary. If the accused do not demand a jury, the justice of the peace shall hear and decide the case.

Penalty on officer failing in duty.

§ 6. If a justice of the peace, or sheriff, or other officer, having knowledge or information of the commission of the offense described in the second section of this article, shall willfully neglect and fail to execute the duties required of them respectively by the provisions of this article, they shall severally be fined the sum of one hundred dollars for each offense.

Minister not to be arrested during service.

M. & B. 1275.

§ 7. No officer, for any civil cause, shall arrest any minister of religion or priest whilst he is publicly preaching or performing religious worship in any religious assembly. An officer making or attempting to make such arrest shall be fined not less than ten nor more than fifty dollars.

Profane cursing in play, show, speech, &c.

M. & B. 1361.

§ 8. If any person, in any stage play, interlude, show, or exhibition, or in any public or professional speech or lecture, jestingly or profanely curse or swear, he shall be fined, for each offense, five dollars.

Profane swearing and drunkenness.

M. & B. 1275.

§ 9. If any person shall profanely curse or swear, or shall be drunk, he shall be fined five shillings for each offense; and every oath shall be deemed a separate offense. If either of the offenses in this section be committed in the presence of a justice of the peace, or of any court of record, the justice of the peace or such court may, instanter, without further proof, inflict the penalty imposed by law.

Adultery and fornication.

M. & B. 1275.

§ 10. Every white person who shall commit adultery or fornication shall, for every offense of adultery, be fined twenty dollars, and for that of fornication, ten dollars.

Observance of sabbath.

M. & B. 1278.

§ 11. No work or business shall be done or performed on the sabbath day, unless the ordinary household offices of daily necessity, or other work of necessity or charity. If any person on the sabbath day shall himself be found at his own or any other trade or calling, or shall employ his apprentices, servants, or slaves, or other person, bond or free, in labor or other business, whether the same be for profit or amusement, unless such as is permitted above, he shall be fined two dollars for each offense. Every person, bond or free, servant or apprentice, so employed, shall be

deemed a separate offense. Persons who are members of any religious society, who observe as a sabbath any other day in the week than Sunday, or the christian sabbath, shall not be liable to the penalty prescribed in this section, if they observe as a sabbath one day in each seven, as herein provided.

Altering or defacing brands of horses, &c.

M. & B. 1276.

§ 12. If any person shall knowingly and fraudulently alter or deface the marks or brands on any horse, neat cattle, sheep, hog, or goat, he shall be fined in a sum not exceeding two hundred dollars, and imprisoned not exceeding six months.

Driving sheep not branded or marked.

L. 545.

§ 13. If any person shall drive sheep for a distance of more than eight miles along a public highway, without having each sheep visibly branded or marked by tar or paint, with one or more letters or cross marks, he shall be fined not less than two nor more than ten dollars for each sheep so driven whilst unmarked.

Burial of persons dying on steamboats, &c.

M. & B. 1263.

§ 14. If any person shall die on board of any steamboat or other water craft, within this state, the master or other officer in command shall cause the dead body to be buried on shore, at least four feet deep; and for a violation of this section, such master or other officer shall be fined not less than two hundred dollars, and the vessel shall be liable to the payment of the fine imposed.

Disintering bodies

§ 15. Whoever shall unlawfully or secretly disinter or displace any dead human body from the grave or vault in which it has been deposited, shall be fined not more than five hundred dollars, and imprisoned not exceeding six months, or both, at the discretion of the jury.

Exhibiting, &c., stud horses, &c., in sight of place of worship.

§ 16. If any person shall exhibit or show, by riding or leading, a stud horse, or jack, or bull, or use him in covering, within view or hearing of any place of public religious worship, during the time that an assemblage of persons, bond or free, are engaged in such worship, or assembled for that purpose, or dispersing therefrom, he shall be fined not less than ten nor more than fifty dollars.

Selling poisonous drugs.

L. 478.

§ 17. If any person shall sell to or deliver to any white person, under the age of fifteen years, or to any slave or free person of color, any poisonous drug or medicine, without the written consent of the parent or guardian of such minor, or the master or person in law having lawful possession of such slave, he shall be fined one hundred dollars.

Commanders of steamboats fraud-

§ 18. If the commander of a steamboat shall fraudulently take wood from a woodyard or woodboat, in this state,

without the consent of the owner thereof, and without making or intending to make compensation therefor, he shall be fined one hundred dollars.

Unlawfully taking wood.

L. 478.

§ 19. If any person, when legally summoned by a sheriff or other officer to assist him in the execution of his office, shall refuse to do so, he shall be fined fifteen dollars, unless he can give a good reason for such refusal or failure.

Refusing when summoned by officer to assist.

M. & B 1276.

§ 20. If any person shall sell or purchase within this state, or remove from the limits thereof, any negro who may be entitled to his freedom after the expiration of a time then to come, knowing such negro to be thus entitled to his freedom, without first obtaining the consent of the county or circuit court of that county in which he has resided for the last preceding year, permitting such sale or removal out of the state, he shall be fined not less than one nor more than five hundred dollars, and imprisoned not less than six nor more than twelve months—one-half of the fine to be paid to the informer and prosecutor. The offender may be indicted without a prosecutor; in which case, one-third of the fine shall be paid to the commonwealth's attorney.

Selling, purchasing, or removing from state negro entitled to freedom in futuro, without consent of court.

M. & B. 1295.

§ 21. The order of court, to authorize the sale or removal, shall state the name, age, and sex of the negro, and when he is to be set at liberty, and a certified copy under the seal of the court shall be given to the negro, at the time of the sale or removal.

What order authorizing shall state.

§ 22. If any persons shall conspire, confederate, or bind themselves, by oath, covenant, or agreement, maliciously and falsely to aid one another to carry on or institute any prosecution in the name of the commonwealth against any other person, they shall be fined not exceeding one hundred dollars, or imprisoned not exceeding twelve months.

Conspiring to prosecute.

M. & B. 415.

§ 23. If a butcher or other person shall knowingly sell the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, or shall sell the flesh as of one animal, knowing it to be that of another species; or if a baker, brewer, distiller, or other person knowingly sell unwholesome bread or drink, he shall be fined not less than one nor more than fifty dollars.

Selling unwholesome provisions.

M. & B. 126.

§ 24. If any person fraudulently adulterate, for the purpose of sale, any thing intended for food or drink, or any drug or medicine, with any substance injurious to health, he shall be confined in jail not more than one year, and

Adulterating food, drink, or medicine.

fined not exceeding five hundred dollars; and the adulterated articles, by order of the court, shall be destroyed.

Cruelty to beasts.

§ 25. If any person unnecessarily and cruelly beat or torture any horse or other beast, whether his own or that of another, he shall be fined not exceeding fifty dollars.

ARTICLE XVIII.

Riots, routs, and breaches of the peace.

By whom suppressed and offender arrested.

M. & B. 1390.

§ 1. If a riot, rout, unlawful assembly, affray, or breach of the peace, be made or committed, the same may be suppressed and the persons guilty arrested by any judge of the circuit or county court, police judge, or justice of the peace, sheriff, marshal, or constable.

Officer may call power of county.

1. They shall have power to call to their aid the power of the county, if need be, and proceed to arrest the persons guilty of either of the offenses aforesaid, and commit them to jail, there to remain until the time fixed by the officer ordering the arrest for the trial of the offenders, which shall not exceed five days from the day of arrest, unless the persons arrested shall severally enter into bond, with good surety, in a sufficient penalty, conditioned that they will be of good behavior, keep the peace, and personally appear on the day and at the place fixed for their trial, and answer to the charge, and not depart without leave. When the arrest is made by a sheriff, marshal, or constable, the offender shall be taken before a justice of the peace, or some other judicial officer, whose duty it shall be to recognize the offender, with good security, as above.

Offenders to be committed in default of bail.

Warrant may be issued on complaint within 60 days.

2. Any of the judicial officers aforesaid, upon complaint on oath that any of the offenses above have been committed, shall issue his warrant, directed to the sheriff or other officer, commanding him to arrest the persons charged, and commit them to jail, unless they will give bond with surety, in a penalty to be stated in said warrant by the officer issuing the same, conditioned as above.

But no warrant shall be issued in such case, unless the complaint is made within sixty days after the offense has been committed.

Jury to be summoned.

3. The sheriff, or other officer, shall summon a jury of twelve sober, discreet housekeepers, to attend at the time and place fixed for the trial of the offenders, who shall be sworn to try the case. If any, so summoned, shall fail to attend, or be objected to or excused, others shall be summoned in their stead. The justice or judge shall preside

at the trial, and decide all questions of law arising in the case, and preserve order.

Punishment.

4. Upon hearing of the evidence, if the jury believe the defendants, or any one or more of them, guilty, they shall be severally fined in a sum not exceeding thirty dollars, or imprisoned not exceeding fifteen days, or both so fined and imprisoned, at the discretion of the jury. The persons convicted shall pay the costs of the prosecution.

Costs when defendants acquitted

5. If the prosecution is commenced by or at the instance of an officer, he shall not be liable to pay costs if the defendant is acquitted. If it be commenced at the instance of any other, such person shall be liable to costs. If the finding of the jury shall be for a pecuniary penalty alone, unless the same be paid, the defendant shall be committed to jail by the officer presiding at the trial, and confined for a term of days, which, at the rate of two dollars per day, will satisfy the whole fine imposed.

Imprisonment in default of payment of fine.

Common law in regard to riots, &c., not repealed.

M. & B. 1291.

6. Nothing in this article shall be construed to repeal the common law in relation to riots, routs, affrays, unlawful assemblies, or breaches of the peace; which offenses may be punished as and by the common law as heretofore.

ARTICLE XIX.

Dueling.

Challenging.

§ 1. Whoever shall challenge another to fight in single combat or otherwise, with any deadly weapon, in or out of this state, shall be imprisoned from three to twelve months, or fined five hundred dollars, or both.

Accepting challenge.

§ 2. Whoever shall accept any such challenge, shall be imprisoned from one to six months, or fined two hundred and fifty dollars, or both.

Carrying challenge, or consenting to be second.

§ 3. Whoever shall knowingly carry or deliver any such challenge, or consent to be a second to either party in any such duel, shall be imprisoned from ten to thirty days, or fined one hundred and fifty dollars, or both.

Penalties.

§ 4. Any person convicted of either of the offenses named in the three previous sections, shall forfeit any office he may then hold, and be excluded and held disqualified from receiving and holding any office, and also from exercising the right of suffrage within this commonwealth, for seven years after the date of his conviction.

ARTICLE XX.

Racing on the highway, &c.

Inducing or accepting slaves or minors to ride in races, &c.

M. & B. 1336.

§ 1. If any person shall induce or accept of any minor or slave, apprentice or servant, without the assent of the natural or statutory guardian of such minor, or the assent of the owner of such slave, or master of such servant or apprentice, to ride in a race, or to practice any horse to run, or to break any horse to ride or work, he shall for each offense pay the sum of one hundred dollars, to be paid to the guardian, owner, or master, as the case may be, to be recovered by suit in any court having jurisdiction; and shall also be liable, in the same suit, for such other damages as the plaintiff may have sustained.

Running horses in highway or in street.

M. & B. 1337.

§ 2. If any person shall be engaged directly or indirectly, in running a horse, by way of practicing him, or in running a horse race, on a public highway, or on the street of any town or city, he shall be fined ten dollars for each offense.

ARTICLE XXI.

Lotteries.

Fine for setting up, managing, &c.

§ 1. Whoever shall set up, draw, manage, or otherwise promote any lottery for money or other thing, or dispose of, or promote the disposing of, any money or thing of value by way of lottery, or aid in the doing of either of said offenses, shall be fined from one hundred to ten thousand dollars.

For printing, vending, &c., tickets.

§ 2. Whoever shall write, print, vend, or have in possession, with intent, for himself or another, to sell or offer to sell, negotiate, exchange, or dispose of any ticket, share of a ticket, or any writing, certificate, token or device, purporting or intended to entitle the holder, bearer, or any other person, to any prize, or any share of or interest in any prize, to be drawn in any lottery, in or out of this state, shall be fined for every such offense from one hundred to one thousand dollars.

Permitting house to be occupied for lottery.

§ 3. Whoever shall knowingly permit, in any house, shop, or other building occupied or controlled by him, the setting up, managing, or drawing of any lottery, or the sale or exchange of any lottery ticket or other thing mentioned in the preceding section, shall incur a like penalty as therein named.

Advertising lotteries, &c.

§ 4. Whoever shall advertise or give public notice of any lottery, ticket, or other thing, in the last two sections, be-

ing for sale or exchange, or set up or exhibit any sign, symbol, or other representation of a lottery, or the drawing of a lottery, indicating where the same may be bought or obtained, in this state, shall incur the like penalty as in those sections named.

Penalties apply to fictitious lotteries.

§ 5. The penalties of the three preceding sections shall apply as well where the lottery is merely pretended and fictitious, as to the cases where the lottery is real.

All lottery rights to determine within three years.

§ 6. Three years after this chapter takes effect, all rights and privileges which may have been granted by the legislature of this commonwealth to raise money by lottery for any purpose, shall cease and determine.

ARTICLE XXII.

Actions popular, or suits for penalty.

To be commenced in county, &c., where offense committed.

M. & B. 1209.

§ 1. All prosecutions for crimes or penalties, and all suits for penalties, shall be commenced in the court having jurisdiction of the same, of that county, town, or city in which the crime was committed or the penalty incurred.

Person first suing in good faith entitled to penalty

M. & B. 475.

§ 2. The person who first, in good faith, shall sue for and recover judgment, shall be entitled to the penalty incurred by the defendant, in all cases where a part or the whole of the fine or forfeiture is given by law to the person suing; and no suit or judgment had or contrived, whereby to screen the offender from a penalty, or prevent a suit in good faith by another person for the same, shall be available against a prosecution carried on in good faith, and without collusion with the defendant.

Commonwealth's attorney not to receive money, &c., on agreement not to prosecute.

M. & B. 476.

§ 3. It shall not be lawful for any commonwealth's attorney, or attorney prosecuting for the commonwealth, to receive or agree to receive, directly or indirectly, any money or other thing from any person prosecuted for, or supposed to be guilty of, violating any of the penal laws, in consideration not to prosecute such offender, or not to prosecute him for more than one violation of any penal law, nor in any other way to waive or fail to make a prosecution under any penal law, so as to enable the offender to escape or avoid the full penalty of the law. And if a commonwealth's attorney, or any attorney prosecuting for the commonwealth, shall violate any of the provisions of this section, he shall be guilty of a high misdemeanor, and fined not less than the amount imposed upon the offense compounded or agreed, and imprisoned ninety days.

Penalty therefor.

Penalty for compounding offense, &c.

§ 4. If an informer or prosecutor upon a penal statute, or in any criminal prosecution, shall compound the penal-

ty, or agree, directly or indirectly, with any one charged or supposed to be guilty of an offense against the penal laws, in consideration of any money or other thing paid or to be paid, not to produce the requisite proof, or to withhold any witness or evidence in the prosecution, or not to appear as prosecutor or witness against such person, he shall be guilty of a high misdemeanor, and be fined a sum not less than the penalty compounded, or to be imposed upon the person compounded with if he were found guilty, and imprisoned for sixty days; and if the prosecution compounded be for a felony, he shall be fined not exceeding two hundred dollars, and imprisoned not exceeding twelve months.

Court suspecting corrupt contract may appoint attorney to prosecute.

M. & B. 476.

§ 5. In all cases coming within the provisions of the two preceding sections, where the court has reason to believe in the existence of any such corrupt agreement, the judge shall appoint an attorney to prosecute the accused compounded with, and may order the prosecution to proceed, notwithstanding any such corrupt agreement.

Where defendant confesses judgment.

M. & B. 476.

§ 6. In penal prosecutions, if the defendant confess judgment, it shall be for the penalty imposed by law; and if the attorney for the commonwealth, or prosecutor, shall by law be entitled to any portion of the same, only one-half of the proportion allowed by law to such attorney or prosecutor, shall be paid to them, and the residue of the penalty shall enure to the commonwealth.

ARTICLE XXIII.

Usurpation of office and bribery of officers.

Usurping office, &c.

A. 1846–7.

§ 1. If any person shall usurp any office established by the constitution or laws of this commonwealth, or shall knowingly hold and pretend to exercise such office, after his election or appointment thereto shall have been declared by a court of competent jurisdiction illegal or void, or after his term of office has constitutionally and legally expired, he shall be guilty of a misdemeanor, and fined in a sum not less than five nor more than fifteen hundred dollars.

Agreeing to sell or purchase office, &c.

§ 2. Whoever shall agree or promise to sell or purchase, for himself or another, directly or indirectly, for reward or profit, any office or employment of honor, trust, or profit, or any deputation thereto, or any part or participation of the profits thereof, or any appointment or nomination thereto, or resignation thereof, or the consent or voice of any person to such appointment, or nomination, or resignation,

shall be fined in a sum not less than fifty nor more than five hundred dollars.

Bribing members of general assembly or executive or ministerial officer

§ 3. If a member of the general assembly, or if any executive or ministerial officer, shall take or agree to take, any bribe to do or omit to do any act in his official capacity, he shall forfeit his office, and be fined in a sum not less than two hundred nor more than one thousand dollars; and, moreover, be disqualified from holding any office of trust or profit, and from the right of suffrage for ten years.

M. & B. 1244, 1246.

ARTICLE XXIV.

Contempts.

Fine not to exceed $30, nor imprisonment one day, without jury.

§ 1. No court or judge shall, for any contempt against such court or judge, impose upon the offender a fine exceeding thirty dollars, or imprison him exceeding one day, without the intervention of a jury legally impanneled to assess the amount of fine and fix the duration of imprisonment.

M. & B. 426.

Before justice and police judge.

§ 2. No justice of the peace or police judge shall, for any contempt offered to him, have power to inflict a fine exceeding three dollars, nor an imprisonment exceeding six hours.

Judge or justice violating provisions.

§ 3. If any judge of a court, or justice of the peace, or police judge, violate the provisions of the two preceding sections, he shall be removed from office, and likewise subject to the action of the party injured.

Truth given in evidence

§ 4. In all cases of trial by jury arising under this article, the truth of the matter may be given in evidence under the general issue.

Contempts by witnesses, jurors, &c.

§ 5. Witnesses, jurors, and officers of court, for a contempt in disobeying the summons of court, or neglecting to execute or due return make of a subpœna or order of court, or other judicial officer, or for any other contempt, may be fined by the court or officer sitting as such, in a sum not exceeding thirty dollars.

Entering court with force and arms, or obstructing proceedings.

If any person shall, with force and arms, enter any court house, or room in which a court is held, during the time such court shall be in the discharge of its official duties, or if he obstruct or hinder by any means such court from discharging its duties, he shall be fined and imprisoned at the discretion of a jury.

M. & B. 1274.

Court not to proceed as for contempt for words or writing not in its presence.

§ 6. No court or judge shall proceed by process of contempt, or impose a fine against any person who shall, by words or writing, animadvert upon or examine into the proceedings or conduct of such court or judge, by words

M. & B. 420.

spoken or writing published not in the presence of such court or judge in the court house, during the sitting of the court.

Bail not allowed. M. & B. 427.

§ 7. Persons committed to prison for a contempt shall not be admitted to bail.

Bond and surety on original process.

§ 8. Upon a capias or other original process, if sued against a person charged with a contempt, the court or officer awarding it shall direct in what sum or penalty the accused shall give bond, with good surety, for his personal appearance at the time and place named in the process; which order shall be indorsed on the writ. If bond be given and the condition thereof violated, proceedings as in other cases shall be instituted by the attorney for the commonwealth to recover the penalty.

Committed in default of giving bond, &c.

§ 9. If the person arrested by virtue of the process in the preceding section, shall fail to give the bond as required, the officer making the arrest shall forthwith remove and lodge him in the jail of the county whence the process issued.

How article to be construed.

§ 10. Nothing in this article shall be construed to prevent any court or judge thereof from proceeding against any person writing or publishing a libel, or slanderous words, of and concerning such court or judge in relation to his judicial conduct in court, by indictment or presentment, nor from prohibiting any court or judicial tribunal from punishing any person guilty of a contempt, in resisting or disobeying any judicial order or process issued by or under the authority of such court or judicial tribunal or officer.

Sheriff summoning jurors with corrupt intent.

§ 11. If a sheriff or other officer corruptly, or through favor or ill-will, summon a juror with intent that such juror shall find a verdict for or against either party, or shall summon a grand juror from the like motives, with intent that such grand juror shall or shall not find an indictment or presentment against any particular individual, he shall be fined not exceeding five hundred dollars, and forfeit his office, and be forever disqualified from holding any office in this commonwealth.

ARTICLE XXV.

Trespass and injury to property.

Injuries to deer parks, &c. M. & B. 785.

§ 1. If any person shall wrongfully break or enter a park or other inclosed grounds used for the keeping, breeding, and cherishing of deer, elk, or buffalo, and hunt, drive, or

chase, take out, maim, or kill any deer, elk, or buffalo therein found, he shall be fined not exceeding twenty dollars, and shall also pay to the person aggrieved treble the amount of damages sustained. He shall, on conviction of the offense, be compelled to give bond, with good surety, in the penalty of one hundred dollars, to keep the peace and be of good behavior for twelve months. On a failure to give such bond, the court shall commit him to jail for thirty days, unless such bond be sooner executed.

Wounding or killing tame deer.

§ 2. Any person who shall knowingly and wrongfully kill or wound a tame or pet deer, having a bell or collar on, shall be fined five dollars, and pay the owner three times the value of such deer.

M. & B. 791.

Injuries to fish ponds, &c.

§ 3. If any person shall break or cut down, cut out or destroy any head or dam of any pond, pool, moat, stew, stagnet, or pit wherein fish are or shall be put or stored by the owner or person in possession thereof, or shall wrongfully, and without leave, fish in any of the places above enumerated, he shall be fined not exceeding fifty dollars, or imprisoned not exceeding three months, and pay the party aggrieved treble the damages sustained; and shall, if required, give bond in the penalty of one hundred dollars, with good surety, to keep the peace and be of good behavior for twelve months, or stand committed until such bond be given. If a slave commit any of the offenses in this section, he shall be punished by stripes, not exceeding thirty-nine.

Killing fish, &c., by throwing in medicines, &c.

§ 4. If any person shall kill, take, destroy, intoxicate, or sicken fish, great or small, or attempt to do so, in any stream, dam, moat, pit, stew, pool, or pond, by throwing or placing therein, or procuring it to be done, any preparation, substance, powders, berries, or medicine of a sickening, intoxicating, or destructive quality, he shall be fined ten dollars.

M. & B. 794.

If a free negro be found guilty of any of the offenses in this section, by the verdict of a jury impanneled by a justice of the peace or in the circuit court, he shall be punished by any number of stripes not exceeding ten. If a slave be guilty of any of the offenses in this section, he shall be punished, by the judgment of a justice of the peace, by any number of stripes not exceeding ten.

Setting fire to woods, &c.

§ 5. If any person shall unlawfully and maliciously set fire to any woods, fence, grass, straw, or other thing capable of spreading fire on land, he shall be fined not exceed-

V. R. 450.

ing one hundred dollars, and confined in jail not less than two nor more than twelve months.

§ 6. If any person intentionally or negligently set any woods on fire, whereby damage is done to the lands or property of another, he shall be amerced at the discretion of a jury.

Carrying away or injuring property unlawfully, but not with felonious intent.

§ 7. If any person unlawfully, but not with felonious intention, take, carry away, deface, destroy, or injure any property, real or personal, or other thing of value not his own, or willfully and knowingly, without a felonious intention, break down, destroy, injure, or remove any monument erected to designate the boundaries of this state, or any county, city, or town thereof, or the boundaries of any tract or lot of land, or any tree marked, or post or stone planted for that purpose, he shall be fined not less than ten nor more than two hundred dollars.

Killing, disfiguring, or maiming horses, cows, &c.

§ 8. If any person shall willfully kill, disfigure, or maim any horse, cow, mule, jack, or jennet, not his own, without the consent of the owner, he shall be fined not less than ten nor more than one hundred dollars, or imprisoned not less than one nor more than six months. If a slave be guilty of either of the offenses above described, he shall be punished by any number of stripes not exceeding thirty-nine.

Destroying or injuring fruit trees

§ 9. If any person shall willfully and unlawfully cut down or destroy, by belting, topping, or otherwise, any fruit or shade tree of another, or quarry stone on the land, pull down or open the fence or gate, destroy or injure the vegetables, trees, or shrubbery in a garden of any other person, he shall be fined not less than five nor more than five hundred dollars.

Pulling down or injuring churches, school houses, &c.

§ 10. If any person willfully and unlawfully pull down or injure a church, court house, school house, or other public building, he shall be fined not less than five nor more than five hundred dollars.

When offender a slave.

§ 11. If a slave commit either of the offenses described in the three next preceding sections, he shall be punished with stripes, not exceeding thirty-nine.

ARTICLE XXVI.

Surety for the peace.

Recognizance for not longer than one year. M. & B. 1444.

§ 1. No person shall be required to enter into a recognizance to keep the peace or be of good behavior, for a longer period than one year, at any one time.

§ 2. In applications to bind persons to keep the peace and be of good behavior, the court, justice of the peace, or other officer to whom such application is made, shall hear testimony, if offered by either party, to enable him to decide whether the application is vexatious, malicious, with or without good cause.

Testimony to be heard on application.

CHAPTER XXIX.

CURRENCY.

Unlawful to tender or pass, as the representative of money, any bill, note, &c., unless that of a legal incorporated Bank.

The Attorney for the Commonwealth may, by petition in equity, restrain persons who are about to engage in issuing notes in violation of law.

A certificate of deposit, or of stock, in such form as to pass by delivery, within the prohibition of this chapter.

Corporations not expressly allowed, forbid to loan money, deal in exchange, &c.

§ 1. It shall not be lawful to make, offer to pay, or pass, or offer to pass any note, bill, order, or other thing passing by delivery, as a circulating medium in lieu of or as the representative of money, unless it be the note or bill of some banking institution, legally incorporated, in the United States.

Notes of incorporated banks only to be offered &c

M. & B. 235.

If a note, bill, order, or other such thing, be of the denomination of two dollars, or under that amount, it shall be presumed to have been made, paid, or passed in violation of this section, unless the contrary be proved.

§ 2. Every party to any such note, bill, order, or other thing, and every person passing the same, shall be liable to the holder for the amount thereof, with treble costs, and ten per cent. on the amount, by way of damages.

Parties to such note or bill, and person passing the same, liable to the holder.

§ 3. Every person who shall make, pass, circulate, or in any way aid in making, passing, or circulating any such note, bill, or order, or other thing, shall be imprisoned not more than six months, or fined not less than ten dollars and not more than five hundred dollars, or both so fined and imprisoned.

Penalty on person making, passing, or circulating such bills, &c.

§ 4. One-fourth of the fines recovered by indictment under this chapter, shall be for the benefit of the attorney for the commonwealth.

Duty of attorney for commonwe'lth

L. 906.

§ 5. The attorney for the commonwealth may, by petition in chancery, supported by affidavit, without surety, obtain an injunction or restraining order against any person or corporation, for an apprehended violation of this chapter, who may be violating or preparing to violate it, and the court shall enforce obedience to its order by fine and imprisonment.

He may obtain a like order against any person or corporation in this state, acting as the agent of any foreign company or corporation, for the redemption of its bills or notes within this state, so as to facilitate their circulation here; and every person or corporation, so acting as such agent, shall be fined for each offense, from one hundred to one thousand dollars.

Certificate of deposit and stock.

§ 6. Certificates of deposit, or of stock, issued in such form or manner as to pass by delivery, or to circulate from one to another like money or bank notes, shall be deemed to be within the prohibition of this chapter.

Corporations, unless authorized, not to loan money or deal in stocks.

§ 7. No corporation, not expressly authorized thereto by law of this state, shall loan money, discount any evidence of debt, or deal in the buying and selling of exchange for profit.

Every person, acting as an officer, servant, or agent of a corporation, who shall aid such corporation in a violation of this section, shall, for every such offense, be fined from fifty to five hundred dollars.

Contracts of, in violation of this section, void.

All contracts made in violation of this section shall be void, and all money paid by way of interest, discount, or for difference of exchange, in violation thereof, may be recovered back by the party paying, or his creditor.

§ 8. Nothing in the last section shall preclude any corporation from receiving notes, bonds, or bills, in payment of pre-existing liabilities, or as collateral security for any debt, or preclude any corporation, chartered by this state, from purchasing exchange for remittance in the regular course of its proper business, or from selling it when so received.

CHAPTER XXX.

DESCENT AND DISTRIBUTION.

Descent of real estate.
Distribution of personal estate.
Widow's dower, &c.

Who shall take by descent.

§ 1. When a person having right or title to any real estate of inheritance, shall die intestate as to such estate, it shall descend in parcenary to his kindred, male and female, in the following course: M. & B. 562. V. R. 5-2.

1. To his children and their descendants; if none, then
2. To his father; if none, then
3. To his mother, brothers, and sisters, and their descendants; if none, then
4. One moiety of the estate shall go to the paternal, and the other to the maternal kindred, in the following course:
5. *First*, to the grandfather; if none, then
6. To the grandmother, uncles, and aunts, and their descendants; if none, then
7. To the great grandfathers, or great grandfather, if there is but one; if none, then
8. To the great grandmothers, or great grandmother, if there is but one, and the brothers and sisters of the grandfathers and grandmothers, and their descendants; and so on in other cases without end, passing to the nearest lineal male ancestors, and, for the want of them, to the nearest lineal female ancestors in the same degree, and the descendants of such male and female ancestors.
9. If there is no such kindred to one of the parents, the whole shall go to the kindred of the other. If there is neither paternal nor maternal kindred, the whole shall go to the husband or wife of the intestate; or, if the husband or wife is dead, to his or her kindred, as if he or she had survived the intestate and died entitled to the estate.

When per stirpes.

§ 2. When any or all of a class first entitled to inherit are dead, leaving descendants, such descendants shall take, *per stirpes*, or by stocks—that is to say, by representation—the share of their respective deceased parents.

Collaterals of the half blood.

§ 3. Collaterals of the half-blood shall inherit only half so much as those of the whole-blood, or as ascending kindred, when they take with either.

Ancestor being an alien no bar to the heir at law.

§ 4. In making title by descent, it shall be no bar to a party, that any ancestor, through whom he derives his descent from the intestate, is or has been an alien.

Bastards may inherit from the mother and from one another.

L. 211.

§ 5. Bastards shall be capable of inheriting and transmitting an inheritance, on the part of or to the mother, and bastards of the same mother shall be capable of inheriting and transmitting an inheritance, on the part of each other, as if such bastards were born in lawful wedlock of the same parents.

A child born out of wedlock may inherit in certain cases.

§ 6. If a man having had a child by a woman, shall afterwards marry her, such child, or its descendants, if recognized by him before or after marriage, shall be deemed legitimate.

A posthumous child to inherit.

§ 7. Any person born within ten months after the death of the intestate, shall inherit from him in the same manner as if he were in being at the time of such death.

Estate held by gift from the parent to pass to the donor, &c.

§ 8. When a person dies intestate and without issue, having real estate of inheritance, the gift of either of his parents, such parent, if living, shall inherit the whole of such estate.

Estate of an infant derived from one parent, to descend to that parent, or his heirs.

§ 9. If an infant dies without issue, having title to real estate derived by gift, devise, or descent from one of his parents, the whole shall descend to that parent and his or her kindred, as hereinbefore directed, if there is any: and if none, then in like manner to the other parent and his or her kindred; but the kindred of one shall not be so excluded by the kindred of the other parent, if the latter is more remote than the grandfather, grandmother, uncles, and aunts of the intestate, and their descendants.

Parceners to be equal.

§ 10. No parcener shall have any privilege over another in any election, division, or matter to be done or made, concerning lands which shall have descended to them.

Personal estate, how distributed.

M. & B. 660.
V. B. 524.

§ 11. Where any person shall die intestate as to his personal estate, or any part thereof, the surplus, after payment of funeral expenses, charges of administration, and debts, shall pass and be distributed among the same persons, and in the same proportions, to whom and in which real estate is directed to descend, except as follows:

First. The personal estate of an infant shall be distributed as if he had died after full age.

Secondly. An alien may be a distributee as though he were a citizen.

Thirdly. A husband shall have the whole surplus of a deceased wife's personal estate, except he shall have only a life estate in her slaves.

Fourthly. If the intestate leaves issue, his widow shall have one-third, and if no issue, one-half of such surplus; but she shall have only the use for her life of such slaves as may be in her said third or half.

Estate to be set apart to widow exclusive of dow'r

Fifthly. If an intestate leaves a widow, the following property shall be set apart by the appraisers of the estate, and vest in such widow for the use and benefit of herself and the infant children of the intestate, if any, residing in the family:

A. 1845, 34.

One work beast, or yoke of oxen; one plough and gear; one axe; one hoe; two cows and calves; two beds, bedding, and furniture; one loom, and spinning wheels and cards for the same; all the spun yarn and manufactured cloth and carpeting manufactured by the family, necessary for its use; one pot; one oven; half dozen plates; half dozen cups and saucers; one coffee pot; one tea pot; half dozen knives and forks; one table; the family bible; one saddle and its appendages; one bridle; six chairs, or so many as shall not exceed eight dollars in value; all the poultry on hand; five head of sheep; and wearing apparel; also, a sufficiency of provisions, including breadstuff and animal food, to sustain the widow and infant children residing with her, for one year; and if there is not a sufficiency of provisions on hand for that purpose, then so much of the live stock suitable for that purpose, and of the growing crop, if any, as may be necessary to supply the deficiency. But if there are no such infant children residing with the widow, and there are adult or infant children not residing with her, the provision contained in this section for the widow, or the value of such portion thereof as she receives, shall be charged to her in the distribution.

When estate to be distributed.

§ 12. A personal representative may distribute the estate of a decedent nine months after his death.

Dower, and renunciation thereof

§ 13. When a widow claims her dowable and distributable share of her husband's estate, she shall be charged with the value of any devise or bequest to her by his will. Or she may, though under full age, relinquish what is given her by the will, and thereupon receive her dower and distributable share, as if no will had been made; but such relinquishment must be made within twelve months after the probate, and acknowledged and left for record with the clerk of the court where probate was made, or acknowledged before two subscribing witnesses, and proved by one of them before, and left with, the clerk.

Nothing herein shall preclude the widow from receiving her dowable and distributable share, in addition to any devise or bequest made to her by the will, if such is the intention of the testator, plainly expressed in the will, or necessarily inferable therefrom.

Dower in slaves emancipated, how allotted.

§ 14. Except where a devise or bequest is made to the widow by the will of her husband, not renounced by her, she shall not be deprived of her share of his slaves, though they are emancipated by his will; but she shall be compensated therefor out of his other personal estate, if there is a sufficiency thereof for that purpose, after payment of debts. When only a part of the slaves is set free, her share shall be taken out of those not emancipated, if they are enough. If any part of the slaves set free, is necessary for her share, all of those set free shall be hired out, and the hire paid to her, until she is compensated for her share.

Adultery forfeiture of dower.

§ 15. The foregoing provisions in favor of the wife are all subject to this condition: if she voluntarily leaves her husband and lives in adultery, she shall have no part of the personal estate of which he dies intestate, unless her husband, after she so left him, became reconciled to her and suffered her to live with him.

Separation by the husband, and living in adultery, forfeits his claim to wife's estate.

§ 16. Where the husband separates from the wife and lives apart from her in adultery, and she dies without a reconciliation and cohabitation, he shall have no part of her personal estate as a distributee.

Advancements and hotchpot.

M. & B. 784. V. R. 525.

§ 17. Any real or personal property or money, given or devised by a parent or grandparent to a descendant, shall be charged to the descendant, or those claiming through him, in the division and distribution of the undevised estate of the parent or grandparent, and such party shall receive nothing further therefrom, until the other descendants are made proportionately equal with him, according to his descendible and distributable share of the whole estate, real and personal, devised and undevised.

The advancement shall be estimated according to the value of the property when given.

2 N. Y. R. 38.

The maintaining or educating, or the giving of money to a child or grandchild, without any view to a portion or settlement in life, shall not be deemed an advancement.

Advancements not a part of decedent's estate in the allottment of dower.

§ 18. Advancements made to distributees shall not be taken as part of the decedent's personal estate, in estimating the distributable share of the widow therein.

CHAPTER XXXI.

DUELING.

Persons engaged in, liable to damages.

Action allowed widow and minor children for damages.

§ 1. The widow and minor child of a person killed in a duel, or either of them, may have an action against the surviving principal, the seconds, and all others aiding or promoting the duel, or against any one or more of them, for reparation of the injury, and in which the jury may give vindictive damages, for the suppression of the practice of dueling.

Parties not sued competent witnesses.

§ 2. The failure to include any of the persons designated by the last section, as defendants in the action, shall discharge them from all liability under that section, and they shall be competent witnesses for the plaintiff or defendant. The testimony of such persons, thus given, shall not be used in any prosecution by the commonwealth, or other procedure to recover a penalty against such persons.

CHAPTER XXXII.

ELECTIONS.

ART. 1. General Provisions.
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ART. 10. Electors of President.
ART. 11. When officers to commence their duties.
ART. 12. Penalties against Frauds on Elections.

ARTICLE 1.

General Provisions.

Term "election" defined.

§ 1. Whenever in this chapter, or in any statute hereafter passed, it is said an election shall be held, or an equivalent expression is used in reference to a state, district, or county election, it shall be deemed to mean an election by the qualified voters, to be held at the places of voting in

the various precincts or justices' districts whose voters have a right to vote in the election of the officers designated.

By "sheriff," other officer implied.

§ 2. Whenever a duty is imposed upon or a power confided to a "sheriff" in reference to an election, the same shall apply to any other officer or person acting for him at an election, and to the deputies of the sheriff, such other officer or person, in the same manner as if the duty were imposed upon or the power confided expressly to such other officer, person, or deputies; except that, in comparing returns or giving the casting vote in the election of a county judge to fill a vacancy, no deputy shall act without the express written authority of the principal.

"Officer of an election."

§ 3. "Officer of an election," as used in this chapter, means a judge, clerk, or sheriff, or person acting for a sheriff at an election; also, a member of the board for examining poll-books or returns, or making returns.

ARTICLE II.

Precincts, &c.

Precincts.

§ 1. The election precincts and places of voting in the several counties in this state, shall be the same as the districts and places fixed by law for the election of justices of the peace, unless otherwise specially provided for by law.

City of Louisville.

§ 2. That elections in the city of Louisville, except those for justices of the peace and constables, shall be held in each ward thereof, the place of voting to be designated by the mayor and council thereof.

Districts, when and how changed.

§ 3. Districts for the election of justices of the peace and constables, election precincts, and places of voting, may be changed by the county court in the month of January or February next preceding the regular time of electing justices of the peace, on the petition of a majority of the voters of each district or precinct to be affected by the change; and when any such change is so made, the sheriff shall cause the same to be advertised at the places of voting in each precinct affected by the change, for two weeks preceding the next election. If, for any good cause, an election cannot be held at the house appointed as the place of voting, the judges of the election may, on the morning of the election, adjourn it to the most convenient place, after having publicly proclaimed the change.

Justices and constables.

§ 4. An election for two justices of the peace shall be held in each magistrate's district on the first Saturday in

May, 1855, and on the same day every fourth year thereafter; and for a constable on the first Saturday in May, 1853, and on the same day in every second year thereafter.

Terms of office.

§ 5. The term of office of justices of the peace and constables shall always commence on the first day of June, in the year of their election, and expire when their successors are qualified. The justices of the peace shall enter on the duties of their respective offices as soon after their terms commence as they shall have received their commissions and qualified thereunder, and shall have filed the same, with the certificate of qualification thereon, in the county court clerk's office.

ARTICLE III.

Elections, how held.

Officers of election appointed.

§ 1. Each county court shall, in the month of June or July in every year, appoint two justices of the peace, if so many there be, or one justice and one other suitable person as judges, and a clerk of the election for each precinct in the county. It shall also, in the month of March or April every second year, appoint two suitable persons as judges, and a clerk of the election, for each district for the election of justices of the peace and constables in the county. Such judges and clerks shall hold their offices till their successors are appointed and qualify. Vacancies may be filled at any time by the court, or as herein provided for; but such counties as do not appoint at their March court, and have no county court in April, may hold a called term to appoint officers for the May elections.

Notice.

§ 2. The sheriff shall, at least five days before the next ensuing election, give each judge and clerk written notice of his appointment.

Failure to appoint

§ 3. Should the court fail to appoint such judges or clerk, or either fail to attend for thirty minutes after the time for commencing the election, or refuse to act, the sheriff or his deputy shall appoint a suitable person or persons to act in his or their stead for that election.

Oath.

§ 4. Each judge and clerk of an election shall, before entering on the duties of his office, take the oath prescribed by the constitution before some justice of the peace; or it may be administered by the sheriff.

Duties of judges.

§ 5. Such judges shall superintend the election, determine upon the legality of all the votes offered, see that they are properly recorded with the voter's name, in the poll book kept for that purpose, attend to the proper summing

up of the votes, certify the poll book over their signatures, and deliver the same, inclosed in an envelope, sealed by them, before they separate, to the sheriff. They shall also make out duplicate statements, in writing, signed by them, of the number of votes received by each candidate, one copy of which shall be retained by each of the judges, and shall serve as evidence of the result of the election, if the poll-book is not produced. When the judges disagree, the sheriff shall act as umpire between them.

Sheriff umpire.

Each clerk, in the presence of the judges, shall sign his name at the foot of every page of the poll-book, as the election progresses, so that the same may be thereby identified.

Clerk sign poll-book.

§ 6. If the office of sheriff is vacant, or if the sheriff is himself a candidate at any election, all his duties pertaining to that election shall be performed by the coroner and such deputies as he may appoint for that purpose; if the coroner is absent, or his office vacant, or he is a candidate, then such duties of the sheriff shall be performed by some person appointed for that purpose by the presiding judge of the county court, and the deputies of such person, if the presiding judge is not himself a candidate. But if the presiding judge is himself a candidate, or if, from any cause, a sheriff is not in attendance, the judges of the election at any precinct, or, if one of them is absent, the other judge may appoint a person to act in the place of the sheriff for the election on that day in that precinct. In case of disagreement between the judges, the clerk may appoint such person.

When office of sheriff vacant.

§ 7. If a person offering to vote is not personally known to one of the judges or the sheriff as a qualified voter, he shall be interrogated, under oath administered by one of the judges, or the clerk, as to his qualification. If, from his statement so made, he appears to be qualified, he shall be admitted to vote, unless his right is disputed by one of the judges or the sheriff, or by some other person present. If so disputed, the judges shall hear witnesses, not exceeding two in number on each side, as to his qualifications, and decide as may appear right from the proof and the statements of the party. The word "sworn" shall be written opposite the name of every one so voting.

When voter not personally known

Nothing in this section shall be construed to exempt a foreigner from producing his certificate of naturalization, unless his qualification is known to one of the judges or the sheriff.

Foreigner.

§ 8. The following rules shall be observed in determining the residence of a person offering to vote: Rules as to residence.

1. That shall be deemed his residence where his habitation is, and to which, when absent, he has the intention of returning.

2. He shall not lose his residence by absence for temporary purposes merely; nor shall he obtain a residence by being in a county or precinct for such temporary purposes, without the intention of making the county or precinct his home.

3. By removal to another state or county, with intention to make his permanent residence there, he loses his former residence.

4. So, also, he loses his residence here by removal to and residence in another state, with intention to reside there an indefinite time, or by voting there, even though he may have had the intention to return here at some future period.

5. The place where the family of a married man resides, shall, generally, be considered his residence, unless the family so resides for a temporary purpose. If his family is permanently in one place, and he transacts his business in another, the former shall be his residence.

§ 9. If a person is objected to as not being a citizen, in addition to any questions the judges may think proper to ask, the following shall be put to him: Questions as to citizenship.

1. Have you resided in this state two years, or in this county one year immediately preceding this election? and have you resided in this precinct sixty days next preceding this election?

2. Have you been absent from this state during the two years immediately preceding this election, and, if so, did you, while absent, consider this state as your home, or did you, while absent, vote in another state?

§ 10. If the person is objected to as not a resident of the county or precinct in which he offers to vote, then, in like manner, the following questions shall be put to him: Questions as to residence.

1. When did you last come into this county (or precinct)?

2. When you came into this county (or precinct,) did you come for a temporary purpose merely, or for the purpose of making it your home?

3. Did you come into this county (or precinct) for the purpose of voting in it?

ARTICLE IV.

Time of holding elections.

Presidential election.

§ 1. The election of electors of president and vice president shall be held on the Tuesday next after the first Monday in November, one thousand eight hundred and fifty-two, and on the same day in every fourth year thereafter. But the governor may, by his proclamation, appoint the same day in any other year, pursuant to the act of congress, for holding the election in the event of a vacancy in the offices of president and vice president.

Representatives in congress.

§ 2. The election of representatives in congress shall be held on the first Monday in August, one thousand eight hundred and fifty-one, and on the same day in every second year thereafter; but should there be a called session of congress between the expiration of any congressional term and the ensuing first Monday in August, the governor may, by his proclamation, published in three newspapers printed in this state, cause an election of representatives in congress to be held at an earlier day, if there is thirty days between the date of publication and the day so assigned by him.

Other officers.

§ 3. The election of all other officers, not otherwise provided for, shall be held on the first Monday in August; and thereafter, on the same day of each year, as the terms of office regularly expire.

Chancellor, &c., of Louisville chancery court.

§ 4. The chancellor, clerk, and marshal of the Louisville chancery court shall be elected by the qualified voters within its jurisdiction, on the first Monday in August of the year in which the term of office regularly expires.

ARTICLE V.

Comparing polls.

Board to examine poll-books.

§ 1. The presiding judge of the county court, the clerk thereof, and the sheriff, or other officer acting for him at an election, shall constitute a board for examining the poll books of each county, and giving certificates of election. Any two of them may constitute a board; but, if either is a candidate, he shall have no voice in the decision of his own case. If, from any cause, two of the before named persons cannot, in whole or in part, act in comparing the polls, their places shall be supplied by the two justices of the peace who may reside nearest to the court house.

Comparing poll-books; certificates

§ 2. Within two days next after an election, the sheriff shall deposit with the clerk of the county court the poll-

books of the different precincts. On the next day, the board shall meet in the clerk's office, between ten and twelve o'clock in the morning, compare the polls, ascertain the correctness of the summing up of the votes, and give triplicate or more written certificates of election, over their signatures, of those who have received the highest number of votes for any office exclusively within the gift of the voters of the county—one copy of the certificate to be retained in the clerk's office, another delivered to each of the persons elected, and the other forwarded by the county clerk to the secretary of state at Frankfort. For offices not within such gift, they shall give duplicate or more written certificates, over their signatures, of the number of votes given in the county to each person voted for, particularizing therein the precinct at which the votes were given—one copy to be retained in the clerk's office, and the other delivered to the sheriff.

Poll-books to remain in office.

The poll-books shall, thereafter, remain in the clerk's office as part of its records. So, also, shall the certificates of any precinct judges, which may have been used in the absence of the poll book of that precinct.

Two counties voting together.

§ 3. Where two or more counties vote together in the choice of a representative or senator, the sheriffs of the respective counties shall, between ten and twelve o'clock in the morning of the first Monday after the election, meet in the clerk's office of the county court of the county first named in the senatorial or representative district, compare the certificates of the examining boards of the several counties, and, therefrom, give triplicate or more certificates of election, in writing, over their signatures, of the persons who appear to have received the highest number of votes —one copy of the certificate to be retained in the clerk's office, another delivered to the person elected, and the other forwarded to the secretary of state at Frankfort.

Form of certificate.

§ 4. The certificate of election of a county officer shall be, in substance, in the following form:

COMMONWEALTH OF KENTUCKY, SCT.

We, A., B., and C., duly authorized to compare the poll-books for the county of ———, do certify that, at an election held in said county on the ——— day of ———, E. F. was duly elected to fill the office of ———.

The certificate of election of a justice of the peace or constable shall be altered to show that the election was held in a named district.

Election of governor, &c.

§ 5. After an election for governor, lieutenant governor, or other officer elective by the votes of the whole state, or for a judge of the court of appeals, clerk of that court, circuit judge, commonwealth's attorney, representative in congress, or electors of president and vice president, it shall be the duty of the board of examiners of poll-books for each county, immediately after the examination of the poll-books, to make out three or more certificates in writing, over their signatures, of the number of votes given in the county for each of the candidates for any of said offices. One of the certificates shall be retained in the clerk's office, another the clerk shall send by the next mail, under cover, to the secretary of state at Frankfort, and the other he shall transmit to the secretary by any private conveyance the clerk may select, free of cost.

Board to examine returns.

§ 6. The governor, attorney general, and secretary of state, and, in the absence of either, the auditor, or any two of them, shall be a board for examining the returns of election for any of the officers named in the last section.

Duties.

1. It shall be the duty of said board, when the returns are all in, or on the fourth Monday after the election, whether they are in or not, to make out in the secretary's office, from the returns made, duplicate certificates, in writing, over their signatures, of the election of those having the highest number of votes—one certificate to be retained in the office, and the other sent by mail to the person elected. If all the returns are not made, the right to contest an election shall not be impaired.

Representatives in congress—certificates.

2. In the case of the election of a representative in congress there shall be three certificates—one to be retained in the office, another sent by mail to the person elected, and the other sent by mail to the clerk of the house of representatives, at the seat of the federal government.

Statement to be published.

3. It shall be the duty of the secretary, immediately after the comparison of the returns, to cause a statement, therefrom, of the votes given in every county for each candidate, to be published in two newspapers printed in Frankfort.

Tie, how determined.

4. If two or more persons shall be found to have received the highest and an equal number of votes for the same office, so that the election cannot be determined among the candidates by a plurality of votes, it shall be determined by lot, in such manner as the board may direct, and in the presence of not less than three other persons.

5. If one or more of the persons voted for as electors of president, is elected, then he or they, when convened to vote for president, shall determine which of the candidates having an equal number of votes shall be deemed to be elected, without casting any lot therefor. But if none is elected, then the board shall determine the election by lot, between those having the highest and equal number of votes; except that they shall he arranged and drawn for in classes, according to their known pledges to vote for the different candidates, so that the whole vote of the state may be given to the same persons.

Tie in county elections.

§ 7. Where the sheriffs of two or more counties, on comparison of the returns, or the board of examiners for a county, find that two or more persons have received the highest and an equal number of votes for the same office, they shall, in like manner, by lot, determine which of the candidates is elected.

ARTICLE VI.

Filling vacancy.

Term "vacancy" defined.

§ 1. The term "vacancy in office," or any equivalent phrase, as used in this article, means such as exists when there is an unexpired part of a term of office without a lawful incumbent therein, or when the person elected or appointed to an office fails to qualify according to law, or when there has been no election to fill the office at the time appointed by law. It applies whether the vacancy is occasioned by death, resignation, removal from the state, county, or district, or otherwise.

Writ of election.

§ 2. A writ of election shall be signed by the officer or attested by the clerk of the court issuing the same, appoint the day for holding the election, and be directed to the proper sheriff or sheriffs.

Proclamation.

1. When an election is to be held to fill a vacancy in any office by the voters of the whole state, or of a congressional or judicial district, a proclamation, signed by the officer authorized to order the same, shall be used and stand in lieu of a writ of election.

How published.

2. Such proclamation, when for the whole state, shall be published, at least thirty days before the election, in two newspapers printed at the seat of government; and when for such district, at least twenty days before the election, in two newspapers printed in the district—if there are such papers printed at the seat of government or in the district. A copy of a proclamation for a district election shall, also,

be forwarded by mail to the sheriff of each county in the district, twenty days before the election.

Sheriff to give notice.

3. Immediately on receipt of a writ of election or proclamation of election, or other sufficient information thereof, the sheriff shall give notice thereof by advertisements, posted at the court house door and the several places of voting, and published in some newspaper printed in the county, if any such there be.

4. No writ for the election of a county officer, a representative, or senator, shall be issued, except so as to enable the sheriff to give such notice at least eight days before the election.

Writ delivered to sheriff.

5. A writ of election from the county court shall be delivered to the sheriff by the clerk thereof, immediately after it is ordered. Other writs of election or proclamations shall be forwarded by the officer issuing them to the sheriff by mail. If, from any cause, the sheriff cannot properly act, he shall immediately hand the writ or proclamation to the person authorized to act in his place.

What day to be appointed.

6. The next succeeding first Monday in August shall always be the day appointed by writ or proclamation for holding an election, except as in this chapter allowed, unless to fill a vacancy in the court of appeals, or in the office of circuit judge, or unless there is or will be an intervening session of the legislature or of congress, rendering it necessary to fill a vacancy therein before the first Monday in August.

7. But when a vacancy so occurs that there is not time to give the requisite notice before the proper first Monday in August, a special election shall be ordered to take place on a day within six weeks after such first Monday.

8. Except in the cases provided for in the last subsection, the day appointed for filling a vacancy in the court of appeals, or in a circuit court, shall be within six weeks after the governor receives notice of a vacancy.

Vacancy in legislature.

§ 3. When a vacancy happens in either branch of the legislature during its session, the presiding officer of the house in which the vacancy occurs shall issue the writ of election; if the legislature is not in session, the writ shall be issued by the governor.

In office of governor.

§ 4. When a vacancy happens in the office of governor, requiring an election, the proclamation therefor shall be issued by the chief justice, or, if he is absent from the state, by the judge of the court of appeals having the shortest unexpired term.

Sheriff.

§ 5. A vacancy in the office of sheriff shall be temporarily filled by the county court, until the next succeeding August election, and until the successor then chosen shall qualify.

Coroner, surveyor, &c.

1. A vacancy in the office of coroner, surveyor, county court clerk, county attorney, jailer, constable, or assessor, shall be filled in like manner, until the next succeeding August election, and until the successor then chosen has qualified. A writ of election to fill the vacancy shall be issued by the court, or if the judge is not at the time in the county, by the clerk under the order of two justices of the peace.

Justice of the peace.

2. A vacancy in the office of justice of the peace shall be filled by the appointment of the governor, temporarily, until the next succeeding May or August election, whichever shall first transpire, and until the successor then chosen shall qualify; and a writ of election to fill the remaining vacancy shall be issued in like manner.

Commonwealth's attorney, or clerk.

3. A vacancy in the office of commonwealth's attorney or circuit court clerk, shall, in like manner, be temporarily filled for the same time by the circuit judge of the district, who shall, also, issue the writ or proclamation for an election to fill the remaining vacancy.

Presiding judge.

§ 6. When a vacancy shall occur in the office of any presiding judge of a county court within the first three years for which he may have been elected to said office, it shall be the duty of the clerk of the county court, or, in his absence, the clerk of the circuit court, to issue a writ of election, directed to the sheriff, who shall proceed to hold an election—after having given due notice; but if the vacancy shall be for a less period than one year, then the clerk of the county or circuit court shall notify all the magistrates of the county that a vacancy has occurred, and requiring the said justices to convene at the court house to fill said vacancy, on a named day.

1. The justices shall convene at ten o'clock in the morning of the appointed day, or as soon thereafter as may be, and at the same hour every succeeding day, Sunday excepted, until the vacancy is filled.

2. A majority of the justices shall be a quorum to fill the vacancy, and their written certificate thereof shall be handed to and preserved by the clerk of the court.

3. In case of a tie, or if a majority of the justices present cannot be otherwise obtained, after three ballots, the sheriff shall give the casting vote.

Resignations.

§ 7. All resignations of office shall be tendered to the court or officer who is required to fill the vacancy. All such resignations shall be in writing, and received and recorded by said court or officer; when it is required to be filled by the circuit judge, he shall cause a record to be made of the resignation, in the court of that county in which the officer lives; and when by the county court, it shall cause a record of the fact to be made; and when by the governor, he shall cause the same to be recorded in the executive journal.

ARTICLE VII.

Contested Election.

Election of governor, &c.

§ 1. When the election of a governor or lieutenant governor is contested, a board for determining the contest shall be formed in the following manner:

Board, how constituted.

1. On the third day after the organization of the general assembly which meets next after the election, the senate shall select, by lot, three of its members, and the house of representatives shall select, by lot, eight of its members, and the eleven so selected shall constitute a board—seven of whom shall have power to act.

Selection by lot.

2. In making the selection by lot, the name of each member present shall be written on a separate piece of paper, every such piece being as nearly similar to the other as may be. Each piece shall be rolled up, so that the name thereon cannot be seen, nor any particular piece ascertained or selected by feeling. The whole, so prepared, shall be placed by the clerk in a box on his table; and, after it has been well shaken, and the papers therein well intermixed, the clerk shall draw out one paper, which shall be opened and read aloud by the presiding officer, and so on, until the required number is obtained. The persons whose names are so drawn, shall be members of the board.

To be sworn.

3. The members of the board so chosen by the two houses, shall be sworn by the speaker of the house of representatives to try the contested election, and give true judgment thereon, according to the evidence, unless dissolved before rendering judgment.

Meeting of board, &c.

4. The board shall, within twenty-four hours after its selection, meet, appoint its chairman, and assign a day for hearing the contest, and adjourn from day to day, as its business may require.

Members excused.

5. If any person, so selected, shall swear that he cannot, without great personal inconvenience, serve on the board, or that he feels an undue bias for or against either of the parties, he may be excused by the house from serving on the board; and if it appears that a person, so selected, is related to either party, or is liable to any other proper objection on the score of his impartiality, he shall be so excused.

Deficiency supplied.

6. Any deficiency in the proper number, so created, shall be supplied by another draw from the box.

Power of board.

7. The board shall have power to send for persons, papers, and records, to issue attachments therefor, signed by its chairman, swear witnesses by its chairman or clerk, and issue commissions for taking proof.

Decision.

8. Where it shall appear that the candidates receiving the highest number of votes given have received an equal number, the right to the office shall be determined by lot, under the direction of the board. Where the person returned is found not to have been legally qualified to receive the office at the time of his election, a new election shall be ordered. Where another than the person returned shall be found to have received the highest number of legal votes given, such other shall be adjudged to be the person elected and entitled to the office.

Vote of six members necessary.

9. No decision shall be made but by the vote of six members. Its decision, when made, shall be final and conclusive. It shall be made out in triplicate and signed by the members voting therefor. One copy shall be retained by the chairman or clerk, and one delivered to the presiding officer of each house.

New election.

10. If a new election is required, it shall be immediately ordered, by the proclamation of the speaker of the house of representatives, to take place within six weeks thereafter, and on a day not sooner than thirty days thereafter.

11. When a new election is ordered, or the incumbent adjudged not to be entitled, his powers shall immediately cease; and if the office is not adjudged to another, it shall be deemed to be vacant.

Member refusing to attend.

12. If any member of the board willfully fail to attend its sessions, he shall be reported to the house to which he belongs, and, thereupon, such house shall, in its discretion, punish him by fine or imprisonment.

When no decision during session

13. If no decision of the board is given, during the then session of the legislature, it shall be dissolved, unless, by

joint resolution of the two houses, it is empowered to continue longer.

Election to general assembly—board, how constituted.

§ 2. When the election of a member of the general assembly is contested, that branch of the legislature to which he belongs, within three days after its organization, shall, in like manner, select a board of not more than nine nor less than five of its members, for determining the contest; which board shall be governed by the same rules, have the same power, and be subject to the same penalties as would the board to determine the contested election of governor, and shall report its decision to that branch of the legislature by which it was appointed, for its further action.

Other officers—who to compose board.

§ 3. The governor, attorney general, auditor, treasurer, and secretary of state, or any three of them, shall be a board, with like powers as those named in the last section, for determining the contested election of any officer, other than governor or lieutenant governor, elective by the voters of the whole state, or of a judge or clerk of the court of appeals, circuit judge, chancellor of the Louisville chancery court, or commonwealth's attorney.

To be sworn.

1. Each member of the board, before entering on his duties as such, shall be sworn by some judge or justice to try the contested election, and give true judgment thereon, according to the evidence.

Rules.

2. The board and its acts shall be governed by the rules named in the first section of this article, where the same are applicable to its duties.

Majority necessary to a decision.

3. A majority of the board shall be necessary to a decision, which shall be in writing, and signed in duplicate by the members concurring therein—one copy to be retained in the secretary's office, and the other delivered to the successful party, or sent to him by mail.

Commission, or new election.

4. The governor shall, immediately after such decision, issue the proper commission, or order a new election, as the case may require.

County and district officers.

§ 4. The judge of the county court and the two justices of the peace residing nearest to the court house in each county, shall be a board, with like powers as those named in the last section, for determining the contested election of any officer elective by the voters of the county or any justice's district therein, or of any police judge, clerk, or marshal, except members of the general assembly. If any of said persons are absent from the county or cannot properly act, then said board shall be filled by adding thereto—first, the county court clerk, then the justice of the peace

who resides next nearest to the court house, and so on, excluding such as cannot properly act, till the board is full. If either party shall make affidavit, and file the same with a county board, that such party verily believes that either or both of said justices will not give a fair and impartial trial, then the board shall be filled by other justices in lieu of those thus objected to.

Rules.

1. The board shall be governed by the rules named in the first and third sections, where the same are applicable to its duties.

Decision.

2. The decision of the board shall be given in writing and signed in triplicate, one copy to be entered on the minutes of the court, another handed to the successful party, and the other, when necessary for obtaining a commission, forwarded by mail to the secretary of state.

New election.

3. When the decision so requires, the court shall immediately issue a writ for a new election.

Notice.

§ 5. No application to contest the election of an officer shall be heard, unless notice thereof, in writing, signed by the party contesting, is given to the officer returned.

Must state grounds.

1. The notice shall state the grounds of the contest, and none other shall afterwards be heard, as coming from such party.

Time of notice.

2. In the case of an officer elective by the voters of the whole state or any judicial district, the notice must be given within thirty days after the final action of the board of examiners. In the case of a senator or representative, it must be given within fifteen days; and in that of any other office, within ten days after such action.

Depositions.

3. Immediately after such notice, either party may proceed to take proof by depositions, under the same rules and regulations that govern the taking of depositions in suits in chancery, except that no dedimus shall be required for taking a deposition out of the state. The depositions shall be sealed up by the officer taking them, and directed to the board having power to decide the contest, or to the clerk of the senate, or clerk of the house of representatives, as the case may require.

Other proof.

4. Such depositions, properly taken, shall be read as evidence before that branch of the legislature, or the board having jurisdiction of the case; but either can, in its discretion, call for and hear other proof.

When taking of depositions to close.

5. The taking of depositions to be used before the legislature, or either branch thereof, shall close ten days before the next meeting thereof, or, if in session when the notice

is given, not until it is ordered to close; if before a county board, it shall close three weeks after the notice of the contest; and if before the other board, six weeks after the notice.

When case to be heard.

6. The case shall be heard by a county board on the fourth Monday after the service of notice; and by the other board, the eighth Monday after such service; but either may, for good cause, allow further time.

Costs.

7. The costs of the proceeding shall be adjudged against the unsuccessful party, and a certificate thereof given by the board, or by the clerk of either branch of the legislature, as the case may require. A judgment for the same may be obtained after five days' notice, in a circuit or county court.

ARTICLE VIII.

Pay of officers of elections, &c.

Costs of elections

§ 1. The costs of all elections held in any county shall be paid out of the county levy.

Pay of officers.

§ 2. Officers of elections shall receive pay as follows: judges, one dollar, each; sheriffs, one dollar, each; clerks, two dollars, each; in all elections to fill vacancies, the same fees, except that the clerk shall only receive one dollar. For comparing the returns of two or more counties in the election of a senator or representative, a sheriff shall receive two dollars, and one dollar and fifty cents for each twenty-five miles of travel in going and returning.

Of witnesses.

§ 3. The compensation to witnesses, and officers taking depositions, in cases of contested elections, shall be the same as in suits at law.

Of clerk.

§ 4. The clerk of the county court shall have twenty-five cents for each certificate of election or appointment of an officer, to be paid by the person receiving it.

ARTICLE IX.

Election of United States Senator.

U. S. Senator.

§ 1. Senators in the congress of the United States shall be elected by *viva voce* vote of the members of the two branches of the general assembly, on joint ballot.

When elected.

1. The election shall be held on the eighth day after the organization of the general assembly, which next precedes the expiration of the senatorial term of the incumbent; and if no election is made on that day, the two

houses may adjourn from time to time until the election is made.

Vacancy.

2. If a vacancy occurs when the legislature is not in session, in an unexpired term, the election shall be held on the eighth day after the organization of the next general assembly; and if during the session of the legislature, or if notice thereof is only received during such session, the election shall be held on the seventh day next after any member of either house moves to go into an election; or, if that seventh day is Sunday, then on the next succeeding day. In either case the election shall be proceeded with as before directed.

Governor to give certificate.

§ 2. When the governor is notified by the clerk of either house of the election of a senator, or when the governor appoints a senator, he shall give a written certificate of such election or appointment, attested by his signature and the seal of the state. If he refuses to give such certificate after an election, the presiding officer and clerk of either house may give the same over their signatures.

ARTICLE X.

Electors of President.

When to convene.

§ 1. The electors of president and vice president of the United States shall convene in the capitol, at the seat of government, at ten o'clock in the morning of the first Wednesday in December after their election, give their votes at or after twelve o'clock, and make return thereof according to law.

Places of absentees filled.

§ 2. If, from any cause, one or more of the electors elected, fails to attend, as before directed, by twelve o'clock of that day, those in attendance shall fill the place of those absent, by the election of another person or persons, who shall have the same powers as if originally elected by the people for that purpose.

ARTICLE XI.

When officers to commence their duties.

Commissions.

§ 1. The governor shall commission all officers elective by the voters of the whole state, other than governor and lieutenant governor, or of any judicial district, and also the chancellor of the Louisville chancery court.

No officer elective by the voters of a single county shall be commissioned by the governor, except the presiding judge of the county court, a police judge, and justices of the peace.

When term of office begins.

§ 2. The term of office of every officer not otherwise provided for, shall hereafter commence on the first Monday of September next after his election, and expire when his successor is qualified. The officer elected shall enter on the duties of his office after the commencement of his term, as soon as he receives his commission or certificate of election, and qualifies thereunder, by taking the oath of office, and by giving his official bond, when required by law.

Commissions of presiding judge & of justices to be noted of record.

The presiding judge of a county court, and a justice of the peace, shall, before entering on his duties, also leave his commission with the clerk of the court, to be noted of record.

Filling vacancies.

§ 3. Every officer appointed to fill a vacancy, shall commence the duties of the office as soon as he has received his commission, or certificate of appointment, and qualified thereunder according to law.

Till successor qualifies.

§ 4. Every officer not otherwise provided for by the constitution, shall hold his office until his successor has duly qualified.

ARTICLE XII.

Penalties against frauds on elections.

Penalty on sheriffs failing to attend elections, &c.

§ 1. Any sheriff who fails to cause an election to be held, or to make, compare, and certify election returns for senator or representative, as required by law, shall be fined from one hundred to five hundred dollars. If he fails to perform any other duty concerning an election, or the returns thereof, for which there is no penalty specifically prescribed, he shall be fined from twenty to two hundred dollars.

On judge or clerk.

§ 2. Any judge or clerk of an election who, after due notice of his appointment, shall fail to perform his duty as such in holding any election, unless for good cause, shall be fined from ten to one hundred dollars.

Failing in comparing polls, &c.

§ 3. Any officer who, without sufficient excuse, fails to discharge his duty after any election as one of a board for comparing the poll-books or election returns, or to decide a contested election, shall be fined from twenty to two hundred dollars.

Acting corruptly.

Any officer who shall act corruptly, or with manifest partiality, in the discharge of such duty, shall be fined from one hundred to five hundred dollars, and shall, also, in addition, forfeit any office he then holds, and be disqualified from ever holding any office.

Altering, &c., poll-books.

§ 4. Any officer or other person who shall fraudulently alter, obliterate, or willfully secrete, suppress, or destroy the certified poll-book or certificate of an election, or fraudulently and unlawfully alter the poll-book before it is certified, shall be deemed guilty of forgery, be confined in the penitentiary from one to five years, forfeit any office he then holds, and be disqualified from ever holding any office.

Making false poll-book, &c.

§ 5. Any officer who shall make or aid in making, or authorize the making up of any false and fraudulent poll-book, or certificate of an election or election return, shall incur the penalties of the last section.

Refusing certificate, &c.

§ 6. Any officer whose duty it is to give or aid in giving a certificate of election or of the returns of an election, or to forward the same, who shall willfully and fraudulently refuse or fail to give the same, or to send the same to the secretary of state, as required by law, shall be imprisoned from one to six months, and fined not more than a thousand dollars, forfeit any office he may then hold, and be disqualified from ever holding any office.

Advising or procuring.

§ 7. Any person who shall counsel, advise, or procure the commission, or aid in the commission of either of the offenses named in this article, shall incur thereby the penalty therefor, as therein named.

Wrongfully receiving or refusing votes.

§ 8. Any judge, sheriff, or clerk who shall receive or assent to receive or record a vote at an election, at any other time or place than that lawfully appointed, and any judge or sheriff who shall knowingly and unlawfully receive the vote of any other than a qualified voter, or so refuse to receive the vote of a qualified voter, shall, for every such offense, be imprisoned from one to six months, or fined from fifty to five hundred dollars, forfeit any office he then holds, and be disqualified from ever holding any office.

Voting under age, &c.

§ 9. Any resident of this state who shall vote at any election before he has resided two years in the state, or in the county and precinct where the election is held the time required by law, or when he has attained full age, or before he has been duly naturalized, shall be fined from fifty to one hundred dollars, or imprisoned from ten to ninety days, or both.

Voting more than once, or by false papers.

§ 10. Any resident of another state or country, or any person who shall vote more than once at an election; any person who shall vote by means of a false personation and use of the naturalization papers of another person, dead or living; and any person who shall lend or hire his natu-

ralization papers to be used for such purpose, shall be imprisoned not less than one month nor more than one year.

Receiving bribes.

§ 11. Any person guilty of receiving a bribe for his vote at an election, or for his services or influence in procuring a vote or votes at an election, shall be fined from fifty to one hundred dollars, or imprisoned from one to twelve months, and be excluded from office and suffrage.

"Bribery," &c., defined.

1. "Bribe" or "bribery," means any reward, benefit, or advantage, present or future, to the party influenced or intended to be influenced, or to another at his instance, or the promise of such reward, benefit, or advantage.

2. Money or other thing of value given or lent, in whole or in part, to be betted on the result of an election, or the promise thereof; or a bet with another that such other will vote for a named candidate, and the gift or promise of a share in any such bet, made or to be made, shall be deemed a bribe.

3. Whoever shall receive money or other thing of value, to be used for the purpose of procuring or influencing a vote or votes, shall be deemed to have been bribed.

Penalty for bribing.

§ 12. Whoever shall bribe another shall, on conviction, be fined from fifty to one hundred dollars, and imprisoned from ten to ninety days, or both so fined and imprisoned, and be excluded from office and suffrage for five years.

Forcibly breaking up election, &c.

§ 13. Any person who, by himself or in aid of others, shall forcibly break up or prevent, or attempt to break up or prevent, the lawful holding of an election, or so obstruct or attempt to obstruct the same, or so prevent or attempt to prevent any qualified voter from giving his vote, shall be fined from fifty to five hundred dollars, or imprisoned not more than one year.

False swearing.

§ 14. Any person who shall make any willfully false statement, under an oath duly administered at an election, shall be deemed guilty of perjury, and incur the penalty for that crime.

Any person who shall willfully and corruptly procure another to make such false statement shall be deemed guilty of subornation of perjury, and incur the like penalty.

Right of suffrage forfeited.

§ 15. Any person condemned to confinement in the penitentiary for larceny, robbery, forgery, counterfeiting, or perjury, or any such like crime, shall forfeit his right of suffrage for ten years after his conviction.

Duty of officers to give information, &c.

§ 16. It shall be the special duty of a sheriff, judge, or clerk of an election to give information of all infractions of this act to the grand jury or commonwealth's attorney;

and where there is reason to fear that an offender will make his escape out of the county before indictment, to procure his immediate apprehension.

Surety for appearance to be taken.

The officer before whom such offender is brought, if satisfied of his guilt, shall require from him surety, in adequate penalty, for his appearance at the next circuit court, to answer the charge; and on his failure to give it, commit him to prison till such surety is given.

Liberally construed.

§ 17. This chapter shall be liberally construed, so as to prevent any evasion of its prohibitions and penalties by shift or device.

To be given in charge to grand jury.

It shall also be given specially in charge to the grand jury of every county first convened after any general election.

Grand jury may compel witnesses to testify.

§ 18. A grand jury may cause any person to be summoned before them as a witness, who shall be compelled to testify as to any knowledge he may possess touching any violation of law in relation to elections in the county during the preceding eighteen months; and if he refuses to testify on oath, he shall be committed to prison, until he submits, and be fined from ten to thirty dollars by the court, and a like sum for each daily repetition of the contempt.

No exemption on ground of criminating self.

§ 19. In any prosecution under this chapter, it shall be no exemption for a witness that his testimony may criminate himself; but no such testimony, given by a witness, shall be used against him in any prosecution, except for perjury; and if used on behalf of the commonwealth, he shall stand discharged from all penalty for any violation of this chapter, so necessarily disclosed in his testimony, as tending to convict the accused.

Jury not to convict on testimony of single witness.

But the jury shall never convict any one under the provisions of this chapter, upon the testimony of a single witness, unless sustained by strong corroborating circumstances.

Limitation.

§ 20. No prosecution shall be had under this chapter, unless the same is commenced within eighteen months from the time of the commission of the offense.

Commonwealth's attorney's fees.

§ 21. A commonwealth's attorney shall, as his taxed fee, receive a fifth of any penalty recovered under this chapter.

CHAPTER XXXIII.

ESCAPES.

Manner of arrest, &c.
Liability of officer, &c.

Warrant to be issued for person escaped.

M. & B. 616.

§ 1. If any person rendered or charged in custody, in execution, or on mesne process, or by any order of a judge or chancellor, made in or out of court, shall escape therefrom, or from the officer having him in custody, a justice of the peace of the county, upon complaint and affidavit made of the fact, shall issue as many warrants for his recapture, directed to all sheriffs and constables, and other officers within this state, as he may deem necessary. The cause of the person's commitment shall be mentioned in said warrant. Sheriffs and constables shall be also commanded to recapture the prisoner and forthwith to convey and commit him to the prison of that county whence he escaped, to be there safely kept until discharged by due course of law. The warrant, with his return thereon indorsed, the sheriff or constable, or other officer, shall return to the office of the clerk of that court having jurisdiction of the cause for which the prisoner was in custody.

When escape is from custody upon execution.

§ 2. If the prisoner was in custody by virtue of execution or final process when he escaped, he shall remain in close jail, without bail or mainprize, until he shall satisfy the said demand, or until the judgment or decree shall be reversed, or he be discharged by due course of law.

When upon mesne process.

§ 3. If the prisoner was in custody by mesne process or other original procedure, he shall remain in confinement, after his capture, until released by due course of law.

When for treason, felony, &c.

§ 4. If the prisoner was in custody on a charge of treason, felony, breach of the peace, or misdemeanor, he shall, upon being recaptured, be conveyed by the officer who apprehends him to the jail of the county from which he escaped, and there remain confined until discharged by due course of law.

Liability of officers.

§ 5. Officers and their sureties shall be liable, in an action upon their official bonds, for the use of the parties aggrieved, for the voluntary or negligent escape of a prisoner in custody, for the damages sustained. No judgment in such action shall be given, unless the jury shall, by their verdict, find "that the escape was with the consent of the officer, or by his negligence, or that such prisoner might

have been retaken if the officer had, in good faith, made proper efforts to do so."

Liability for aiding escapes.

§ 6. If any person shall aid a prisoner to escape, or shall knowingly conceal him after he escapes, or in any way hinder or prevent his recapture, he shall be liable to the party aggrieved for such damages as he may have sustained.

CHAPTER XXXIV.

ESCHEATS AND ESCHEATORS.

ART. 1. When estate escheats for failure of heirs or persons to take.
ART. 2. Agents to be appointed.
ART. 3. Money to be paid into the Treasury.
ART. 4. Escheators to be appointed.
ART. 5. Lands to be reported to the Auditor.

ARTICLE I.

When estate escheats for failure of heirs or persons to take.

Failure of heirs, &c.

L. 229. A. 1842-3.

§ 1. That part of the estates not disposed of by will of persons who have died or may hereafter die in this commonwealth without heirs or distributees entitled to the same, shall vest in the commonwealth without office found, subject to the debts and liabilities of the decedent.

Estate not claimed in five years.

§ 2. That part of the estates of such persons who have died or may hereafter die which has been or may hereafter be devised to any person, who, or any heir or distributee or devisee of his or of the testator, has not claimed the same or shall not claim the same within five years after such death, shall, in like manner, vest in the commonwealth.

Duty of personal representative.

L. 229.

§ 3. The personal representatives of persons named in the first section, whose estates or a part of whose estates are not disposed of by will, shall settle their accounts within one year after qualifying as such, and pay over to the treasurer of the commonwealth the proceeds of the personalty, first deducting the proper legal liabilities of the estate.

When accounts not settled within one year.

1. If the whole personal estate cannot be settled and the accounts closed within a year, the settlement shall be made and the proceeds paid over to the treasurer as far as practicable, and the residue shall be so settled and paid over as soon thereafter as it can be properly done.

Real estate not devised to be rented.

2. The personal representative shall take possession of the surplus real estate of the deceased not disposed of by his will, and rent out the same from year to year until it is otherwise legally disposed of, and pay the net proceeds into the treasury annually.

Accounts returned to auditor.

3. He shall also make out and transmit to the auditor of public accounts a description of the quantity, quality, and value of such real estate, and its probable annual profits.

ARTICLE II.

Agents to be appointed.

Agents to be appointed. L. 230.

§ 1. The auditor of public accounts shall appoint an agent for the commonwealth in each county.

To give bond.

1. Before the agent so appointed shall enter on the duties of his office, he must give bond and good surety, to be approved by the county court of his county, for the faithful discharge of his duty; a certified copy of which bond shall be sent by the clerk of the court to the auditor.

To take possession.

2. It shall be the duty of the agent to take into his possession and manage estates, and the profits thereof, which may be devised and not claimed within five years, as provided for in the first article of this chapter.

To settle with personal representatives.

3. Also, to bring the personal representatives to a settlement and to an account for all such estates as are therein provided for.

To report to auditor.

4. Also, to make report to the auditor of the amount, quantity, quality, and value of such estates, and of the annual profits thereof.

To sell estate.

5. He shall also, under written directions from the auditor of public accounts, sell any estate or property which may so come to his possession, on such credit as the auditor may direct, taking good security for the payment of the sale money; which sales he shall report in due time to the auditor.

To pay into the treasury.

6. He shall also pay all money into the public treasury which comes to his hands as agent.

Auditor may remove. L. 230.

§ 2. The auditor may, at any time, remove an agent and appoint another, or fill any vacancy in that office.

Legacies not claimed for five years.

L. 220.

§ 3. If any devisee or his heirs, devisee, or distributee, or any heir or distributee of the testator has failed, or shall hereafter fail, for five years to claim his legacy, as provided for in the second section of this chapter, the personal representatives of such testator, or other person having the same in possession, shall, after deducting the legal liabili-

ties thereon, pay and deliver over such legacy, whether the same be real or personal estate, and the net profits thereof, to the agent of the commonwealth for the use of the treasury.

ARTICLE III.

Money to be paid into the Treasury.

Auditor to report to general assembly. L. 230.

§ 1. The returns made to the auditor by personal representatives and agents shall be, biennially, reported by him to the general assembly.

May institute suits. L. 230.

§ 2. Suits in the name of the commonwealth, to settle or recover such estates, against any person in possession of or accountable for the same, may be instituted by the direction of the auditor.

Prepared by agent

1. Such suits shall be prepared by the agent of the commonwealth.

Allowance.

2. No agent shall be allowed more than five per cent. for his whole attention to any estate.

Land may be sold.

§ 3. Lands or other property to which the commonwealth may be entitled under the three first articles of this chapter, by the owner dying intestate, may be sold on a reasonable credit, at any time, by the agent of the commonwealth, in pursuance to the written directions of the auditor. Upon the production of such directions by the agent, the personal representative, or other person having such estate in possession or under his control, shall surrender the same to such agent.

Auditor to convey

§ 4. The auditor, after the purchase money for any land so sold is paid into the treasury, shall convey the title of the commonwealth therein to the purchaser or his assignee, his heirs or devisees.

ARTICLE IV.

Escheators to be appointed.

Escheators to be appointed. M. & B. 620. V. R. 489.

§ 1. The governor shall appoint an escheator in each county, who shall hold his office for four years, or until removed, or a successor is appointed and qualified.

To give bond.

1. He shall, before he enters on the duties of his office, give an obligation in the county court of the county for which he is appointed, with good surety, payable to the commonwealth, for the faithful discharge of the duties of his office; a certified copy of which shall be sent by the clerk of the court to the auditor.

To act in person.

2. He shall execute the duties of his office in person, and not by deputy.

Governor may remove.

3. He may be removed from office by the governor for misbehavior, neglect of duty, or incapacity.

When to hold inquest.

§ 2. No escheator shall hold an inquest in any case embraced in the three preceding articles. He shall hold an inquest in all other cases embraced by the laws of escheat which have occurred where none has been holden, and in all cases which shall hereafter occur.

To sit in public places.

§ 3. An escheator shall sit in public places.

To give notice.

1. He shall give notice, posted on the court house door of the county thirty days, of the time and place of taking an inquest.

To require jury.

2. He shall cause the sheriff to impannel a jury of freeholders of the county, to convene at the time and place designated, who shall be sworn by the escheator to find and return a true inquest.

To preside at trial.

3. The escheator shall preside on the trial, keep order, and decide questions of law.

Evidence.

4. Witnesses and other evidence shall be heard touching the matters under investigation.

Verdict.

5. When the inquest is ended and verdict made up, each member of the jury shall sign the same.

It must be countersigned by the escheator, and returned by him, within thirty days, to the clerk of the county court.

Claimant may petition court.
V. R. 490.
M. & B. 620.

§ 4. When the verdict on such inquest shall be for the commonwealth, any person claiming an interest, legal or equitable, in the land, may, before the sale thereof, petition the circuit court for redress.

Escheator to defend.

1. To which the escheator shall be a defendant, and shall file an answer stating the objections to the claim.

Court to decide.

2. The court shall decide the cause, but may, at the request of either party, impannel a jury to try the facts.

Witnesses coerced to attend.

§ 5. Each party shall be entitled to the appropriate process to coerce the attendance of witnesses on the inquest or upon the trial in court.

Land may be committed to the claimant pending suit.
V. R. 491.
M. & B. 620, 621.

§ 6. Pending the petition, the court may commit the lands, or a part thereof, to the claimant, on his giving an obligation, with good surety, to take proper care thereof, and to pay the commonwealth the rents and profits of the same if the right be found for her.

Or remain under control of escheator.

1. If not so committed, the lands shall remain under the control of the escheator, who shall be answerable for rents and profits to the claimant or the commonwealth, as the right may be determined.

Escheator to collect and account for rents.

2. The escheator shall, each year, collect and return a statement to the auditor of public accounts, of the rents received by him, and for what land, and pay the same into the treasury, except when a claimant shall be successful, deducting from such receipts five per centum for his services.

Inquisition not to affect terms, &c.

M. & B. 621.

§ 7. The finding of an inquisition in behalf of the commonwealth shall not affect the right of any person who is entitled to any term or interest in the freehold or estate so found to be escheated, or has any rent, right of common, or any other profit issuing out of the same. But such person shall hold and enjoy his lease, interest, rent, common, or profit, whether the same is or not found in the inquisition.

Escheator may traverse finding.

§ 8. If an inquest be found against the commonwealth, the escheator may traverse the finding, and have it re-tried in the circuit court. Where the inquest is decided against the commonwealth, it shall not be evidence as between the heirs of the person dying seized, on a question of heirship.

ARTICLE V.

Lands to be reported to the Auditor.

Lands escheated to be reported to auditor.

V. R. 491.

§ 1. Every escheator shall, within sixty days after office found for the commonwealth, transmit to the auditor of public accounts a statement showing the number of tracts of land or town lots escheated, the reputed quantity of each parcel, the county or town in which it lies, and the name of the person from whom the land escheated.

To be published.

1. The auditor shall forthwith cause such statement to be published four weeks in a public journal, printed at the seat of government.

To be sold if not claimed in six months.

M. & B. 621.

2. If no person makes claim to the lands within six months from the finding of the inquest, or if any claim be so made and found against the claimant, the escheator shall sell the same at public sale, to the highest bidder, on a reasonable credit, giving proper notice thereof, and taking good security for the payment of the sale money.

Sale to be certified.

3. The escheator shall certify the amount of the sale, and return the sale bond to the auditor of public accounts.

Auditor to convey

4. When the amount of the bonds are paid into the public treasury, the auditor shall, on behalf of the commonwealth, make the purchaser a deed for the land.

Escheators allowed 5 per cent.

5. Escheators shall be allowed five per centum on the amount of all sales of lands made, or rents received by

them, to be paid when the proceeds are realized by the treasury.

Aliens—when time to sell allowed by treaty.

V. R. 491.

§ 2. If, under any treaty between the United States and any foreign country, time is allowed a citizen or subject of such country to sell lands escheated, the same shall not be sold by the escheator, unless such citizen or subject shall fail to sell the land within the prescribed period.

Fine of escheator for failure in duty.
V. R. 492.

§ 3. Any escheator failing to comply with any of the requisitions of this chapter, shall be fined one hundred dollars, upon indictment in the Franklin circuit court.

Estates in trust or by mortgage.

V. R. 493.

Equitable titles.

§ 4. Estates held in trust or by mortgage shall not escheat or be forfeited by reason of the trustee or mortgagee being an alien, or of his dying without heirs. But any equitable title to lands shall escheat or be forfeited so far as it would if the person having the equitable had the legal title.

Land subject to debts.
V. R. 493.

§ 5. Lands which escheat shall nevertheless be subject to the debts of the person dying seized.

Creditor's claim.

1. Any creditor of such person may file his procedure in equity to recover such debt in the circuit court of the county in which the inquest is returned, verified by affidavit, and make the escheator a party defendant thereto.

May contest.

2. The escheator may contest the claims.

Decree paid out of lands.

3. If the court shall decree that any part of the debt is justly owing, it shall be paid out of the proceeds of the lands, in whosesoever hands it may be.

Escheator not to pay costs.

4. The escheator shall not be liable for costs in such suit.

When remedy applies.

5. The remedy given in this section shall obtain and apply to cases of escheat under the first and second articles of this chapter.

Net proceeds reimbursed to owner.

V. R. 494.

§ 6. The net proceeds of any estate embraced in this chapter, which may be paid into the treasury, shall be reimbursed to the proper owner, who had not before asserted claim thereto by petition or otherwise, upon his producing to the auditor evidence of the justice of his claim, certified to be competent by a majority of the judges of the court of appeals. In such cases the attorney general, if he deem it proper, shall be allowed time to adduce countervailing evidence before such certificate is given.

CHAPTER XXXV.

EVIDENCE.

Of what Courts shall take judicial notice, as evidence.
Copies from Journals, Records, &c., evidence.
Executions may issue on lost Records, and how lost records may be supplied.
Mode in which Records, &c., of other States and Foreign Countries are to be authenticated.

Of what courts are to take judicial notice.

§ 1. Acts and resolutions of the general assembly, local or private, may be given in evidence, without being specially pleaded; and the appellate court shall take judicial notice of such as appear to have been relied on in the inferior court.

V. R. 660.

V. R. 660.

§ 2. All courts, tribunals, officers, and persons, shall take notice of the official signature of any officer of this state or of the United States.

Copies of journals to be evidence

V. R. 660.

§ 3. Copies of the journal of either house of the general assembly, printed by the public printer, shall be received as evidence, for any purpose for which the original journal could be received.

Copies attested by the keeper of documents evidence.

V. R. 661.

§ 4. A copy of any record or paper, properly filed or lodged in the clerk's office of any court, or of the secretary of the commonwealth, treasurer, register, or auditor, or of the surveyor of a county, attested by the person having the legal custody thereof, shall, upon proof of the execution of the original, be admitted as evidence in lieu thereof.

Suits may be founded on copies

V. R. 661.

§ 5. A copy of any such writing as is embraced in the preceding section may be filed in a suit thereon, and the defendant shall plead thereto, as if the original were filed.

Copies of ordinances of towns, &c., evidence.

V. R. 287.

§ 6. A copy from the mayor's office of any city, or from the official books of any town, or religious society, of an ordinance or by-law for the rule of such city, town, or society, attested by the keeper thereof, shall be evidence for any purpose for which the original could be received.

Entries in execution books.

V. R. 598.

§ 7. A copy from an entry in a clerk's or justice's execution book, of the date of an execution that issued from such office, and to whom delivered, and when returnable, shall be evidence, in any proceeding against the officer and his sureties, to whom it shall be entered as delivered.

Auditor's certificate evidence.

V. R. 661.

§ 8. The certificate of the auditor of public accounts of the fact, and of the time of the return of any real estate

as delinquent, or of the sale thereof for taxes, shall be *prima facie* evidence of the facts therein stated.

Record books may be re-bound and transcribed.

V. R. 661.

§ 9. Any county court may order any of the books or records in the clerk's office of such court, or in the office of the surveyor of the county, to be re-bound; or, when obliterated, torn, or in a ruinous condition, to be transcribed in new books; and shall make a reasonable allowance therefor, which shall be chargeable to the county. The circuit courts shall also have the same power over the books and records of their clerk's offices, and the expense thereof shall be paid out of the treasury.

Such transcript to be evidence.

V. R. 661.

§ 10. After any book, that shall be so transcribed, is examined by the judges of the county or circuit court and an order shall be made on the records of the court that the same is correct, the same faith and credit shall be given to the transcript that the book or record transcribed was entitled to.

How execution may be issued on lost records

M. & B. 899, 1340.

§ 11. Where an original judgment or decree, or a delivery, replevin, or forthcoming bond taken thereon, has been destroyed, obliterated, or lost, upon satisfactory evidence, after reasonable notice to the opposite party, showing that it had existed, its contents, and that it had not been discharged, the court or the justice of the peace that rendered the judgment or decree, or in whose office such bond was filed, may, on the motion of the person, or his representative, in whose favor the judgment, decree, or bond was rendered or taken, if it appear proper, order an execution to issue thereon.

Proceedings in case of bonds destroyed.

M. & B. 1340.

§ 12. Where the order of the county court, appointing an administrator or guardian, or any person to any place, station, or trust, or the bond executed in the county court by any such person, or any officer, shall be destroyed, obliterated, or lost, the court shall, by the appropriate proceeding, due notice thereof being given, supply the record, and compel such person to execute a new bond, with good and sufficient sureties; and on his failure to do so, shall enter up an order vacating his office or station.

Where records, &c., of court destroyed or defaced

M. & B. 1240–41.

§ 13. Where the records and papers of any court shall be destroyed, defaced, or obliterated, such court shall appoint a commissioner, who shall have power and authority to fix on a convenient place to meet and sit, from time to time, giving reasonable public notice thereof.

Commissioner may take evidence in such cases.

§ 14. The commissioner may, at the instance of any person, issue a summons and cause the attendance of witnesses, and take evidence, in writing, of such witnesses,

relative to any record or paper so destroyed, defaced, or obliterated; which deposition shall be legal evidence, and shall be returned to the clerk of the court, and safely kept by such clerk. The commissioner shall not remain in office longer than one year.

Compensation. M. & B. 1341.

§ 15. The commissioner shall be paid a reasonable compensation for his services, out of the county levy.

Lost records to be supplied.

V. R. 610. M. & B. 1339.

§ 16. When any record book, containing judgments, decrees, orders, executions, or proceedings of a court, shall be lost, destroyed, or become illegible, and the same can be again entered correctly by means of any writing, such court may order its clerk to have the matter re-entered, and the same, when done and approved by the court, shall have the same effect as the original. But any party to be affected thereby, shall first have reasonable notice of such proceeding.

Provision in case of the loss, &c., of record book of wills, &c.

V. R. 661.

§ 17. When any record book of wills, deeds, and other instruments of writing, or any such instrument, shall be filed in any clerk's office, and shall be lost, destroyed, or become illegible, the clerk in whose office such book or paper was, upon the production to him of any original paper which was recorded in such book, or an attested copy from the record, or of any thing else in said book, or of any paper so filed, shall, on the request of the person interested, record the same anew, and shall certify on the record whether it was recorded from the original or a copy, and how the same was authenticated; and such record shall be *prima facie* evidence.

How records of other states to be authenticated.

V. R. 662.

§ 18. The records and judicial proceedings of any court of the United States, or of any state, attested by the clerk thereof, with the seal of the court annexed, if there be a seal, and certified by the judge, chief justice, or presiding magistrate of the court, to be attested in due form, shall have such faith and credit given to them, in this state, as they would have at the place whence the said records come.

When records and exemplifications shall be evidence.

V. R. 662.

§ 19. All records and exemplifications of office books, kept in any public office of the United States, or of a sister state, not appertaining to a court, shall be evidence in this state, if attested by the keeper of said records or books, and the seal of his office, if there be a seal.

Attestation of records of other states.

V. R. 662.

§ 20. Exemplifications from the books of the executive department of the United States, or any papers filed therein, shall be evidence, when attested by the president or the chief of either of the departments; or from any state

or territory, of like books or papers, when attested by the governor or the secretary of state thereof, under his official seal.

Foreign records, how to be authenticated.

V. R. 663.

§ 21. A copy from the record books of any court, or of any register of births and marriages, or other instruments of writing, or a copy of any law or ordinance of any state, nation, province, colony, city, or town, in any place out of the United States, if the same shall have been registered in due form, according to the laws of such sovereignty, so certified and attested by the keeper of such record or register, and his attestation shall be certified under his official seal, by any consul, charge d'affaires, or minister of the United States, resident within the sovereignty where the record is kept, shall be evidence in this state.

Where a person shall be presumed dead.

V. R. 669.

§ 22. If any person who shall have resided in this state, go from and do not return to this state for seven successive years, he shall be presumed to be dead, in any case wherein his death shall come in question, unless proof be made that he was alive within that time.

How laws of other states may be proved.

M. R. 577.

§ 23. The unwritten or common law of any other of the United States may be proved as facts by the parol evidence of persons learned in that law. The printed books of cases adjudged in the courts of a sister state, may also be admitted as evidence of such law.

How foreign laws to be proved.

M. R. 577.

§ 24. The existence and the tenor or effect of all foreign laws, beyond the limits of the United States, may be proved by the parol evidence of persons learned in those laws. But if it appear that the law in question is contained in a written statute, the court may reject such parol evidence, unless it be accompanied by a copy of the statute.

Printed laws received at secretary's office, or certified copies thereof, evidence.

M. & B. 187.

§ 25. The printed laws of the United States, or of any state or territory thereof, which have been or shall be received in the secretary's office of this state, and which shall have been printed under the authority of the United States, or such state or territory, or a copy thereof, when duly certified by the secretary of state for this commonwealth, shall be admitted and received as evidence of such laws.

CHAPTER XXXVI.

EXECUTIONS.

ART. 1. Writ of eligit abolished.
ART. 2. Writs of fieri facias.
ART. 3. Defendant's estate bound.
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ARTICLE I.

Writ of eligit abolished.

§ 1. The writ of *eligit* is abolished.

Eligit. M. & B. 631.

ARTICLE II.

Writs of fieri facias.

§ 1. A *fieri facias* may issue on any final judgment or decree of a court of record, *in personam*, for a liquidated sum of money, and for interest and costs, or for costs alone.

Fieri facias. M. & B. 631, 635.

§ 2. The form of a writ of *fieri facias* may be in substance as follows, to-wit:

Form thereof. M. & B. 632.

THE COMMONWEALTH OF KENTUCKY TO THE SHERIFF OF ——— COUNTY, GREETING: We command you that of the estate of A. B., you cause to be made the sum of $——, which C. D., late in our —— court, hath recovered against him for debt, with interest thereon from the —— day of —— until paid; also the sum of $——, which to the said C. D., in the same court, were adjudged for his costs in that suit expended, whereof he is convicted, as appears to us of record, and that you have the said sums of money before our

said court on the —— day of ——, to render to the said C. D., his debt, interest, and costs, aforesaid, and have then there this writ. Witness, &c.

1. The form may be varied to suit each particular case.

When and how returned.

2. All executions shall be returnable to some rule day of the court not under thirty nor over seventy days from the test.

3. If a *fi. fa.* be satisfied, the officer may return thereon, in substance, "satisfied," unless it be by the sale of property, when the fact must be stated.

4. If satisfied in part, he must state what part and why the residue is not made.

5. If levied, and no sale has been made for the want of bidders, or no property has been found, he must state the facts.

Fi. fa. at plaintiff's cost, when first not returned.

M. & B. 635.

§ 3. If a *fieri facias* is issued, and the plaintiff desires to take out another, at his own proper costs, the clerk may issue the same, though the previous execution be not returned.

When a fi. fa. not satisfied.

1. If it be returned in whole or in part not satisfied, a new one may issue.

On joint judgment, &c.

2. On a joint judgment or decree against several, the execution must be joint.

§ 4. No execution shall issue on any judgment or decree, unless ordered by the court, until after the expiration of ten days from the rendition thereof.

Return day.

§ 5. Each court shall, by an order of record, appoint a monthly return day of executions.

ARTICLE III.

Defendant's estate bound.

Lien of fi. fa.

M. & B. 636.

§ 1. A writ of *fieri facias* shall bind the estate of the defendant only from the time the same is delivered to the proper officer to execute.

Time to be indorsed.

1. The officer to whom it is so delivered shall indorse thereon the day of the month, year, and time of day, when the same is received by him.

Priority.

2. If two or more executions are delivered to the officer on the same day against the same person, he shall satisfy that one first which comes first to his hands.

Pro rata.

M. & B. 637.

3. When two or more executions come to an officer's hands at the same time, and he is unable to make the amount thereof, he shall apportion the sum made among the several executions so coming to his hands, according to the amount thereof.

ARTICLE IV.

Capias ad satisfaciendum allowed.

§ 1. A *capias ad satisfaciendum* may issue, except against females, upon all judgments for a trespass, *vi et armis*, upon the person or property, for seduction, or for slander, written or verbal, or for a malicious prosecution. The court shall note, at the foot of the judgment, that a *capias ad satisfaciendum* may issue thereon. The form of such execution shall be, in substance, as follows, to-wit: Capias. M. & B. 630.

THE COMMONWEALTH OF KENTUCKY TO THE SHERIFF OF —— COUNTY, GREETING: We command you that you take A. B., if he be found within your county, and him safely keep, so that you have his body before our judge (or justices) of our ——— court, &c., the —— day of ———, to satisfy C. D., the sum of $——, which the said C. D. hath recovered against him for damages; also the sum of $——, which to the said C. D., in the same court, was adjudged for his costs; and that you have the same at ——, on the —— day of ——, to satisfy and pay the said C. D. his damages and costs aforesaid, and have then there this writ. Form of.

Witness, E. F., clerk of our said court, this —— day of June, 1851.

1. The benefit of the prison rules is, in all cases, abolished. Prison rules.

2. No defendant shall be allowed to take the oath of an insolvent debtor until ten days after he has furnished the plaintiff or his attorney a copy of the schedule of his property he intends to surrender. Insolvent's oath.

3. The sheriff or other officer may return on a *ca. sa.*, in substance: In virtue of this writ, I have taken the within named A. B., and delivered him to the jailer of my county. This —— day of ——. Or, the within named A. B. is not found within my connty. This —— day of ——. Return on ca. sa.

§ 2. The death of a defendant imprisoned under a *ca. sa.* shall not release his estate from liability to the plaintiff. M. & B. 637.

ARTICLE V.

How decrees in chancery may be enforced.

§ 1. A final order or decree for money, lands, slaves, or other specific things, may be enforced by any appropriate writ of execution, allowable on a judgment at law, according to the nature of the case. Execution on a decree. M. & B. 635.

1. Such writ shall issue and be returnable as other writs of execution.

Ancient proceeding allowed.

2. Nothing in this section shall prevent any party from proceeding to carry any order or decree of court into execution, according to the ancient practice of courts of chancery.

ARTICLE VI.

Writs of venditioni exponas.

Venditioni exponas.

M. & B. 637.

§ 1. When the sheriff or other officer shall return on a writ of *fieri facias*, that the estate levied on, or any part thereof, remains in his hands unsold, a writ of *venditioni exponas* may issue, directed to such officer.

Form of.

1. Which writ shall be, in substance, as follows:

M. & B. 638.

THE COMMONWEALTH OF KENTUCKY TO THE SHERIFF OF —— COUNTY, GREETING: We command you that you expose to sale the estate of A. B., to the value of $——, which, according to our command, you have taken into your hands, and which remains in your hands unsold, as you have certified to our —— court, to satisfy C. D. the sum of $——, whereof in our said court he hath recovered execution against the said A. B., by virtue of a judgment in the said court, and that you have, &c.

Proceedings on.

2. The like proceedings shall be had on such writ as might and ought to have been had on the first execution.

Sale on fi. fa. after return day.

3. An officer may, at any time after the return day, while the original execution is in his hands, sell any property taken by him, before the return day, in virtue thereof.

ARTICLE VII.

Executions on judgments for specific property.

Execution for specific property.

M. & B. 649.

§ 1. When a judgment shall be recovered for a specified slave or other thing, the plaintiff may have an execution issued thereon, commanding the proper officer to take the thing so recovered, and deliver the same to the plaintiff.

A fi. fa. for assessed value.

1. Or, the plaintiff may, if he so elect, take a writ of *fieri facias* for the assessed value of the thing recovered; and in either case he shall have execution for the damages assessed for the detention, and his costs.

2. The court may, upon satisfactory proof that the property recovered has perished, or that, without the fault of the defendant, it is out of his power to produce the same, order the plaintiff to receive the assessed value in lieu of such property.

ARTICLE VIII.

Concerning live stock and slaves.

Sustenance for stock and slaves levied on.
M. & B. 638.

§ 1. When an execution is levied on a slave or live stock, and no forthcoming or replevin bond is immediately given, the officer shall provide sufficient sustenance for the slave or live stock so levied on, until the same is legally disposed of.

Allowance to officer therefor.

1. In such case, the officer shall make a fair estimate of his expenses, and collect the same, subject to correction by the court.

2. Upon the return of the execution, if either party so desire, the court must fix what the officer shall be allowed for his expenses, which is to be considered a part of the taxed costs in the case, and collected accordingly.

3. When an execution which has been levied on slaves or live stock is quashed, enjoined, superseded, or suspended, the officer levying the same may have his expenses allowed, and issue his fee bill for and collect the same from the plaintiff in the execution.

4. Such expense, except when the execution is quashed, shall form a part of the costs, and be collected from the defendant if the stay or suspension be removed. If removed in part only, then in proportion to such part.

ARTICLE IX.

Defendants allowed to replevy.

Judgment replevied.
M. & B. 655.
A. 1842-3, 60.

§ 1. The defendants (except in the cases herein otherwise provided,) may, when there is no execution thereon in the hands of a collecting officer, replevy any judgment or decree for money, except decrees to enforce a lien, for three months before the clerk or justice of the peace, or judge of the quarterly court entering up the judgment or decree, by giving an obligation and good surety, to be approved of by such officer, in substance as follows:

Form of bond.

This day the defendant, A. B., together with C. D., his surety, came before me, as clerk of the —— court, (or before me, the presiding judge or justice of the peace of —— county,) and undertook that they would satisfy and pay E. F. his judgment, including interest (if any) and costs, amounting to ——, rendered in his favor against the said A. B., by this court, (or by me,) within three months, with legal interest on the whole amount thereof from this date.

Executions replevied.
M. & B. 642.

§ 2. Any execution on a judgment or decree which could be replevied before such execution issued, may be replevied

for three months at any time before a sale of the property under the same, by the defendant giving to the officer acting under the same an obligation, payable to the plaintiff, with good surety for the amount thereof, including interest, costs, and half commission up to that time. The obligation shall be, in substance, as follows:

Form of bond.

We, A. B., principal, and E. F., security, do bind ourselves, three months after the date hereof, to pay C. D., the plaintiff in execution, the sum of $——, — cents, to bear interest from this date, being the amount of an execution which issued from the clerk's office of the circuit court (or county court) of ——, (or the office of G. H., a justice of the peace in and for —— county, as the case may be,) on the —— day of ——, in favor of the said C. D., for the sum of $——, debt or damages, $——, interest, $——, costs of suit, $——, sheriff's (or constable's) half commission, amounting in the whole to the sum of $——, aforesaid, against the said A. B.; and we, the said A. B. and E. F., his surety, have hereby replevied the same. Witness our hands this —— day of ——.

Waiver of right.

M. & B. 655.

§ 3. An agreement to waive the right to replevy, or any other legal agreement in relation to any judgment or decree, entered on the record among the orders of court, shall be specifically enforced. In such case the proper indorsement shall be made on the execution by the clerk, judge, or justice.

No replevy allowed in certain cases

M. & B 646, 651.

§ 4. No replevy shall be allowed upon a judgment against any collecting officer or attorney at law, or agent, for a delinquency or default in executing or fulfilling the duties of his office or place, or for failing to pay over money collected by him in such capacity, or against a principal by his surety, or of a debt due by obligation having the force of a judgment, or of a judgment or decree for specific property, or for the property or its value.

ARTICLE X.

Forthcoming bond.

Forthcoming bond.

M. & B. 641.

§ 1. The owner of personal estate taken in execution may give to the officer levying on the same an obligation, with good surety, to have the property forthcoming at the time and place of sale, specifying therein each article of property, and its value.

Form of.

1. The obligation shall be, in substance, as follows, viz:

We, A. B., principal, and C. D., surety, do bind ourselves that the property mentioned in the following schedule and

valuation, to-wit: ——, valued at $——, (naming each article and its value,) shall be forthcoming at ——, on the —— day of —— next, by the hour of twelve o'clock in the day. Witness our hands.

Possession restored.

2. Upon the giving of such obligation, the officer shall restore the possession of the property so taken in execution to the defendant, to remain with him, at his own risk and expense, until the time stipulated for its delivery.

Failure to pay or deliver.

M. & B. 642.

§ 2. If the defendant shall fail to pay or replevy the amount of the execution, and shall fail to deliver so much of the property specified in the forthcoming obligation, or other property in its place sufficient to satisfy the execution, and all costs and commissions, the officer shall return the execution and bond to the office whence the former issued, and indorse on the execution the levy, the giving of the bond, and the particular property which is not forthcoming, and the other facts.

Liability of surety.

L. 234.

1. The surety therein shall be liable only for the value of the property specified in the bond, which is not forthcoming, with interest thereon from the date of the bond, and the accruing costs.

When property in bond not sufficient.

2. If the property specified in a forthcoming bond is not of value sufficient to satisfy the execution and all costs and commissions, the proper officer may issue another execution, and credit the same with the value of the property specified in the bond.

Officer failing to return a forthcoming bond.

M. & B. 642.

§ 3. An officer taking a forthcoming bond, who shall fail to return the same to the proper office for twenty days after the failure to comply on the part of the defendant, shall, with his sureties, be liable to the plaintiff for the amount of the execution, costs, and commission, and twenty per centum thereon, to be recovered by action or motion against any one or more of them, or their representatives.

ARTICLE XI.

Sale bonds.

Credit of three months.

M. & B. 644.

§ 1. In all cases where the right to replevy exists and is not exercised, sales under execution shall be on a credit of three months, upon the purchaser giving bond and good surety to the plaintiff in the execution, for the payment of the sale money, bearing interest from the date.

1. The bond shall be, in substance, as follows:

Form of bond.

We, A. B., principal, and C. D., surety, do bind ourselves to pay to E. F., within three months from the date hereof, the sum of $——, — cents, with interest thereon from this

date, being the purchase money for (here set out the several items of the property so purchased, with the price of each,) which was this day sold by G. H., sheriff, (or constable, &c., as the case may be,) of —— county, in satisfaction of an execution which issued from the office of the clerk of the —— circuit court, (or K. L., a justice of the peace for —— county, as the case may be,) on the —— day of ——, in favor of the said E. F., against M. O., for the sum of $——, debt or damages, with interest and costs. Given under our hands this —— day of ——.

Bond to defendant for excess.

M. & B. 645.

§ 2. When property sold on a credit shall sell for more than will satisfy the execution, costs, and commission, the officer making the sale shall take a bond, payable to the defendant, the owner of the property, for the excess, similar in every other respect to that directed in this article to be taken to the plaintiff, and to have like force and effect, and on which like proceedings may be had. If the property is sold for cash in hand, any excess, over satifying the execution and charges and commissions, shall be paid over by the officer to the defendant whose property is sold.

ARTICLE XII.

Bonds having the effect of judgments.

Bond, how executed.

§ 1. Every bond taken on the sale of property under an order or decree in chancery, or on the sale of property under execution, and every replevin and forthcoming bond shall be signed by the principal and sureties, and attested by the person taking the same, or by some one in his presence.

Return.

1. A bond so taken shall be returned to the proper office with a report of the acts of the person taking it; and if taken under an execution, the latter must be returned with the bond.

Force and effect.

2. All such bonds shall have the force and effect of a judgment, and on which, if not paid at maturity, an execution may issue, and shall be indorsed that no surety of any kind is to be taken.

Liability of officer

§ 2. The officer taking any of the bonds aforesaid, and his sureties, or their representatives, shall be jointly and severally liable to the person injured for any damage he may sustain by taking surety thereon who is not good when received.

Death of obligor, &c.

M. & B. 647.

§ 3. If one of several obligors or obligees in any bond having the force and effect of a judgment, shall die before the same is satisfied, execution may issue on such bond in

the name of the surviving obligee or obligees, against the obligors or the survivor.

§ 4. When all the obligees in such bond as is specified in the next preceding section shall die, their personal representatives may, if such bond is not satisfied, sue out execution thereon after its maturity, against the obligors or their personal representatives, if they are all dead, or if only part be dead, against the survivor and the personal representatives of the deceased. Death of obligees. M. & B. 623.

§ 5. When a bond having the force of a judgment is quashed, a new execution may issue on the original judgment at the instance of the plaintiff, in the same manner as if such bond had never been given. Bond quashed. M. & B. 644.

ARTICLE XIII.

Lands liable to execution.

§ 1. Land to which the defendant has a legal title, in fee, for life, or for a term, whether in possession, reversion, or remainder, may be taken and sold under execution. Land subject to execution. M. & B. 652.

§ 2. Land must be sold under execution to the highest bidder, on the first day of a county or circuit court, at the court house door of the county in which it lies. When sold. M. & B. 639.

1. Only so much can be thus sold as will satisfy the execution under which the sale is made. Quantity sold.

2. The officer making the sale must first advertise the time and place of making the same, by written notice set up at the court house door and three other public places in the vicinity of the land, for fifteen days next preceding the sale, therein describing the land to be sold. Advertised.

3. Before a sale of land, the officer shall cause it to be valued, under oath, by two disinterested, intelligent housekeepers of the county, not related to either party. If they disagree, the officer shall act as umpire. If a part of a tract only is sold, the part so sold shall, after the sale, be valued in like manner, Valued. M. & B. 649.

4. The valuation so made shall be in writing, signed by the persons making it, and returned with the execution, and the officer must refer to and explain the proceeding in his return on the execution. M. & B. 650.

§ 3. In making sale of land, when the whole tract shall be bid up to the amount required to be made, the defendant, his agent or attorney, if present, may designate off what side or end of the land the sale shall be made. If no designation is so made, the officer must declare which Part sold to be designated. M. & B. 650.

side or end he will sell; and in so doing, act according to what he may deem the best interest of the defendant.

Right of redemption.

M. & B. 650.

§ 4. If the land so sold does not bring two-thirds of the valuation, the defendant and his representatives shall have the right to redeem the same within a year from the day of sale, by paying the purchaser or his representatives the original purchase money, and ten per centum per annum interest thereon.

Purchaser's receipt.

1. The defendant redeeming his land shall take receipt from the purchaser, and lodge the same with the clerk of the court, to be filed with the execution under which the sale is made.

Tender of redemption money.

2. The defendant may tender the redemption money to the purchaser, his agent, or attorney, if in the county where the land lies, or in the county where the judgment is obtained, and if the same is refused, or if the purchaser do not reside in either of said counties, the defendant may, before the expiration of the year, go to the clerk of the court whence the execution issued, and make affidavit of such tender and refusal, or that the purchaser, his agent or attorney, does not reside in the county where the land lies, or whence the process issued, as he believes. Thereupon, he may pay to such clerk the redemption money for the purchaser, and the clerk shall give a receipt therefor and file the affidavit with the execution in his office.

Defendant to keep possession.

3. When the right of redemption exists, the defendant shall remain in possession until it expires.

Not conveyed for one year.

M. & B. 650-51.

§ 5. Land sold under execution which is subject to redemption shall not be conveyed by the officer making the sale until the expiration of one year from the sale; nor shall he convey after that period if the land has been redeemed or the affidavit is made and money deposited with the clerk, as in this article provided, unless in pursuance to an order or decree of a court, or the written assent of the defendants in the execution.

Right of redemption subject to execution.

M. & B. 651.

§ 6 The right of redemption herein provided for shall be liable to sale under execution. The land shall, in such case, still be subject to redemption by the defendant until the end of a year from the first sale. The purchaser of the right of redemption may, before the end of a year from the first sale, pay the prior purchaser his money and interest, as stated in this article; and shall be entitled to the land, unless redeemed by the defendant in the execution.

§ 7. Land sold under an execution issued to another county than that in which the judgment was rendered, or than that in which the owner resides, at the request of the defendant, shall not be subject to valuation or redemption. The clerk shall indorse on such execution, that no valuation is to be made.

Land in another county.

M. & B. 651.

§ 8. If the defendant shall hold the legal title to several tracts of land in the same county, he, or his agent or attorney, may, by writing, direct an officer having an execution against him, to make the amount of the same first out of such of the tracts as he may designate.

Where defendant owns several tracts.

M. & B. 651.

1. Such direction shall not preclude the officer from levying on and selling other property at the same time, to supply the deficiency, if any, in the sale of the land designated.

2. The proper title papers must be delivered to an officer with the directions.

§ 9. At any time when there is no execution in an officer's hands, the defendant may make affidavit before the clerk in whose office there is a judgment or decree against him, that he has the legal title to land in another county than that in which the defendant resides, or in which the judgment or decree was rendered, and that the same will, as he believes, satisfy said execution; that the land is not in the adverse possession of another, and state his derivation of title to the land, and file his title papers with the clerk. He must further state in his affidavit that he desires an execution to issue to the county in which the lands lie. Thereupon, the clerk shall issue an execution to such county.

Defendant's affidavit, &c., as to lands in another county.

M. & B. 651.

1. But if the defendant fails to comply with any one of these requisitions, the clerk shall not, without the assent of the plaintiff, issue an execution to such county.

2. If the land is sold under the execution, the title papers deposited with the clerk shall, on request, be delivered to the purchaser of the land.

§ 10. The sheriff who sells land under execution, or his deputy, or the successor of the former, must convey the title sold to the purchaser, or his assignee, or his heirs or devisees, if the same is not redeemed.

Sheriff to convey.

ARTICLE XIV.

Concerning the sale of property under execution.

§ 1. The same personal property shall be exempt from execution which is exempted from distribution.

Property exempt.

M. & B. 611, 612.

1. And on all liabilities created after the twenty-second of March, 1851, the following additional property shall be exempt: one work horse; five head of sheep; one cooking stove and appendages, and other cooking utensils not exceeding twenty-five dollars in value.

Defendant may give up exempt property, &c.

2. A defendant in an execution may give up for sale all or any part of the property exempt from execution or sale under a fee bill or an attachment, and take other property of equal value, to be ascertained by two disinterested housekeepers, selected by the officer making the levy.

Order of liability.

§ 2. Property shall be liable to levy and sale under execution in the following order:

1. Personalty.
2. Slaves.
3. Lands.

§ 3. If there is not enough of that description of property first liable, the officer may levy on or sell others in succession, at the same time, until a sufficiency to satisfy the execution is seized and sold.

Defendant may direct.

§ 4. The defendant may, on the day of sale, by writing, direct the property levied on to be sold in any succession he may desire; and he may produce other property, or the title to land in the county not levied on, and by writing direct the same to be first sold; and in that case the residue of the execution, costs, &c., if any, shall be made out of the property levied on.

Place of sale.

§ 5. Slaves must be sold under execution at the court house door of the county in which the levy is made, on the first day of a county court or circuit court. Personalty may be sold at or in the vicinity of the place of levy.

Time, notice, &c.

§ 6. Slaves and personalty may be sold in ten days after the levy; the time and place of sale, and a description of the property, being first advertised, by setting up written notices ten days preceding, at three of the most public places in the vicinity of the place of sale.

Crops.

§ 7. No crop of any description shall be levied on or sold under execution, (unless it shall have been severed from the ground,) until after the first day of October in each year.

But if the estate of the defendant in the land is liable to be sold, and is levied on and sold, the title to the growing crop may pass by such sale.

ARTICLE XV.

Encumbered property may be sold.

Defendant's interest in property mortgaged, &c., may be sold.

§ 1. When the defendant in an execution shall have owned the legal title in any real or personal estate, and have created a *bona fide* incumbrance thereon, by mortgage, deed of trust, or otherwise, before an execution has created a lien on the same, the interest of the defendant in such property may be levied on and sold, subject to such incumbrance. M. & B. 653.

Purchaser's lien—ten per cent. interest.

1. The purchaser at the sale shall acquire a lien on such property for the purchase money, and interest after the rate of ten per centum per annum from the day of sale until paid, subject to the prior incumbrances.

Other creditors.

2. Any other creditor, whether by judgment or not, may, after such execution and sale, by equitable proceedings, subject the encumbered property to sale, and, after satisfying prior liens, have his demand satisfied out of the proceeds of the residue. The proceedings in equity must be instituted before the purchaser has, by suit, removed the incumbrance.

Defendant may redeem.

3. The defendant in the execution may redeem the property so sold by paying the original incumbrance, with legal interest thereon, and by paying the purchaser his purchase money, with ten per centum per annum interest thereon.

Purchaser to give surety not to remove.

4. The purchaser of encumbered movable property must, before possession thereof is delivered to him, give an obligation, with good surety, payable to the incumbrancer and the owner, stipulating that the property shall not be removed out of the county, and shall be preserved and forthcoming, unavoidable accidents excepted, to answer the incumbrance, and for redemption, and deliver the obligation to the officer, to be returned with the execution.

Courts of equity to control.

5. Courts of equity shall have the control of all encumbered property sold under execution, and the power to make all needful orders for the preservation and forthcoming of the property and its issues and profits, to satisfy the incumbrance, and to secure the rights of others.

Officer may appoint agent.

§ 2. When an execution is placed in the hands of an officer for collection in a county in which the plaintiff does not reside, he may, by indorsement on the execution, name an agent in the county to which the execution is directed, who shall have power to receive and receipt for the money when collected.

ARTICLE XVI.

Certain sales invalid.

What sales invalid—how set aside. M. & B. 628.

§ 1. Sales made under execution by fraud, covin, or collusion, may be set aside on the motion of any person aggrieved, or by bill in equity.

1. If by motion, it must be commenced within one year from the sale.

2. It must be made in the court whence the execution issued.

3. The parties affected by the motion must have ten days previous notice in writing, setting forth the grounds relied on for invalidating the sale.

Officer may not buy. M & B. 623.

§ 2. No officer shall, directly or indirectly, bid for or buy any property under an execution which may be sold by his deputy, or principal, or by his co-deputy.

1. The right of property so sold and purchased by any such officer, or by another to his use, shall not thereby be changed.

2. Any deed or bill of sale made for property so sold shall be void.

ARTICLE XVII.

To what counties executions may issue.

Execution to another county. M. & B. 646.

§ 1. No execution shall issue to any other county than that in which the judgment was rendered, or that in which the defendant resides, until execution has issued to one of the counties named, and has been returned by the proper officer, no property found, as to all or part thereof.

1. This section is not to apply when the plaintiff, his agent or attorney, shall make affidavit and file the same with the clerk, stating that the defendant has absconded, or removed to another county or state, or that he is about so to abscond or remove himself or effects, or part of them, out of the county where he resided at the date of the judgment, or that the defendant is, by some other ways or means, (naming the same,) attempting to defraud the plaintiff in the collection of his debt; or that the defendant has no property subject to execution in the county of his residence or that in which the judgment was rendered; but on his filing such affidavit, an execution may issue to any county the plaintiff may direct.

2. The plaintiff shall be liable to the defendant for any damage he may sustain by procuring an execution to issue wrongfully under the first subsection of this article.

§ 2. No sheriff shall be required to go out of his county to return process in a civil case.

Return by mail.

1. He may inclose such process, with the return thereon, (keeping a copy,) directed to the plaintiff, and send the same by mail to the county whence it issued.

M. & B. 627.

2. When so sent in proper time and manner, the officer shall not be liable.

ARTICLE XVIII.

Duties and liabilities of certain officers.

Officer delaying to advertize.

§ 1. When an officer shall delay advertising property for sale taken under execution for an unreasonable time, he may, on the motion of either the plaintiff or defendant in the execution, be fined by the court whence the execution issued, not less than five nor more than twenty dollars and costs, to the use of the party making the motion.

M. & B. 640.

1. The officer must have at least ten days previous notice, in writing, of such motion.

2. The officer shall, moreover, be liable to the action of the party aggrieved, for damages.

Failing to make return.

§ 2. When any writ of execution or attachment for not performing a decree in chancery is placed in an officer's hands to execute, and he shall fail to return the same by the return day thereof, the court whence it issued may, on motion, fine such officer, for the use of the party injured, not exceeding fifty dollars—three days previous notice of such motion being given.

M. & B. 624.

Failing to pay over money collected.

§ 3. When a sheriff or other like officer shall have received the money or any part thereof, on any writ of execution or other process, and shall not immediately pay the same to the party entitled thereto, or his agent or attorney, on a proper demand thereof, he and his sureties, or any one of them, or his personal representatives, heirs, or devisees, shall be liable to such party for the amount collected, and fifteen per centum per annum interest thereon, from such demand until paid, and the costs of recovery, legal and extraordinary.

M. & B. 624.

1. The remedy shall be by motion or suit in the court whence the execution issued.

2. Ten days previous notice of the motion, specifying the grounds thereof, shall be given.

Failing to make return for thirty days.

§ 4. Any sheriff or other like officer, in whose hands a writ of execution is placed to do execution thereof, who fails to return the same to the office whence it issued, for thirty days after the return day of the same, without rea-

M. & B. 626.

sonable excuse for such failure, shall, with his sureties or the personal representatives, heirs, or devisees, be liable, jointly or severally, to the plaintiff in such execution, for the amount thereof, and thirty per centum damages thereon, and costs of recovery. The remedy shall be the same as is given in the next preceding section.

But this section shall not apply where the defendant is insolvent, and has not property in the county out of which the execution, or any part of it, could be made; but in such case the liability shall be for thirty per cent. on the amount of the execution.

Where injunction obtained before money paid over.

M. & B. 648.

§ 5. When the sheriff or other like officer collects any money under an execution in his hands, and the defendant shall obtain an injunction or other writ staying proceedings on such execution, before the money is paid over to the plaintiff, the officer must pay the money, or the part for which the execution is stayed, to the defendant from whom it was collected.

1. Any officer refusing to pay over money, as herein directed, shall be liable as in case of a refusal to pay over money to the plaintiff collected on execution.

Motions within two years.

2. All motions allowed by this chapter must be commenced within two years after the cause of such motion accrues.

ARTICLE XIX.

Miscellaneous matters.

Executions from county judge or justices.

M. & B. 648.

§ 1. Executions issued by a judge of a county court, on judgments or decrees at its quarterly sittings, or by a justice of the peace, shall bear test in the name of the officer issuing the same, and shall be governed by the provisions of this chapter, so far as the same are appropriate.

Against personal representatives, heirs, &c.

§ 2. When an execution is issued jointly against a personal representative, and heirs and devisees, it shall be the duty of the officer in whose hands it is placed for collection, to sell first the estate in the hands of the personal representative; second, the estate descended to the heir; and third, the estate devised. The same order shall be observed when the execution issues against only two of the classes named.

But the defendants may, by writing, direct the sale to take place in any order they desire.

CHAPTER XXXVII.

EXECUTORS AND ADMINISTRATORS.

ART. 1. Powers, duties, and responsibilities of Executors.
ART. 2. Appointment, duties, and responsibilities of Administrators.

ARTICLE I.

Powers, duties, and responsibilities of Executors.

Powers of executors.

§ 1. The person nominated by a will as the executor thereof, shall not have power to act until he qualifies as such, by taking an oath and giving bond in the court in which the will, or an authenticated copy thereof, is admitted to record. But he may provide for the burial of the testator, pay reasonable funeral expenses, and take care of and preserve the estate.

V. R. 540.

Oath.

§ 2. The oath of an executor or administrator with the will annexed, shall be, that the writing admitted to record contains the true last will and testament of the deceased, so far as he knows or believes, and that he will faithfully perform the duties of his office to the best of his judgment.

M. & B. 659.
V. R. 541.

To give bond.

§ 3. Every executor and administrator with the will annexed, shall give a bond and good surety, sufficient to secure the amount of the whole estate of the deceased to be administered.

M. & B. 659.
V. R. 541.

No surety in certain cases.

§ 4. But when the will directs that an executor shall not give surety, the court shall not require it, unless on the motion of some one interested, or from its own knowledge it shall appear proper to require it.

V. R. 541.
M. & B. 660.

Form of bond.

§ 5. The bond of an executor or administrator with the will annexed shall be, in substance, as follows:

M. & B. 659.

Whereas, I, A. B., have been appointed and have qualified as executor, (or administrator with the will annexed,) of C. D. Now we, A. B., principal, and E. F. and G. H., his sureties, do hereby covenant to and with the commonwealth of Kentucky, that the said A. B. will well and truly administer, according to law, the goods, chattels, credits, and effects that may come to his hands, and the proceeds of any sale, and the rents and profits of any estate which may come to his hands, or any one for him, by color of his office, which the will empowers him to sell, and will make a just and true account of all his actings and doings therein; and will further well and truly pay and deliver all the

legacies specified in said will, as far as the goods, chattels, credits, and other effects will extend. And we further covenant that he will make a proper distribution of any surplus effects to the persons entitled thereto. This —— day of ——.

How bond to be executed.

§ 6. Which bond shall be subscribed by the executor, or administrator with the will annexed, and his sureties, approved by the court, and attested by the clerk, and carefully kept by the latter in his office.

Certificate of probate unnecessary.

M. & B. 664.
V. R. 542.

§ 7. A copy of the order, whereby a certificate is granted any personal representative for obtaining probate or letters of administration, shall be as effectual as the probate or letters made out in due form. But the clerk of the court making such order, shall, when required by any personal representative, make out such letters and probate in due form, and certify the same under the seal of his court.

Indemnity bonds to be given by legatees and distributees.

M. R. 433.

§ 8. Before an executor, or administrator with the will annexed, shall pay or deliver over a legacy, or distribute the part not devised, he may require an obligation, with good surety, from the legatee or distributee, to refund due proportions of any debts or demands which may afterwards appear against the testator, and the costs attending the recovery of the same.

Power of executors to sell lands

M. & B. 666.

§ 9. The executors, or such of them as shall undertake the execution of the will, or if all, or more than one, undertake and part die, or vacate the office, the residue or survivor may sell the land which the will directs or devises to the executor or to another person to be sold, or gives a discretionary power to sell, if no other person be thereby appointed for that purpose, or if the person so appointed shall refuse to perform the trust, or die before he shall have completed it.

Debt not extinguished by appointment of debtor.

M. & B. 668.

§ 10. The appointment of a debtor executor shall in no case be deemed an extinguishment of the debt, unless the will so direct.

Executor of an executor not to be executor of first testator.

M. & B. 670.
V. R. 541.

§ 11. The executor of an executor shall have no authority, as such, to administer the estate of the first testator; but on the death of the sole or surviving executor of any last will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person as would have been entitled to administration if the testator had died intestate.

Administrator with will annexed

§ 12. If there be no executor appointed by the will, or if all the executors therein named die, or refuse the executorship, or fail to give bond as required by law, which

shall amount to such refusal, the court may grant administration with the will annexed, to the person who would have been entitled to administration if there had been no will. M. & B. 638. V. R. 541.

§ 13. An administrator with the will annexed shall possess and exercise all power and authority, and shall have the same rights and interest, and be responsible in like manner, as the executors therein named, or any of them. M. & B. 671.

§ 14. If all the persons appointed executors are under the age of twenty-one years at the time of recording the will, or those who are of age refuse to qualify, or cannot give security, administration with the will annexed may be granted during such minority. But if a testator by his will so direct, then such infant executor may qualify and give bond as an adult. Infant executors. M. R. 423.

§ 15. When any personal representative shall commence a suit or action, or shall be sued, and shall die, be removed, or superseded by another, before the termination of the suit or action, his successor may, by order of court, be substituted in the place or stead of the original plaintiff or defendant, the opposite party being notified of such order. Successors of personal representatives.

§ 16. If an unmarried woman, who is a personal representative either alone or jointly with another, shall marry, her husband shall not be a personal representative in her right, but the marriage shall operate as an extinguishment of her authority, and the other personal representative, if there be any, may proceed in discharging the trust, as if she were dead. If there be no other, administration *de bonis non* may be granted by the court. When a female representative marries. V. R. 543. M. R. 428.

§ 17. If all the executors named in any last will shall refuse to qualify, or shall refuse or be unable to give security, and no person shall apply for administration with the will annexed, or if no one who can give good surety shall apply for administration of the goods and chattels of any intestate, or if from any other cause there shall be no personal representative of a deceased person, it shall be lawful for the court having jurisdiction, after the expiration of three months from the death of such person, to order the sheriff of the county to take the estate of the decedent into his possession, and administer the same. When sheriff to administer. M. & B. 670. V. R. 542.

§ 18. The sheriff shall in such case, by virtue of his office and the order of court, be the administrator, or administrator *de bonis non* of the decedent, with his will annexed, if there be a will, and shall thenceforward have all the rights and powers, and shall be bound to perform all His powers and duties.

the duties of such administration. His powers, rights, duties, and liabilities shall not expire with his office of sheriff. The court may, however, at any time afterwards, revoke such order, and allow any other person to qualify as executor or administrator.

A personal representative may be removed.

M. R. 428.

§ 19. When any personal representative shall reside out of the state, or become insane, or shall, after his qualification, become otherwise incapable to discharge his trust, the county court may, after citation, remove him; and his co-representative, if he has one, shall discharge the trust alone, as if the one removed were dead.

Court may appoint

M. R. 428.

§ 20. If there be no other representative to discharge the trust, the court may appoint one who shall have the same power and rights and be liable to the same responsibility, as respects the estate unadministered, as the person removed.

When a curator may be appointed.

M. & B. 660.
M. R. 425.

§ 21. During the contest about the probate of a will, or when the court, for any valid cause, shall be delayed in granting letters testamentary or administration, it may appoint a curator to collect and preserve the estate of the decedent, until probate of the will be granted, or until the cause for which such order was made shall be removed.

In such case the court shall take bond and good surety, from the person appointed, for the full and faithful performance of the trust confided to him. An appeal or writ of error from such order of court shall not suspend the powers of the curator.

His duties and powers.

M. R. 426.

§ 22. It shall be the duty of the curator to collect and safely keep the estate of the decedent, and to make, and return to court within three months, a full and complete inventory of the same. It shall be his further duty to deliver up the estate, when required, to the executor or administrator. He may pay debts, commence and maintain a suit or action, and may be sued as such. He may sell such perishable and other goods as the county court may order to be sold, and shall be allowed a reasonable compensation for his services.

Suits against personal representatives.

M. & B. 673.

§ 23. No suit or action shall be commenced against any personal representative, until six months after he qualifies as such. If any be brought, the court shall dismiss the same with costs. This section shall not apply to executors *de son tort*, nor suits to procure a settlement of insolvent estates.

ARTICLE II.

Appointment, duties, and responsibilities of Administrators.

What court may grant administration.

§ 1. When any person shall die intestate, that court shall have jurisdiction to grant administration on his estate, that would have had jurisdiction to grant a certificate of the probate of his will, had he died testate.

M. & B. 661.

No administration after twenty years.

§ 2. No original administration shall be granted after the expiration of twenty years from the death of the testator or intestate. If such grant be made it shall be void.

M. R. 427.

Who entitled to administer.

§ 3. The court having jurisdiction shall grant administration to the relations of the deceased, who apply for the same, preferring first the husband or wife, and then such others as are next entitled to distribution, or one or more of them, whom the court shall judge will best manage the estate.

M. & B. 661.

When a creditor may be appointed.

§ 4. If no such person apply for administration at the second county court from the death of an intestate, the court may grant administration to a creditor, or to any other person in the discretion of the court. If a will shall afterwards be produced and proved, the administration shall cease, and the court may proceed to grant a certificate of the probate thereof, or, in the proper case, letters of administration with the will annexed.

M. & B. 662.

Oath.

§ 5. An administrator, at the time of his appointment, shall take the following oath: You do swear that ——— ——— died without any will, so far as you know or believe, and that you will faithfully perform and discharge the duties of administrator of said decedent, to the best of your judgment. So help you God.

M. & B. 663.

Non-resident decedents.

§ 6. When administration shall be taken in this state, on the estate of any person who was an inhabitant of any other state or country, his personal estate found here, after payment of his debts, shall be disposed of according to his last will, if he shall have executed any according to the law of his domicil. If there be no such will, his personal estate shall be distributed and disposed of according to the laws of the state or country of which he was an inhabitant.

M. R. 449.

M. R. 449.

§ 7. Upon the settlement of such estate, after the payment of the debts in this commonwealth, the residue of the personal estate, if any, may be distributed and disposed of in the manner stated in the next preceding section, or it may be transmitted as the county court may think best and order, to the personal representatives, if there be any, in

the state or country where the decedent had his domicil, to be there disposed of according to the law of the place.

M. R. 449.

§ 8. If such person has died or shall die insolvent, his estate found in this commonwealth shall be disposed of among all his creditors here and elsewhere, by distributing the part going to the creditors resident in Kentucky, and by paying over to the personal representatives of the domicil of the decedent, under the order of court, the portion going to the non-resident creditors.

Bond.

M. & B. 662.

§ 9. Each administrator shall, at the time of his appointment, give bond and sufficient surety, in substance, as follows:

Whereas, I, A. B., have been appointed by the county court of ——— administrator of ——— deceased. Now we, A. B., administrator, and C. D. and E. F., his sureties, do hereby covenant to and with the commonwealth of Kentucky, that the said A. B. will well and truly administer the goods, chattels, credits, and effects of the said intestate, according to law, and will further make a just and true account of all his actings and doings therein; and will well and truly make a proper distribution of any surplus money, effects, and rents which may come to his hands, or to any one for him, by color of his office, to the persons entitled thereto. If it shall hereafter appear that a last will and testament was made by the deceased, and the same be proved and recorded, we further covenant that the said A. B. will in such case, surrender his letters of administration, and that he will account with and pay and deliver over to the executor, or administrator with the will annexed, the assets in his hands unadministered. This —— day of ——.

§ 10. Which bond shall be subscribed by the administrator and his sureties, approved by the court, and attested by the clerk, and safely kept in his office.

Indemnity bonds by distributees.

§ 11. Before an administrator shall make distribution, each distributee shall, if required, give an obligation with good surety, to refund due proportions of any debts or demands which may afterwards appear against the intestate, and the costs attending the recovery of the same.

Remedies in relation to sureties.

M. R. 450.

§ 12. If the sureties in the bond of any personal representative shall be or become insufficient, the county court, on the motion of any one interested, or on its own knowledge of the fact, after notice to such representative, may require an additional bond and surety, on which, and the original bond, a joint action or suit may be maintained;

and upon a failure to give such additional bond and surety, the court may revoke the authority of such representative, and appoint another in his stead, taking proper bond and surety.

§ 13. Where the surety of any personal representative shall notify his principal thereof, the county court may, on motion, if it shall be made appear that the principal is in doubtful circumstances, rule such principal to give counter surety, or make such other order as shall be just and proper.

Acts of personal representatives under invalid wills.

§ 14. Where any letters of administration shall be revoked, or where any executor or administrator shall be removed, or the will under which he acted shall, by the competent authority, be declared invalid, all previous sales of personal estate, made lawfully by the executor or administrator, and with good faith on the part of the purchaser, and all other lawful acts done by such executor or administrator, shall remain valid and effectual. But pending a suit or procedure to set aside or reject the will, there shall be no power to sell the land or slaves of the deceased, except by or under a decree of court.

M. R. 449.

Inventory and appraisement.

§ 15. The court granting a certificate of probate or of administration shall appoint three persons appraisers, in each county where any estate to be managed by such representative shall be, any two of whom may act, being first sworn faithfully to discharge the duty assigned to them, to the best of their judgment. It shall be their duty to view and appraise such estate as the personal representative shall exhibit to them, and subscribe and return such appraisement to the clerk's office of the court appointing them, within three months after such appointment. If the appraisers believe the whole personal estate has not been exhibited to them, they shall report the fact to the court.

M. & B. 665.

§ 16. The personal representative may sign the appraisement, and it shall be thereby considered an inventory of the estate that had come to his hands.

M. & B. 665.

Perishable property to be sold.

§ 17. Each personal representative, whether it be necessary for the payment of debts or not, shall, within a reasonable time after he is qualified, sell at public sale, on a reasonable credit, such goods of the decedent, (specific legacies excepted,) as are liable to perish, be consumed, or rendered worse by keeping, and shall take an obligation, with good surety, from the purchasers for the payment of the sale money.

M. & B. 665.

When more sold than necessary to pay debts and expenses.

M. & B. 665.

§ 18. If more be sold than will pay the debts and expenses incident to the administration, the personal representative may assign the obligations for the surplus to the persons entitled to the estate, and be discharged as to so much.

When such goods not sufficient to pay debts and expenses.

M. & B. 666.

§ 19. If the perishable goods be not sufficient to pay the debts and expenses, the personal representative shall proceed to sell such of the other goods, disposing of the slaves last, until the debts and expenses be all paid, having regard to the privilege of specific legacies.

When estate may be preserved in specie.
M. & B. 666.

§ 20. Unless it be necessary for the payment of debts, and the testator so direct, his estate need not be sold, but may be preserved in specie.

Inventory and sale bill to be returned.

M. & B. 665.

§ 21. It shall be the duty of a personal representative of a decedent to return an inventory and sale bill of his estate, the former within three months from the time of qualifying as such, and the latter within sixty days after the sale, to the clerk's office of the court in which he qualified, which shall be recorded by the clerk; copies from the record of the inventory or appraisement shall be *prima facie* evidence for and against such representative.

Pay of appraisers.

M. & B. 665.

§ 22. Appraisers shall be entitled to one dollar per day each, for their services, to be paid by the personal representative out of the estate.

County court to enforce return of inventory and sale bill.

§ 23. If any personal representative shall fail, for six months, to return an inventory or sale bill, as herein required, the clerk of the county court shall report the fact to the court, and such representative shall be notified, and proceedings taken, by fine or otherwise, at his cost, to compel him to make such return.

Account to be settled.

§ 24. It shall be the duty of every personal representative to have his accounts settled, and such settlement, and the vouchers to sustain the same, returned to the county court within two years after he qualifies, and as often thereafter as the court may require; which settlement shall be recorded by the clerk, and the original and the vouchers accompanying the same shall be carefully kept by him in his office.

Interest on surplus in hands of administrator.

§ 25. A personal representative, after the expiration of two years from the time he qualifies as such, shall be presumed to have used the surplus assets in his hands, and shall be charged with interest thereon from that period, unless he proves that he did not use or make interest on such assets.

Estates for life.

V. R. 543.
M. & B. 669.

§ 26. An estate held by a deceased person for the life of another, shall go to the personal representative of the deceased, and be assets in his hands, and be applied and distributed as the personal estate.

Estates of persons dying after March first.

M. & B. 667.
V. R. 573.

§ 27. The slaves in possession of a person who shall die after the first day of March, whether held for life or other uncertain period, and which were employed in making a crop, shall be continued on the plantation in the occupation of the decedent, until the last day of December following, and then delivered to those who shall have a right to demand the same, well clothed. If the slaves are held for the life of the decedent, his personal representative shall pay out of the estate, to the person entitled to the slaves in reversion or remainder, a reasonable hire for the same, from the death of the decedent until the end of that year.

M. & B. 668.

§ 28. All the emblements of the lands of a person who shall die after the first day of March, which shall be severed before the thirty-first day of December following, shall be assets in the hands of his personal representative. But all the emblements growing on the lands on the last named day, or at his death, if that shall happen after the thirty-first of December and before the first day of March, shall pass with the land to the heir, devisee, reversioner, or remainder man.

M. & B. 668.
V. R. 573.

§ 29. If the tenant for life of land or slaves let or hire the same to another for the year, and die after the first day of March, the lessee or person hiring shall hold the land or slaves until the last day of December following, but shall deliver the slaves well clothed, and shall pay a reasonable rent or hire from the death of the tenant for life.

How rent or hire is to be divided.

M. & B. 668.

§ 30. When a person who has a freehold or other uncertain interest in land, or the use for life or for other uncertain term in slaves, shall rent out the land or hire out the slaves for the year, and die before the rent or hire shall become due, the rent of the land or hire of the slaves shall be apportioned between the personal representatives of the deceased and the person who shall succeed to the land or slaves as heir, personal representative, devisee, or person in reversion or remainder, unless in the case of a devisee the will shall otherwise direct.

Personal representative not liable for failure to plead.

M. & B. 672.

§ 31. No personal representative shall be liable for more than the amount of assets which have or may come to his hands to be administered, on account of having failed to plead or make defense, or on account of any plea that he may plead, but the judgment of the court shall only ren-

der him liable for the amount of assets in his hands unadministered.

Sureties for personal representatives.

A. 1848-9, 5.

§ 32. It shall not be lawful for any county court to accept as surety, in any bond of a personal representative or guardian, any master or other commissioner whose duty it is to settle the accounts of such fiduciary, or any judge or clerk of a county court, or practicing attorney of such court. Nor shall any master or other commissioner be appointed an administrator.

Insolvent estates.

L. 241.

§ 33. If the personal estate of a decedent be not sufficient to pay his liabilities, then the burial expenses of such decedent, and the costs and charges of the administration of his estate, and the amount of the estate of a dead person, or of a ward, or of a person of unsound mind, committed by a court of record, and remaining in the hands of a decedent, shall be paid in full before any *pro rata* distribution shall be made; all other debts and liabilities shall be of equal dignity, and paid ratably in the administration of his estate; and should more than the ratable share of any debt be paid, his personal representative shall only receive credit for its proper proportion.

Proceeds to be first applied to discharge liens.

§ 34. When such an estate is covered by *bona fide* liens, giving a creditor a priority on such property, the proceeds thereof shall be first applied to the discharge of such lien, and the residue shall be subject to a *pro rata* division among the other creditors. But when any creditor has a lien, and the property subject to the lien is not sufficient to discharge the debt, he shall not be entitled to any portion of the residue of the estate, until all the creditors not having liens shall have received a sum equal, *pro rata*, with such lien creditor.

How demands to be verified.

A. 1848-9, 28.

§ 35. All demands against the estate of a decedent shall be verified by the written affidavit of the claimant, or in his absence from the state, by his agent, or if dead, by his personal representative, stating that the demand is just, and has never, to his knowledge or belief, been paid, and that there is no just off-set or discount against the same, or any usury embraced therein.

A. 1848-9, 28.

§ 36. If any part of the demand has been paid, or there be any just off-set or discount against the same, or any usury embraced therein, the affidavit shall state the amount of the payment or usury, when the payment was made, and when the off-set or discount was due, to the best of the affiant's knowledge and belief. The verification as above shall not be held to dispense with other proof as hereto-

fore required by law. No recovery shall be had of any such demand until such affidavit be made and filed in court.

§ 37. No demand against a decedent's estate shall be paid by his personal representative, or allowed as a credit by any commissioner or court, which is not verified by affidavit as above required. A. 1848-9, 28.

Claimant may be interrogated on oath as to usury, &c.

§ 38. In a proceeding to coerce a claim against the estate of a decedent, his personal representative shall have the right to compel the attendance of the claimant, the original obligee, or intermediate assignors, and interrogate any of them touching the usury embraced in the claim, a payment of all or a part thereof, or of the existence of an off-set or discount against the same. A. 1848-9, 28.

Usury, &c., to be deducted.

§ 39. No personal representative shall pay or be adjudged to pay any more of any demand against the decedent's estate, than what remains due of the same after the usury embraced therein, and the payments made thereon, and the off-sets and discounts against the same, are deducted. A. 1848-9, 28.

Undue proportion paid by mistake may be recovered.

§ 40. When a personal representative shall pay to a creditor an undue proportion of his demands, or to a distributee or devisee a part or all of his share or legacy, under a mistake as to the solvency of the estate, or otherwise, such personal representative may recover from the creditor, distributee, or devisee, the amount of the over-payment with interest thereon. A. 1849-50, 44.

CHAPTER XXXVIII.

FEES.

ART. 1. Auditor of Public Accounts and Attorneys.
ART. 2. Register of the Land Office.
ART. 3. Surveyors, Chain Carriers, and Markers.
ART. 4. Clerk of the Court of Appeals.
ART. 5. Clerks of Circuit Courts.
ART. 6. Clerks of County Courts.
ART. 7. Sheriffs.
ART. 8. Constables.
ART. 9. Coroners and Elisors.
ART. 10. Jailers.
ART. 11. Justices of the Peace.
ART. 12. Arbitrators.
ART. 13. Notaries Public.
ART. 14. Viewers of Roads, Appraisers of Estates, and Processioners.
ART. 15. Witnesses and Commissioners.
ART. 16. How fee bills to be made out.
ART. 17. When fees due and when distrainable.
ART. 18. Illegal fee bills and charges.

ARTICLE 1.

§ 1. The fees of officers and others performing public duties shall be as follows: M. & B. 679.

Auditor of Public Accounts and Attorneys.

§ 2. For a certificate that land forfeited or sold for failing to list or pay taxes has been redeemed, fifty cents.

§ 3. The clerks of the several courts shall tax and allow as costs an attorney's fee to the successful party, as follows:

1. In the court of appeals, in equity cases, ten dollars.

In common law cases, where the title or boundary of land is directly or indirectly drawn in question, ten dollars.

In all other common law actions, five dollars.

2. In the circuit courts, in all cases, in law or equity, in which the title or boundary of land is drawn in question, directly or indirectly, ten dollars.

In other equity cases, five dollars.

In other common law cases, two dollars and fifty cents.

3. In all cases in the county courts, two dollars and fifty cents.

ARTICLE II.

Register of the Land Office.

§ 1. Entering a caveat, or for a copy thereof, twenty-five cents. M. & B. 679.

ARTICLE III.

Surveyors, Chain Carriers, and Markers.

§ 1. For every original survey, and a plat of such survey, a surveyor shall have a fee of three dollars. M. & B. 679, 403.

Surveying a town lot, fifty cents.

Running a dividing line, two dollars.

Surveying land for a mill seat, two dollars.

For every survey of patented land and making a plat thereof, two dollars.

And for every hundred acres above four hundred in the patent, fifty cents.

For each additional tract, one dollar.

For each plat and connection, one dollar.

For running a dividing line between two counties, to be paid by the new county, twelve dollars.

Receiving and receipting for a land warrant, twenty cents.

Making an entry for land, or for a copy, twenty cents.

Copy of a certificate of survey and plat, twenty-five cents.

For every three poles of a survey actually run under an order of court, one cent.

For every plat from notes taken on the ground or furnished by the parties, and calculating the contents, with a certificate attached thereto, one dollar.

For each additional plat laid down by him from field notes, or from official documents, with notes of reference, ten cents.

For each copy of such connected plat, fifty cents.

Processioning land, per day, two dollars.

For each connected plat thereof, twenty-five cents.

For each day's attendance on the viewers of a public road, two dollars.

A connected plat thereof, twenty-five cents.

§ 2. Like fees shall be allowed a surveyor for services rendered on other occasions as are above specified.

1. Surveyors shall state their fees at length on the back of each connected plat made under an order of court, or

in his attendance on processioners or viewers of roads, and on other occasions.

2. If it appears that the surveyor has charged more than is allowed by law, the court shall, by an order, reduce the same at the costs of the surveyor.

§ 3. Chain carriers and markers shall be allowed fifty cents per day for each day they shall respectively be employed in carrying the chain, or in marking lines. Their services and fees shall be reported by the surveyor.

ARTICLE IV.

Clerk of the Court of Appeals.

M. & B 682. § 1. Preparing a supersedeas bond, forty cents.

For copying the opinion of the court, for every twenty words, one and a half cents.

Filing a record upon a writ of error or an appeal, twenty cents.

Copy of such record, for every twenty words, one and a half cents.

Taxing the costs in any case, for either party, twenty cents.

A copy thereof, ten cents.

For examining any person, and giving him a certificate of qualification for the office of clerk, four dollars.

Filing errors, or for a copy thereof, ten cents.

Issuing a summons or *certiorari*, and entering the return, twenty-five cents.

A copy of any bond in his office, twenty cents.

Copy of any paper or record for which no specific fee is allowed, for every twenty words, one and a half cents.

Copy of a caveat separate from a complete record, twenty-five cents.

Issuing a writ of mandamus, twenty-five cents.

Recording the return thereof, twenty-five cents.

M. & B. 403. § 2. The clerk of the court of appeals, for all services not specified, shall receive the same compensation allowed by law to the clerks of the circuit courts for like services.

ARTICLE V.

Clerks of Circuit Courts.

M. & B. 684. § 1. The clerks of the circuit courts, and of the county courts, (so far as the same will apply,) shall receive the following fees for the services performed by them:

For each writ not hereinafter particularly specified with the indorsement thereon, twenty-five cents.

For a copy thereof, ten cents.

Entering the sheriff's return, ten cents.

Docketing a cause, to be charged but once in a suit, ten cents.

Entering the appearance of each party or attorney, to be charged but once in a cause, ten cents.

For filing each pleading of either party, and noting the same on the order book, ten cents.

Every order of court in the progress of a cause, counting the whole entry one order, and not including any entry for which a fee is specially allowed, twenty-five cents.

For a copy thereof, ten cents.

For each trial or writ of inquiry, including the swearing of the jury or witnesses, and recording the verdict and entering judgment, seventy-five cents.

Entering a judgment where there is no jury, including all services incident thereto, twenty-five cents.

Giving a copy of a judgment, ten cents.

Taxing the costs in a suit for the successful party, to be only charged once in the same suit at the same term, ten cents.

A copy thereof, ten cents.

An execution of any kind, with all indorsements and orders thereon, and return, to be charged when the execution issues, fifty cents.

For a copy of an execution and return, twenty cents.

Recording an award, for every twenty words, one and a half cents.

For an order making an allowance to a witness, commissioner, or other person, only one charge for all who are allowed in the cause on the same side, at the same term, fifteen cents.

A copy thereof, ten cents.

For issuing an attachment, fifteen cents.

Injunction, appeal, supersedeas, attachment, or other bond, thirty cents.

For a copy of the same, fifteen cents.

Certiorari, and return, forty cents.

Subpœna duces tecum, twenty cents.

Subpœna for a witness or witnesses, twenty cents.

Filing an appeal, ten cents.

Entering satisfaction of a judgment, or a release or discharge of any part thereof, fifteen cents.

Administering an oath in court, not relating to the trial of a cause therein, and certifying the same, fifteen cents.

Filing an attachment granted by a justice of the peace, ten cents.

Issuing a summons against a garnishee, or issuing an attachment, fifteen cents.

Administering an oath to a garnishee, ten cents.

Recording the confession of a garnishee, fifteen cents.

Issuing an order for an injunction, ten cents.

Making a warning order, or order of survey, twenty-five cents.

Copy of a surveyor's report, for every twenty words, two cents.

For copying plat, twenty-five cents.

An order to take depositions, fifteen cents.

A copy thereof, ten cents.

Filing the papers in any cause for each party—exclusive of the process and pleadings, or depositions or papers referred to in the pleadings—to be charged but once in a cause to each party, twenty cents.

Affixing his seal of office, and the certificate accompanying the same, except in cases exempt from charge, fifty cents.

For each official certificate, except such as are attached to copies of papers or records, or indorsements of papers filed in the office, twenty cents.

Filing the depositions, if any, of each party, fifteen cents.

Entering a decree, for every twenty words, one and a half cents.

For issuing a writ of lunacy and return, fifty cents.

Copy of a record, for every twenty words, one and a half cents.

Of any other paper, not specified, the same.

Copying a deed and certificates, seventy-five cents.

If more than one tract is embraced, then for each additional tract, ten cents.

For taking a recognizance (replevin,) and to be taxed in the recognizance, fifty cents.

For taking any other bond, thirty cents.

For a copy of any bond, fifteen cents.

Taking a recognizance in a penal or criminal case, to be taxed if costs are recovered, twenty-five cents.

ARTICLE VI.

Clerks of County Courts.

§ 1. For recording a plat and certificate of survey, twenty-five cents. M. & B. 668.

Recording a deed conveying land, taking the acknowledgment or proof thereof, and certifying the same, and recording his own certificate, one dollar.

Recording each certificate of other officers, twenty-five cents.

For each additional tract embraced in such deed, except town lots, twenty cents.

For a copy of a deed and the certificate thereon, seventy-five cents.

For making out and transmitting the memorial of a deed, ten cents.

Recording a conveyance of slaves or personal estate, taking the proof or acknowledgment thereof, and recording the orders and certificates, including the whole service, seventy-five cents.

A copy thereof, thirty cents.

For the probate of a will and certificate, including all services relating thereto, thirty cents.

Recording a will, inventory, sale bill, settlement with personal representatives or guardians, or for copies thereof, for every twenty words, two cents.

An order granting administration, appointing a guardian, curator, or committee of a lunatic or idiot, or for appraising an estate, fifteen cents.

Taking bond from a personal representative, guardian, or committee, forty cents.

A copy of an order in such case, ten cents.

A certificate of administration and copy, twenty-five cents.

Tavern license and bond, fifty cents.

Copy of tavern rates, twenty-five cents.

License to vend spirituous liquors, &c., fifty cents.

Marriage license and bond, and for recording certificate of marriage, one dollar and twenty-five cents.

An order to bind out an apprentice, twenty cents.

Writing the indentures, and recording the same, one dollar.

Filing an appeal from a justice of the peace, and docketing the same, to be charged but once, twenty-five cents.

Taking an appeal bond, twenty-five cents.

Issuing a writ of *ad quod damnum*, fifty cents.

Recording the report thereon, for every twenty words, two cents.

Making a record for the establishment of a town, recording the plan thereof, and all other services, four dollars.

Orders establishing a ferry, fifty cents.

Taking a bond from the owner of a ferry, or in any other case where no fee is fixed by law, fifty cents.

A copy of any bond, twenty-five cents.

ARTICLE VII.

Sheriffs.

M. & B. 690.

§ 1. For executing and returning a process against the defendant, fifty cents.

Serving an order of court and return, twenty-five cents.

Summoning a witness, twenty cents.

Summoning an appraiser or reviewer, twenty cents.

For each day's attendance in the county on a jury, or attending on a surveyor, when ordered by the court, one dollar.

Whipping a free person, to be paid by the person whipped, forty cents.

Taking bond in a special action, forty cents.

For serving a *fieri facias* or distress warrant, if the debt be paid, or the property sold, or a delivery bond is taken, and not complied with, the sheriff shall be entitled to five per cent. on the first three hundred dollars, and two per cent. on the residue.

1. When he shall levy an execution or a distress warrant, and the defendant replevies the debt, or the writ is stayed by injunction, appeal, or writ of error, or other legal proceedings, or by order of the plaintiff, the officer shall have half the above commissions, to be charged to the plaintiff, and shall be collected as costs in the case.

2. For taking a replevin, or forthcoming, or indemnifying bond, or any other bond required by law, forty cents.

For taking a recognizance, twenty-five cents.

For levying an attachment, fifty cents; and reasonable charges for removing and taking care of attached property, to be allowed by the court.

Summoning a garnishee, twenty-five cents.

Serving a writ of distringas, fifty cents.

Summoning the jury under the rioting act, attending the trial, and conducting the offender to jail, to be paid by the defendant, one dollar and fifty cents.

Serving the process in such case, twenty-five cents.

Summoning a witness, twenty cents.

In collecting the county levy or revenue tax, the sheriff shall receive for levying on and selling any property, on all sums under a dollar, twenty-five cents.

3. For all sums above a dollar, six per centum in addition thereto.

4. Such sums to be retained out of the money arising from the sale, to be paid over and above the tax.

5. He shall have the same compensation for similar services in collecting officer's fees, to be paid in the same manner.

For serving an order or process of revivor, fifty cents.

For each tenant, in executing a writ of possession, one dollar.

For serving a *ca. sa.* the same commission as on a *fi. fa.* If the debt is not paid, stayed, or secured, half commission.

Summoning and attending a jury in a case of forcible entry and detainer, four dollars; besides his fees for summoning witnesses.

Summoning a jury to try disturbers of religious worship, attending the trial, and conducting the offender to jail, one dollar and fifty cents.

Arresting such person, fifty cents.

All the costs in such case to be paid by the accused, if convicted.

Collecting militia fines and fee bills, ten per cent.

Serving a notice, twenty-five cents.

§ 2. No sheriff or other officer shall charge any fee for taking a sale bond for the price of property sold under execution. L. 249

ARTICLE VIII.

Constables.

§ 1. Serving a warrant for debt, twenty-five cents. M. & B. 93.

Serving a peace or search warrant, one dollar.

Levying an attachment, forty cents; and the reasonable value of removing and taking care of the attached goods, to be allowed by the court.

Summoning a garnishee, twenty-five cents.

Taking up a vagrant, fifty cents.

Summoning a witness, ten cents.

He shall have for collecting money, taking a replevin or forthcoming bond, or for a stay of execution, and other ser-

vices under an execution, the same commission as is allowed a sheriff, and one per cent. more.

For collecting fee bills, ten per cent.

Summoning a jury, seventy-five cents.

Serving a notice, twenty-five cents.

For arresting and carrying a slave before a justice of
L. 749. the peace or other officer, on a charge of misdemeanor, fifty cents.

For whipping a slave, under an order of a justice or other officer, to be paid out of the county levy, fifty cents.

He shall, for all other services, be allowed the same fees as sheriffs.

ARTICLE IX.

Coroners and Elisors.

§ 1. For taking an inquisition on a dead body, and bury-
M. & B. 694. ing it, six dollars, to be paid out of the estate of the deceased, if sufficient; if not, out of the county levy.

For all other services, the same fees that are allowed sheriffs.

ARTICLE X.

Jailers.

§ 1. For putting in prison and releasing a prisoner, forty
M. & B. 695. cents.

Each day's keeping in jail, and dieting, &c., thirty-five cents; a person under civil process, to be paid by the plaintiff, and taxed as costs against the defendant—where the prisoner is in under more than one claim, only one charge to be made, and equally divided among the plaintiffs.

Keeping and providing for a runaway, to be paid by the owner, and keeping and providing for a criminal in jail, to be paid by the state, for each day, thirty-five cents.

Attending the circuit court, to be paid out of the treasury, one dollar per day, besides a reasonable compensation for fuel and lights.

For keeping the jail clean, furnishing fuel, ammunition for guard, &c., a reasonable compensation, to be paid by the county.

In all other cases, the same fees as sheriffs.

ARTICLE XI.

Justices of the Peace.

§ 1. For attending to taking depositions, per day, one
M. & B. 624. dollar.

Superintending a writ of forcible entry or detainer, per day, one dollar.

Issuing summons for a witness, ten cents.

Issuing a warrant in a civil case, fifteen cents.

Each original judgment, fifteen cents.

Recording same, fifteen cents.

Presiding at the trial in all cases of breaches of the peace, to be taxed against the defendant if found guilty, one dollar.

Execution, fifteen cents.

Issuing an attachment, twenty-five cents.

Taking bond, twenty-five cents.

For each twenty words of record, copied and certified, two cents.

Certifying a record and papers on an appeal, twenty-five cents.

Issuing a summons for a garnishee, fifteen cents.

Issuing a distress warrant for rent, twenty-five cents.

Issuing a peace warrant, twenty-five cents.

Taking a recognizance, (replevin,) to be taxed in the recognizance, twenty-five cents.

§ 2. No justice shall demand or receive any fee for any service, except such as is specifically allowed by law; and where no fee is allowed by law, he shall have no compensation for his services.

For swearing a person, and writing and certifying a certificate, ten cents.

ARTICLE XII.

Arbitrators.

§ 1. Arbitrators shall be allowed one dollar and fifty cents per day, each, to be paid by the successful party, and taxed in the bill of costs. M. & B. 694.

ARTICLE XIII.

Notaries Public

§ 1. May demand, for every attestation, protestation, or for taking the proof or acknowledgment of any instrument of writing, and certifying the same under their seal, fifty cents. M. & B. 606.

For recording, in a book to be kept for that purpose, a protestation or attestation, fifty cents.

For swearing a person and a certificate thereof, ten cents.

ARTICLE XIV.

Viewers of Roads, Appraisers of Estates, and Processioners.

§ 1. Each viewer of a road shall be paid by the applicant, per day, fifty cents. M. & B. 693.

Appraisers of estates shall be allowed per day, one dollar, to be paid out of the estate.

Processioners shall be allowed per day, each, to be paid by the employer, one dollar.

ARTICLE XV.

Witnesses and Commissioners.

§ 1. A witness shall be allowed for each day's attendance on court or arbitrators, or to give a deposition, or to give evidence on any legal occasion, fifty cents. M. & B. 697.

Officers attending under *subpœna duces tecum*, per day, one dollar.

A witness summoned and attending in a county different from that in which he resides, or who resides more than twenty-five miles from the court to which he is summoned, shall be allowed four cents per mile going and returning, besides ferriages and tollages, and his per diem while attending court.

A witness attending in several suits at the same time shall only be allowed to claim in one case.

To a commissioner to allot dower, per day, one dollar.

To settle accounts, or divide land or slaves, per day, one dollar and fifty cents.

For making the deed, one dollar and fifty cents.

ARTICLE XVI.

How fee bills to be made out.

§ 1. The fee bills of every officer shall be made out in words at length, in figures, and in plain English, and signed by the officer in his official capacity. M. & B. 392, 393, 396.

1. No officer shall demand or receive for his services any other or greater fee than is allowed by law, or any fee for services rendered when the law has not fixed on a compensation therefor; nor any fee for services not actually rendered. Other fees not to be demanded.

2. Where there are more plaintiffs or defendants than one in an action at law, or in equity, and they shall sever in their pleadings or otherwise, so that part of them shall cause the clerk or other officer to render separate services for him or them, for which the others ought not to be lia- Where plaintiffs or defendants sever. M. & B. 395.

ble, the fees for such services shall be charged separately to those for whom the service shall be rendered.

Name of person chargeable to be inserted.

3. No officer, in making out his fee bill, shall omit the name of any person properly chargeable therewith, or insert the name of a person not properly chargeable.

Against person in trust capacity.

4. Fees against a person acting in a trust capacity, shall be made out against him in such capacity; and such persons shall only be liable therefor to the extent of the trust funds in their hands liable to the payment thereof.

No fees for ex officio services.

5. No fee bill shall be made out, or compensation allowed hereafter, for any *ex officio* services rendered or to be rendered by any officer.

When officer dies.

§ 2. If any officer shall die before making out a fee bill or collecting his fees in any case, his deputy, or, if none, his personal representative, may, within two years after the services were rendered, make out and sign a fee bill therefor, and may list the same, in due time, for collection, with the proper officer; and the same shall be collectable and distrainable as if issued by the deceased officer in his lifetime.

M. & B. 700-1.

Penalty for issuing illegal fee bill.

1. Any deputy or personal representative who shall knowingly make a wrong charge, or in any respect issue an illegal fee bill, shall be subject to the same liabilities, and the person the bill is against shall be entitled to the same remedies against such deputy or personal representative, as are given against an officer if issued in his lifetime.

Where affidavit of payment is made.

2. If any person against whom a fee bill is issued under this section, shall make affidavit that the fee was paid to the officer in his lifetime, and produce the affidavit to the officer having the fee bill for collection, such officer shall forthwith return the fee bill and affidavit to the person who issued it; and the same shall thereafter be collectable by action only, as other debts.

ARTICLE XVII.

When fees due and when distrainable.

§ 1. All fees shall be due and payable within two months after the services are rendered.

Witnesses' fees.

1. The fee for the attendance of a witness may be distrained for immediately after it is due, and shall retain its distrainable power for three years. From the expiration of that period, it shall only be collectable as other debts of like quality.

Of all officers after January first.

2. The fees of all officers shall be distrainable on and after the first of January next ensuing the rendition of the services, and whether an officer shall list the same or not, it shall retain its distrainable force for three years; and from the expiration of that period it shall only be collectable as other debts of like quality.

Demand of payment first to be made.

§ 2. No distress shall be made for any fee bill until the same is exhibited to and a demand of payment thereof is made from the person it is against.

Fees distrainable immediately upon affidavit of removal, fraud &c

M. & B. 705.

§ 3. Officer's fees may be distrained for immediately after the services are rendered, when the officer rendering the services shall make an affidavit on the back of such fee bill that the person it is against is about to leave the state with his effects, or that he intends and is about fraudulently to sell or dispose of his effects with the intent of hindering and delaying his creditors from the collection thereof.

ARTICLE XVIII.

Illegal fee bills and charges.

Fee bill containing illegal charge void.

§ 1. Every fee bill containing one illegal charge, or which in any respect is not according to what is required by law, shall be void for the whole amount thereof.

Splitting services, illegal charges &c., deemed extortion.

§ 2. Any officer who shall split up and divide his services so as to make two charges, when the law intended but one charge or fee for the whole service, or who shall knowingly make an illegal charge or issue an illegal fee bill, or collect or attempt to collect his fees twice for the same services, or shall by any indirection collect or attempt to collect more for his services than is allowed by law, shall be considered guilty of extortion, and shall be punished accordingly.

Conviction prima facie evidence in proceeding to remove from office

M. & B. 404.

§ 3. Any officer who shall be guilty of any of the offenses specified in the last preceding section, shall be considered guilty of a high misdemeanor, and his conviction thereof shall be *prima facie* evidence of his guilt in any proceeding to remove him from office.

Officer issuing illegal fee bill liable to action.

M. & B. 393.

§ 4. An officer who issues a fee bill shall be liable to an action at the suit of any person for a distress made on his property, by virtue of such fee bill, if it contains any illegal or improper item, or an item for which the services have not been rendered, or shall omit the name of any of the parties legally chargeable therewith, or if it issues for a fee against any person not legally chargeable with the same, or that has been paid, or if the fee bill shall not strictly

comport in every particular with the laws in respect to fee bills.

Officer cannot justify under.

1. And no officer issuing such fee bill shall, in defense of such action, justify under such fee bill.

2. In such action, the finding of the jury shall not be less than three times the amount of the fee bill.

Erroneous or illegal fee bills may be submitted to circuit judge, quashed, &c.

§ 5. If any person shall pay any fee bill or claim for fees, in which he believes there is an erroneous, improper, or illegal item or items, or charge or charges for services not actually rendered, or that the fee bill does not comport with the law in every respect, he may hand such fee bill to the circuit judge who presides in the county where the person who paid the bill resides, either in vacation or in term time; and, thereupon, such judge, after inspecting the fee bill, shall, if there be any item therein not authorized by law, or if the fee bill does not comport with the law in every respect, the judge shall, at the term that he receives the fee bill, or, if in vacation, at the next term of the court holden for that county, proceed to quash such fee bill and order the officer to repay the amount of the fee bill to the person who had paid the same, and for the costs of the proceeding.

Fine of officer.

1. He shall, moreover, enter up a fine against the officer who issued such fee bill, in favor of the person aggrieved, of not less than one dollar nor more than four dollars for each illegal item contained therein. The production of the fee bill by the party charged shall be *prima facie* evidence of its payment.

Production of bill evidence of payment.

If bill correct, restored without cost.

2. If the court or judge is of the opinion that there is no improper charge or illegal item in the fee bill, for which it ought to be quashed, he shall restore it to the person placing it in his hands, without costs or expense.

M. & B. 702.

Fieri facias for fines, &c.

3. A *fieri facias* may issue in behalf of the person aggrieved for all the sums and costs adjudged under this section, which shall be indorsed that no surety is to be taken.

Defendant to have two days notice.

4. Before any judgment is entered under the provisions of this section, the defendant in the proceeding must have at least two days notice thereof by rule or otherwise.

When distress made under illegal fee bill, copy thereof may be demanded.

§ 6. If distress be made upon the property of any person for a fee bill, which has any unjust or improper charge or item therein, or any item that is not made out in every respect agreeably to the requirements of law, such person may apply to the officer making such distress for an exact

M. & B. 395.

copy of the fee bill, whose duty it shall be to make out and deliver the same to such person forthwith.

On inspection of copy, judge to stay proceedings.

1. On the receipt of such copy, the person on whom the distress is made may lay the same before the circuit judge who presides in the county of his residence, and if on the inspection thereof the judge shall be of opinion that the fee bill contains one unjust item, or one item not made out in every respect according to the requirements of law, he shall, by written indorsement thereon, order the officer to stay proceedings under the distress until the matter is determined in court.

2. Upon the receipt of such order, the officer making the distress shall obey the same, and restore the property distrained to the owner.

Fee bill and copy to be returned to clerk's office.

3. The officer shall, moreover, return the fee bill and copy, with the judge's order thereon, to the circuit court clerk's office of his county, with the facts of the case indorsed on the fee bill.

Notice to officer issuing.

4. The officer who issued the fee bill shall be notified as directed in the preceding section.

Fee bill to be quashed and judgment entered against officer.

5. At the term of the court at which the judge makes the order on the fee bill, or if made in vacation, at the next term thereof, the court shall proceed to act on and quash the fee bill, and render judgment against the officer issuing the same, for the amounts and in the manner stated in the next preceding section, and for which execution may issue.

No fees allowed in misdemeanors unless collected from defendant.

§ 7. No officer shall be entitled to any fee in a proceeding for a misdemeanor, unless the same is recovered and collected from the defendant, in which cases the fees allowed and to be taxed shall be the same as for similar services in civil cases.

CHAPTER XXXIX.

FERRIES.

County Court to establish Ferries at the instance of party owning the land. The right not to continue beyond twenty years.
Owners of Ferries to give bond.
Owners of Ferries on the Ohio river liable for illegal transportation of slaves.
If owner of land will not apply for the establishment of a Ferry, it may be granted to another.

County court may establish.

M. & B. 706. L. 2.5.

§ 1. The several county courts shall have jurisdiction to establish ferries and grant ferry privileges upon any river or stream in or adjoining their respective counties, and for regulating, revoking, and controlling the same.

Writs of error and appeals.

A. 1848, 76.

§ 2. A writ of error or appeal from any order concerning a ferry, in favor of any one interested, shall lie to the circuit court of the county, and thence to the court of appeals, both of which shall have jurisdiction of law and fact; but the court of appeals of only such facts as may be certified from the circuit court. The appeal to be taken at the time of making the order or during the term, and the writ of error from the circuit court to be sued within three years from the making of the order, and from the court of appeals within one year from the making of the order in the circuit court.

Limited to 20 years.

§ 3. No ferry right shall be hereafter granted for a longer period than twenty years.

At whose instance ferries established.

§ 4. A ferry shall be established only at the instance and for the benefit of the owner of the land where it is located, or of some one who has obtained from the owner the privilege of using the same for that purpose.

Notice of application.

§ 5. No application to establish a ferry shall be heard, unless notice of the application shall have been posted at the court house door of the county, on the first day of the next preceding term of the court.

Where applicant owns only one side of stream, writ of ad quod damnum.

§ 6. If the applicant owns or has right to use the land proposed as the site of the ferry, only on one side of the stream, and the landing on the opposite side be not at an established public highway, the court, before granting the ferry right shall cause a writ of *ad quod damnum* to issue, to ascertain the damage the owner of the land on the opposite side will sustain by establishing the necessary right of way over his land, not more than forty feet wide, for the use of such ferry, he having had reasonable notice

of the intended application for such writ. If the court do not approve such assessment, it shall order a new writ to issue, but if it approve the same, it shall, upon payment into court, for the benefit of the owner, of the amount assessed, condemn such right of way for the public use as a highway. If the land, over which the right of way is sought, be in another county, the writ of *ad quod damnum* shall be directed to the sheriff of that county. Nothing herein shall be construed to authorize the opening, by compulsion, of a road over any land which is prohibited by the chapter on roads.

When the right may be granted to another than the owner.

§ 7. If no owner of the land on either side of the stream over which a public highway passes, will obtain the ferry right, or if, after having obtained the right, he abandons or fails to keep it up according to law, the court may, after reasonable notice, grant the right to another, and when necessary to the proper exercise of the right by such other, cause to be condemned the fee simple right, or the use for not more than twenty years, if the owner so elect, of not more than two acres of ground adjoining the landing, together with the use for ferry purposes, of any adjacent uninclosed bank of the stream. But before the final grant of the right, the damage to the owner of the land shall be first ascertained under a writ of *ad quod damnum*, and the amount thereof paid into court for the use of the owner.

Applicant to give surety.

§ 8. Before a ferry right is granted, the applicant shall, with sufficient surety, give a covenant to the commonwealth that he will keep the ferry according to law, and pay all damages that any one may sustain by reason of his failure to do so, or by reason of any neglect or misconduct of those managing the ferry, or by reason of the insufficiency of any boat employed thereat.

Transporting slaves.

The covenant of the owner of a ferry on the Ohio river shall, in addition, promise to pay the owner of any slave all damage he may sustain by reason of the illegally transporting or attempting to transport the slave across that river.

Amount of surety.

1. The surety to be taken on the grant of a ferry right on the Ohio river, shall be good for at least three thousand dollars, and any where else for at least five hundred dollars.

Present owners to give covenant described.

2. Every owner of a ferry who shall heretofore have given bond, shall enter into such covenant with sufficient surety, within six months after this act takes effect; and

upon his failure to do so after summons, his ferry right shall be revoked.

To be renewed every five years.

3. Every such covenant shall be renewed once in five years, and oftener if required by the court; and upon failure to do so after summons, the ferry right shall be revoked.

Suits thereon.

4. Any person aggrieved may sue, at his own costs, and for his own benefit, on such covenant, in the name of the commonwealth.

Sale of right to be made with the leave of court.

5. When sale is made of a ferry right, or lease thereof, it must be with leave of the court, and the purchaser or lessee must execute covenant, with sufficient surety, in lieu of the former covenant. A devisee or heir of a fee simple or freehold estate in a ferry, if of full age, must also, in like manner, execute, within one year after probate or descent, a new covenant, and if under age it must be executed by his guardian for the infant; if the estate be for a term of years, the personal representative must, within one year after administration, sell the right with the assent of the court, and the purchaser give such new covenant. A non-resident owner of a ferry right hereafter granted shall sell the same to a resident citizen of this state, within a year after his removal or the accrual of his right, with leave of the court, and the purchaser give such new covenant.

Purchaser, heir, &c., to give covenant.

Non-resident owner required to sell to resident.

Grant revoked for failure.

Upon failure to comply with any requisition of this subsection, the court shall revoke the grant, the party having been first summoned, or, if a non-resident, warned by an order posted at the court house door, on a court day of a previous term, and by publication in some newspaper printed in the county, if any such there be.

Court to prescribe number and kind of boats, &c.

§ 9. At the time of making the grant of a ferry right, the court shall prescribe the number and kind of boats to be kept, and the number of hands employed, and how propelled—whether by steam, horse power, or otherwise—and may, from time to time, once in every year thereafter, change the same, after notice to the grantee. Where the rapidity of the current does not require the boat to be propelled by poles, it shall prescribe that the ferry boat shall have a substantial railing on its sides of at least two feet high.

Grant revoked for failure to comply.

§ 10. If the grantee shall not, within six months after the grant, put and keep the required boats and hands in use, the court shall, after notice to him, revoke his grant.

Failure for one year deemed abandonment.

§ 11. A failure for one year to keep up any ferry heretofore or hereafter granted, in the manner required, shall be deemed an abandonment of the grant, and, upon notice to the owner, it shall be revoked.

Sale, leasing, &c. when deemed abandonment.

§ 12. Any sale or leasing of a ferry right hereafter made to, or contract not to use it, made with the owner of a ferry established within a mile thereof, or any tenant or partner of his, or with any owner, tenant, or partner of a ferry established on the other side of the Ohio or Mississippi, shall be deemed and treated as an abandonment of such right, for which the right shall, in like manner, be revoked.

Tolls.

§ 13. The court shall, also, at the time of making the grant, fix the rate of tolls to be charged at the ferry, which shall be in the following proportions: For every heavy four wheeled wagon, carriage, or coach, and driver, the same as for six horses; for every light or open four wheeled carriage or light wagon and driver, the same as for four horses; for every two wheeled carriage or cart and driver, the same as for two horses; for every hogshead of tobacco not in a wagon or cart, the same as for one horse; and for every head of neat cattle, the same as for a horse; for every sheep, goat, hog, or lamb, one-fifth as much as for a horse.

When changed.

1. The rates may be changed from time to time, once in every year; but no reduction shall be made until after notice to the owner.

Penalty for overcharging.

2. If any ferry-keeper, or his servant or agent, shall demand or take from any person a greater sum for ferriage than is allowed by the court, he and the owner shall forfeit the ferriage demanded or received to the person overcharged, and four dollars for every such offense, recoverable before a justice of the peace of the county.

Other persons not to transport within one mile.

§ 14. Any one who shall, for reward, transport any person or thing across a water course from or to a point within one mile of an established ferry, unless it be the owner of an established ferry on the other side of the Ohio or Mississippi river, so transporting to such point on this side, and any owner or lessee or servant of the owner of a ferry on the other side of either of those rivers, who shall so transport from this side, without reward, shall forfeit and pay to the owner of the nearest ferry the sum of sixteen dollars for every such offense, recoverable before a justice of the peace.

Owner or keeper liable for not transporting immediately.

§ 15. Any person aggrievd by not being put across immediately at any ferry, without sufficient reasonable excuse

therefor, may recover from the owner or keeper four dollars, before any justice, for every such offense.

New ferries—within what distances, &c.

§ 16. No ferry shall be established on the Ohio river within less than a mile and a half, nor upon any other stream within less than a mile of the place, in a straight line, where any existing ferry was pre-established—unless it be in a town or city, or where an impassable stream intervenes.

1. No new ferry shall be so granted within a city or town unless those established therein cannot properly do all the business, or unless public convenience greatly requires a new ferry at a site not within four hundred yards of that of any other.

2. No ferry boat shall take in or land any passenger or thing within such distances of another ferry, under the penalty of fifteen dollars for every offense, to be recovered before a justice, against the owner or keeper, and by the owner of such other ferry.

Liability of owners, &c., for transporting slaves.

§ 17. If a slave be put across the Ohio river in a boat attached to any ferry established thereon, the owner and keeper of the ferry shall, in addition to his liability to the owner of the slave for any damage sustained thereby, pay him two hundred dollars, unless the owner or his agent accompany the slave, or has given his written consent thereto; and if the slave be so put across the river with the knowledge or assent of the owner or keeper of the ferry, they shall jointly and severally forfeit and pay the sum of one thousand dollars, to be recovered by any person who will prosecute for the same, by suit or indictment.

Of other persons.

§ 18. Any person not a ferry keeper or owner who shall put a slave across the Ohio river, contrary to the last section, or aid in so doing, shall incur the liability and penalty therein named for so doing.

Boat may be attached to secure penalty.

§ 19. The better to secure the penalties herein given against the owner or keeper of a ferry established on the other side of the Ohio river, the justice issuing the warrant may order any boat belonging to such ferry to be attached, treat the levy of the attachment as a service on the owner, and if the penalty adjudged, with the costs, be not paid, order the boat to be sold in satisfaction of the same.

Appeal.

§ 20. An appeal from all penalties imposed under this chapter by a justice shall lie to the county court, if prayed within twenty days, and bond with good surety be given

to satisfy the appellee, if the appeal be not successfully prosecuted.

Duty of court. A. 1848, 77.

§ 21. When an appeal or writ of error from an order granting or revoking a ferry right is pending before the circuit court, it shall be the duty of that court to see that all proper parties interested are brought before the court.

Wharfs and landings.

§ 22. Every owner of a ferry shall have convenient wharfs, or other firm and dry landings for the use of his ferry, and always kept in repair; and for a failure for two months to perform this duty in this particular, after monition from the court, his right shall be revoked; and besides, he shall at all times be liable to any one damaged for the want of such firm landing.

Keepers, &c., exempt from juries, &c. M. & B. 708.

§ 23. Ferry keepers and their necessary hands actually employed in keeping the ferry, shall be exempt from serving on juries, from militia musters, from patrol duty, and from working on the public highways.

Louisville charter.

§ 24. So much of the charter of the city of Louisville as is inconsistent with this chapter is repealed.

An act allowing appeals from orders of County Courts fixing ferry rates—approved December 15, 1851.

Owners of ferries may appeal to circuit courts from orders fixing rates. A. 1851-2, 9.

§ 1. That the owner of any ferry in this commonwealth who shall feel himself aggrieved by the order of any county court in fixing or changing, or refusing to increase the rates of his ferry, may appeal to the circuit court of the county at the same term of the county court at which said order is made, or may prosecute a writ of error at any time within sixty days.

County attorney may appeal, &c.

§ 2. That the county attorney may take an appeal in the name of the commonwealth to the circuit court, or prosecute a writ of error within sixty days from any order fixing or refusing to diminish the rates of ferriage at any ferry. The circuit court shall hear and try the question of

Circuit court shall hear, determine, and fix rates

fixing or altering the rates as an original case, and shall have power to order the rates of ferriage to be fixed by the county court.

How rates may be increased, &c.

§ 3. The owner of any ferry, upon serving notice on the county attorney, and setting up a notice at the court house door one month beforehand, may move the court to increase the rates of his ferriage, and the county attorney, upon giving written notice to the owner one month beforehand, may move the court to diminish the same.

§ 4. No appeal or writ of error shall be prosecuted in the name of the commonwealth, unless some person be-

comes responsible to the adverse party for his cost in the same.

CHAPTER XL.

FRAUDULENT CONVEYANCES AND DEVISES.

What conveyances, gifts, &c., void.
Voluntary gifts or conveyances, by a debtor, void as to prior debts, but good as to subsequent creditors.
Voluntary gifts, unless the possession accompanies the same, or the deed be recorded, void as to purchasers without notice.
Loan of property for five years subjects it to the payment of debts, &c.
Devisees liable to the debts of testators, in the same manner as the heir at law would have been.

Fraudulent conveyances void as to creditors.

§ 1. Every gift, conveyance, assignment, or transfer of, or charge upon, any estate, real or personal, or right or thing in action, or any rent or profit thereof, made with the intent to delay, hinder, or defraud creditors, purchasers, or other persons, and every bond or other evidence of debt given, suit commenced, decree or judgment suffered, with like intent, shall be void, as against such creditors, purchasers, and other persons.

M. & B. 737.
V. R. 507.
2 N. Y. R. 193, 197.

This section shall not affect the title of a purchaser for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Voluntary conveyances &c. void as to pre existing creditors.

§ 2. Every gift, conveyance, assignment, transfer, or charge made by a debtor, of or upon any of his estate, without valuable consideration therefor, shall be void as to all his then existing liabilities, but shall not, on that account alone, be void as to creditors whose debts or demands are thereafter contracted, or as to purchasers with notice of the voluntary alienation or charge; and though it be adjudged to be void as to a prior creditor, it shall not therefor be decreed to be void as to such subsequent creditors or purchasers.

Unless possession accompanies the donation, void as to purchasers, &c., without notice.

§ 3. Every voluntary alienation of or charge upon personal property, unless the actual possession, in good faith, accompanies the same, shall be void as to a purchaser without notice, or any creditor, prior to the lodging for record of such transfer or charge in the office of the county court for the county where the alienor or person creating the charge resides.

Loan of personal property, effect of.

§ 4. Where any loan of personal property is pretended to have been made to any person with whom, or those claiming under him, possession shall have remained for five years, without demand made and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation, by way of condition, reversion, remainder, or otherwise, is pretended to have been made in the alienation of such property so possessed, the absolute right shall be deemed to be with the possession, in favor of a purchaser without notice, or any creditor of the person so remaining in possession, unless the written evidence of the loan, reservation, or limitation be in like manner duly recorded in the county where the person resides, or is contained in a properly recorded will.

A devisee liable for the payment of debts.
M. & B. 742.

§ 5. A devisee shall be liable for all debts and liabilities of the testator, in the same manner as the heir of the testator would have been liable, if the property devised had descended to the heir.

Personal representatives, heir, and devisee may be sued jointly.
M. & B 778.

§ 6. The same actions which lie against the personal representatives, may be brought jointly against him and the heir or devisee of the decedent, or both, and shall not be delayed for the non-age of any of the parties.

A devise for the payment of all the debts of decedent, not affected by the two last sections.
M & B. 743.
L. 240.

§ 7. The last two sections shall not apply to a devise made in good faith, for the payment of any of the testator's debts, if such devise have not the effect of giving precedence in favor of one creditor to the prejudice of another.

Estate aliened before suit, not liable to pay debts.
M. & B. 742-4.

§ 8. When the heir or devisee shall alien, before suit brought, the estate descended or devised, he shall be liable for the value thereof, with legal interest from the time of alienation, to the creditors of the decedent or testator; but the estate so aliened shall not be liable to the creditors, in the hands of a *bona fide* purchaser for valuable consideration.

Representatives of an heir or devisee liable to extent of assets received.

§ 9. To the extent of assets received, the representative, heir, and devisee of an heir or devisee, shall be chargeable for the liabilities of either of the latter as such, to the creditors of the original decedent or testator.

Courts of equity have jurisdiction, against heirs, &c., at suit of creditors

§ 10. The heir or devisee may be sued in equity by a creditor, for any liability of the decedent or testator, and he may also, in such suit, if demanded, obtain, by the proper procedure, a lien on any specified property, descended or devised, not theretofore aliened, but not so as to prejudice thereby any other creditor.

CHAPTER XLI.

FUGITIVES FROM JUSTICE.

ART. 1. Fugitives from justice, how dealt with.
ART. 2. Arrest of persons for offenses committed in another State or Territory.

ARTICLE I.

Fugitives from justice, how dealt with.

Demand of the executive of another state, a warrant to issue.

§ 1. Upon the demand of the executive of any state or territory of the United States, made upon the governor of this commonwealth, to surrender a fugitive from justice from said state or territory, pursuant to the constitution and laws of the United States, he shall issue his warrant to the sheriff or constable of any county within this state, commanding him to apprehend said fugitive and bring him before some circuit judge.

M. & B. 745.

Duty of circuit court.

§ 2. The circuit judge shall proceed, by the examination of witnesses, to ascertain if the person apprehended be the fugitive demanded and mentioned in the warrant of the governor of this state, and, if satisfied of the identity of the person, the judge shall order him to be delivered up to the agent of the state or territory demanding him, to be transported to such state or territory agreeably to the laws of the United States; otherwise, he shall discharge the person from custody.

M. & B. 745.

If no agent, fugitive to be confined in jail, &c.

§ 3. If no such agent be present, the fugitive shall be committed to the jail of the county in which the hearing before the judge is had. Of the fact of commitment the judge shall forthwith inform the governor of this state, and, on demand by the agent of the state upon the jailer, by the authority of the governor of this state, the fugitive from justice shall be delivered up to such agent. If said fugitive be not demanded within three months after his commitment, the jailer shall discharge him.

M. B. 746.

Costs, how paid.

§ 4. All costs incurred in apprehending and securing said fugitive shall be paid by the agent of the state, before he shall be permitted to remove him or receive him into custody.

M. & B. 746.

If charge be for kidnapping a person of color, the duty of judge.

§ 5. If a person shall be charged by indictment or otherwise, in any state or territory, of the offense of kidnapping, or of removing by force or otherwise, a person of color from said state, and shall be demanded by the executive of such state or territory of the governor of this state,

M. & B. 746-7.

as a fugitive from justice, and the person shall be apprehended and brought before a circuit judge, as is provided for in the first section of this article, it shall be the duty of the judge not only to inquire into the identity of the person of such supposed fugitive, but he shall also inquire into the fact whether he is the owner of the negro charged to have been abducted, or whether he acted as the agent, friend, or by the permission of the owner, or had his sanction for what he did in the premises; and, if he is satisfied the person arrested was the owner, or acted as his agent, friend, or with his sanction and approbation, the judge shall discharge him; if not so satisfied, the judge shall deal with him as required by the provisions of this chapter.

ARTICLE II.

Arrest of persons for offenses committed in another State or Territory.

Such persons may be arrested, & how dealt with.

L. 262.

§ 1. A person guilty of felony any where in the United States, if found in this state, may be arrested and confined in jail, and delivered over to the proper authority, in the following manner:

1. A warrant issued by any judicial authority, upon affidavit made of the facts, shall authorize his arrest by any ministerial officer, or other person, to whom it may be directed by name.

2. The person arresting the accused shall immediately take him before the circuit judge, the president judge of the county court, or the police judge of a city, in the county in which he was arrested, who shall, upon hearing the evidence, if satisfied of the guilt of the prisoner, commit him to the jail of the county where he was arrested, there to remain sixty days, unless he be legally discharged, or removed upon the demand of the executive of the state or territory in which it is charged that the offense was committed.

Executive of the state in which the offense was committed to be notified.

§ 2. It shall be the duty of the person who caused the arrest of such fugitive to be made, to notify the executive of the state in which the crime was committed.

Governor to order prisoner to be delivered to agent.

§ 3. The governor of this commonwealth, upon a proper demand made, shall issue his warrant directing the officer having the custody of the prisoner to deliver him to the agent of the state demanding him, whose duty it shall be to deliver over such prisoner, upon the payment of all legal costs and charges by said agent, or other person.

CHAPTER XLII.

GAMING.

All contracts based upon gambling consideration void.
Property or money lost at any game may be recovered back.
Penalty for keeping bank or gaming table.
Penalty for enticing others to game, or permitting unlawful gaming in a house.
Professed gamblers, how punished.
Billiard tables.

All gaming contracts declared void.

M. & B. 751. V. R. 578.

§ 1. Every contract, conveyance, transfer, or assurance for the consideration, in whole or in part, of money, property, or other thing won, lost, or bet at any game, sport, pastime, or wager, or for the consideration of money, property, or other thing lent or advanced for the purpose of gaming, or lent or advanced at the time of any betting, gaming, or wagering, to a person then actually engaged in betting, gaming, or wagering, shall be void.

Property lost at gaming may be recovered back.

M. & B. 752, 758, 764. V. R. 579.

§ 2. If any person shall lose to another at one time, or within any twenty-four hours, five dollars or more, or property or other thing of that value, and shall pay, transfer, or deliver the same, such loser, or any creditor of his, may recover the same, or the value thereof, from the winner, or any transferree of the winner, having notice of the consideration, by suit brought within five years after the payment, transfer, or delivery.

Recovery may be had against the winner, although the payment, transfer, or delivery was made to his endorsee, assignee, or transferree.

And if the conveyance or transfer were of real estate, or the right thereto, in violation of the first section of this chapter, the heirs of the loser may recover it back by suit brought within two years after his death, unless it shall have been passed to a purchaser in good faith for valuable consideration without notice.

Discovery and relief may be had in chancery.

§ 3. Such loser or his creditor, or the persons designated in the preceding section, may have discovery and relief in chancery; but when so obtained, the winner shall be discharged from all penalty and forfeiture for having won the money or other thing, which, or its value, is so recovered back.

If the person losing does not sue, a stranger may.

§ 4. If such loser or his creditor do not sue for the money or thing lost, within six months after its payment or delivery, and prosecute the suit to recovery with due diligence,

any other person may sue the winner and recover treble the amount or value of the money or thing lost, if suit be so brought within five years from the delivery or payment.

One-half of what is so recovered shall be for the person suing, and the other half for the commonwealth. The loser, creditor, or other person first suing, after the six months, to have the preference, if the suit be prosecuted to recovery with due diligence.

Stake-holder required to return stake, on notice.

§ 5. The stakeholder of any money or other thing that may be staked on any bet or wager, shall, when thereto notified, return the same to the person making the stake or deposit, and for failing to do so, the amount or value of the stake may be recovered from him by the party aggrieved.

Penalty for keeping faro bank or gaming table.

M. & B. 756.
A. 1848, 10.

§ 6. Whoever shall set up, exhibit, or keep for himself or another, or shall procure to be set up, exhibited, or kept, any faro bank, gaming table, machine or contrivance used in betting, or other game of chance, whereby money or other thing is or may be won or lost, shall be fined five hundred dollars and costs, and imprisoned till the same are paid, or imprisoned not more than one year, or both so fined and imprisoned; shall be deemed infamous after conviction, and be forever thereafter disqualified from exercising the right of suffrage and from holding any office of honor, trust, or profit.

Gaming implement, stakes, &c., may be seized and forfeited.

Any such bank, table, or machine, or articles used for carrying on such game, together with all money or other thing staked or exhibited to allure persons to bet, may be seized by any magistrate, sheriff, constable, or police officer of a city or town, with or without a warrant, and upon conviction of the person setting up or keeping the game, such money or other thing shall be forfeited—one-half for the use of the person making the seizure, and the other half for the use of the commonwealth—and such table, machine, and articles shall be burnt or destroyed.

And though no person be convicted as the setter up or keeper of such table or game, yet if a jury shall, in a summary proceeding, find that the money, table, or other things were used or intended to be used for the purpose of such gaming, they shall be so condemned and forfeited.

Penalty for permitting gaming table in house, boat, &c.

§ 7. Whoever shall permit any such game or table, as is mentioned in the last section, to be set up, kept, or exhibited in any house, boat, or float, or on any premises in his occupation or under his control, or shall lease the same or any part thereof for that purpose, shall be fined from two

hundred and fifty to five hundred dollars and costs, and imprisoned till the same are paid.

Tavern license, &c., forfeited on conviction.

If the offender be a tavern keeper, coffee house keeper, or other retailer of spirituous liquors, he shall be fined five hundred dollars, forfeit his license, and never be again licensed.

Permission of owner of house, &c., presumed.

After proof of the setting up, keeping, or exhibiting of such table or game in any such house, boat, float, or place, it shall be presumed to have been with the permission of the person occupying or controlling the same, unless the contrary be clearly proved.

Persons arrested to be held to bail.

§ 8. Any person arrested for violating either of the last two sections shall be held to bail in the sum of six hundred dollars. Whoever shall cause himself to be entered as prosecutor on any indictment under those sections, and stand responsible for the costs, shall be entitled to one-half, and the prosecuting attorney shall be entitled to one-fourth of the fine recovered; but no prosecutor shall be deemed necessary.

Prosecutor and attorney entitled to a portion of the fine each.

Penalty for enticing to game.

A. 1848, 12.

§ 9. Whoever shall invite, persuade, or otherwise induce another to visit any place where gaming is carried on, shall be fined from fifty to five hundred dollars, and moreover be responsible to such other, and his creditors, for whatever he may lose in gaming at such place.

For allowing gaming in house, &c.

M. & B. 754.

§ 10. Whoever shall suffer any game whatever, at which money or property is won or lost, to be played in a house, boat, or float, or on premises in his occupation or under his control, shall be fined from two hundred to five hundred dollars for each offense.

Fine of half the sum for winning or losing $20.

M. & B. 750.

§ 11. If any person, by playing or betting at any game or wager, at any time within the space of twenty-four hours, shall win or lose twenty dollars or upwards, or the value thereof, he shall be fined a sum equal to half the value of what he shall so win or lose.

Professed gamblers may be arrested & required to give surety for good behavior.

M. & B. 751.

§ 12. Two justices of the peace may cause any person charged with having no visible estate, lawful trade or profession, but supporting himself for the most part by gaming, to be brought before them, and if the charge appears to be well founded, shall require surety for his good behavior in the sum of one hundred dollars, for one year, or commit him to prison until he give the same; and if after giving the same he shall, during the year, play for or bet any money or thing at any game whatever, he shall be deemed to have broken his recognizance.

§ 13. Any person who is without any lawful trade or

Who may be indicted as a common gambler.

M. & B. 750. A. 1848, 10.

profession, but supports himself for the most part by gaming, may be indicted as a common gambler, and upon conviction be fined from fifty to two hundred dollars and costs, or imprisoned not more than six months, or both, and committed till fine and costs are paid; and, furthermore, shall give surety for his good behavior in the penalty of five hundred dollars for one year, or be committed to prison for one year or until he gives such surety; and if after giving the same he shall, during the year, bet any money or thing at any game whatever, he shall be deemed to have broken his recognizance.

On conviction, fined and required to give surety for good behavior.

Witnesses compelled to testify before grand jury.

§ 14. A grand jury may cause any person to be summoned before them as a witness, who shall be compelled to testify as to any knowledge he may possess, touching any unlawful gaming in the county during the preceding twelve months, and if he refuse to testify on oath, he shall be committed to prison until he submits, and be fined from ten to thirty dollars, and a like sum for each daily repetition of the contempt.

Oath of every town officer.

§ 15. It shall be the duty, and a part of the oath of office of every town or city marshal, or his deputy, or other like police officer, that he will endeavor to the best of his ability to detect and prosecute all gamblers and others violating the laws against gaming.

Fine for neglect of duty.

§ 16. Any such officer willfully refusing or neglecting to perform his duty according to the last section, shall be fined from ten to five hundred dollars.

Evidence of witness in prosecutions for gaming not to be used against himself.

A. 1848, 11. V. R. 752.

§ 17. In any prosecution for a penalty against gaming, it shall be no exemption for a witness that his testimony may criminate himself; but no such testimony given by the witness shall be used against him in any prosecution except for perjury, and he shall be discharged from all liability for any gaming so necessarily disclosed in his testimony; and, furthermore, the person against whom he testifies shall not be received to prove any gaming theretofore by such witness.

Attorney's fee to be taxed.

§ 18. There shall be allowed and taxed as costs, under all convictions for violation of the laws against unlawful gaming, a fee of ten dollars to the commonwealth's attorney; and all prosecutions and suits arising under said laws,

Prosecutions and suits within five years.

may be had within five years after the cause of action arose or the offense committed, and not afterwards, except as provided in favor of the wife, children, and next of kin of a loser, for the recovery of real estate.

§ 19. If any person shall set up, or cause to be set up, or

permit to be played upon or keep any billiard table, he shall be fined from one hundred to a thousand dollars and costs; and every time such table shall be played upon, it shall be a distinct offense; and, upon conviction of the offender, the table, with all the implements and furniture used in playing thereon, shall be forfeited, burned, or destroyed. And, furthermore, the offender shall be committed to prison until the fine and costs are paid. (*a*)

Fine for keeping billiard tables.

M. & B. 242.

Table, &c., forfeited.

§ 20. When there is more than one owner, setter up, or keeper, or lessee of such billiard table, each shall be severally liable for such penalties.

Each of several owners, &c. liable for penalty.

§ 21. A judge or justice of the peace may, by his warrant, cause any house or building to be searched, by night or by day, for the detection of any billiard or gaming table, and if admission be not given on demand made, the officer or other person in charge of the warrant, shall force an entrance, seize the table, and all implements used therewith, and all money or other things staked or exhibited thereon, and arrest the keeper thereof.

Buildings may be searched.

§ 22. Any setter up or keeper of a billiard or gaming table, may be required by a judge or justice of the peace to give security in six hundred dollars for his appearance at the next circuit court of the county, to answer the charge, and be of good behavior for one year; and on failure, shall be committed to prison until after the next term of said court, or until the security be given; and if, after giving the security, he shall, within the year, keep or permit any such table to be used, it shall be deemed a breach of the recognizance.

Security may be required of keeper of billiard table.

§ 23. These prohibitions and penalties shall apply to any table upon which is played any game substantially the same as that commonly known by the name of billiards, by whatever name the game may be called.

Penalties, &c., apply to other games substantially the same.

§ 24. The fine for keeping or setting up a billiard table shall be one-third for the use of the informer, if there be one, and one-third for the use of the prosecuting attorney.

§ 25. Any white person who shall play with a free negro or slave at any game of cards, or with dice, or at any other game whatever, whereby money or other thing of value shall be won or lost, shall be fined not more than fifty dollars.

Fine for a white person gaming with a free negro or slave.

L. 476.

(*a*) By an act to amend the charter of the city of Louisville, approved January 7, 1852, billiard tables are permitted to be set up in Louisville and Lexington.

CHAPTER XLIII.

GUARDIAN AND WARD.

ART. 1. Appointment of Guardian and Curator.
ART. 2. Power and duty of Guardian.

ARTICLE 1.

Appointment of Guardian and Curator.

§ 1. The several county courts shall have jurisdiction for the appointment and removal of guardians and curators to minors, and the settlement of their accounts.

What county court has jurisdiction to appoint.

The court of the county where the minor resides at the time of appointing the guardian or curator, shall have the jurisdiction, unless the minor is a non-resident of this state—in which case the jurisdiction shall be in the court of the county where the real estate of the minor, or the greater part thereof, may lie; or if he has no real estate, then in any county where he may have personal estate; and unless, also, the appointment is made by the will of the father of the minor—in which case the jurisdiction shall be in the court where the will was proved.

May be appointed by will.

M & B. 766.
V. R. 533.
M. R. 489.

§ 2. Any father may, by will, appoint a guardian to his infant child during its minority, or for any less period, and may appoint the guardianship of the infant's estate to one, and the custody, nurture, and education of the infant to another.

Guardian to give bond.

§ 3. No guardian, except a testamentary one for nurture and education, can act, until he has been appointed by the proper county court and given covenant, with good surety, approved by the court, to the commonwealth, faithfully to discharge the trust of guardian.

Court liable if good surety be not taken.

M. & B. 766.
V. R. 533.

§ 4. If the court fails to take such covenant, or accepts such person or persons for surety as do not satisfy it of their sufficiency, the judges present and so in default, shall be jointly and severally liable to the ward for any damage he may sustain thereby.

Appointed by will; if so directed, surety need not be given.

V. R. 533.

§ 5. If the will of the father so directs, no security shall be required from the guardian, unless from change of circumstances in the guardian since the making of the will, or other cause, the court deems it imprudent to dispense therewith.

The right of precedence in appointment.

§ 6. In appointing a guardian, the court shall pay proper attention to the following order of precedence in right, and

not depart therefrom, unless it deems that prudence and the interest of the infant so require:

First, the father, or testamentary guardian of his appointing.

Secondly, the mother, if unmarried; and

Thirdly, the next of kin, giving preference to males.

Minor fourteen years of age may choose his guardian.

§ 7. If the minor is fourteen years of age, he may, in the presence of the court or by writing signed in the presence of one of its judges, after privy examination, nominate his own guardian. But if the person so nominated is not approved by the court, or if the minor, after summons, fails to nominate a suitable person, or resides out of the state, or if the testamentary guardian fails for three months to qualify, the court may appoint a guardian of its own selection.

M. R. 489. V. R. 533.

A curator may be appointed, &c.

§ 8. During any vacancy in the office of guardian by reason of non-appointment, death, removal, or suspension of a guardian, the court may, from time to time, appoint and remove a curator, who shall give a covenant with surety similar to that required from a guardian.

§ 9. The powers, duties, and responsibilities of such curator shall be the same as those of a guardian.

Suits on bond, &c.

§ 10. Any one damaged by the act or omission of a guardian or curator as such, may sue as relator upon his covenant; and with the assent of the county court, or of a court of chancery, any one may sue thereon as next friend of the ward before he has attained full age.

Guardian may be removed, and for what causes.

§ 11. When a guardian shall become insane, move out of the state, become incapable of discharging the duties of his trust, or evidently unsuited therefor, the court, after notice to him, may remove him; or when it appears proper, the court may permit him to resign his trust, if he first settles his accounts, and delivers over the estate as by the court directed, and in either case, or upon his death, appoint another guardian.

M. R. 492.

Marriage of ward, effect of.

§ 12. The marriage of a female ward shall operate as a discharge of the guardianship, and entitle her to demand a settlement with her guardian.

M. R. 492.

Failure to settle account.

§ 13. The court may also remove a guardian for failing to make a settlement of his accounts as required by law, or as may be required by the court, or for failing to give additional security when required.

M. & B. 769.

Solvency of surety to be inquired into.

§ 14. The court shall annually inquire into the solvency of sureties for guardians; and if at any time it has cause to believe that the sureties of a guardian are insolvent or

A. 1848, 56.

in failing circumstances, it shall, after summoning the guardian, require him to give additional security.

Counter surety, when given.

M. & B. 770.

§ 15. Upon the application of the surety of any guardian and after summoning the guardian, the court may, if it believes him to be insolvent or in doubtful circumstances, require him to give counter security to his surety; and on his failing to do so, remove him or order the estate of the ward to be paid over to a new guardian or a curator.

ARTICLE II.

Power and duty of Guardian.

Inventory of estate to be returned

§ 1. A guardian shall, within sixty days after his appointment, return to the court, or to its clerk in location, a true and perfect inventory of the real and personal estate of the ward, signed by him and verified by his affidavit. If other estate shall afterwards come to his knowledge, he shall return a supplementary inventory thereof within sixty days from the time of obtaining such knowledge.

§ 2. For failure to make such return within such times, the court may remove the guardian.

What it shall state.

§ 3. The inventory shall describe the real estate and where situated, with its probable value, and the probable value of its rent; also, the name, age, and sex of each slave, with its probable value and hire; and also, a list of all other personal property, including debts due the ward, with the probable value.

To be recorded, and court to summon delinquents.

M. & B. 768. A. 1848, 56.

§ 4. The inventory shall be recorded, and the clerk shall, in the months of January and July of every year, present the court with a list of such guardians as shall have failed to return an inventory or to settle their accounts; and the court thereupon shall summon any delinquent, coerce performance of his duty, or remove him, holding him personally responsible for the costs of the proceeding.

Guardians to pay debts, may sell property, &c.

§ 5. A guardian shall discharge the liabilities of the ward for the debts of his ancestor out of his personal estate other than slaves; and when the personal estate, with the rents of the real estate and hire of slaves, is not sufficient therefor, he may, by leave of the county court, sell slaves for that purpose. He shall, also, receive and sue for the debts and demands owing to the ward, defend suits against him, and, with leave of the court, may compound a debt or demand.

May sell by leave of the court, for benefit of ward; make leases, &c.

§ 6. A guardian shall also have power to sell any of the personal estate of the ward other than slaves, and he may sell slaves with leave of the court when the interest of the

ward may seem to require the sale to be made. He may lease any real estate of the ward till the ward shall arrive at full age; but no such lease shall be made for a longer term than seven years. He may also renew any beneficial lease which the ward may hold as tenant for years, and keep the real estate in proper repair.

Shall have the custody of ward.

§ 7. A guardian shall have the custody of his ward, and the possession, care, and management of the ward's estate, real and personal, and out of the estate shall provide for the necessary and proper maintenance and education of the ward.

Father or mother may, by order of court, have custody of ward in certain cases.

§ 8. The father of the minor, if living, or if dead, the mother, if suited to the trust, shall be allowed by the court to have the custody, nurture, and education of the ward.

When the allowance to guardian for maintenance of ward may exceed income of estate. V. R. 534.

§ 9. No disbursement shall be allowed the guardian for the maintenance and education of the ward beyond the income of the estate, except in the following cases, unless authorized by the deed or will under which the estate is derived:

First, when the ward is of such tender years or infirm health that he cannot be bound out as an apprentice, or no suitable person will take him as such; and

Secondly, when it is best for the ward that the principal of his personal estate shall be applied for his board and tuition, and the court, upon settlement of the accounts, shall deem such application to have been judicious, and properly made.

But neither the ward nor his real estate shall be liable for any such disbursement.

Guardian to pay interest.

§ 10. If a balance, whether it be from profits received or estimated, or of interest or principal, is owing by a guardian at the end of any year, counting from the time of his appointment, which ought to have been invested or loaned out for the benefit of the ward in reasonable time, but which remains in the hands of the guardian, he shall be charged with interest from the end of the year in which such balance arose; and thereafter he shall be charged with interest upon interest, in biennial rests.

To be allowed compensation.

§ 11. The guardian, besides all necessary disbursements and repairs, shall be allowed by the court a reasonable compensation for his services.

Accounts, when settled and money paid over.

§ 12. A guardian shall, within sixty days after the expiration of a year from his appointment, settle his accounts as guardian with the county court, and at least once within every two years thereafter, and as much oftener as the

court may require. At the expiration of his trust, he shall deliver and pay to those entitled thereto all the estate and money in his hands as guardian, or with which he is chargeable as such.

Vouchers to be filed.

§ 13. The necessary vouchers shall accompany and remain with the guardian's accounts presented for settlement, which, when properly made, shall be *prima facie* evidence in his favor; but it may be surcharged and falsified by any person interested therein, who did not contest the settlement.

Courts of chancery, jurisdiction

V. R. 534.

§ 14. The several courts of chancery shall also have power to hear and determine all matters between guardian and ward, require settlements of guardianship accounts, remove a guardian for neglect or breach of trust, control the custody and tuition of the ward and the management and preservation of his estate, and direct the sale of any of his real estate where necessary to the proper maintenance and education of the ward, or for the payment of his debts.

Guardian and surety liable for all money & property

§ 15. The guardian and his surety shall be liable on their covenant for all property or money which comes to the hands of the guardian as such, whether by virtue of an order of court, or of any statute passed after the date of their covenant, or otherwise.

Non-resident guardians, their powers and rights.

§ 16. Where there is no guardian in this state of a non-resident minor, his guardian appointed and qualified according to the law of the place where the minor resides, may collect, receive, and remove to such place of residence any personal estate of the minor being in this state. Upon application by petition in a summary way, the county court of the county having jurisdiction to appoint a guardian may authorize such foreign guardian to sue for, recover, and so remove any personal estate of such minor, or otherwise to act as a guardian appointed in this state.

Resident guardian of non-resident ward, to pay over money on petition, &c.

§ 17. Where there is a guardian in this state of such non-resident minor, he may, by similar petition either to the county court or the circuit court of the county and ten days notice, be compelled to pay over to such foreign guardian, for such removal, the personal estate of the minor and the rents and profits of his real estate.

But neither court shall grant either of said petitions, unless it is satisfied by documentary evidence that such foreign guardian has, where he qualified, given bond with surety to account for all the estate of the minor that might come to his hands; nor, where there is no resident

guardian, if there is any next of kin of such minor in this state, within the knowledge or information of the court, until such next of kin shall have been summoned; nor unless the court is satisfied that neither the minor nor any of his creditors in this state, will be prejudiced by the order.

CHAPTER XLIV.

GUARDS, PUBLIC.

How appointed and paid.
Guards attending Convicts to Penitentiary.

When appointed.

§ 1. When, in the opinion of the judge of the circuit court of the county, the safe-keeping of a prisoner confined under a charge of felony requires that a guard shall be kept over him, he shall make the order of record to that effect, and direct the number of the guards to be summoned, by whom to be summoned, and under whose control the same shall be placed. If the safe-keeping of the prisoner is rendered doubtful from the insufficiency of the jail, the order shall state that fact; in which case, the expenses of the guard, when certified by the circuit court, shall be paid by the county. The order of the judge for the guard may also be made in vacation.

M. & B. 772.

When county to pay expenses.

How many.

§ 2. Not more than two guards shall be employed by any officer to assit him to guard any criminal to the penitentiary, or prisoner under arrest for crime, before or after the trial of such prisoner, or to assist the officer in the removal of a prisoner from one county to another, without the special order, in writing, of the judge or justices before whom said prisoner has been tried, or brought for examination and inquiry. If two or more prisoners are to be guarded, the officer may increase his guard to three.

A. 1847.
M. & B. 772.

When number may be increased.

§ 3. The judge or justices in the case referred to in the preceding section, if satisfied by evidence, that there is danger of a rescue, or of an escape, shall order the necessary number of guards to be summoned to conduct the prisoner to the penitentiary, or to jail, or to safely keep him until trial can be had.

Two or more prisoners to be conveyed at the same time.

§ 4. If two or more criminals shall be convicted at the same term of any court, they shall all be conducted to the penitentiary by the same officer and guard, and the officer

and guard shall be allowed compensation for such service for one trip only.

Compensation, &c

A. 1850, 40.
M. & B. 368.
L. 134.

§ 5. The officer conducting a convict to the penitentiary, or person from one county to another, upon horseback, shall be allowed twelve and a half cents per mile for going to, and twelve and a half cents per mile for returning; guards for the same services, six cents per mile, and seventy-five cents per day; officers and guards to be allowed their ferriages and tolls paid, and to pay their own expenses. The officer shall be allowed all reasonable expenses for putting in irons, dieting, lodging, horse hire, ferriages, and tolls paid for the prisoner.

How claims verified.

All such claims shall be verified by the oath of the officer, if living, or other witness if the officer be dead or out of the state, and approved by the circuit court, before they shall be paid at the treasury. If the auditor shall be of opinion the amount allowed by the circuit court is too great, he may, upon evidence of witnesses sworn by himself, reduce the same.

When convict conveyed by stage, steamboat, &c.

§ 6. When the convict or prisoner has been conveyed by stage, steamboat, railroad, or by any other like conveyance, the officer shall be allowed the actual expenses paid for such prisoner, exclusive of his own allowance as above.

f be verified by
fi r and certi-
t y clerk.

50, 40.

§ 7. No allowance shall be made by any court to an officer for the fees paid to the guards, or expenses incurred for the prisoner, unless the officer shall verify, upon oath, the true amount paid by him. All allowances to officers and guards, under this article, shall be certified by the clerk of the court of that county in which the prisoner was tried, that the same has been sworn to, proven, and allowed by the court.

CHAPTER XLV.

HABEAS CORPUS.

By whom granted.
What must appear to authorize the writ.
By whom it may be served.
Hearing of the cause, and final disposition of the person in custody.

By what officers writ to be issued.

§ 1. The writ of *habeas corpus* shall be issued, upon proper application, by the following officers:

M. & B. 774.

1. By a judge of a circuit court, or of any chancery court, during the sitting of the respective courts, or in vacation.

2. Where there is no judge of the circuit or chancery court at the time in the county, then by a police judge of any city or town, or judge of the county court, or in their absence from the county, by a justice of the peace.

M. & B. 492.

The power of a judge of a circuit court or chancery court to issue writs of *habeas corpus*, shall be co-extensive with the state; that of the county, city, or town officers shall extend only to the limits of their respective towns, cities, or counties.

To be signed by the officer. M. & B. 774.

§ 2. Writs of *habeas corpus* may be granted without the seal of the officer, but shall be signed by him.

Granted forthwith, upon affidavit or other evidence.

§ 3. The writ of *habeas corpus* shall be granted forthwith, by any of the officers enumerated in the first section of this article, to any person who shall apply for the same by petition, showing, by affidavit or other evidence, probable cause to believe he is detained without lawful authority, or is imprisoned when, by law, he is entitled to bail.

V. R. 613.

To whom directed, and before whom returned.

§ 4. The writ shall be directed to the person in whose custody the prisoner is detained, and made returnable, as soon as may be, before the circuit or chancery judge of the county in which it may be served, if either be within the county, or, in his absence, before a judge of the county court, or, in his absence from the county, before two justices of the peace. The writ shall specify the time and place to which it shall be returned.

Bond may be required.

§ 5. The officer granting the writ may previously require bond, with surety, in sufficient penalty, payable to the commonwealth, or to the person against whom the writ is directed, conditioned that the person detained shall not escape by the way, and for the payment of such costs and charges as may be awarded against him. The bond shall

V. R. 613.

be filed with the other proceedings in the court, and may be sued on by the commonwealth, for the benefit of any person injured by the breach of it.

Who may serve writ.

§ 6. The writ shall be served by any qualified officer, or by any private individual designated by the judge, on the person to whom it is directed, or, in his absence from the place where the petitioner is confined, on the person having him in immediate custody.

When returnable.

§ 7. The writ shall be made returnable within three days after it is served, or, if the person is to be brought more than twenty miles, within so many days more as will be equal to one day for every twenty miles for such further distance, and shall be returned with the person of the petitioner, with the cause of his detention, or his imprisonment, stated in said return. The officer, or other person serving the writ, shall leave a copy with the person on whom it is served, upon which the cause of detention shall be stated, and return the original to the proper officer.

Penalty for disobeying writ.

M. & B. 775.
V. R. 614.

§ 8. If any person, on whom such writ is served, fail to bring the body of the petitioner, with a return of the cause of his detention, at the time and place specified in said writ, he shall forfeit and pay the prisoner one thousand dollars. When the person who applies for a writ of *habeas corpus* shall not be in the custody of a jailer, or other officer, the judge may, for good cause shown, direct the officer or person serving the writ to take the applicant into his custody, and produce him on the return of the writ.

Copy of cause of imprisonment to be furnished.

M. & B. 775.

§ 9. When a person is confined in jail by a warrant of commitment, or order of a court of record, the officer, upon demand of the prisoner, or any one for him, shall deliver a copy of the same; and if he refuse, he shall forfeit and pay to the prisoner three hundred dollars.

Penalty for refusing to issue a writ.
M. & B. 775.

§ 10. If any officer enumerated in the first section of this article, shall, when legally applied to, refuse to issue the writ of *habeas corpus* to the petitioner, he shall forfeit and pay to the petitioner five hundred dollars.

Disposition of cause and costs.

V. R. 714.

§ 11. The officer before whom the writ is returned, after hearing the matter, both upon the return and any other evidence, shall either discharge or remand the petitioner, or admit him to bail, or make such order as may be proper, and adjudge the costs of the proceeding, including the charge for transporting the prisoner, to be paid as shall seem right; which payment may be enforced, by attachment, or otherwise, by the court to which the proceedings are returned.

Affidavits may be read.

§ 12. At the discretion of the officer or court before whom the writ is returned, the affidavits of witnesses, taken by either party, on reasonable notice to his agent or attorney, may be read as evidence on the trial of the return.

Proceedings, when returned.

§ 13. The proceedings upon a writ of *habeas corpus* shall be returned to the clerk of the circuit court of the county in which the writ was heard, or to the court in which the prosecution, if any, is pending.

Witnesses compelled to attend.

§ 14. The officer issuing the writ in vacation, or the officer before whom it may be returned for trial, shall have the same power to compel the attendance of witnesses, or to punish a contempt of his authority, as a court of record has; and his judgment on the trial of the writ shall be considered, and be enforced as if it were a judgment of such court.

Person delivered not again to be arrested, &c.

§ 15. A person delivered upon a writ of *habeas corpus* shall not again be imprisoned, or committed for the same offense, except by the legal order or process of the court wherein he shall be bound by recognizance to appear, or some other court having jurisdiction of the same cause.

Defective proceedings; prisoner not discharged.

M. & B. 526.

§ 16. Upon the trial of a *habeas corpus*, if the judge, or other officer shall be of opinion that the prisoner has been guilty of a misdemeanor, or felony, for which such prisoner may be liable to be tried, and that the proceedings against him are so defective that he cannot be detained by them, the judge, or other officer, shall admit him to bail, if he be entitled to bail, to appear at the court having jurisdiction over the case, or remand him to the custody of the proper officer, to be conveyed to the proper county for new proceedings, to be had against such prisoner.

Writs to issue against religious societies or associations in certain cases.

§ 17. Writs of *habeas corpus* shall issue upon the application of the husband, father, mother, guardian, or next friend of any married woman or infant, detained by any religious or other association, or by persons acting under the authority of such association. The county attorney, where such detention is made, shall prosecute such writ, without fee, if required to do so.

Persons imprisoned for crime not to be removed—

§ 18. A person committed to prison in custody of an officer, for any criminal offense, shall not be removed from said prison, or delivered to the custody of any other officer, except in the following cases:

Except by habeas corpus.

1. By writ of *habeas corpus*, or some other legal writ.

When delivered to an officer to be removed.

2. When he may be delivered to an officer, to be removed to some common jail.

In case of fire, &c.

3. In case of fire, infectious disease, or other great necessity.

When charged with crime in another state, on order of the governor, &c.

4. When the prisoner is charged, by affidavit, with treason or felony, committed in some other state or territory of the United States of America; in which case he shall, on the demand of the executive of such state, or the governor of a territory in the United States, from which he fled, be sent thither in custody, by the order of any circuit court, or judge thereof; or may be bound by recognizance, with good surety, by said court or judge, to appear at the proper time and place, and surrender himself to the court or tribunal having jurisdiction of the offense, if the said court or judge shall, upon consideration of the evidence, be of opinion he should be put upon his trial.

CHAPTER XLVI.

HEIRS AND DEVISEES.

ART. 1. Deed or grant, effect of when grantee is dead.
ART. 2. Devisees as a class—how they take, &c.
ART. 3. Ademption of Legacy, &c.

ARTICLE I.

Deed or grant, effect of when grantee is dead.

When patentee or alienee dead.

M. & B. 779.

§ 1. When a patent has issued or shall issue, or a deed shall be made to a person who is dead at the issuing of the patent, or the making of the deed, the heirs of such patentee shall take, hold, and enjoy the title to the estate so patented or conveyed, as if such patent had issued or deed had been made to such heirs by name.

ARTICLE II.

Devisees as a class—how they take, &c.

Death of devisee before testator.

Powell on Devises.

§ 1. When a devise is made to several as a class, or as tenants in common, or as joint tenants, and one or more of the devisees shall die before the testator, and another or others shall survive the testator, the share or shares of such as so die shall go to his or their descendants, if any; if none, to the surviving devisees, unless a different disposition is made by the devisor.

When children embraces "grandchildren."

A devise to children embraces grand children when there are no children, and no other construction will give effect to the devise.

§ 2. If no time is fixed for the payment of a specific pecuniary legacy, it shall be payable one year after the testator's death, and carry interest after due.

Specific legacy.

Powell on Dev. vol. I, note 5.

§ 3. When any property shall be devised subject to or upon the payment by the devisee to another of a sum of money or his doing some other thing, the latter shall have a lien on the legacy for the sum so to be paid, or for the value of the thing to be done.

Lien for legacy charged on devise.

Ward on Legacies, 306–7.

§ 4. A devisee may disclaim by deed, acknowledged or proved and left for record in the clerk's office of the court in which probate is made, within a year after notice of the probate.

Devisee may disclaim.

Powell, 439, note 3.

ARTICLE III.

Ademption of Legacy, &c.

§ 1. The conversion, in whole or in part, of money or property, or the proceeds of property devised to one of the testator's heirs, into other property or thing, with or without the assent of the testator, shall not be an ademption of the legacy or devise, unless the testator so intended, but the devisee shall have and receive the value of such devise, unless a contrary intention on the part of the testator appear from the will, or by parol or other evidence.

Conversion not ademption, unless intended.

§ 2. The removal of property devised shall not operate as an ademption unless a contrary intention on the part of the testator is manifested, in like manner.

Nor removal.

CHAPTER XLVII.

HUSBAND AND WIFE.

ART. 1. Marriage.
ART. 2. Marital Rights.
ART. 3. Divorce and Alimony.
ART. 4. Curtesy and Dower.

ARTICLE I.

Marriage.

§ 1. A man shall not marry his mother, grandmother, sister, daughter, or granddaughter; nor the wife of his father, grandfather, son, or grandson; nor the daughter, granddaughter, mother, or grandmother of his wife; nor the daughter or granddaughter of his brother or sister; nor the sister of his father or mother.

Whom a man may not marry.

M. & B. 1157. V. R. 471.

Whom a woman may not marry.

A woman shall not marry her father, grandfather, brother, son, or grandson; nor the husband of her mother, grandmother, daughter, or granddaughter; nor the son, grandson, father, or grandfather of her husband; nor the son or grandson of her brother or sister; nor the brother of her father or mother.

M. & B. 475.

Where relationship is founded on marriage, the prohibition shall continue, notwithstanding the dissolution of the marriage by death or divorce, unless the divorce is for a cause that rendered the marriage originally illegal or void.

2 N. Y. R. 199.

This section includes illegitimate children and relatives.

Ib. and L. 417.

Marriages prohibited by this section are incestuous and void.

§ 2. Marriage is prohibited and declared void—

In what cases marriage prohibited and declared void.

1. With an idiot or lunatic;

2 N. Y. R. 199. V. R. 452. M. & B. 1153. V. R. 450.

2. Between a white person and a negro, or mulatto, bond or free;

3. Where there is a husband or wife living from whom the person marrying has not been lawfully divorced, with a privilege to re-marry;

4. When not solemnized or contracted in the presence of an authorized person or society:

5. When, at the time of marriage, the male is under the age of fourteen or the female is under twelve years.

The issue of an illegal marriage.

§ 3. The issue of an illegal or void marriage shall nevertheless be legitimate, except that the issue of an incestuous marriage, found such by the conviction, judgment, or decree of court, in the lifetime of the parties, or of a marriage between a white person and a negro or mulatto, shall not be legitimate; and except, also, that where one of the parties is an idiot or lunatic, the issue shall be legitimate only as the other party.

M. & B. 565. M. R. 461.

The issue of a marriage contracted with the belief that the other party was dead.

§ 4. Where the marriage is contracted in good faith and with the full belief of the parties that a former husband or wife then living was dead, the issue of such marriage, born or begotten before notice of the mistake, shall be the legitimate issue of both its parents.

Marriages obtained by force or fraud may be declared void.

§ 5. The courts having chancery jurisdiction may nullify and declare void a marriage obtained by force or fraud; or at the instance of any next friend, where the male was under the age of sixteen or the female under that of fourteen at the time of the marriage, and the marriage was without the consent of the father, mother, guardian, or other per-

son having the proper charge of his or her person, and has not been ratified by cohabitation after that age.

Effect of attempt to evade law by marrying abroad.

§ 6. Where persons resident in this state shall attempt to evade the provisions of this chapter declaring marriages void, by going to and marrying in another state and afterwards return to and reside in this state, such marriage shall be deemed and treated as if solemnized in this state; but this section shall not apply to such evasion of the rule herein as to the mode of solemnization.

V. R. 472.
M. R. 476.

Marriage before unauthorized person, valid if consummated in good faith.

§ 7. No marriage solemnized before any person professing to have authority therefor shall be invalidated for the want of authority to solemnize marriage, if it is consummated with the full belief of the parties or either of them that he had such authority, and that they have been lawfully joined in marriage.

Who may solemnize marriages.

§ 8. Marriage shall be solemnized by the following persons only—

1. Ministers of the gospel or priests of any denomination, in regular communion with any religious society.

2. Judges of the county court, and such justices of the peace as the county court may authorize.

3. Or, where either party belongs to a religious society having no officiating priest or minister, whose usage is to solemnize marriage at the usual place of worship and by consent given in the presence of the society, it may be so solemnized.

License to be first obtained.

§ 9. No minister or priest shall solemnize marriage, until he has obtained a license therefor from the county court of the county where he resides, upon satisfying the court that he is a man of good moral character and in regular communion with his religious society, and upon giving covenant, to the commonwealth, with good surety, not to violate the law of this state concerning marriage. The parties to such covenant may, for a breach thereof, be fined, on the presentment of a grand jury, not exceeding two thousand dollars. Such license may be revoked by any county court, after notice to the minister or priest.

M. & B. 1154.

How obtained.

§ 10. No marriage shall be solemnized without a license therefor issued by the clerk of a county court. It shall only issue from the clerk of the county where the female usually resides, unless she is of full age or a widow and it is issued on her own application in person or by writing signed by her.

§ 11. If either of the parties is under twenty-one years of age and never theretofore married, no license shall issue

without the consent of his or her father or guardian; or, if there is none, or he is absent from the state, without the consent of his or her mother, personally given or certified in writing to the clerk over his or her signature, attested by two subscribing witnesses, and proved by the oath of one of them administered by the clerk. Nor, where the parties are not personally known to the clerk, shall a license issue until bond with good surety in the penalty of one hundred dollars, is given to the commonwealth with condition that there is no lawful cause to obstruct the marriage.

License to be returned to the clerk of county court.

§ 12. The person solemnizing the marriage, or the clerk of the religious society before whom it was done, shall, within three months, return the license to the clerk of the county court whence it issued, with a certificate of the marriage over his signature giving the date and place of celebration, the names of some two or three persons present, of whom there shall never be less than two. For failing to make such return he shall be fined sixty dollars.

Certificate to be filed.

§ 13. The certificate shall be filed away in the office and a fair register made of the parties' names, of the person before whom, and the date when the marriage was solemnized; and also a proper index to the book in which the register is kept.

Penalty for solemnizing a marriage without license.

§ 14. If any person shall solemnize a marriage without such license, or without being authorized thereto by a county court, he shall be imprisoned not less than one nor more than twelve months, and fined not more than one thousand dollars.

False pretense or personation.

§ 15. If any person not authorized shall solemnize a marriage under pretence of having authority, or falsely personate the father, mother, or guardian in obtaining a license, he shall be confined in the penitentiary not exceeding three years.

L. 417.
M. & B. 1154.

§ 16. If any authorized person shall knowingly, with or without license, solemnize a marriage such as is herein prohibited, he shall be imprisoned not less than one nor more than twelve months and fined not exceeding one thousand dollars.

Penalty against a clerk for issuing a license contrary to law.

§ 17. A clerk who shall knowingly issue a license for any such prohibited marriage, shall be fined not less than five hundred nor more than one thousand dollars, and expelled from his office by the judgment of the court before which his conviction is had. And if he issue a license contrary to his duty as herein prescribed, he shall be fined not ex-

L. 417.
M. & B. 1157.

ceeding one thousand dollars. If the license is issued by a deputy he shall be fined the same as is directed when issued by the principal; and, in the case of prohibited marriages, shall be imprisoned not more than one year.

Judge of county court may issue license in the absence of the clerk.

§ 18. In the absence of the clerk, or during a vacancy in the office, the license may be issued by a judge of the county court, who in so doing shall perform the duty and incur all the responsibilities of the clerk, and shall return a memorandum thereof to the clerk, and the same shall be recorded as if issued by him.

Penalty for marriage incestuous, or between white and negro.

L. 417.

§ 19. Any party to a marriage within the incestuous degree herein prohibited, or between a white person and a negro or mulatto, shall be fined not less than five hundred nor more than five thousand dollars; and if, after conviction, the parties continue to cohabit as man and wife, they or either of them shall be imprisoned not less than three nor more than twelve months.

Doubt as to validity may be settled in chancery.

V. R. 472.

§ 20. Where doubt is felt as to the validity of a marriage, either party may by bill in chancery demand its avoidance or affirmance; but where one of the parties was within the age of consent at the time of marriage, the other party being of proper age shall have no such proceeding for that cause against the party under age.

Disposition of the estate of a female under 16, who marries without consent of parent, &c.

M. & B. 1157.
V. R. 471.

§ 21. If any female under sixteen years of age marries without the consent of her father or guardian, or of her mother, the court having chancery jurisdiction in the county of her usual residence, shall, on the petition of a next friend, commit her estate, real and personal, to a receiver, upon his giving adequate security for the performance of his duty, who shall hold her estate, and, after deducting a reasonable compensation for his services, pay out the rents and profits to her separate use, during her infancy, under the direction of the court. When the wife shall arrive at the age of twenty-one years, the estate, with its avails, shall be delivered to her, unless the court shall consider it for her benefit and interest to continue the same longer in the hands of the receiver.

ARTICLE II.

Marital Rights.

Interest of husband in wife's real estate and slaves.

A. 1846, 42.

§ 1. Marriage shall give to the husband, during the life of the wife, no estate or interest in her real estate, chattels real, or slaves owned at the time or acquired by her after marriage, except the use thereof, with power to rent the real estate for not more than three years at a time, and

hire the slaves in like manner for not more than one year, and receive the rent and hire.

Not liable to husband's debts.

1. Nor shall such real estate, slaves, rent, or hire, be liable for any debt or responsibility of his, contracted or incurred before or after marriage, but shall be liable for her debts and responsibilities contracted or incurred before marriage, and for such contracted after marriage on account of necessaries for herself or any member of her family, her husband included, as shall be evidenced by writing signed by her and her husband. The remedy may be against both or against her alone, as the case shall require.

Nor shall his contingent interest be sold during life of wife.

2. Nor shall the husband's contingent right of curtesy or life estate, or his right to such use, rent, or hire, be sold for, or otherwise subjected to the payment of any separate debt or responsibility of his during her life.

Chattels real and slaves may be sold by husband & wife

§ 2. Husband and wife may sell and convey her chattel real or slave, in the same mode as the land of the wife may be sold and conveyed; and the proceeds shall be his, unless otherwise expressly provided in the conveyance or the obligation of the purchaser.

Husband not liable for debts of wife, contracted before marriage.

§ 3. The husband shall not be liable for any debt or responsibility of the wife contracted or incurred before marriage, except to the amount or value of whatever he may receive by her independent of real estate or slaves, their use, rent, or hire; but shall be liable as formerly for necessaries furnished to her after marriage. (*a*)

When a married woman may act as a feme sole.

§ 4. Where the husband abandons the wife and lives separately and apart from her, or abandons her and leaves the state, without making sufficient provision for her main-

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(*a*) The commissioners, in their revision of the cases relating to Husband and Wife, as contained in chapter first of their report to the legislature in November, 1850, limited the operation of the first, second, and third sections of this article to marriages consummated after the passage of the act of 1846. They were of opinion that the provisions of that act were not retroactive, or made so by any express words. The act had been construed by the court of appeals to operate upon marital rights, and obligations of the parties, who were married prior to the passage of the act. The commissioners were of a different opinion, judging from the language of the act, and believing that laws should never be made to operate retrospectively upon rights or responsibilities incurred by construction, they expressly limited the three sections to marriages happening after the passage of the act. In this form the chapter was approved and adopted. The last legislature, however, repealed the limitation, and left the law to operate upon all marriages, whether consummated before or after the act of 1846.

tenance, or where he is confined in the penitentiary for an unexpired term of more than one year, the wife may, by petition in chancery, be empowered to use, enjoy, and sell, for her own benefit, any property she may acquire thereafter, or may have acquired since the abandonment or leaving the state; to make contracts, sue and be sued as a single woman; and also, to recover in her own name any property or debt to which she is entitled, or to which the husband is entitled in her right. She may also be empowered to sell and convey by her own deed any of her real estate or slaves, freed from any claim of her husband.

A. 1843, 19. M. R. 484.

§ 5. Such husband, upon manifesting proper disposition again to cohabit with his wife and make suitable provision for her, or upon his release from the penitentiary, by his petition may, in the discretion of the court, have all or part of said powers revoked, and take upon himself the prosecution or defense of any pending suit by or against her.

When such power may be revoked

§ 6. The wife of an infant husband may unite with his guardian in the sale of his real estate so as to release her right of dower, where the guardian is authorized to sell and convey.

Dower in estate of infant husband may be conveyed.

M. R. 486.

§ 7. When the real estate of a wife is taken for a railroad, turnpike, or other public use, or shall be damaged by such road, turnpike, or other public work, the compensation or damages shall be appropriated by the court in such manner as she, on privy examination, may direct, or without such examination, for her benefit, in such manner as to the court may seem just.

Damages assessed for injury to wife's land, how disposed of.

§ 8. A married woman who shall come to this from another state or country without her husband, he never having resided here, may contract, buy and sell, sue and be sued, as an unmarried woman; but his arrival in the state and claiming his marital rights shall revoke all such power, leaving existing liabilities of herself, and all property held here by her, and all suits, unaffected by the revocation.

A married woman, her husband non-resident, may act as a feme sole.

ARTICLE III.

Divorce and Alimony.

§ 1. The courts having chancery jurisdiction may decree a divorce for any of the following causes, to both husband and wife—

For what causes a court of chancery may decree a divorce.

1. Such impotency or malformation as prevents sexual intercourse.

M. & B. 121, 122. A. 1847, 29. A. 1850, 54.

2. Living separately and apart without any cohabitation for the space of five consecutive years next before the application.

Also, to the party not in fault, for the following causes—

1. Abandonment, or like separation by one party from the other, for one year.

2. Abandoment and living in adultery with another man or woman for six months.

3. Condemnation for felony in or out of this state.

4. Concealment from the other party of any loathsome disease existing at the time of marriage, or contracting such afterwards.

5. Force, duress, or fraud in obtaining the marriage.

6. Uniting with any religious society whose creed and rules require a renunciation of the marriage covenant, or forbid husband and wife from cohabiting.

Also, to the wife when not in like fault, for the following causes—

1. Confirmed habit of drunkenness on the part of the husband of not less than one year's duration, accompanied with a wasting of his estate, and without any suitable provision for the maintenance of his wife and children.

2. Habitually behaving towards her by the husband, for not less than six months, in such cruel and inhuman manner as to indicate a settled aversion to her, and to destroy permanently her peace and happiness.

3. Such cruel beating or injury, or attempt at injury, of the wife by the husband as indicates an outrageous, ungovernable temper in him, and probable danger to her life, or great bodily injury, from her remaining with him.

Also, to the husband for the following causes—

1. Where the wife is pregnant by another man without the husband's knowledge at the time of marriage.

2. Adultery committed by the wife, or such lewd, lascivious behavior on her part as proves her to be unchaste, without actual proof of a specific act of adultery.

When parties divorced may marry again.

§ 2. No decree of divorce shall authorize or permit the party obtaining it to marry again until one year after final decree, except where it is herein allowed in favor of both parties; nor shall the party against whom the decree is rendered marry again in less than five years thereafter. An earlier marriage than is herein allowed shall subject

the party entering into it to all the pains and penalties prescribed by law against bigamy.

Answer and proof required to grant divorce.

§ 3. The defendant may answer a bill for divorce without oath; and no such bill shall be taken for confessed or be sustained by the admissions of the defendant alone, but must be supported by other proof. Two witnesses, or one and strong corroborating circumstances, shall be necessary to sustain the charge of adultery or lewdness. The credibility or good character of such witnesses must be personally known to the judge, or to the officer taking the deposition, who shall so certify, or it must be proved by some witness who is so known. It shall be the duty of the attorney for the commonwealth to resist every application for a divorce; and if successful in defeating it, he shall be allowed a fee of five dollars, to be paid by the husband, which he may be compelled to pay by attachment.

M. & B. 123.

Attorney for the commonwealth, his duty.

What court has jurisdiction.

§ 4. Suit for divorce must be brought in the county where the wife usually resides, if she has a residence in the state; if not, then in the county of the husband's residence; and no such suit shall be brought by one who has not been a continuous resident of this state for a year next before its institution. Nor, unless the party complaining had an actual residence here at the time of the doing of the act complained of, shall a divorce be granted for any thing done out of the state unless it was also a cause for divorce by the law of the country where the act was done. A suit for divorce must be brought within five years of the doing of the act complained of; and cohabitation as man and wife, after a knowledge of the adultery or lewdness complained of, shall take away the right of divorce therefor.

Cohabitation after knowledge of adultery, takes away right.

Decree may be revoked.

§ 5. Every decree for a divorce may at any time be revoked or annulled by the court rendering it, on the joint application of the parties, and they thereby restored to the condition of husband and wife; but no divorce shall thereafter be granted between them for the same or a like cause.

Decree of separation from bed and board, effect of.

§ 6. Decree for separation or divorce from bed and board may also be rendered for any of the causes which allow divorce, or for such other cause as the court in its discretion may deem sufficient. Pending an application for any divorce the court may allow the wife maintenance. Upon final decree of divorce from the bond of matrimony, the parties shall be restored such property, not disposed of at the commencement of suit, as either obtained from or through the other before or during the marriage, in consid-

Maintenance allowed.

Disposition of estate.

eration or by reason thereof; and if the wife have not sufficient estate of her own, she may, on a divorce obtained by her, have such allowance out of that of her husband as shall be deemed equitable.

Minor children to be provided for.

§ 7. Pending an application for divorce, or on final decree, the court may make any order for the care, custody, and maintenance of the minor children of the parties, or any of them; and at any time afterwards, upon the petition of either parent, revise and alter the same, having, in all such cases of care and custody, the interest and welfare of the children principally in view; but no such order for maintenance of children or allotment in favor of the wife, shall divest either party of the fee simple title to real estate.

Persons separated from bed and board, not to marry if both are living. Dower, curtesy, and right of distribution saved

V. R. 473.
M. & B. 122.

§ 8. A divorce from bed and board shall operate, as to property thereafter acquired, and upon the personal rights and legal capacities of the parties, as a divorce from the bond of matrimony; except that neither shall marry again during the life of the other, and except that it shall not bar curtesy, dower, or distributive right. Such decree may be revised or revoked at any time by the court rendering the same.

Husband may be restrained by wife, & support secured.

M. & B. 122.

§ 9. Where the husband is about to remove himself or property out of the state, or where there is reason to suspect that he will fraudulently sell, convey, or conceal his property, the wife may obtain the necessary order for securing alimony for herself and maintenance to their children, without giving any security.

Jury not required.
M. & B. 127.

§ 10. A jury shall not be used in any case for divorce or alimony.

Parents joining Shakers, children to be taken and provided for.

M & B. 126.

§ 11. Where a father, or widow having a child, joins the religious society called Shakers, or any religious society holding similar faith, without having made adequate provision for his or her child or children, the circuit court of the county where he or she resides, if in this state, or of the county in which the principal part of his or her property may be, if not residing in this state, may, upon petition of any next friend, appoint a guardian to any infant child of such father or mother, and make out of his or her estate a reasonable provision for the maintenance of such child or children, and remove the child from the custody of such parent or society.

Sales made to defraud wife or children, void.
M. & B. 125.

§ 12. Sales and conveyances made by the husband to a purchaser with notice, and with intent to defraud or hinder the wife, or for the benefit of any religious society, in fraud

or hinderance of the right of his children to maintenance, shall be void, as against such wife and children.

ARTICLE IV.

Curtesy and Dower.

When entitled to curtesy.

§ 1. Where there is issue of the marriage born alive, the husband shall have an estate for his own life in all the real estate owned and possessed by the wife at the time of her death, or of which another may then be seized to her use; but shall hold the same subject to her debts.

A. 1846, 43.

Slaves of wife.

§ 2. Whether there is such issue or not, the husband shall have an estate for his own life in all the slaves the wife owns at the time of her death and which remain after payment of her debts.

Dower—when wife entitled.

§ 3. After the death of the husband, the wife shall be endowed for her life, of one third of the real estate whereof he or any one, for his use, was seized of an estate in fee simple at any time during the coverture, unless her right to such dower shall have been barred, forfeited, or relinquished.

M. & B. 572. V. R. 474.

For what dower is forfeited.

§ 4. If the wife voluntarily leaves her husband and lives in adultery, she shall forfeit such right of dower, unless he is afterwards reconciled to her and lives with her.

Possession not necessary.

§ 5. The wife shall have dower of real estate, although there may have been no actual possession, or recovery of possession, by the husband in his lifetime.

V. R. 474.

Of what lands wife shall not be endowed.

§ 6. The wife shall not be endowed of land sold but not conveyed by the husband before marriage; nor of land sold *bona fide* after marriage to satisfy a lien or incumbrance created before marriage, or created by deed in which she joined, or to satisfy a lien for the purchase money. But if there is a surplus of the land or proceeds of sale after satisfying the lien, she shall have dower or compensation out of such surplus, unless the surplus proceeds of sale were received or disposed of by the husband in his life-time.

V. R. 474.

When jointure bars dower.

§ 7. A conveyance or devise of real or personal estate, by way of jointure, may bar the wife's dower; but if made before marriage without her consent, or during her infancy, or after marriage, she may, within twelve months after her husband's death, waive the jointure by written relinquishment acknowledged or proved before and left with the clerk of the county court, and have her dower. When she so demands and receives her dower, the estate conveyed or devised in lieu thereof shall determine and revert to the heirs or representatives of the grantor or devisor.

Jointure lost—dower allowed.

V. R. 475.

§ 8. Where the wife is lawfully deprived of her jointure, or any part thereof, and not by any act of her own, she shall have indemnity therefor by way of dower or damages, out of her husband's estate.

Wife entitled to one third of rents, &c.

V. R. 475.

§ 9. The wife shall be entitled to one third of the rents and profits of her husband's dowable real estate, from his death until dower is assigned; and she shall hold the mansion house and curtilage without charge therefor, until dower is assigned to her out of the estate devised or descended.

Rule in the allotment of dower, as to purchasers or heirs, &c.

§ 10. Whether the recovery is against the heir or devisee, or purchaser from the husband, the wife shall be endowed according to the value of the estate when received by the heir, devisee, or purchaser, so as not to include in the estimated value any permanent improvements he has made on the land.

Against the heir or devisee or his alienee, her claim for rent shall not exceed five years before suit; and against a purchaser from the husband, shall only be from commencement of suit. In either case it shall continue up to final recovery.

If, after suit brought, the widow or tenant dies before recovery, the damages may be recovered by her representative and against his heirs, devisees, and representative.

Decree or judgment by default or collusion no bar to dower.

§ 11. The wife shall not be barred of dower by reason of any judgment or decree rendered by default or collusion against the husband, if she would be entitled to dower had there been no such judgment or decree. Nor shall an heir be bound by any collusive or *ex parte* assignment of dower made to her, except so far as she shows herself to have been justly entitled thereto.

Heir not bound by collusive allotment.
V. R. 476.

How dower may be assigned in certain cases.

L. 214.

§ 12. Where the lands are not severally held by different devisees or purchasers, it shall not be necessary to assign dower out of each separate portion, but an equitable allotment may be made in one or more parcels, in lieu of the whole.

No dower in equitable estate, if sold by husband.

§ 13. If the husband held land by executory contract only, the wife shall not be endowed of the land, unless he owned such equitable right at his death.

A devise of slaves to husband & wife, no survivorship.

V. R. 502.

§ 14. Where any real estate or slave is conveyed or devised to husband and wife, unless a right by survivorship is expressly provided for, there shall be no mutual right to the entirety by survivorship between them; but they shall take as tenants in common, and the respective moieties be subject to curtesy or dower with all other incidents to such a tenancy.

§ 15. A divorce bars all claim to curtesy or dower.

Divorce bars dower and curtesy

§ 16. If any stock in any of the banks or other corporations of this state is taken for or transferred to any female, and it is expressed on the face of the certificate or transfer-book of such stock that it is for the exclusive use of such female for her annual support, no husband she then has, or may thereafter have, shall take any interest in such stock or the dividends thereon; and the same, at her death, shall pass to her heirs; but, if unmarried, she may dispose of it by will, or, if married, so dispose of it with the consent of her husband, or without such consent, if so provided in the deed or will creating the trust.

Bank stock of wife, she may dispose of by will.

L. 231.

She may also receive the dividends, and give acquittances therefor, though married; but she shall not in any way anticipate the same; nor shall any dividend be paid upon an order or power given by her before the same is declared.

§ 17. If real or personal estate be hereafter conveyed or devised for the separate use of a married woman, or for that of an unmarried woman, to the exclusion of any husband she may thereafter have, she shall not alienate such estate with or without the consent of any husband she may have; but may do so, when it is a gift, by the consent of the donor or his personal representative.

How separate estate may be disposed of by wife.

Such estates, heretofore created, shall not be sold or encumbered but by order of a court of equity, and only for the purpose of exchange and reinvestment, for the same use as that of the original conveyance or devise; and the court shall see that the exchange or reinvestment is properly made.

Estates, heretofore created, not to be sold or incumbered but by order or decree of court.

CHAPTER XLVIII.

IDIOTS AND LUNATICS.

ART. 1. Custody of their estates and persons.
ART. 2. Money drawn from the treasury for the support of pauper Idiots. Mode and manner of inquest.
ART. 3. Lunatic Asylums.

ARTICLE I.

Custody of their estates and persons.

§ 1. The several circuit and chancery courts shall have power and jurisdiction over the care and custody of the

Jurisdiction of circuit and chancery courts.

persons and estates of all idiots and lunatics resident in their respective counties, and over their committees, and to appoint, suspend, and remove committees for them upon the same terms and in the same manner as is given over the persons, estates, and guardians of infants.

Real estate may be sold to pay debts, or for maintenance.

§ 2. The several courts of chancery may, on the application of a committee, order the sale of the whole or any part of the real estate of an idiot or lunatic, when indispensably necessary for the payment of debts or for the maintenance of the idiot or lunatic and his family, and where the personal estate, with the rents and profits of the real estate, are not adequate for that purpose.

Power and duty of committee.

§ 3. The power and duty of the committee of an idiot or lunatic shall, in all respects, be the same as those of the guardian of an infant, except as to education. But the court may appoint a person other than the committee to take charge of the person of the idiot or lunatic when he is not confined in a lunatic asylum, and make the necessary orders for his support upon the committee.

Another may be appointed to take charge of the person.

Committee must be brought before the court in suits, &c.

§ 4. No judgment or decree shall be binding on an idiot or lunatic having a committee, unless the committee be also brought before the court; nor shall any suit be prosecuted in the name of such idiot or lunatic without the assent of his committee, unless, for special cause, the court in which it is brought shall permit its prosecution at the instance of another as next friend.

When there is no committee.

1. If there be no committee the court may proceed by the appointment of a next friend.

When idiot or lunatic in asylum.

2. If there be a committee, and the idiot or lunatic is confined in an asylum, service of process on the committee alone shall be sufficient to bind the idiot or lunatic.

Committee not to be appointed except upon judgment of court.

§ 5. A committee shall not be appointed to an idiot or lunatic who is a resident of this state, unless he has been heretofore or may hereafter be found such by the judgment of a court of competent jurisdiction in the county of his residence; or, if a non-resident, by the judgment of such court in the county of his residence.

ARTICLE II.

Money drawn from the treasury for the support of pauper Idiots. Mode and manner of inquest.

Money to be drawn from treasury in case of idiot so found by jury.

§ 1. No money shall be drawn from the public treasury for the support of any idiot until he shall have been found such by the verdict of a jury, as provided for in this chapter.

Amount not to exceed $50 per year.

§ 2. Nor shall the amount thus drawn exceed the sum of fifty dollars for each idiot, in any one year, and according to that rate for a less time.

Funeral expenses.

§ 3. The funeral expenses, not exceeding ten dollars, of a pauper idiot, found such by inquisition, when certified by the proper court, shall be paid out of the public treasury.

When idiots need not be sent to asylum.

§ 4. Idiots who are paupers, and who, in the opinion of the court, can be safely and properly kept by a committee within the county, need not be sent to the asylum, but may, by order of the court, be committed to the custody of a committee or other person.

Allowance to pauper idiots and lunatics—when made.

§ 5. A person is a pauper idiot or lunatic, within the meaning of this chapter, who has been found, by the verdict of a jury, to be an idiot or lunatic, and that he has no estate sufficient for his support; and also that his parents, if alive, have not sufficient estate to maintain him, and that he is unable to work for a support; and the order of court, making and certifying the annual allowance for the support of the idiot, shall be made on proof, and so state, and shall also state that the idiot is then alive, and a pauper. Upon such certificate, if a copy of the inquisition required to be filed by the provisions of this chapter has been filed with the auditor, he shall issue his warrant upon the treasury for the amount due, not exceeding fifty dollars per year, and at that rate for a greater or less time.

Inquest to be held—attorney for defendant to be appointed—duty of commonwealth's attorney.

§ 6. If any person be of unsound mind, it shall be the duty of the circuit or chancery court of the county in which he resides, upon the application of the attorney of the commonwealth, to cause an inquest by a jury to be held in open court, to inquire into the fact. The court shall appoint some member of the bar to represent and protect the interest and rights of the person alleged to be of unsound mind; and it shall also be the special duty of the attorney for the commonwealth to prevent the finding of any person as an idiot or lunatic who, in his opinion, is not such; or the finding of any person an idiot, who is a lunatic.

Oath of jury.

§ 7. The following oath shall be administered to the jury: "You do swear that you will well and truly inquire, and, from the evidence, say in your verdict whether A. B., the person whom you have in charge, is of unsound mind, and if of unsound mind, whether he is an idiot or lunatic—that is, whether he was destitute of mind from infancy, or has lost it since his birth; and if he has lost it since his

birth, that you will state when, and, as far as you can from the evidence, the cause of it. You will also inquire and state his birth, and residence, and whether he has been brought into this state by any person, and by whom, for the purpose of becoming a charge upon the commonwealth. That you will find what estate, and the value thereof, he owns in possession, reversion, or remainder; whether his parents are alive; where they reside; and whether they have estate sufficient to support the person under trial; whether he is capable of laboring, in whole or in part, and what part, for his support." The judge shall instruct the jury upon the whole case, so as to enable them to to decide the question whether the defendant is an idiot or lunatic.

Judge to instruct jury.

§ 8. On return of the verdict, if the court is satisfied with the inquest, judgment shall be entered upon it according to the finding. If the judge who presides shall be of opinion the verdict is not sustained by the evidence, or is against law, he shall set it aside and award a new inquest.

Judgment on verdict, or new trial.

§ 9. No inquest shall be held unless the person charged to be of unsound mind is in court, and personally in the presence of the jury. The personal presence of the person charged shall not be dispensed with, unless it shall appear by the oath or affidavit of two physicians, that they have personally examined the individual charged to be of unsound mind, and that they verily believe him to be an idiot or lunatic, as the case may be, and that his condition is such that it would be unsafe to bring him into court.

Personal presence of the person charged.

§ 10. In the year 1855, and every fifth year thereafter, before any order shall be granted by the court for the maintenance of an idiot out of his own estate, or out of the treasury, the idiot, in like manner, shall be brought into court, or his presence dispensed with, for the reasons in the preceding section; and the court shall cause the jury to be impanneled, who shall be sworn, as provided in the second section of this article, and also to inquire, and true report to make from the evidence, whether the person whom they have in charge has before been found, by the verdict of a jury and judgment of a court, an idiot, and whether and what change, if any, has taken place in his mind, physical condition, and estate, since the original inquest.

Idiot to be brought personally into court in 1855, and every 5th year.

§ 11. A copy, certified by the clerk, of each original and subsequent inquisition, shall be transmitted to the au-

Clerk to certify inquisition to auditor,

ditor of public accounts; without such transcript, the auditor shall issue no warrant for the amount allowed by the court.

Clerk to send list of pauper idiots to auditor.

§ 12. The circuit court clerk of each county shall transmit to the auditor, on or before the tenth of September, in each year, a list of the pauper idiots in his county; if he fail to do so without good cause, he shall be fined fifty dollars. All pauper idiots and lunatics may be sent, by order of a court, to the lunatic asylum, and shall be maintained, during the continuance of the malady and stay in the hospital, at the expense of the commonwealth. If not so sent, the expense of maintaining lunatics shall not be a charge upon the commonwealth.

May be sent to asylum; state not charged if not.

Who may hold inquests.

§ 13. Inquests, under and according to the provisions of this chapter, may be held by a judge or chancellor, by the presiding judge of a county, the judge of a city court, or police judge when the circuit or chancery court is not in session. The officer who presides at such inquest may make all orders for the security of the estate and care of the person found of unsound mind; may order him to be taken to the lunatic asylum, when it would be proper for a court to do so; appoint a temporary committee for that purpose, and take from him bond and surety, payable to the commonwealth, for a fathful discharge of the duties of his station. Upon which bond, for a violation of its stipulations, any person aggrieved, or the committee thereafter appointed by the court, may sue in the name of the commonwealth, at their own costs.

His powers.

Disposition of papers of inquest.

§ 14. The papers pertaining to the inquest shall be delivered, by the officer holding the same, to the clerk of the court having jurisdiction, who shall file the same; and, at the next term of the court, a committee shall be appointed by the court, as though the inquest had been holden in term time, and such other orders made and taken as may be necessary to execute the provisions of this chapter. Whenever it shall be suggested to the court, by affidavit, that a person found of unsound mind has been restored to his proper senses, or that the inquest was false or fraudulent, the court shall forthwith direct the facts to be inquired into by a jury, in open court, and make all necessary orders or decrees in the premises.

When suggested that lunatic restored.

Presiding officer of inquest to prepare history of case.

§ 15. When a person shall be found lunatic under the provisions of this chapter, the officer who presides at the inquest shall endeavor to ascertain and draw up a brief history of the patient's case, embracing the following

points: 1. Age, occupation, married or single, habits, educated or not. 2. If any, what relations have been insane. 3. Date of first attack, how exhibited, has it changed in character, ever any at a former period. 4. Supposed cause, any peculiar illusions, and what, subject to fits, how long, and from what cause, natural temper and kind of affection towards relations. 5. Any attempt at suicide, if any in what violence or propensity to mischief exhibited. 6. Periodic frenzy and lucid intervals, and duration of each. 7. What restraint has been imposed, what treatment used, and if bleeding, to what extent. 8. Any injury about the head ever received, any bodily disease from suppression of evacuations, eruptions, sores, or injuries. 9. Together with whatever else may be deemed material towards enabling the superintendent of the asylum to understand the case. Which statement or a copy, shall be sent with the record to the asylum, if the lunatic is sent.

When lunatics sent to asylum within first six months.

§ 16. To encourage the sending forward of lunatic patients, so that they may receive the benefit of proper medical treatment at that early stage of the disease which experience proves to be indispensable to a cure, neither the county nor any relative of a lunatic shall be chargeable with the cost of his detention for one year in the asylum, if he be delivered there within six months after the first attack of his lunacy; nor shall a relative, in such case, be chargeable with the cost of his transportation.

Date of first attack to be certified in order, and certified by circuit judge.

§ 17. The court shall ascertain and certify as part of the order for the confinement of a lunatic in the asylum, the date of his first attack of lunacy, when it is intended to obtain the benefit of this provision; but before it is allowed, the fact shall also be ascertained, upon proper proof, and certified by the circuit judge of the district.

When judge's certificate not obtained in time.

§ 18. If the certificate of the circuit judge cannot be obtained until after the commitment, the treasurer of the asylum shall, upon its production, refund the cost of transportation to any relative paying the same.

Compensation for transporting pauper lunatics, &c.

§ 19. The officer carrying a pauper lunatic or idiot to an asylum, shall be paid, by the treasurer thereof, eight cents per mile for himself and each guard, going and returning, besides tolls and ferriages, and the same for the lunatic in going. But there shall be no charge for more than two guards, and only for one, unless the officer ordering such person to the asylum authorizes two. If transportation, in whole or in part, could have been had by stage, steam-

boat, or railway for less cost, no more than what ought to have been the actual cost shall be allowed.

Application to superintendent first to be made.

§ 20. No officer shall be allowed for carrying an insane person who is a pauper to a lunatic asylum, unless he first apply by letter to the superintendent thereof and ascertain that the patient can be received, and that he cannot be sent for by the officers of the asylum. But where the safety of the lunatic or others seems to require it, the court may order the patient to be carried to the asylum immediately, without waiting for his being sent for.

Superintendent to cause patients to be brought.

§ 21. The superintendent, immediately upon notice that a person has been ordered into confinement at the asylum, shall cause him to be brought, and pay the expenses of transportation.

Penalty for introducing pauper idiots or lunatics.

§ 22. Whoever shall bring or cause to be brought into any county or city of this state, from another state or county, any pauper idiot or lunatic, with the intent to make him a charge upon such county or city, or this state, shall be fined one hundred dollars, besides being liable at the suit of the county or city for all damages incurred thereby, besides the cost of transportation, and imprisoned not more than three months.

Epileptic fits.

§ 23. No person not otherwise insane shall be sent to an asylum merely because he is subject to epileptic fits, or thereby rendered helpless.

ARTICLE III.

Lunatic Asylums.

Corporate powers of managers.

§ 1. From and after the first day of January, 1853, there shall be five managers for each of the lunatic asylums in this state. The government of the lunatic asylums at Lexington and Hopkinsville shall respectively remain under the present managers and their successors in office. Each shall be a body corporate for the benefit of the state, the first by the name and style of "the eastern lunatic asylum of Kentucky," and the other by that of "the western lunatic asylum of Kentucky." Each shall have perpetual succession, have power to make contracts for the necessary purposes and objects of the institution, to receive any gift or devise of real or personal estate for the benefit of the state, in furtherance of those objects, and may sue and be sued.

Term of office, vacancies, &c.

§ 2. Of the managers now in office it shall be arranged, by lot, which of them shall go out of office on the first of January next after this chapter takes effect, and which on

each successive first of January for four years thereafter; and those hereafter appointed shall hold the office for five years from the then preceding first of January, or in case of vacancy during a term, for the unexpired term. Vacancies shall be filled by the governor, by and with the consent of the senate, or during the recess of the latter, by the appointment of the governor till the end of its next session. Incumbents at any time shall hold the office till a successor is appointed and qualified.

Each manager shall, before entering on his duties, take an oath well and truly to discharge the duties of his trust.

Chairman—quorum.

§ 3. The managers shall appoint their chairman; a majority shall be a quorum, and a majority of the quorum sufficient to do any business pertaining to the board, other than that of making or repealing by-laws, and the appointment or removal of the superintendent, for any of which acts the vote of four managers shall be necessary.

By-laws.

1. They shall pass all necessary by-laws for the government of the institution, and all officers and servants attached thereto.

Superintendent, &c.

2. They shall appoint and remove at pleasure a superintendent, an assistant physician, a steward, a matron, and a treasurer.

Subordinate officers.

3. All subordinate officers and servants allowed by the board shall be appointed and removed by the superintendent.

Superintendent to be physician.

4. The superintendent shall be a skillful physician, reside in or near the asylum, devote his whole time to the management thereof, and the supervision of the patients, and have the control thereof, under and subject to the by-laws.

Treasurer's covenant.

5. The treasurer shall give a covenant to the commonwealth, with good surety, to be approved by the presiding judge of the county court, worth thirty thousand dollars, stipulating for the faithful discharge of his trust, which covenant shall be renewed once in every two years, and oftener if required by the board.

His duties.

He shall receive, collect, sue for, and pay out all moneys belonging to the institution, settle his accounts with the board at least once in every three months, and in the month of December of every year with the auditor.

He shall keep all money belonging to the institution to his credit as treasurer in one of the banks incorporated by the state, and not be allowed to check out the same but by

virtue of special orders made from time to time by the board and attested by its chairman, or in his absence by the chairman *pro tem*.

Purchases to be made for cash.

6. All purchases shall be made and all work procured to be done for cash. The steward shall keep a regular account of all daily disbursements for the asylum, take vouchers for all payments of three dollars and over, settle his accounts with the superintendent and treasurer once in every month, with the board once in every three months, and with the auditor in every month of December. He shall keep his accounts always open for the inspection of any manager, the superintendent, or the treasurer. He shall give a covenant to the commonwealth, with good surety, worth four thousand dollars, to be approved by the presiding judge of the county court, for the faithful discharge of his trust.

Steward to keep account, &c.

Assistant physician.

7. The assistant physician shall, in case of the sickness or absence of the superintendent, discharge the duties of superintendent.

Salaries.

8. The managers shall receive no compensation. The salaries of all other officers and servants shall be as follows: the superintendent shall have fifteen hundred dollars per annum; the assistant physician two hundred and fifty dollars per annum; the steward three hundred dollars per annum; the matron two hundred dollars per annum; and the compensation of the other officers and servants to be such as, from time to time, shall be fixed by law in the appropriation bill. No manager or other officer shall sell any thing to the asylum or make any contract therewith in which he is directly or indirectly interested.

Register of patients.

9. The superintendent shall keep a register of all patients, showing name, age, date of reception and discharge, by whose authority received or discharged, and such as are pay patients or boarders.

Steward accountable for furniture, &c.

10. The steward shall be accountable for the careful keeping and economical use of all furniture, stores, or other articles provided for the asylum. He shall annually, during the month of November, make and file with the managers a true and perfect inventory, verified by oath, of all personal property of every description belonging to the asylum, with the estimated value of different classes of articles.

Managers to keep record.

§ 4. The managers shall keep a regular record of their doings, which, together with the accounts of any officer, shall be open at all times for the inspection of the governor

or a legislative committee, or of any person appointed by either to examine the same.

Exempt from militia duty, &c.

§ 5. The managers and all officers and servants of the asylum shall be exempt from militia duty, from working on the public highway, and from serving on any jury. Nor shall the officers and servants be required to give personal attendance as witnesses in any civil suit out of the county in which the asylum is situated, but their depositions shall be taken in lieu thereof.

Residence and duties.

§ 6. The managers must reside within five miles of the asylum; they shall hold regular quarterly meetings, and as much oftener as may be required by notice from the chairman or any two managers. They shall maintain a vigilant inspection of the asylum, for which purpose one of them shall visit it every week, two once every month, a majority once every quarter, and the whole board once every six months, in the manner and at the times to be prescribed by the by-laws. In a book kept for that purpose, the visiting manager or managers shall note the date of each visit, the condition of the house, patients, &c., with such remarks as may be deemed necessary. Any manager who cannot or will not comply with his duty as visitor for three months, shall vacate his office, and the chairman shall report the same to the governor, who shall fill the vacancy.

Receiving and discharging patients.

§ 7. No private patient shall be received but by the permit of a committee, composed of two managers and the superintendent, after personal inspection and other proof as may be deemed necessary, of the insanity of the party; nor shall any patient be discharged as cured or delivered to the custody of friends, where friends have placed him in the asylum, but by like permit. Any cured patient who was committed to the asylum whilst in custody of the law upon a criminal charge, shall be delivered to the keeper of the penitentiary or to the jailer of the county whence he came as the case may require. A cured pauper, before discharged, shall have a good suit of clothes, and be furnished with money enough to pay his traveling expenses back to his home, not exceeding twenty dollars.

Charges.

§ 8. The managers shall not charge for any paying patient more than five dollars a week, nor, except by special agreement with the committee or friend, more than sixty dollars a year. Where the estate of the lunatic warrants it, his committee may contract for his receiving special

comfort and being exempt from work, at any rate not exceeding five dollars a week.

Board to be paid in advance.

§ 9. No patient shall be received or retained except by order of court, unless six months board be always paid in advance, and another six months board secured by the obligation of some sufficient resident of this state; but if the patient be discharged before the end of the six months, a proper portion of the amount paid shall be refunded.

Suits brought in circuit court.

§ 10. Suit in behalf of any asylum may be brought in the proper circuit court.

Annual report to the governor.

§ 11. The superintendent and managers shall, on or before the tenth day of October in each year, report to the governor the condition of the lunatic asylums under their charge, exhibiting the amount of expenditures, and for what expended; the number of patients, foreign and domestic, confined in each; the number received and discharged each year; and such other facts and suggestions as they may deem important; which reports the governor shall communicate to the legislature at its regular session.

CHAPTER XLIX.

IMPEACHMENT.

Mode and manner of instituting impeachments.
Tried by the Senate, the members of which shall be sworn.

Petition to H. R. M. & B. 804.

§ 1. A person desirous of procuring the impeachment of any officer shall, by petition in writing to the house of representatives, signed by himself, and verified by his own affidavit, and the affidavits of such others as he may deem necessary, set forth the facts upon which he prays an impeachment.

Referred.

1. The house shall refer the petition to a committee, with power to send for persons and papers, and to report thereon.

Committee to prosecute.

2. If an impeachment be ordered, a committee shall be appointed to prosecute the same, whose chairman shall, within five days, lay the same before the senate.

Accused summoned.

3. The senate shall appoint a day for hearing the impeachment. The accused shall be summoned, by precept issued by the clerk of the senate, to appear on that day. The precept shall be served in person, or a copy left at his

residence with some white member of his family over the age of sixteen years, together with a copy of the impeachment.

Summoning witnesses, &c.

4. The clerk of the senate shall, at the instance of the chairman of the committee, or of the accused, issue process for the summoning of witnesses, and the production of books or papers, which shall be executed in the same manner, and be obeyed under a like penalty, as is prescribed for disobedience to similar process issued by a court.

Witness' pay, &c.

5. A witness summoned shall also receive like compensation, and have the same privilege in going, remaining, and returning.

Costs.

6. If the accused is acquitted, he shall be entitled to his costs, to be taxed by the clerk, and paid by the party petitioning; and if he be convicted, he shall, in like manner, pay such party the costs incurred in behalf of the prosecution. The amount of costs so taxed by the clerk in favor of either party, may be recovered by motion against the other, after five days notice, in a circuit or county court.

Oath of senators.

§ 2. Before the senate proceeds to try an impeachment, the speaker and every member present shall take the following oath or affirmation: "I do solemnly swear (or affirm,) that I will faithfully and impartially try the impeachment against A. B., and give my decision according to the law and the evidence."

Removal by address

§ 3. In like manner, under like responsibility, a person may petition either or both houses to have an officer removed by address, which shall, in like manner, be referred to a committee. In either mode of proceeding, the petitioner shall be responsible to witnesses, and to the accused for the costs of an investigation before a committee, to be taxed by the clerk of the house appointing the committee, recovered, as before directed, if the committee report against the petition, and the report be not overruled by the house.

Costs,

No petition necessary.

§ 4. Nothing herein shall be construed to render it necessary that there shall be a person petitioning for impeachment or removal by address to the institution of either proceeding.

CHAPTER L.

INCLOSURES AND CERTAIN TRESPASSES.

ART. 1. What a lawful fence. Damages to owner of stock. Damages to occupant, &c.
ART. 2. Partition Fences.

ARTICLE I.

What a lawful fence. Damages to owner of stock. Damages to occupant, &c.

What is a lawful fence.

§ 1. Every strong and sound fence of rails, brick, stone, or plank, five feet high, or a ditch three feet deep, and three feet broad, with a hedge two feet high, or a rail, plank, stone, or brick fence, two and a half feet high on the margin thereof, the hedge or fence being so close that cattle cannot creep through, shall be deemed and held to be a lawful fence.

M. & B. 611-12.

Damages, &c., for breaches.

§ 2. If any cattle shall enter into any grounds inclosed by a lawful fence, the owner or manager of the cattle shall, for the first breach, be liable to the owner or occupant of such ground for such damages as he may have sustained thereby; and for every subsequent breach by the cattle of the same owner, double damages. And after having given the owner or manager of such cattle at least five days notice, in writing, of the fact of two previous breaches into the same inclosure, by the cattle of the same owner, the owner or occupant of such inclosure shall be entitled to said cattle, if again found trespassing on said inclosure, or he may, at his election, kill the cattle and sue for and recover treble damages of the owner or manager, for the third or any subsequent breach.

Killing or maiming by one not having a lawful fence.

§ 3. If any person not having a lawful fence shall in any mode hurt, lame, kill, or destroy any cattle which may have broken over or through said fence into his inclosure, he shall pay to or satisfy the owner or manager of such stock double damages.

Non-residents turning cattle loose, &c.

§ 4. It shall not be lawful for the owner, or any person having the care of any cattle, who is a non-resident of this state, to bring the same into this state and turn them loose to range or pasture in the woods. The cattle of such non-resident, so brought into this state, if found running at large upon the lands of other persons, shall be forfeited to the uses and purposes hereinafter mentioned.

A. 1850, 38.

Cattle to be attached.

§ 5. It shall be the duty of a justice of the peace of the county in which any such cattle may be so found, upon complaint made, to issue his warrant of attachment, directed to any constable of his county, who shall forthwith attach the cattle and safely keep the same, and make return to the officer who issues the warrant, or to some other justice of the peace for the same county.

To be sold.

§ 6. Upon the return of the attachment, the justice shall cause a jury of housekeepers to be impanneled to try the facts, and if the jury shall return a verdict that said cattle were brought within the county by the owner or manager, who is a non-resident, and that they were found running at large in the range or woods, upon the lands of other persons, the justice shall order such cattle to be sold for cash, by the constable, at public sale; ten days notice in writing of the terms, time, and place of sale shall be given.

Disposition of money received.

§ 7. The constable shall retain for his full services, out of the proceeds of the sale, one dollar and fifty cents, and pay to the justice for his full services, one dollar, and pay the remainder, if any, after deducting all reasonable expenses allowed and certified by the justice, to the commissioners of common schools of his county, to be applied to the purposes of education in said county. If he fail to do so, he and his sureties shall be liable to the persons entitled, as in cases of failing to pay money collected upon execution.

ARTICLE II.

Partition Fences.

When partition fence to be removed.

§ 1. When a partition fence has existed or may hereafter exist by agreement or acquiescence between two or more persons, neither party shall remove the same without the consent of the others, except between the first of December and the first of March in any year.

Previous notice.

§ 2. No such change as named in the last section shall be made unless two months previous notice in writing shall be given to the opposite party by the person desiring to make the same.

CHAPTER LI.

INSOLVENT DEBTORS.

Manner of their discharge.
Disposition of effects.
Executions may issue after discharge.

Insolvent debtors to be brought before two justices, county judge, &c.

L. 237.
M. & B. 630.

§ 1. Any person desiring to be discharged that now is or hereafter may be taken or charged in execution in any civil case, may, by petition, apply to two justices of the peace, or the presiding judge of his county, or the police judge of the county town, who shall, by warrant, under their or his hands, require the keeper of the jail to bring the body of the petitioner before them or him, at the court house, on a specified day, and a list of the several executions with which he may stand charged.

Notice to other party.

1. Reasonable notice of the time and place of such application must be given to the opposite party, or his agent or attorney, if in the county.

2. The keeper of the jail shall obey the warrant.

Schedule and oath

3. The petitioner, when brought before the judge or justices, shall subscribe and deliver a schedule of his whole estate liable for his debts, and take an oath or affirmation in substance as follows:

I, A. B., do swear (or affirm) that the schedule now delivered contains, to the best of my knowledge and belief, a full, true, and perfect account and discovery of all the estate and effects unto me in any wise belonging, and of such debts as are owing to me, or in trust for me, which are liable for my debts; and that I have not, directly or indirectly, sold, assigned, or otherwise disposed of, in trust or otherwise, for my use or the benefit of another, or concealed any part of my effects whereby to secure the same, to receive or expect any profit or advantage from the same, to defraud any creditor to whom I am in any wise indebted.

Discharge.

4. Upon the delivery of such schedule, properly verified, the judge or justices (unless it be made to appear that the petitioner has acted fraudulently) may, by warrant, command the keeper of the jail to discharge the petitioner forthwith; and the warrant shall be a justification to the keeper of the jail for such discharge.

Schedule, &c., to be filed.

5. The schedule, so subscribed and verified, with the petition and warrant, shall be returned to, and kept safely on

file by, the clerk of the county court of the county in which the prisoner was confined.

Property vested in sheriff in trust.

§ 2. The right of the petitioner to the effects described in the schedule, (saving his wife's dower in the lands, if any,) shall be vested in the sheriff of the county in which the prisoner was confined, in trust for the use of the creditors under whose executions he stood charged, and the sheriff shall perform the trust though his term of office expires.

Sheriff to sell, &c.

1. The sheriff shall sell such effects, and pay over the proceeds to the execution creditors, retaining his commission.

To prosecute actions.

2. He shall, for the use of the execution creditors, at their instance and costs, prosecute any necessary action to recover the effects of a person discharged under this chapter.

Fieri facias after discharge.

L. 276.

§ 3. A *fieri facias* may be issued after the discharge of a prisoner, to have execution of the unsatisfied portion of the creditor's judgment. No revival of the judgment shall be necessary.

Effects exempt from execution.
M. & B. 1358.

§ 4. An insolvent debtor shall not be held to surrender such of his effects as are exempted by law from execution.

Applies to one imprisoned by order of court of chancery.

§ 5. The provisions of this chapter shall apply to a person imprisoned by order of a court of chancery to compel the payment of money under a decree or judgment of such court.

CHAPTER LII.

INSPECTIONS.

ART. 1. Tobacco.
ART. 2. Inspectors, how appointed. Flour, Salt, Liquor, Beef, and Lard. Inspectors' Fees.
ART. 3. Penalties, &c.

ARTICLE 1.

Tobacco.

County court to appoint inspectors

M. & B. 817.
V. R. 400.
A. 1844 32.

§ 1. The several county courts shall have power to appoint two tobacco inspectors for each tobacco inspection warehouse now established, or which may hereafter be established in their respective counties, as vacancies may occur; also, after notice, to remove an inspector for miscon-

duct, negligence in the discharge of his duty, or incompetency, and also to fill all vacancies in the office.

Not to vote for kindred.

No member of the court shall be allowed to vote, in the appointment of an inspector, for his father, father-in-law, son, son-in-law, uncle, nephew, or cousin.

Inspection warehouses.

§ 2. The court may also establish new inspection warehouses, but none such shall be within a distance of less than three miles of any established warehouse, on the same side of a river, except in cities and towns. The court may, also, after notice to the owner, discontinue any inspection warehouse for insufficiency of the building, or for the want of the proper scales and weights.

How built.

§ 3. Every such warehouse must be built of brick or stone, or of scantling inclosed with strong planks well nailed on, or of logs so close as to keep safely and prevent injury from the weather to articles stored therein, with a good tight roof, and proper fastenings to the doors and windows.

Scales.

The warehouse must always have, as an appurtenance, scales, or steel-yard, or patent balance of sufficient size and strength to weigh at least a ton, with the suitable and necessary cast iron weights.

Term of office.

§ 4. An inspector shall hold his office for four years, and until a successor is appointed and qualified.

Incumbent inspectors shall hold their offices until the first of October next ensuing the expiration of their present terms, and appointments hereafter made shall be for four years from the next succeeding or last preceding first of October, whichever may be nearest. No appointment shall be made more than six weeks next preceding the regular expiration of the term, except to fill a casual vacancy.

Adjunct inspector

§ 5. An adjunct inspector shall be appointed for each warehouse, for like term, in like manner, and be removable in the same way as the principal inspectors. He shall act in cases of difference of opinion between the inspectors, or where either of them is unavoidably absent, or interested in the tobacco offered for inspection.

Covenant with surety.

§ 6. An inspector, before entering on the duties of his office, shall give covenant, with good surety, to be approved by the court, payable to the commonwealth, worth five thousand dollars, stipulating for the faithful performance of his duty as inspector; he shall also, prior thereto, take an oath or affirmation faithfully, honestly, and impartially to discharge the duties of his office.

Suits thereon.

1. The covenant may be sued on at the instance and costs of any relator injured by the act or omission of the inspector.

Attendance of inspectors.

2. The inspectors shall daily attend the warehouses under their charge, from the first of November to the first of June, Sundays and general holidays excepted; and during the balance of the year, one of them shall attend when necessary for the delivery of tobacco.

Entry and receipt.

3. They shall enter in a book to be kept for that purpose the marks and owner's name of every hogshead of tobacco brought to the warehouse, with the time of delivery, and if inspected, the quality, gross and net weight, and give the owner a receipt therefor.

Inspection in turn

4. The inspection of all tobacco shall progress in due turn as brought in.

How made.

5. The inspection shall be made by both inspectors, after the hogshead is uncased and broke. If they agree that it is good, sound, merchantable, and clear of trash, the tobacco and its casing shall be separately weighed with standard weights and scales, or steel yard, and the name of the warehouse, with gross and net weight durably marked on the head and bulge of the hogshead. The quality and weight shall be expressed in the receipt given for any inspected tobacco. If rejected, the word "refused" shall be branded on the head and bulge of the cask.

Hands.

6. The inspectors shall constantly keep, for the business of the warehouse, such necessary hands as the court may prescribe.

Inspector, &c., not to be interested.

7. No inspector, breaker, sampler, cooper, or other person employed by the inspectors or owner of the warehouse, shall, directly or indirectly, be concerned in the business of stemming, or in that of buying or selling stemmed tobacco; nor shall he purchase tobacco inspected at his warehouse. For every violation of these prohibitions, he shall be fined one hundred dollars, removed from office, and disqualified from again holding the office of inspector.

Failing to deliver, &c.

8. If the inspectors refuse or fail to deliver to the owner or his assignee, on demand, any tobacco pursuant to their receipt, he may recover from them double the value thereof.

New inspectors, &c.

9. New inspectors shall give their predecessors receipts for all tobacco remaining on hand at the time of their appointment, and thereafter shall be responsible for the same, and the predecessors discharged from such responsibility.

Upon the death, resignation, removal, or expiration of the term of only one of two inspectors, the other inspector and the successor shall give such receipt.

Lost receipts.

§ 7. Upon affidavit made by the owner of a tobacco receipt, or his assignee, that the same has been casually lost or destroyed, the inspector shall give him a duplicate receipt, or deliver the tobacco upon his demand.

Hogsheads, size, &c.

§ 8. Every tobacco hogshead shall be made of well-seasoned staves, not more than fifty-two inches in length, with thirty-four inches in the prizing head, within the crows, allowing for prizing not more than two inches above the guage in the prizing head.

Inspection where made.

§ 9. No inspection of tobacco shall be made elsewhere than at a lawfully established warehouse; but none shall be inspected unless so required by the owners.

Prohibitions repealed.

All prohibitions or penalties against the vending or exportation of tobacco without inspection, are repealed.

Liability for injury, &c.

§ 10. There shall be no liability on the part of the commonwealth for any tobacco stored in an inspection warehouse, nor shall the inspectors be responsible for its destruction or injury by fire, unless the fire resulted from the misconduct or negligence of themselves or their servants.

Compensation to owner of warehouse.

§ 11. The proprietor of an inspection warehouse shall, so long as he permits its use as such, receive fifty cents for every hogshead of tobacco received in and delivered therefrom, and five cents per month for each hogshead remaining more than twelve months, to be settled for and paid by the inspectors, half yearly, in the months of January and July.

Fees, &c.

The owner of the tobacco shall, in addition to the warehouse fee, pay the inspectors, at the time of delivery, thirty-seven and a half cents for each hogshead; and if it has been inspected, an additional thirty-seven and a half cents for each hogshead; and when it has been coopered, fifty cents for nails and cooperage.

Louisville tax on tobacco repealed.

§ 12. So much of the charter of the city of Louisville as authorizes the levying of a tax of two per cent. on the proceeds of sale of any tobacco stored at an inspection warehouse in said city, sold at auction or by public outcry by the inspectors thereof, is repealed.

ARTICLE II.

Inspectors, how appointed. Flour, Salt, Liquor, Beef, and Lard. Inspectors' Fees.

Inspectors of flour, beef, &c.

§ 1. The several county courts may, from time to time, lay off the whole or any part of their respective counties into convenient inspection districts, alter or abolish the same, and appoint an inspector in each for the inspection of flour, of salted beef or pork, of lard, of spirituous liquor, and of imported salt. There may be an inspector of each of said articles; or where the amount of business does not otherwise require, one inspector may be authorized to inspect the whole or any part of them for the entire county, or for one or more districts.

M. & B. 817.
V. H. 414.
L. 279.
A. 1843, 75.

When there is a city within the limits of a county, the power herein given in relation to the inspection of the articles named in this section, and of appointing and removing inspectors, and laying off inspection districts within the city, shall be vested in the city council of such city.

No member of court to vote for kindred.

§ 2. In the appointment of any such inspector, no member of the court, or of the council, shall be allowed to vote for his father, father-in-law, son, son-in-law, uncle, nephew, or cousin.

Term of office.

§ 3. Such inspector shall hold his appointment for two years, and until his successor is appointed. He shall, before commencing his duties, swear or affirm to discharge the same honestly and impartially. He may be removed, at any time, by the court or council, for neglect of duty, incapacity, or misconduct; and the order of removal shall not be elsewhere revised or reversed.

Not to inspect in another district

§ 4. No such inspector shall inspect within the district of another inspector, unless such other be sick, absent, or otherwise unable to attend.

Deputy.

§ 5. Every such inspector may, with the consent of the court or council, appoint a deputy, who, after taking the oath required of the principal, may exercise any power of the principal, and for whose acts the principal shall be responsible.

Purchaser may demand inspection.

§ 6. No inspection of any such articles shall be made but at the request of the owner; but the purchaser, before acceptance of delivery, may refuse to complete his purchase until the article has been inspected, and passed as merchantable; such inspection to be at the cost of the seller and purchaser if passed, but of the seller alone if rejected.

All penalties for the sale or exportation of such articles without inspection are repealed. Penalties repealed

§ 7. Wheat flour, to be merchantable, shall be sweet, well bolted, of due fineness, without mixture of coarser flour, or of any other grain or thing. Flour—merchantable.

1. The barrel shall be made of good seasoned timber, tightened with ten good hoops, and the chine hoops nailed with four and the bilge hoops with three nails; the staves twenty-seven inches long, and the head seventeen and a half inches in diameter. In half barrels, the staves to be twenty-three inches long, and the head to be twelve and a half inches in diameter. Barrel.

2. The barrel of flour shall contain one hundred and ninety-six pounds, and the half barrel ninety-eight pounds of flour. Barrel 196 pounds.

3. If the flour be packed in a suitable barrel, is of proper weight, and be deemed merchantable, the inspector shall brand the head with the name of the place of inspection, and the quality as "superfine," "fine," or "middling." If found unmerchantable, it shall be branded on the bilge with the word "condemned." Brand.

4. The inspection shall be made through an auger hole at one side of the head, not exceeding half an inch in diameter, and by passing the auger twice through the flour. The inspector shall plug the hole thus made. Inspection, how made.

The inspector may unpack the flour to ascertain its weight if he deem it deficient, and shall do so at the request of a purchaser. The cost of unpacking and re-packing to be paid by the owner, if it prove deficient in weight, otherwise by the inspector or the purchaser.

5. Every barrel or half barrel, before sent from the mill, shall be branded by the name of the mill or its owner. Mill or owner's name.

6. For every barrel or half barrel of flour sent from the mill without being so branded, the owner or manufacturer shall be fined thirty-five cents, and a like sum if not properly hooped and nailed. For any deficiency in the weight, he shall be fined at the rate of ten cents per pound up to three pounds, and for every pound more than three, twenty cents. For every barrel or half barrel falsely packed, by the mixture of the flour of any other grain or thing than wheat, or by the packing of middlings with fine or superfine flour, he shall be fined two dollars; and any other person knowing it to be so falsely packed, or deficient in weight, selling or offering to sell it, shall incur the like penalty. Penalties for failure, &c.

Salt--inspection brand, &c.

§ 8. Salt imported into this state for sale may be inspected by running an inch auger diagonally through the cask or package containing it. When found merchantable, and not falsely packed, the cask or package shall be branded or marked by the inspector with the word "inspected;" otherwise, with the word "refused."

Liquor—barrel.

§ 9. The staves and heading of a merchantable liquor barrel shall be made of good, well seasoned timber, clear of sap: the staves to be thirty two inches long, from three quarters to an inch thick at each end, from a half to three quarters of an inch thick at the bilge, and not more than an inch thick anywhere; the heading to be eighteen inches in diameter in the clear, from an inch to an inch and a quarter thick, with not less than two strong dowels in each seam, and the barrel to be bound with not less than fourteen strong hoops.

Inspector's marks

1. The inspector shall mark the head of the cask with the number of gallons found therein, and the proof of the liquor, first, second, third, or fourth.

2. And if it be found under first proof, it shall be marked "refused."

Beef, pork, and lard—barrel.

§ 10. A merchantable barrel for the packing of beef or pork shall be made of well seasoned white oak, clear of sap, twenty-nine inches long, with a cut head of seventeen and a half inches in diameter, tightly bound with strong hoops, extending one-third the whole length from each end, and when packed and headed, the outer hoop at each end secured with four suitable nails.

Barrel 200 pounds

§ 11. A barrel of beef or pork shall contain two hundred pounds of sound, clear, well slaughtered, and well fattened meat, and be denominated and assorted as follows:

Mess beef.

1. Mess beef shall have twenty pieces, each weighing ten pounds, or as near as may be, well assorted from the different parts of the carcass, excluding legs, leg rounds, necks, and shoulder clots.

Prime beef.

2. Prime beef shall be cut and assorted in same manner, but may include two pieces from leg rounds, leaving out the point of the neck, and all clotted pieces.

Salting, &c.

3. Fifty pounds of clean, fair, dry salt, and four ounces of salt petre shall be put into each barrel of beef, and when the barrel is packed and headed, it shall be filled up with strong salt pickle.

Prime pork.

4. Prime pork shall have twenty-five pieces, each weighing eight pounds, as near as may be, which may include one head and a half, and six shanks, excluding the legs,

ears, and snouts, so as to be composed of the assorted meat of a hog and a half; or in lieu thereof, three shoulders, one head and a half, and the remainder in side pieces, excluding the legs, snout, and ears.

Mess pork.

5. Mess pork shall have twenty-five pieces, of eight pounds each, as near as may be, taken from the middlings or sides of hogs weighing two hundred pounds and over.

Navy pork.

6. Navy pork shall have twenty-five pieces, of eight pounds each, as near as may be, as assorted, and out of hogs weighing one hundred and fifty pounds and over, excluding all shanks and faces.

Salting, &c.

7. Pork shall be packed on the edge, with fifty pounds of clean, fair, dry salt, and two ounces of salt petre in each barrel. When packed and headed, the barrel shall be filled with strong salt pickle.

Half barrel.

8. A half barrel shall be made in like manner, and of like material, twenty-four inches in length, with a head fourteen inches in diameter, and each outer hoop secured with three nails.

Inspector's brand.

§ 12. Every barrel or half barrel of beef or pork which passes inspection shall be branded by the inspector with the name of the county or city where inspected, the kind, quality, and quantity of the meat; if it do not pass, he shall brand it on the bilge "refused."

Lard, inspection of.

§ 13. Lard shall be packed in tight, well seasoned kegs or firkins, with its weight marked thereon. The inspector shall bore diagonally through the lard, ascertain that it be clear of mould, rancid, or musty taste, and if so, brand it "inspected;" if not, brand it "refused."

Fees.

§ 14. The fees for inspection shall be as follows:

1. For each barrel of flour, three cents; half barrel, two cents.

2. For each barrel of salt, three cents; for a sack of salt, two cents.

3. For inspecting and packing each barrel of beef or pork, twenty cents; for each half barrel, twelve cents, and for each keg or firkin of lard, two cents.

4. For a single barrel or cask of liquor, twelve and a half cents; for more than one and less than five, seven cents, each; and for five or more, five cents, each.

ARTICLE III.

Penalties, &c.

Penalty on inspector dealing in article.

§ 1. If any inspector shall deal in or purchase, otherwise than for his own use, any article of which he is appointed

inspector, or be directly or indirectly interested in the purchase of any such article when condemned, he shall be fined five dollars for every barrel, cask, keg, firkin, or package, so bought or dealt in by him.

Liable for incapacity, neglect, fraud, &c.

§ 2. An inspector shall be liable to the party aggrieved for the incapacity, neglect, fraud, or misconduct of himself or deputy as inspector, and furthermore for every willful neglect or breach of duty, and every act of partiality or fraud as inspector, he or his deputy shall be fined fifty dollars, removed from office, and disqualified from again holding such office.

Frauds in relation to brands, &c

§ 3. If any person shall willfully use or imitate the brand or mark of another on the barrel or cask of any such article, or shall pack or put such article in a barrel, cask, box, keg, or firkin previously branded with the name or mark of another, or shall alter, erase, or obliterate the brand or mark made by an inspector on an inspected hogshead, barrel, cask, keg, or firkin, or shall shift or change the contents of the same after inspection, or shall mark or brand with the mark or brand of an inspector or with any imitation thereof, any article subject to inspection which has not been inspected, and shall sell or offer to sell the same, he shall, for every such offense of false marking, using, packing, changing, or shifting, be fined twenty dollars; and for every such fraudulent erasure, alteration, or counterfeiting of the brand or mark of an inspector, shall incur the penalties prescribed against forgery.

Selling false weights, brands, &c.

§ 4. Whoever shall sell or offer to sell any barrel or other package of such article, knowing the article not to be of the weight or quantity, after allowing for ordinary waste or loss of weight, that is required by law, or that is marked or branded thereon, shall be fined ten dollars for every barrel or package so sold or offered for sale.

Inspector demanding illegal fees.

§ 5. Every tobacco or other inspector who shall exact, demand, or receive any more than the legal fee or other compensation for inspecting, shall, for every hogshead, barrel, or package upon which he exacts, demands, or receives such higher fee or other compensation, be fined five dollars, removed from office, and disqualified from being again an inspector.

Frauds, in cask, weight, quantity, &c.

§ 6. Whoever shall knowingly sell or attempt to sell, any hogshead, barrel, or other package of tobacco, liquor, salt, beek, pork, or lard which is falsely packed or filled, or the staves or heading of which are falsely made, with a view to cheat a purchaser as to weight or quantity, or

shall so pack, fill, or prepare a hogshead, barrel, or other package, with such intent, shall be fined ten dollars for every such hogshead, barrel, or other package.

Inspector to prosecute.

§ 7. It shall be the duty of every inspector to have an offender prosecuted for any of the penalties incurred under this chapter; and his willful neglect so to prosecute shall be deemed a breach of official duty.

Adulterating liquors.

A. 1851, 51.

§ 8. If a person knowingly sells or buys, or prepares for sale, any wine or liquor containing any adulteration by mixing therewith coculus indicus, tobacco, soap, vitriol, logwood, or any other injurious drug or chemical preparation, he shall be fined not more than five hundred dollars for each offense, or not less than twenty for every gallon of wine or liquor so adulterated.

When adulteration found or suspected.

1. When an inspector finds any wine or liquor so adulterated, he shall mark the cask, "condemned for impurity;" when he suspects it to be so adulterated, he shall cause it to be analyzed by a skillful chemist, at the cost of the owner, and ascertain whether it contains anything impure, or other than the extract of the grain or fruit from which it was or ought to have been made.

Rectifying evidence of adulteration.

2. In all prosecutions against wholesale dealers under this section, the fact of rectifying the wine or liquor shall be deemed *prima facie* evidence of knowledge of any adulteration, on the part of the dealer.

CHAPTER LIII.

INTEREST AND USURY.

Legal Interest, and how calculated.
What Judgments bear interest.
Discount by Banks, how computed.

Six per cent.

M. & B. 852.
V. R. 307, 575.

§ 1. Legal interest shall be at the rate of six dollars upon one hundred dollars for a year, and at the same rate for a greater or less sum, and for a longer or shorter time.

All contracts for a greater rate void

§ 2. All contracts and assurances made, directly or indirectly, for the loan or forbearance of money, or other thing, at a greater rate than legal interest, shall be void for the excess over the legal interest. The amount loaned, with legal interest, may be recovered on any such contract or assurance; but if the lender refuse, before suit brought, a tender of the principal, with legal interest, he shall pay

the costs of any suit brought on such contract or assurance.

Chancery courts may grant relief.

§ 3. A chancery court may grant relief for any such excess of interest, and, to that end, compel the necessary discovery from the lender or forbearer.

Usury paid to assignee. V. R. 577.

§ 4. Such excess of interest may be recovered from the lender or forbearer, although the payment thereof was made to his assignee.

Payments, how applied. N. & B. 853.

§ 5. Partial payment on a debt bearing interest shall be first applied to the extinguishment of the interest then due.

Certain judgments to bear interest.

L. 280.

§ 6. A judgment, except for malicious prosecution, libel, slander, or injury to the person, and a decree, shall bear legal interest from its date. A judgment or decree may be for the principal and accrued interest; but, if rendered for accruing interest, it shall bear interest only according to its terms.

Interest on foreign judgments.

§ 7. Any indebtedness incurred, or evidenced by judgment or decree rendered out of the state, shall be presumed, unless the contrary be shown, to bear like interest as if it had been incurred, or the judgment or decree rendered in this state.

Bank discount.

L. 205.

§ 8. In the discount of any evidence of debt, corporations authorized to loan money may take the discount in advance, at the rate of one dollar in the hundred for every sixty days, and at that rate for a longer or shorter period, including the three days of grace. If any greater discount is taken, the whole contract for interest shall be void, and anything paid thereon as interest may be recovered back by the person paying the same, or any creditor of his may recover the same by bill in equity.

Exchange.

§ 9. Nothing in the last section shall prevent such corporation, in discounting a bill of exchange, from taking the fair rate of exchange between the place where it is bought and that where it is payable, in addition to the discount for interest as therein named. But such privilege of buying exchange, at less than par value, shall not be used to disguise a loan of money at a greater rate of discount than in the last section allowed.

CHAPTER LIV.

INTERNAL IMPROVEMENT.

The Board of Internal Improvement, its duties and powers.
Duties of Presidents, &c., of Turnpike Roads, in which the State is a stockholder.
Rate of Tolls.
Condemnation of land, timber, &c.
Collector of Tolls, his powers and duties.

Who to compose board.

§ 1. The board of internal improvement shall be composed of the president, auditor of public accounts, and one other citizen of this state, to be appointed by the governor, by and with the advice of the senate, for the term of four years, whose residence shall be on or near the line of navigation of Green and Barren rivers, and who shall be paid out of the public treasury three dollars per day for each day he shall be necessarily engaged in his official duties as member of said board. The auditor shall act as secretary of the board.

Board to control improvements.

§ 2. The board shall keep its office at the seat of government. All works of internal improvement owned by the state, or which may hereafter be made or directed to be made by the state, shall be under the control and direction of the board; and the board shall vote for the state, to the extent she may be entitled to vote, on account of any stock owned or to be owned by her in any turnpike, railway, or canal, at any election of directors or meeting of stockholders.

Regulate tolls.

§ 3. The board shall, from time to time, regulate the rate of tolls for passing the different locks, appoint collectors of tolls, take from them covenant, payable to the commonwealth, with adequate surety, stipulating for the faithful performance of the trust, require settlements and the payment of all tolls into the treasury, at least once in every month, and allow the collectors reasonable compensation for their services.

Make repairs.

It shall, out of the proceeds of tolls, keep the works in repair, and defray necessary expenses, and pay into the treasury the residue semi-annually, on the first days of June and December.

Appoint superintendent.

It may also, from time to time, appoint a superintendent of the Green and Barren river works, prescribe his duties, and fix his compensation, not exceeding six hundred dollars a year.

Keep a record, and report.

§ 4. It shall keep a record of all its proceedings, which, together with a full statement of all its actings and doings, and the condition of the works, it shall report to every legislature during the first ten days of its session, and in years when there is no session, make such report to the governor during the month of December.

Sell or lease surplus water.

§ 5. It shall have power to lease or sell, for the benefit of the state, any surplus water which it is ascertained can be spared from either of the dams without injury to navigation, for a term not exceeding thirty years, and with the privilege of renewal at the discretion of the board.

Buy lands, quarries, &c.

A. 1849, 13.

§ 6. It may purchase or cause to be condemned on behalf of the state any lands, quarries of rock or gravel, or other material necessary for the proper use and enjoyment of the slackwater navigation and water power now erected, or which may be authorized by law, and also for the completion, extension, improvement, or repair of any such works.

Authorize turnpike company to fix tolls.

L. 326.

§ 7. It may authorize any turnpike company to fix such rate of tolls as the board may deem necessary to keep the road in repair and pay the stockholders a dividend of four per cent. annually, on the amount of stock, if the same can be done without making the tolls oppressive and unreasonable.

Reports of turnpike companies.

§ 8. The officers controlling every turnpike company in which the state has an interest as stockholder, shall, once in every three months, report the amount of tolls received during the previous quarter, and a specific statement of the amounts disbursed for repairs and other expenses. Such report shall be verified by the affidavit of the president or chairman of the board of directors or managers rendering the same. The books of every such company shall, at all times, be subject to the inspection of any member of the board, or of any agent appointed by it.

Rates of toll.

§ 9. Until altered by the board, the rates of toll for the use of slackwater navigation shall remain the same as now established by law, or by the orders of the board.

When rent not paid, water to be shut off.

A. 1845, 88.

§ 10. If rent for the use of water from any of the state works be past due for the space of sixty days, it shall be the duty of the officer having the collection of the rent to close the gates admitting the flow of water for the use of such defaulting lessee, and keep them closed until the rent is paid.

Penalty for opening gate.

§ 11. Every person opening a gate after it has been so closed, without the permission of such officer, or who shall

improperly resist his closing a gate, shall, for every such offense, be fined not less than fifty nor more than two hundred dollars.

Boats starting above slack water.

A. 1847, 20.

§ 12. A flatboat or other craft, other than a steamboat, descending a stream, from a point above the action of any dam thereon, shall not be chargeable with toll, unless it pass through a lock.

Turning rafts, &c., loose.

A. 1850, 39.

§ 13. Whoever shall turn loose, or cause to float a raft or boat on a stream locked and damned, during the night, without keeping up, from half an hour after sunset to half an hour before sunrise, a light thereon that can be seen at the distance of a fourth of a mile, shall, for every such offense, be fined not more than one hundred dollars, or imprisoned not more than thirty days, or both so fined and imprisoned, and shall be liable to any person injured for any damage sustained thereby.

Statement of freight and passengers.

A. 1851, 39.

§ 14. The manifest or written statement of the officer of any steam or other boat passing a lock and dam, of the whole amount of freight and the number of passengers on board, shall be signed by him, and verified by his oath, to be administered by the collector of the toll. Any willful false statement so made shall be punished as other perjury.

Collector suspecting frauds.

§ 15. A collector of toll having reason to believe that any fraud has been committed in any such statement, shall visit any point necessary for the detection of the fraud, and exert himself diligently to obtain evidence thereof. He shall appoint a discreet person to act as his deputy during his absence, for whom he shall be responsible, and who, during his absence, shall have all the power of the collector. The collector, whilst necessarily so absent, shall be allowed one dollar and fifty cents a day to defray his traveling expenses.

Boats passing locks without paying toll.

§ 16. Any steamboat that shall pass over a dam without stopping and paying the collector the full toll, and any steam or other boat that shall pass through a lock without paying him full toll, and any boat whose officer shall render a false and fraudulent manifest for the purpose of evading the payment of full toll, shall be liable for the sum of four hundred dollars for each offense, which may be enforced by attachment from the circuit court of the county where the toll is payable, or where the boat may be found. The master and owners, and the officer making such false manifest, shall also be jointly and severally personally liable for such

sum, to be recovered in such court. The process in either case may be served in any other county.

Duty of commonwealth's attorney.

§ 17. It shall be the duty of the commonwealth's attorney for the district to sue, at the request of the collector, for the recovery of the sum named in the last section, and he shall receive for his services one fourth of the sum collected. The collector shall also be allowed one dollar and fifty cents a day for every day of his necessary attendance on the preparation and trial of such suit.

Condemning lands, timber, &c.

§ 18. When the board shall deem it necessary to procure any land, timber, rock, or other material to be condemned for the use of the commonwealth, in the construction, repair, or extension of any public work now or hereafter made, in aid or enlargement of slackwater navigation, it shall file in the clerk's office of the county court of the county where the property is situated, a written petition, describing the property needed, and setting forth the reasons producing the necessity for its condemnation.

Not exceeding 15 acres.

1. The land so to be condemned shall not exceed fifteen acres.

Writ of ad quod damnum.

2. Upon filing the petition the clerk shall issue a writ of *ad quod damnum* to the sheriff of the county, requiring him to summon twelve discreet house keepers on or near the property to be condemned, on some convenient day within six weeks next after the receipt of the writ.

Notice to owner.

3. The owner of the property shall have at least twenty days notice, in writing, of the time, place, and object for convening the jury, given by the sheriff. If the owner be in the county, the notice shall be by personal service; if not, it may be by service on his agent or tenant. If he be a non-resident of the state, or he be unknown to the sheriff, the notice may be by publication of a notice in the paper of the public printer for at least four successive weeks.

Oath and finding of jurors.

4. The jurors shall be sworn by the sheriff truly, fairly, and impartially to assess the damage the owner of the property will sustain by its condemnation. They shall state in writing the amount of their assessment, sign the same with their respective signatures, and deliver it to the sheriff, who shall return it with his official return to the clerk of the court. If the jury cannot agree, or if, from any cause, a trial cannot be had on the day, the sheriff shall adjourn the trial to another day, and, without any new writ or notice, convene another jury, and submit the

case to their decision, and so on from time to time, until a verdict is obtained.

When case to be heard.

5. The petition and proceedings under it shall stand for hearing at the county court next after the return of the writ.

When proceedings confirmed.

6. If the same be confirmed, an order shall be entered condemning the property for the use of the commonwealth, and ordering the board of internal improvement to be put into possession; provided that the board shall first pay to the owner, or to the clerk of the court for the use of the owner, the amount assessed in his favor and his costs. But if the board elect not to take the property, it may have its waiver of all benefit from the proceedings entered of record at any time before the end of the next ensuing term of the court; and, thereupon, the proceedings shall stand annulled, except that the defendant shall have an order for the payment of his costs; and the board shall be barred from any other proceeding for the condemnation of the property.

Board may waive benefit of proceedings.

Penalty for digging, &c., bank of river.

§ 19. Whoever shall dig, cut, or excavate the rock, dirt, or gravel of the bank of the river, where the same is used for the purposes of slackwater navigation, whereby the water in any pool is diverted from its proper passage over the dam, through the lock, or through a water power canal, shall be fined from one hundred to five thousand dollars.

Cutting or defacing lock or dam.

§ 20. Whoever shall willfully and maliciously cut, deface, or injuriously molest a lock or dam, or water power canal, or any of the fixtures or appurtenances of either, shall be fined from fifty to a thousand dollars, and may likewise be imprisoned from one to twelve months.

Injunction against injury, &c.

§ 21. Upon reasonable grounds of apprehension that any person is injuring, or is about to injure or injuriously molest any lock, dam, pool, or canal, or an appurtenance thereto, the board may, upon presenting a bill verified by affidavit, and containing sufficient grounds, obtain an order from any circuit judge, enjoining against and restraining any such injury or molestation, and finally a decree for quieting the board in the possession and use of the property.

An act fixing the rates of toll on Muldrow's Hill, and to provide for collecting the same—approved January 9, 1852.

Penalty for removing obstructions to unlawful passways.

§ 1. That any person who may be engaged in removing, or causing the same to be done, any tree, log, brush, or

A. 1851-2, 302.

thing placed across a passway or road, or fill up, or cause to be filled, any ditch which has been dug by authority of law for the purpose of preventing travel, shall be fined not less than twenty dollars nor more than fifty dollars, at the discretion of a jury, which may be recovered as other fines, and paid into the sinking find.

Rate of tolls.

§ 2. That the tolls collected upon wagons and carriages of every description, shall be the same as fixed by the board, whether they are drawn by separate teams, or attached to each other.

CHAPTER LV.

JURIES, GRAND AND PETIT.

ART. 1. Grand Jury.
ART. 2. Mode of summoning Grand Jurors.
ART. 3. Petit Jurors.
ART. 4. Mode or summoning Petit Jurors. Jury Commissioners.
ART. 5. Mode of selecting a jury to try a cause.
ART. 6. Jury Fund, and Trustees thereof.
ART. 7. Clerks' Fees for services performed under this chapter.

ARTICLE I.

Grand Jury.

Who may serve on grand jury.

M. & B. 860-81.

§ 1. No person shall be qualified to serve as a grand juryman, unless he shall be a citizen and a house-keeper of the county in which he may be called to serve, and over the age of twenty-one years. No civil officer, surveyor of a highway, owner of a grist mill, tavern-keeper, or vender of ardent spirits by license, shall be competent to serve as a grand juror.

Sheriff to summon sixteen.

§ 2. There shall be summoned by the sheriff of the county sixteen grand jurymen, to attend on the first day of the term of each circuit court, at which criminal or penal prosecutions may be tried.

Fine for not attending.

§ 3. Every person summoned to attend as a grand juryman, if he fail to attend, without a reasonable cause, shall be fined not exceeding ten dollars.

Grand jury of by-standers.

§ 4. If the court shall deem it necessary, a grand jury composed of by-standers may be impanneled at any term, after the discharge of the grand jury first impanneled.

Foreman.

§ 5. The court shall appoint one of the number of every grand jury foreman thereof.

Oath.

§ 6. The following oath, in substance, shall be administered to the grand jury: "Saving yourselves, you do swear that you will diligently inquire of and present all treasons, felonies, misdemeanors, and breaches of the penal laws, which shall have been committed or done within the limits or the jurisdiction of this county, of which you have knowledge or may receive information."

Sheriff failing to summons.

§ 7. If a sheriff shall fail to summon the grand jury as required by law, without a reasonable excuse for such failure, he shall forfeit and pay for each offense a sum not exceeding thirty dollars, nor less than five dollars.

ARTICLE II.

Mode of summoning Grand Jury.

How grand jurors selected.

§ 1. The jury commissioners, when they select the petit jury, shall in the same mode select not less than thirty-two citizens and house-keepers qualified to serve on the grand jury, from which they shall by lot select sixteen, who shall be reported to the court and constitute the grand jury for the next term. The list so returned, sealed, shall be disposed of by the court and clerk, and the grand jurymen summoned in the same way and manner by the sheriff as in case of the petit jury.

Grand jurymen failing to attend.

§ 2. If a grand juryman shall fail to attend, or be excused for any cause, his place may be supplied from the by-standers or the list of names originally drawn and returned by the jury commissioners, as the court may order.

Grand jurymen excused from juries next court.

§ 3. Persons who have served upon the grand jury one term of a court, shall not be compelled to serve on the grand or petit jury at the succeeding term of said court.

ARTICLE III.

Petit Jurors.

Consist of twelve M. & B. 862-3.

§ 1. A petit jury shall consist of twelve persons, unless the parties agree that it may be composed of a less number.

Who may be jurymen.

§ 2. No person shall be a competent juryman for the trial of criminal, penal, or civil cases, in the circuit court, unless he be a free white citizen, at least twenty-one years of age, a house-keeper; likewise, sober, temperate, discreet, and of good demeanor.

§ 3. No sheriff or other officer shall at any time summon a juror not qualified as herein required.

Verdict not to be affected.

§ 4. No verdict shall be void or voidable because of the want of any of the qualifications herein required, nor shall exception be taken to any juryman for the causes above, after he is sworn.

De medietate linguæ.

§ 5. Juries *de medietate linguæ* may be directed by the court.

Juror as witness.

§ 6. Jurors knowing any fact material to the issue shall disclose the same in open court, upon oath, as evidence.

Fine for contempt

§ 7. A juror guilty of a contempt of court may be fined by the court in any sum not exceeding thirty dollars.

Sheriff not to converse with.

§ 8. No sheriff or other officer shall converse with the jury upon any subject, after they have been sworn, but by leave of the court.

Penalty for bribery, &c.

§ 9. If a juror in any case shall take or agree to take any thing, directly or indirectly, to give or refrain from giving his verdict, or shall, from favoritism or corrupt partiality, give or refrain from giving his verdict, and shall be thereof convicted, such juror shall not thereafter serve on any jury, and shall be fined one hundred dollars, and a sum equal to ten times the amount received or agreed to be received.

Who exempt.

M. & B. 884.

§ 10. No civil officer shall be summoned on a petit jury in the circuit court. No transient person, physician, surgeon, practicing attorney, or minister of any religious society, shall be compelled to serve on a petit or grand jury.

Challenge.

§ 11. Each party litigant shall have the right of peremptory challenge to one-fourth of the jury summoned, and the right to challenge for cause as now given by law.

Cause for challenge.

M. & B. 885.

§ 12. Having formed or expressed an opinion from mere rumor, shall be no cause of challenge to a juror in any criminal case. When the juryman is under the influence of prejudice, or will not, in the opinion of the court, make an impartial tryer, he shall be held and adjudged to be an incompetent juryman. Any other legal cause of challenge to the jurors may be allowed by the court.

Oath.

M. & B. 340.

§ 13. The following, in substance, shall be the oath to be administered to jurors, in a civil suit, or in a penal prosecution by the commonwealth: "You do swear that you will well and truly try the issue joined between A. B., plaintiff, and C. D., defendant, and a true verdict give, according to evidence, unless dismissed by the court or with-

drawn by the parties;" and in prosecutions by the commonwealth for treason or felony: "You do swear that you will well and truly try and true deliverance make in the case of the commonwealth and A. B., the prisoner at the bar, whom you have in charge."

ARTICLE IV.

Mode of summoning Petit Jurors. Jury Commissioners.

Jury commissioners.

§ 1. The circuit courts at their several terms, shall appoint three jury commissioners, possessing the qualifications prescribed for petit jurymen, resident in different portions of the county, and who have no suit in court which requires the intervention of a jury. The judge shall administer to the commissioners the following oath: "You do swear faithfully to discharge the duties required of you as jury commissioner; that you will not, knowingly, select any man as a juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you, and reported on your list to court, until after the commencement of the next term of this court; that you will not directly or indirectly converse with any one selected by you as a juryman, concerning the merits of any suit to be tried at the next term of this court, until after said cause may be tried or continued or the jury be discharged."

L. 367.

Their oath.

Penalty for failure to attend.

§ 2. If any person appointed a jury commissioner shall fail or refuse to attend and perform the duties required, without a reasonable excuse, he shall forfeit and pay twenty-five dollars; nor shall the same person act as jury commissioner more than once in the same year.

L. 369.

Commissioners to retire.

§ 3. The jury commissioners, after they have been organized and sworn, shall retire to a jury room or some other apartment designated by the judge. They shall be kept free from the intrusion of any person, and not separate without leave of the court, until they shall have completed the duties required of them. The clerk shall furnish the commissioners with the names of persons exempted from serving on the petit jury at each term.

How selection to be made.

§ 4. They shall select from the citizens of the different portions of the county, one hundred persons free from all legal exceptions, of fair character, and approved integrity, of sound judgment, and well informed, to serve as petit jurors at the next term of the court; write the names of such persons on separate pieces of paper, as near the same size and appearance as may be, and fold the same so that

the name thereon may not be seen. The names of the one hundred persons, so written and folded, shall then be deposited in a box, and after being well mixed and shaken, the commissioners shall draw from said box the names of twenty-four persons, one by one, and record the same as drawn, upon paper, which shall be certified and signed by them, directed to the judge of the circuit court, and indorsed "a list of the standing jury." They shall also inclose, in like manner, the list of the names of the remaining seventy-six originally selected; which papers they shall deliver to the judge in open court. The two lists shall be sealed and indorsed, and the names of the commissioners written upon the seals, so that the contents cannot be seen without breaking the seals.

Oath of clerk.

§ 5. The judge shall deliver the lists to the clerk, in open court, and administer to the clerk and his deputies the following oath: "You do swear, that you will not open the jury lists now delivered to you until the time prescribed by law: that you will not directly or indirectly converse with any one selected as a petit juror, concerning any suit pending and for trial in this court at the next term, uless by leave of the court." Should the clerk subsequently appoint a deputy in vacation, he shall administer to him the like oath.

Opening of list, &c.

§ 6. Within thirty days of the next term, and not before, the clerk shall open the envelope, and make out a fair copy of the jury list, and give the same to the sheriff or his deputy, who shall, at least three days prior to the first day of the next term, summon the persons to attend on the second day of said term, as petit jurors, by giving personal notice to each juror, or by leaving a written notice at the juror's place of residence with a free white member of his family, over sixteen years of age. The list shall be returned by the sheriff on the first day of the term, with a certificate thereon, of the date and manner in which each juror was summoned.

Juror failing to attend.

§ 7. A juror legally summoned, if he fail to attend, without a reasonable excuse, may be fined any sum not less than one nor more than thirty dollars.

Panel discharged at end of week, &c.

§ 8. The court may discharge the regular first panel of a jury, after they shall have served one week, and direct another panel of twenty-four to be summoned for the succeeding week, and so on for each week of the term; said panel shall be taken from the original list returned by the jury commissioners, in the order in which their names are

L. 380-9.

recorded in said list; in like manner, shall a deficit in any panel be made up, when a selected juryman is excused, or fails from any cause to attend on the day specified in the summons.

Number may be increased or diminished.

§ 9. In counties where the business and population require it, the court may, by an order, increase or reduce the number of persons to be selected by the jury commissioners, from which the panel of twenty-four is to be drawn; the number shall not be increased above two hundred or reduced below fifty persons.

L. 370.

Oath of sheriff, &c.

§ 10. At the commencement of each term of the court at which jury causes may be tried, the judge shall administer to the sheriff and deputies the following oath: "You do swear, that without favor or affection, or without a desire to favor or injure the rights of any litigant, you will summon jurors in and for this county, and that to the best of your skill and judgment, you will select discreet, sensible, impartial, and sober men; and that you will not, directly or indirectly, communicate or converse with any juryman, unless under the direction of the court, touching the subject matter of any suit pending for trial at the time. That you will not by any means attempt to influence, advise, or control a juryman in his opinion in any case under trial."

Where commissioners do not to act, &c.

§ 11. If, for any cause, the jury commissioners shall not be appointed, or shall fail to select a grand or petit jury, as is provided in this chapter, or the panel selected shall be set aside, or the jury lists returned in court shall be lost or destroyed, the court shall order the sheriff to summon a grand or petit jury of the proper number, who shall attend and perform the duties thereof, respectively, as if they had been regularly selected.

L. 370.

Juror to serve but one term per year.

§ 12. No person shall be compelled to serve as a petit juryman more than one term in any one year.

Issues first day of term.

§ 13. The judge of any circuit court may, if he deem it expedient, make an order directing the clerk to docket issues for the first day of the term, and order the jury to be summoned to appear on that day; which order he may make and revoke at pleasure.

L. 374.

ARTICLE V.

Mode of selecting a jury to try a cause.

Duty of jurors to attend, &c.

§ 1. Jurors shall be summoned and attend on the second day of the term, unless the court, by its order of record, shall direct them to be summoned for the first day, and also

L. 384.

direct jury cases to be docketed for trial on that day. It shall be their duty to give their constant attention at court, and not leave the court house while in session without leave of court; for a violation of this duty they may be fined by the court, for a contempt, a sum not exceeding ten dollars for each offense, which fine shall be deducted from the pay of the juror.

Panel called.

§ 2. On the day the jury shall be summoned to attend court, the panel shall be called and the names of such as attend shall be entered of record; and any deficiency in the panel shall be supplied as directed in this chapter.

How jury selected

§ 3. The clerk shall write the names of the jurors entered of record on separate slips of paper, as near the same size and appearance as may be, and when a jury is wanted for the trial of a cause, the same shall be drawn from a box after the papers shall have been deposited therein and well mixed. The clerk shall provide and keep for that purpose a suitable box with a sliding lid.

Peremptory challenges.

§ 4. In criminal cases, where the defendant is entitled to a peremptory challenge of more than three jurors, the clerk, under the direction of the court, shall draw from the box twelve names who shall compose the jury to try the cause, unless some one or all of them shall be challenged; in which case, the clerk shall draw from the box as many more as may be required, and as often as required, until a jury be obtained, or the whole panel be exhausted, then the court shall order the sheriff to make up the deficiency from by-standers.

Lists of eighteen to be furnished to each party.

§ 5. In all cases of jury trial the clerk shall draw from the box the names of eighteen of the jury, and write them as drawn on two slips of paper, and deliver one to each party, from which plaintiff and defendant may each strike three, and return the list to the clerk, who shall call the first twelve names not erased, and swear them as a jury, to try the case. If any on the list be challenged for cause, others shall be drawn and placed on the list in their stead. In all cases where the jury shall be completed, the names of persons not on the jury shall be returned to the box, from which another jury may be drawn. And whenever, from any cause it may be necessary to make up a jury, if there be not enough of the standing jury remaining, or in attendance, the court shall order, for the occasion, a sufficient number of by-standers to be summoned to make up a panel. If a standing juror, for any cause, shall be excused

or discharged from the jury, his place shall be supplied from the original list returned.

Attorney fee

§ 6. In civil suits tried by a jury, no attorney's fee shall be taxed against the unsuccessful party.

Jury fee.

A. 1846, 22.

§ 7. Upon the return of a verdict into court by the jury, a dismissal or judgment of nonsuit, or the withdrawal of a jury by consent after it has been sworn, a jury fee of four dollars shall be paid to the clerk by the successful party, in the two first cases, before any execution shall issue on the judgment. In the latter case the jury fee of four dollars shall be paid by the party plaintiff, and in each case to be taxed as costs.

In forma pauperis.

§ 8. When a plaintiff sues in *forma pauperis*, no jury fee shall be paid if he is unsuccessful.

Defeated party may pay.

§ 9. If the successful party shall fail or refuse to pay the jury fee, the opposite party may pay it to the clerk, which shall be credited on the judgment and execution against him.

When not paid.

§ 10. If the jury fee is not paid to the clerk before the adjournment of court, an order shall be entered up at that or some subsequent term of the court, that execution issue for the same in the name of the commonwealth, to be collected and accounted for by the sheriff, or other officer, as money collected on other executions. Whenever it shall appear to the clerk that the jury fee has been paid on the judgment, execution may be issued. If the party bound for the jury fee be a non-resident, the order and execution for the fee shall be against him and his surety, if any.

Juror's pay.

A. 1848, 48.

§ 11. A petit juryman shall be paid one dollar for each day he is in attendance upon the court. A grand juryman shall be paid one dollar per day for the two first days, and fifty cents for any additional day he may serve. The clerk shall not issue to the jurors any certificate of service, but shall, in a book to be kept for that purpose, enter the name of each juror entitled to pay, and the amount to be paid him; by which book the trustee shall be regulated in making payment to jurors; in the book the juror shall sign his name as evidence of payment.

When by-standers paid.

§ 12. By-standers summoned and not sworn as jurors shall be discharged without pay. If sworn, and they shall serve more than one day at any one time, they shall be paid.

Jury not paid during adjournment.

§ 13. The court may adjourn the whole or a part of the jury to any day of the term, but they shall not be paid for

the time they stand adjourned. The grand jury may be adjourned, in like manner, without pay.

Challenge to array

§ 14. If the challenge of a party to the array shall be sustained, the court may order the whole panel to be discharged, and a new one to be summoned from by-standers, or a special jury may be summoned to try the suit of such party.

ARTICLE VI.

Jury Fund, and Trustees thereof.

What constitutes jury fund.

L. 363.

§ 1. The fines and forfeitures which have or may accrue by the judgment of the circuit or county courts, justices of the peace, or police judges of the several cities or towns, such portions of the public revenue and taxes, as by order of the circuit court shall be paid to the trustees of the jury fund, and the jury fees assessed and collected, shall constitute the jury fund for each county, for the payment of grand and petit jurors. That portion of fines or forfeitures given by law to the commonwealth's attorney, or the prosecutor, and the fines for violating the police laws of any city or town, and the fines and forfeitures adjudged by the city court of Louisville, are not included in this section.

Judge to appoint trustee, &c.

L. 363.

A. 1843, 69.

§ 2. A trustee of the jury fund shall be appointed by the circuit court in each county, who shall hold his office for the term of four years, and until his successor is qualified. He shall give covenant with good surety, and renew the same every second year, to be examined and approved by the attorney for the commonwealth and circuit judge, faithfully to discharge the duties of trustee of said fund, and to account for and pay over all public money which may come to his hands. The circuit court shall have power to remove the trustee, and appoint another, whenever the public interests may, in its opinion, require it. The covenant shall be recorded in the order book, the original filed, and a certified copy transmitted forthwith to the auditor of public accounts by the clerk.

He shall pay jurors.

L. 363.

§ 3. The trustee of the jury fund shall attend the court, and pay the jurors, in proper person, the full compensation allowed them by law, which fact he shall verify by his oath in open court, when he makes his report. The court shall have power to compel the trustee to discharge the duties of his office, by fine and imprisonment.

Executions; postage.

L. 364.

§ 4. Justices of the peace and police judges and clerks, shall issue executions, and renew the same from time to time, for all fines and forfeitures, until the same shall be

collected. The trustee of the jury fund may pay out of said fund the postage on all process issued for the collection of fines to other counties, and all other process of the circuit court in behalf of the commonwealth, in criminal and penal cases. He shall be entitled to receive all fines and forfeitures which constitute a part of said fund.

Officers to pay fines to trustee.

§ 5. It shall be the duty of all civil officers and others having fines and forfeitures or other funds in their hands, belonging to said fund, to pay the same to the trustee of the jury fund, as soon as received. They shall make their settlement with the trustee up to and on the first day of each circuit court. The trustee shall report, on the second day of each term, the amount of fines received since his last report, from whom, for what, and when received; the amount paid out by him, to whom, for what, and when paid; what officers have failed to report or settle with him —verified by oath. The court shall forthwith summon and fine the delinquents any sum not exceeding thirty dollars, and compel them to report and settle.

His report.

Justices, marshals, &c. to report and pay fines.

§ 6. Justices of the peace, police judges, city and town marshals, shall report, on the first day of each circuit court, a list of all fines imposed or collected by them since their last report, and pay over all moneys in their hands belonging to the jury fund, to the trustee thereof.

Clerk to report fines, &c., to trustee.

§ 7. Circuit, city, and county court clerks shall, at the expiration of each term of their respective courts, make to the trustee a report of all fines imposed by their respective courts, and pay over any funds in their hands belonging to said fund. Clerks and sheriffs shall, on the first day of the term of the circuit court, settle with the trustee and pay over to him the funds in their hands which belong to said fund. The trustee of the jury fund shall superintend and control the collection of all fines and money belonging to said fund.

Court may order public money in clerk's or sheriff's hands to be paid to trustee.

§ 8. The clerks of the county and circuit courts shall report on the second day of the term of each circuit court, in writing, verified by their oath, the amount of public money in their hands, from whom, and for what received; a copy of which report they shall transmit to the auditor of public accounts, who shall, after deducting five per cent., clerk's commission for collecting, charge the clerk with the remainder. The court may order the whole, or any part thereof, to be paid to the trustee of the jury fund, whose receipt on a copy of the order shall entitle the clerk to a credit for the amount. The auditor shall pre-

L. 373.

L. 374.

scribe the form of the reports to be made by clerks. If the jury fund be still inadequate to meet the demands upon it, the court shall order the sheriff to pay the trustee a sum sufficient, out of the revenue collected by him, whose receipt on a copy of the order shall entitle the sheriff to a credit in his settlement with the auditor.

Clerk to make list of fines, &c.

L. 365.

§ 9. The clerks of the circuit court shall, on the first day of October in each year, make out three copies of the lists of fines and forfeitures imposed in their respective counties, including those reported by the justices of the peace and others the preceding year, one of which to be transmitted to the auditor, one for the use of the trustee, and the other to be filed with the reports of the trustee.

Settlement of trustee's accounts.

§ 10. The trustee of the jury fund shall settle his accounts under the supervision of the attorney for the commonwealth, at the close of each term of the circuit court. He shall be charged with all sums received by him since the last settlement, showing by said charge from whom, for what, and when received, as also with any balance which may have been in his hands at the last settlement, and credited with all sums legally paid out by him, for what, to whom, and when paid, and credited also with a commission of five per cent. upon all such sums so paid out. The settlement shall exhibit the state and condition of the fund; which settlement, when attested by the attorney of the commonwealth, and after being examined and approved by the court, shall be recorded by the clerk in a book to be provided and kept for that purpose, and a copy transmitted to the auditor of public accounts.

Deficiency in fund.

L. 372.

§ 11. If the fund proves deficient by this settlement, the deficiency shall be certified to the auditor of public accounts, and paid to the trustee out of the public treasury. All balances remaining in the hands of the trustees shall be paid into the treasury by the first day of January in each year. The auditor shall prescribe the form of the settlement and report of the trustee's accounts.

In Jefferson, to settle every month

§ 12. The trustee of the jury fund of the Jefferson circuit court shall settle his accounts at the end of each month, and perform the duties required of other trustees in the preceding section.

Auditor's warrant, when issued.

§ 13. The auditor shall issue no warrant for any deficiency, unless a copy of the trustee's settlement has been filed in his office.

Buying juryman's claim.

§ 14. If a trustee of the jury fund, sheriff, or deputy sheriff, clerk of the court, or other officer, shall, directly

or indirectly, buy or contract for the claim for the services of any grand or petit juryman, they shall severally forfeit and pay fifty dollars, one half to any person suing for the same; or the same may be recovered by indictment in the circuit court, to which no prosecutor shall be required.

Auditor to report.

§ 15. The auditor shall report to the legislature the annual income and expenditures of the jury fund.

Duty of judge & commonwealth's attorney.

L. 373.

§ 16. It shall be the duty of the judges to know that the trustees of the jury fund faithfully apply the money in their hands to the payment of the grand and petit jurors, and to see that they settle their accounts and perform faithfully their other duties, and to remove them for any dereliction of duty. The attorney of the commonwealth shall cause the appropriate proceedings to be instituted against any defaulting or derelict trustee.

Clerk's report.

§ 17. The clerks, when they certify and report to the auditor the list of claims ordered to be paid out of the treasury, shall also certify the amount of all deficiencies in the jury fund, and how the same have been supplied.

Penalties.

L. 373.

§ 18. The trustees of the jury fund, and all other officers and persons failing to comply and to perform the duties required of them by this chapter, or violating its provisions, where there has not been prescribed in this chapter a different penalty, shall be fined for each offense any sum not exceeding five hundred dollars.

ARTICLE VII.

Clerks' Fees for services performed under the provisions of this chapter.

Clerk's fee bill, how allowed and certified.

A. 1847, 35.

§ 1. The circuit court clerks, at the fall term of their respective courts, shall make out their fee bill for services rendered the commonwealth under the jury law. The attorney for the commonwealth shall examine the fee bill; and if in accordance with the fees allowed by this chapter, he shall certify the same to the court, who shall order the trusteee of the jury fund to pay the same, which fee bill shall be copied and certified to the auditor with the jury fund report.

Fees.

§ 2. The following shall be the allowances to the clerks, and no more:

For order appointing and swearing jury commissioners, twenty-five cents.

Furnishing to jury commissioners names of persons exempted from service, twenty-five cents.

Recording receipt of envelope of sealed return, and the oath of clerk and deputy, twenty-five cents.

Certified list of jurors to sheriff, twenty-five cents.

Filing the same when returned by the sheriff, and placing names of jurors on slips of paper, twenty-five cents.

Order excusing juror—(if more than one be excused at the same time, no more,)—twenty-five cents.

Noting the names of the standing jurors on the order book, twenty-five cents.

Order for sheriff to summon other jurors, ten cents.

Noting on the order book the allowance to each juror, two cents.

Certifying allowance to the trustee of the jury fund for each juror, two cents.

Recording settlement of trustee, copy and certifying the same to auditor, and for all services incident thereto, seventy-five cents.

Trustee's compensation.

§ 3. In no case shall the trustee of the jury fund be allowed, for any services rendered under the jury law, more than five per cent. on the amount paid out by him according to law.

CHAPTER LVI.

LANDLORD AND TENANT.

ART. 1. Powers and rights of Landlord and Tenant in and over leases.
ART. 2. Rent, mode and manner of recovering.
ART. 3. Waste, damages, and rights of remainder men.

ARTICLE 1.

Powers and rights of Landlord and Tenant in and over leases.

What shall not work a forfeiture.

M. R. 409.

§ 1. A conveyance made by a tenant for life or years purporting to grant a greater estate than he has, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

Restriction on tenants.

§ 2. No tenant for a term not exceeding two years, or at will, or by sufferance, shall assign or transfer his term or interest, or any part thereof, to another without the written assent of the landlord,

Landlord may enter for violation of restriction.

§ 3. If any tenant shall violate the provisions of the preceding section, the landlord, after giving ten days notice to

quit possession, shall have a right to re-enter the premises and take possession thereof, or to oust the tenant, sub-tenant, or under-tenant by the proper procedure.

How a tenancy from year to year may be terminated

§ 4. Either party may terminate a tenancy from year to year, by giving notice, in writing, of his intention to terminate the same, of not less than three months before the end of the year if for lands in a city or town, and six months if elsewhere.

V. R. 568.

Tenancy at will, how terminated.

§ 5. A tenancy at will or by sufferance may be terminated by the landlord giving one month's notice in writing, to the tenant, requiring him to remove.

N. Y. R. 745.

Tenants liable for double rent in certain cases.

§ 6. If a tenant, after giving notice of his intention to quit possession of the premises held by him, shall not accordingly deliver possession thereof at the time specified in the notice, such tenant, or his representatives, shall, from thenceforward, pay to the landlord, his heirs or assignees, so long as he continues in possession, double the rent which he should otherwise have paid, to be recovered in the same manner as the single rent.

N. Y. R. 745.

§ 7. The preceding section shall apply to a tenant whose term is to end at a certain time, or to a tenant who enters under a special agreement that no notice is to be given, and who shall refuse to deliver possession, in the first instance, when his term expires, and, in the second, when possession shall be demanded.

Notice.

§ 8. No notice to quit shall be necessary, from or to a tenant whose term is to end at a certain time, or when, by special agreement, notice is dispensed with.

V. R. 568.

ARTICLE II.

Rent, mode and manner of recovering.

Rent, how recovered.

§ 1. Rent reserved in money may be recovered by distress, and rent reserved in money or otherwise may be recovered by action.

V. R. 568.

N. Y. R. 748.

§ 2. Where the contract is not by deed, a landlord may recover, by action, a reasonable satisfaction for the use and occupation of lands; on the trial of which, if any contract not in writing, whereby a certain rent was reserved, shall be proved, the plaintiff shall not, for that, be non-suited; but the same may be used as evidence of the criterion of recovery.

To carry interest.

§ 3. Rent, after it is due, shall carry interest like other liabilities originating in contract.

Distress warrant how issued.

§ 4. A landlord shall not issue his own distress warrant; but when the rent is reserved in money, may, before a jus-

M. & B. 1356. V. R. 569.

tice of the peace, or a judge of a county court, or a police judge of a town, in the county where the land lies, by himself or agent, make oath to the amount of rent due him and in arrear, and thereupon such officer may issue a distress warrant, directed to the sheriff, or a constable of the county, authorizing such officer to distrain the personal estate of the tenant, for the amount due, with interest and costs; the personal estate of a sub-tenant found on the premises, shall also be liable to the distress. But if the tenant has removed his property to another county, the distress may be directed to such county.

Attachment for rent.

M. & B. 1353.

§ 5. When any person who shall be liable to pay rent, (whether the same be due or not, and whether the same be payable in money or other thing, if the rent be due within one year thereafter,) intends to remove, or is removing, or has, within fifteen days, removed his property from the leased premises, the person to whom the rent is owing may, before a justice of the peace or a judge of a county court of the county in which the tenement lies, state, on oath, the facts aforesaid, and that he believes, unless an attachment be issued, he will lose his rent; whereupon such officer shall issue an attachment for the rent against the personal property of the person liable for the same, to any county the person suing out the same may desire. But no such attachment shall issue until the plaintiff has given bond, with good surety, to indemnify the defendant, if it appear that the attachment has been wrongfully obtained.

In cases under $50. returnable before justice of the peace, &c.

§ 6. All attachments issued under this chapter, for a sum of fifty dollars or less, exclusive of interest and costs, shall be returned before a justice of the peace; and all those for a sum exceeding fifty dollars, shall be returned before the circuit court of the county whence it issued; and in either case the proceedings thereon shall be the same as on other common law attachments.

Who may have distress, &c.

V. R. 568. 3 & 4 Wm. IV, c. 42.

§ 7. He to whom rent is due, whether he have the reversion or not, or his personal representative or assignee, may recover it, as provided in the three preceding sections, whatever be the estate of the person owing it, or though his estate or interest in the land be ended.

§ 8. If the owner or holder alien or assign his estate or term, or the rent thereafter to fall due thereon, his alienee or assignee may recover such rent.

Who liable for rent. V. R. 569.

§ 9. Rent may be recovered from the lessee, or other person owing it, or his assignee or under-tenant, or the

representative of either, by the same remedies given in the preceding sections.

V. R. 569.

§ 10. But no assignee or under-tenant shall be liable for rent which became due before his interest began. The liability of heirs or devisees, for the debts and rents of the ancestor or devisor, shall not, by any thing herein, be changed or impaired.

Distress must be within six months after rent due. V. R. 569.

§ 11. Whether the lease be ended or not, rent may be distrained for within six months from the time it has or may become due, and not afterwards.

Upon what distress, &c., may be levied. V. R. 569.

§ 12. A distress or attachment for rent, may be levied on, and shall bind any personal estate of the lessee, or his assignee or under-tenant, found on the premises or which may have been removed within fifteen days.

Prior liens. V. R. 569.

§ 13. If the personal estate of such lessee, assignee, or under-tenant, when carried upon the premises, shall be subject to a valid lien against his creditors, his interest only in such estate shall be liable to the distress or attachment.

On what a landlord has a lien, &c

§ 14. A landlord shall not have an exclusive lien, under his warrant, except on the produce of the farm, or premises rented, on the fixtures, and on the household furniture of the tenant or under-tenant, and on such other of his personal estate as is not acquired after he takes possession of the premises. Nor shall such lien be for more than one year's rent, due or to become due, nor for any rent which has been due for more than four months.

Mortgaged property, &c., on the premises. V. R. 569.

§ 15. If any *bona fide* lien be created on the personal estate, whilst on the leased premises, the same shall be liable to distress or attachment, but not for more than one year's rent, whether it shall have accrued before or shall accrue after the creation of such lien.

Distress, &c., may be levied on other property, in or out of county. M. & B. 1354-56. A. 1843, 54.

§ 16. The distress or attachment may be also levied on any personal estate of the lessee, or his assignee, claiming or occupying the leased premises, directly or indirectly, under the tenant, either in or out of the county in which the leased premises shall lie. But the landlord's lien shall not extend beyond fifteen days after the removal of the property, nor against a *bona fide* purchaser.

What property exempt from distress.

§ 17. Property exempted from execution shall be also exempted from distress or attachment for rent.

Pound breach or rescous. M. & B. 1353.

§ 18. Any person guilty of a pound breach, or rescous of property distrained for rent, shall be liable to the person aggrieved for treble damages, with costs of suit. If the property distrained, after such breach or rescous, come

to the possession of the owner by his wrongful procurement, he shall be liable to the person aggrieved in like manner.

Property on leased premises, how removed by holder of lien.

V. R. 569.

§ 19. If, after the commencement of any tenancy, a lien be created on the property liable for rent upon the leased premises, the party making or acquring such lien may remove the property from the premises upon the following terms, and not otherwise: that is, by paying to the person entitled to the rent so much as is in arrear, and securing to him so much as is to become due; what is so paid and secured not being more altogether than a year's rent, in any case.

One year's rent to be paid out of property sold on execution.

V. R. 569.

§ 20. If the property be taken under execution, or order of sale or attachment, the officer shall, out of the proceeds of the property found on the leased premises, make payment of what is payable in money, not exceeding one year's rent in arrear. This section shall not affect any lien for taxes, levies, or militia fines.

Irregularity, &c. does not make trespass ab initio.

V. R. 570.

§ 21. When distress shall be made for rent justly due, and any irregular or unlawful act shall be afterwards done by the party distraining, or his agent, the distress itself shall not be deemed unlawful, nor the party making it be deemed therefor a trespasser from the beginning, but the party aggrieved by such irregularity or unlawful act may, by action, recover full satisfaction for the special damage he shall have sustained thereby.

Property, how disposed of.

V. R. 570.

§ 22. Property distrained for rent reserved, if the same be not replevied, or the payment of the rent be not secured in ten days, or so much as will satisfy the demand and costs, shall be sold by the officer.

Lease for life.
N. Y. R. 747.

§ 23. The same remedy to recover arrearages of rent due on a lease for life or lives shall be allowed, as if such lease were for years.

Death of certain persons not to affect the remedy.
N. Y. R. 747.

§ 24. A person entitled to rents dependent upon the life of another, may, notwithstanding the death of the latter, have the same remedy, by action or distress, for the rents in arrear, as he might have had if such person were in full life.

Husband's remedy for rent due on wife's estate.

M. & B. 1350-51.

§ 25. A husband who has, in right of his wife, any estate in, or right to, any rent in arrear in his wife's life, or his personal representative, may have the like remedy against the tenant who shall be in arrear, or his personal representative, after the death of his wife, as if his wife were living.

Personal representative may distrain.

§ 26. The personal representatives of a person to whom any rent shall have been due and unpaid at the time of his

death, may have the same remedy, by action or by distress, for the recovery of the arrears of such rent, that the decedent might have had if living. N. Y. R. 747.

Property, how to be sold.

§ 27. When distress shall be made for rent, the officer making the same shall advertise the time and place of the sale, in the same manner that sheriffs are directed to advertise property sold under execution; and shall sell so much thereof as will satisfy the rent and all interest and costs, to the highest bidder, on a credit of three months, with interest from the date, and take from the purchasers bonds and good surety for the sale money, which he shall return, with the warrant, to the circuit court clerk's office, and upon which, at maturity, if the same be not satisfied, the clerk shall issue execution, directed to the sheriff of any county which the plaintiff may designate. M. & B. 1357.

Distress or attachment may be replevied.

§ 28. A distress for rent may, at any time before a sale of the property, be replevied for three months, by the defendant's giving bond and good surety, to be approved by the officer; whereupon the property seized shall be restored, and the officer shall return the precept and replevin bond to the clerk's office of the circuit court, to be proceeded on as is provided in case of a sale bond. M. & B. 1357.

§ 29. All executions which shall issue on a sale or replevin bond, taken on a distress, shall be indorsed that no security, of any kind, is to be taken.

Penalty for a wrongful distress.

§ 30. If property be distrained for any rent not due, or attached for any rent not due or accruing, or taken under any attachment sued out without good cause, the owner of such property may, in an action against the party suing out the warrant of distress or the attachment, recover double damages for the wrongful seizure, and if the property be sold, for double the value thereof. V. R. 589.

ARTICLE III.

Waste, damages, and rights of remainder men.

Waste.

§ 1. If any tenant for life or years, shall commit waste during his estate or term, of any thing belonging to the tenement so held, without special license, in writing, so to do, he shall be subject to an action of waste, and shall lose the thing wasted, and pay treble the amount at which the waste shall be assessed. M. & B. 1530.

Rights of remainder men.

§ 2. The action may be maintained by one who has the remainder or reversion in fee simple after an intervening estate for life or years, and also by one who has a remainder or reversion for life or years only, and each of them shall M. R. 630. N. Y. R. 750. M. & B 1530.

recover such damages as it shall appear that he has suffered by the waste complained of.

Action, &c. for waste. M. R. 630.

§ 3. An heir may bring and maintain an action for waste, done in the time of his ancestor, as well as in his own time.

V. R. 566. M. & B. 1530.

§ 4. If a tenant of land commit any waste thereon, after he has alienedit, while he remains in possession, he shall be liable to the party injured for damages.

M. & B. 566, 1351. V. R. 566.

§ 5. If a tenant in common, joint tenant, or parcener, commit waste, he shall be liable to his co-tenants, jointly or severally, for damages.

V. R. 566. M. & B. 1531.

§ 6. If a guardian commit waste of the estate of his ward, he shall be liable to the ward for damages, at the expiration of his guardianship.

V. R. 566. M. R. 630.

§ 7. Any person who is entitled to such action of waste, may, instead thereof, bring an action on the case in the nature of waste, in which he shall recover such damages as it shall appear that he has suffered by the waste complained of.

Damages for waste.

V. R. 566.

§ 8. If, in any action of waste, or any action on the case for waste, the jury find that the waste was wantonly committed, judgment shall be entered for three times the amount of the damages assessed.

M. R. 630.

§ 9. An action on the case for waste may be brought against the representatives of a tenant, or if instituted in the lifetime of the tenant, it may be revived against his representatives after his death.

V. R. 566. M. & B. 1531.

§ 10. If the tenant in possession of any land shall, pending a suit to recover or charge said land, commit any waste thereon, the court in which the suit may be pending may order a receiver to take possession of the land.

CHAPTER LVII.

LANDS, DIVISION AND CONVEYANCE OF BY COUNTY COURTS.

What Lands may be divided by County Court Commissioners.
In what instances Land may be conveyed by County Court Commissioners.

What lands may be divided & conveyed. M. & B. 445, 446, 1066, 1072.

§ 1. Land held by joint tenants, tenants in common, coparceners or devisees, whether they or any of them be citizens or non-residents of this state, may be divided and conveyed by commissioners appointed by the county court

of the county in which the same, or the greater part thereof, is situated, in the manner prescribed in this chapter.

Commissioners appointed by county court.

§ 2. The party desiring such partition and conveyance may apply to the county court for the appointment of three competent and impartial commissioners, who, or any two of them, shall make the division and conveyance, with a due regard to justice and fairness to all parties concerned.

Notice of application.

Before such appointment of commissioners shall be made, unless all the persons interested join in the application, reasonable notice, in writing, of the intended application for the appointment, shall be given upon the parties resident within the state; as to non-resident parties, such notice shall be published at least three weeks in some authorized newspaper printed in this state. If there be married women, infants, or insane persons concerned, notice to the husband, guardian, or committee shall be good; if there be no guardian or committee, the court shall appoint, for the occasion, some person to represent the interest of such infant or insane person, to whom the notice shall be given.

Evidences of title to be filed.

§ 3. The evidences in writing, or official copies of the same, of the title to the land, shall be filed in court when the motion for the appointment of commissioners is made.

Commissioners to take oath.

§ 4. The commissioners, before they proceed to act under the order of appointment, shall take an oath impartially and fairly to divide the lands, according to the rights of each party.

Day and place of meeting.

§ 5. The court shall, in the order appointing the commissioners, name the day and place of their meeting, upon the land to be divided. The commissioners, after they shall have met, may continue from day to day, or may adjourn to any other day, and again meet and continue from day to day, until the whole division shall be completed.

Report of allotment, and execution of deeds.

§ 6. They shall survey and allot to each party his interest, and make report of the division to the county court, which report, if approved by the court, shall be ordered to record in a book provided for that purpose; and the court shall direct the commissioners who have made the division to execute deeds of partition to the parties for their respective interests, which deeds, when executed, shall pass the title as well of married women, infants, and persons of unsound mind, as of the adult parties to such proceeding.

Division, &c., in other cases.

§ 7. The county court shall also have jurisdiction to order the conveyance or the division and conveyance of land, in the following cases and manner, upon notice being given and the proceedings had, as required in the preceding sections.

When land claimed by executory contracts.

1. When the application for the conveyance, or for the division and conveyance of land, is based upon the bond or executory contract of the party seized, or of his ancestor, devisor, or grantor, the bond or contract shall be produced and proven to be the act and deed of the person it purports to be; and the court shall be satisfied that the purchase money has been paid, or the conditions upon which the land was to have been conveyed, have been performed.

If desired by any person interested, the court shall cause a jury to be summoned and sworn, to try the questions of fact above enumerated.

After deed executed, facts to be controverted only by suit in chancery

2. After the order appointing commissioners is made, and after they have made their report and executed deeds, it shall not be lawful to controvert the facts required to be proven in the county court, unless by suit in chancery to set aside the proceedings for fraud or mistake. A writ of error, or appeal to the court of appeals, as in other cases, may be prosecuted by a party aggrieved by the division or conveyance.

Appeal allowed.

Pay of commissioners.

§ 8. The commissioners shall each be paid by the party calling upon them, one dollar per day while engaged, and one dollar for each deed they shall execute.

CHAPTER LVIII.

LANDS, FORFEITED.

ART. 1. School Lands not taxed, nor subject to forfeiture.
ART. 2. Redemption of Forfeited Lands.
ART. 3. Sale of Forfeited Lands.

ARTICLE 1.

School Lands not taxed nor subject to forfeiture.

School and seminary lands. M. & B. 1080.

§ 1. Lands held by a school or seminary shall not be subject to taxation, or to forfeiture, for any cause whatsoever.

ARTICLE II.

Redemption of Forfeited Lands.

Lands of infants, married women, &c.

§ 1. If any person, having a right to redeem lands forfeited, was, or shall be an infant, married woman, of unsound mind, imprisoned, or out of the United States upon the business of this state or of the United States, at the time of the omission to list the same, or to pay the taxes thereon, such person or his heirs shall have two years to redeem the forfeited lands, from and after such disability is removed, or from and after his death, if that first happen.

M. & B. 1072, 1073, 1079.

ARTICLE III.

Sale of Forfeited Lands.

Agent to report description of land, &c.

§ 1. It shall be the duty of each agent appointed in the respective counties by the auditor of public accounts, as provided for in the chapter on Escheats and Escheators, to ascertain and report to the auditor a description of the quality, quantity, and locality of the several tracts of land lying in his county, owned by residents of the state, which have not been listed for taxation, and the names of the proprietors, and the year for which the same was not listed.

Auditor to make entry.

1. The auditor shall enter in a book, to be kept by him, the names of non-residents and of residents who own lands in the state which are not listed for taxation, and the quantity owned, the county in which the lands lie, and such other description thereof as he can reasonably procure.

Residents and non-residents.

2. The book must designate which part of the lands are held by residents and which by non-residents.

Lands of non-residents forfeited, to be sold.

§ 2. Lands belonging to non-residents which may be forfeited for failing to list the same, or for the failing to pay the taxes due thereon, may, after the time allowed for redeeming the same expires, be sold at public sale, on reasonable notice at the court house door of the county, on a court day designated by the auditor, as provided in the chapter on Escheats and Escheators.

Proceeds paid into treasury.

1. The proceeds shall be accounted for and paid into the treasury, and the title must be made to the purchaser as is provided in the chapter last referred to.

To be sold to former owner for taxes, interest, &c

A. 1843, 65.

2. Before forfeited lands shall be sold, the agent or attorney appointed by the auditor shall, on the application of the former owner, or his heir, devisee, or vendee, sell him the land for the taxes, with the interest and charges due thereon, and ten per centum on the whole amount, to the agent or attorney for his compensation.

Or to person in possession.

3. If no former owner, or his heirs or vendee, will purchase the lands, any one in possession of the same, or any part thereof, under an adverse title, shall have a right to make the purchase of such part on the terms stated in the last preceding subsection.

CHAPTER LIX.

LANDS, FORFEITURE AND RELINQUISHMENT OF.

When such Lands vest in the occupant.
When and by whom Lands may be relinquished.

When forfeited lands vest in occupant.

M. & B. 1081.

§ 1. When the title to any land shall be vested in the commonwealth, by forfeiture for any cause, or shall be relinquished under the provisions of this chapter, and the same or part thereof shall be in the possession, occupancy, and cultivation of any person who has title or claim, in law or equity, to the land so possessed, occupied, and cultivated by him, and who has regularly paid the taxes on the same, the title forfeited and vested in the commonwealth shall, *ipso facto*, pass and vest in such occupant or owner, so far as it may interfere with the claim of the occupant or owner, unless in cases where the title or claim of such occupant or owner is founded upon and derived from a Kentucky land warrant, issued since the sixth day of February, 1815.

How relinquishment of lands to be made.

§ 2. A person vested with title to land acquired under the laws of Virginia or of this state, his heirs or grantees, immediate or remote, may relinquish the said land, or any part thereof, and vest such title in the commonwealth, in the following manner:

By resident.

1. If a resident in this state, he shall make and sign an entry in the record book of the surveyor of the county where the land, or the greater part thereof, lies, in which he shall describe the land, and give the metes and boundaries of the part relinquished, and the name of the patentee, if known. The entry shall be attested by the surveyor. If the entry be made by an agent, the power of attorney shall first be recorded as other powers, in the clerk's office of the proper county.

By non-resident.

2. If the person be a non-resident, then by a like entry with the auditor of public accounts, attested by him, in a book to be kept for that purpose.

CHAPTER LX.

LANDS, PROCESSIONING OF.

How Commissioners to be appointed.
Their powers, and effect of their report.

§ 1. All laws providing for the appointment of special commissioners to procession lands are hereby repealed, except such as shall be selected by the parties.

Laws repealed.
M. & B. 1097.

§ 2. The county court of each county shall appoint for the term of four years, three discreet qualified persons in the county processioners for the county, any two of whom shall constitute a quorum to do business. The court shall have the power to fill vacancies, and to remove any of the processioners, and appoint others.

County court to appoint processioners.
M. & B. 1098.

Before they proceed to act they shall each take an oath to discharge the duties of his office to the best of his skill and judgment.

Oath.

§ 3. The processioners shall, on the application of any person producing his title papers, go around his land, or such part as he may desire, and re-mark the same, taking care that the re-marks are on the old lines; and when they find the corner trees, posts, or stones, or any of them removed, defaced, or rotted down, the processioners shall mark new corner trees, or place stones or posts properly marked where the old corners stood.

Re-marking old lines.
M & B. 1098.
A. 1842-3, 34.

The processioners shall report to the county court the land they have processioned, the lands of the persons it adjoins, and what alterations of corner trees, posts or stones have been made or added.

Report.

§ 4. The processioners, or any two or more persons selected by the parties and appointed by the court, may, on the application of persons whose lands adjoin, go on their dividing lines, and by their consent mark new corner trees, set up new stones or posts, ascertain the length of the lines, and make a report to the county court, in which the names of the parties, the new corner trees marked, or stones or posts set up, and the length of the lines, shall be stated.

New corners by consent.
M. & B. 1100.
A. 1847-8, 16.

1. The consent of the parties to the acts of the processioners, or persons selected, shall in such cases be indorsed on the report, and signed by such parties and attested by one or more of the processioners or persons selected, or the proceedings shall not bind them.

Consent to be indorsed on report.

Reports evidence.

2. In all contests as to boundary, such reports shall be conclusive evidence between the parties and all persons claiming through or under them; except,

3. Where such report shall be obtained by fraud or misrepresentation.

Surveyor to attend processioners

M. & B. 1099.

§ 5. The surveyor of the county, or some person appointed to survey by the court, shall in all cases attend the processioners or persons selected by the parties, and make out a plat and certificate of the land of the applicant or applicants, noting what is done, which shall be returned with and be considered a part of the processioners' report.

Variation of needle.

The processioners and surveyor, in establishing lines and corners, may make proper allowance for the variation of the needle.

Depositions.

M. & B. 1099.

§ 6. The processioners may, at the request of any party interested, take depositions as to the proper position of any corner or line, which depositions shall be returned with the processioners' report.

1. The opposite party may in like manner take testimony, at the same or another time.

Processioners may administer oath.

M. & B. 1102.

2. The processioners or persons so selected by the parties, or any one of them, shall have power to administer an oath touching any matter within the scope of their duties.

Notice to be given

M. & B. 1101.

§ 7. Any person desiring to have his land processioned, or to take depositions as herein allowed, may give ten days' notice to any person interested, or his agent or attorney, or if an infant, lunatic, or idiot, to his guardian or committee, of the time and place when and where he will procure the processioners to convene.

How, to non-residents.

A. 1842-3, 34.

1. If the party interested does not reside in the state, and has no known agent therein, such notice shall be published once per week for one month prior to the convention of such processioners in some authorized newspaper, and posted up for the same period on the court house door of the county.

Affidavit of printer.

M. & B. 1101.

2. The printer of the paper in which the notice shall be published shall make affidavit of the fact of publication, which, with the notice, shall be laid before the processioners before they act, and returned with their proceedings.

Proof of service of notice.

3. Affidavit of a disinterested person of the service of a notice on persons interested, or their agents, and of the fact of such agency, shall in like manner be made and

laid before the processioners, and returned with their report.

Land lying in several counties.

§ 8. If any person shall own a tract of land which, in part, lies in two or more adjoining counties, the processioners of that county in which the greater part thereof lies may procession the whole tract.

M. & B. 1101.
A. 1842-3, 34.

Reports, &c., to be recorded.

§ 9. The reports of processioners, the plats and certificates of the surveyor, notices and affidavits, and depositions taken by the processioners, shall, when returned to the county court, be recorded in a book kept for that purpose, and filed away and carefully kept by the clerk, and shall be *prima facie* evidence against and between the parties interested, and others claiming through or under them.

A. 1842-3, 34.

Prima facie evidence.

CHAPTER LXI.

LAWS.

What Books are evidence of law, in Courts.
When Acts of the General Assembly shall take effect.
Who entitled to acts and other Public Books.
Duty of Secretary of State, and the Clerks of the General Assembly.

British decisions.

§ 1. The decisions of the courts of Great Britain, rendered since the fourth day of July, one thousand seven hundred and seventy-six, shall not be of binding authority in the courts of Kentucky, but may be read in court and have such weight as the judges may think proper to give them.

M. & B. 613.
A. 1843-4, 84.

Acts of assembly.

§ 2. The session acts and resolutions of the general assembly, heretofore or hereafter published, the editions of the statutes of Kentucky, by Daniel Bradford, by Wm. Littell, by Littell and Swigert, by Morehead and Brown, and in part by Preston S. Loughborough, this revision, and the edition of the Virginia statutes, by William Waller Hening, shall be received as evidence in the courts and tribunals of this state.

V. R. 99.

When acts of assembly to take effect.

§ 3. An act of assembly shall take effect two months from and after the time it shall be approved by the governor, or if passed against his objections, from the period of such passage; unless a different time be fixed by the act.

M. & B. 107.

V. R. 98.

§ 4. The day of the approval of an act of assembly by the governor, or if passed against his objections, the day it so passes, shall be stated at the end of the same.

Private acts. M. & B. 326. M. R. 59

§ 5. Acts of incorporation and private acts of the general assembly may be declared on and given in evidence without being specially pleaded.

Acts, &c., to be printed.

M. R. 98.

§ 6. The acts and resolutions of each session of the general assembly shall be printed and half bound in paper, in pamphlet form, in two parts; the first containing the general acts, the second the local or private acts; and there shall be to each a well arranged index.

To be delivered to the secretary of state and distributed. V. R. 99.

§ 7. All the copies of the acts of the general assembly, which may be printed for the state, shall be delivered over to the secretary thereof, and by him distributed as hereinafter directed.

Who entitled to copy of acts.

M. & B. 568.

§ 8. The following persons shall each be entitled to one copy of the session acts of the general assembly, hereafter published, by virtue of their respective offices, to-wit: members of the general assembly, the auditor, register, and treasurer, the attorney general, circuit and county attorneys, and justices of the peace, the clerk of each court, secretary of state, the president of the board of internal improvement, and each judge of a court; the clerk of the senate shall be entitled to ten copies for the use of that body, and the clerk of the house of representatives to thirty copies for the use of that house.

Duty of secretary of state.

M. & B. 569.

§ 9. The secretary of state shall annually transmit to the executive of each of the other states, and also the secretary of state for the United States, two copies of the session acts.

Duty of officers receiving books.

M. & B. 569.

§ 10. Each officer of this state, (except the members of the general assembly,) who shall receive any book under this or any act of assembly, shall hold the same as public property, and as an appendage to his office, and when he shall vacate the same, the books shall be delivered over to his successor.

M. & B. 569.

§ 11. It shall be the duty of the respective officers to take good care of the books delivered to them. The clerk of each court shall keep the books entrusted to him in his office, for the use of the public.

Journals.

M. & B. 568.

§ 12. The members of the general assembly shall each be entitled to one copy of the journal of each house, the session such member may serve, and each clerk of a county and circuit court shall be entitled to one copy, the secretary of state to two copies for the use of his office, the clerk of

the senate five copies for the use of the senate, the clerk of the house of representatives to ten copies for the use of the house.

Who entitled to copy of this revision, &c.

§ 13. The following persons shall each be entitled to one copy of the code and of this revision: each of the judges and clerks of the courts in this commonwealth, and the judges and clerk of the federal court for Kentucky; each member of the two boards of commissioners to simplify the rules of practice, and to revise the statutes, the attorney general, and each county court attorney, and each attorney for the commonwealth; the governor, secretary of state, register, auditor of state, and treasurer of the state, and the president of the board of internal improvement; the superintendent of public instruction, the sergeant of the court of appeals, the adjutant and quartermaster generals, the sheriff, assessor, and the justices of the peace, of each county.

Decisions of the court of appeals

M. & B. 568.

§ 14. The following persons shall each be entitled to one copy of the reports of the decisions of the court of appeals which may be hereafter published: the judges of the court of appeals, of the circuit and county courts, of the general court, and of the federal court for Kentucky, and the clerk of each of said courts.

M. & B. 569.

§ 15. The reports of decisions of the court of appeals shall be designated by placing the following words in the title page, "Property of the State of Kentucky;" and the binder shall press on the cover the same words, and each and every officer who may receive books under this act, shall write in the same the name of the office to which it belongs.

Acts of congress.

M. & B. 568.

§ 16. The members of the general assembly, the judges and clerks of each of the state courts, the attorney general, the circuit and county attorneys, and secretary of state, shall each be entitled to one copy of the acts of congress which may be sent to the state for distribution.

Duty of clerks of courts.

M. & B. 569.

§ 17. The clerk of each court in this state shall, on or before the first day of September in the year 1851, and every fourth year thereafter, make out and present to the presiding judge of his court a list of all the law books which he has received on the public account, and another list of those remaining in his office; which list, being duly certified by the clerk and examined by the judge, shall be recorded in the office of said court, and a copy shall be transmitted by the clerk to the secretary of state, to be filed in his office.

A clerk who shall fail at any term of his court to furnish any of said books shall be fined, at the discretion of the court, not exceeding ten dollars.

Further duty of secretary of state.

M. & B. 570.

§ 18. The acts of assembly, journals of each house, and books of reports, shall, when bound, be deposited in the office of the secretary of state, and it shall be his duty to pack up the same in a suitable manner for each county, with a list of the names of those who are entitled to the same. He shall give three weeks notice, in two of the newspapers printed in Frankfort, when and where he will let the delivery and distribution thereof to the clerks of the county courts. He shall divide the state into three districts of as nearly equal size as may be, and shall, on the day and at the place stated in the publication, let the duty to be performed in each district to the lowest bidder, and shall take from each contractor bond and good surety, payable to the commonwealth, conditioned for the faithful discharge of his duties within forty days.

Secretary to contract for distribution of books.

But the whole amount to be paid for such distribution shall not in any year exceed one thousand dollars.

When contractors to be paid.

M. & B. 570.

§ 19. Upon the contractor's producing to the secretary of state the receipt of the clerk of each county, containing a list of all the books delivered to such contractor, he shall certify the same to the auditor of public accounts with the amount due thereon; whereupon the auditor shall issue his warrant on the treasury for the same.

Duty of clerks of each house.

M. & B. 570.

§ 20. It shall be the duty of each clerk of the general assembly, for the time being, at the close of each session, to collect all the books belonging to their respective houses, and to make out a complete list of the same, and have the books carefully boxed up. The same shall then be delivered to the state librarian, whose duty it shall be carefully to preserve the same, so as to have them forthcoming at the commencement of each succeeding session of the general assembly.

When books lost, &c.

M. & B. 567.

§ 21. When the statutes furnished any court shall be lost, mutilated, or torn, it shall be lawful for the court to procure an additional copy, and certify the cost thereof to the auditor of public accounts, who shall issue his warrant on the treasury for the same.

No books distributed at any other time.

M. & B. 568.

§ 22. There shall be no books or reports distributed at the public expense, at any other time, except when the session acts of the general assembly and journals are distributed.

§ 23. An order may be made from time to time, by any of the courts, certifying what officers of such court or county, entitled to the same, have not been furnished with copies of this revision, or of the reports of decisions of the appellate court, or acts of the general assembly; and if such officers have been furnished in part, to certify what part has not been furnished; and the secretary of state, upon a receipt of a copy of such order, shall send to those counties the copies so required. In procuring the same he shall not exceed the price originally paid by the state for similar books.

Deficiencies to be certified by the court and supplied by secretary.

M. & B. 571.

An act concerning certain Public Books—approved January 3, 1852.

§ 1. That it shall be the duty of every person in this commonwealth, heretofore and not now holding the offices of judge of the court of appeals, judge of a circuit court, or commonwealth's attorney, within thirty days after the passage of this act, to return to the clerk of the county court of the county of his residence, all public books in his possession, to be held by such clerk subject to the order of the secretary of state; and it shall be the duty of each clerk receiving such books forthwith to transmit by mail, to the secretary of state, a full and complete list of all books so received by him; and upon the production of the affidavit of any of the judges of the court of appeals, or judges of the circuit courts, now in office, stating that he has not received all the books to which he is entitled by law, and specifying such as he may not have received, it shall be the duty of the secretary of state to give him an order for the books wanting, upon the most convenient clerk or clerks having such books subject to his order: *Provided*, that after the supply of all the above mentioned officers with books, as above, then the said secretary shall distribute by order, as above, the remaining books among the county judges not heretofore supplied.

Books of public officers to be returned.

A. 1851-2, 27

Duty of the clerks.

§ 2. All laws now in force requiring the secretary of state to purchase books are hereby repealed.

§ 3. The secretary of state is hereby directed to forward a copy of this act to each of the late judges of the court of appeals and circuit courts, and commonwealth's attorneys immediately after its passage.

Duty of secretary of state.

CHAPTER LXII.

LEGISLATURE.

Privileges of Members, and Powers of Legislature to protect itself from disorder, &c.
How fines imposed to be collected.
Memorials and Petitions.
Time of Meeting.

Members exempt from arrest.

M. & B. 1110-11.

§ 1. The members of the general assembly shall in no wise be disturbed or embarrassed in the great and important business of legislation. They shall not, directly or indirectly, by any ways or means, be arrested, menaced, or otherwise disturbed during the existence of their constitutional privilege, except on legal process for treason, felony, breach of the peace, or misdemeanor. A member of either branch of the legislature guilty of a breach of privilege, may be expelled, censured, or fined by the concurrence of two-thirds of the members present.

May be expelled, &c.

Each house may punish for contempts.

§ 2. Either house of the legislature shall have power to punish any one by fine not exceeding five hundred dollars, and by imprisonment not exceeding six months, or either or both, for a contempt or breach of privilege.

How contempts inquired into.

Contempts and breach of privilege shall be inquired into first by a special committee appointed for that purpose, before which the accused shall have the right to be heard by himself and counsel, and have compulsory process to procure the attendance of his witnesses; which committee shall report all matters of fact specially, with their opinion thereon, for the final action of the house.

By whom orders executed.

§ 3. The orders of either house shall be executed by the respective sergeants-at-arms, or by any sheriff to whom the same may be directed. Witnesses attending the legislature, or a committee thereof, shall be entitled to all the privileges and immunities, and the same compensation, to be paid, when summoned by the commonwealth, out of the public treasury, as are allowed witnesses in other cases.

Privileges of witnesses.

How fines collected and accounted for.

§ 4. All fines imposed by virtue of this chapter shall be collected by the sheriff of the county where the delinquent or his estate may be found, under the mandate of the house, signed by the speaker, and paid into the public treasury by the officer, and accounted for as other public moneys collected by him. The mandate shall be made

returnable to the auditor, within ninety days from its date; and if the money cannot be made under the first mandate, the auditor shall renew the same under the seal of his office from time to time until the fine and costs shall be collected.

Oaths, who may administer.

§ 5. During the sessions of the legislature, the speaker of either house, the clerk thereof, or the chairman of a committee, shall have power to administer oaths to witnesses testifying before them.

Power to send for persons and papers.

§ 6. The senate or house of representatives shall have power to send for persons, papers, and records for their information, on any subject or question which may be pending before them, or referred to a committee for investigation and report.

Books, stationery, furniture, &c.

§ 7. The clerks of the two houses of the general assembly, at the close of each session, shall make an inventory of all the books, stationery, and furniture belonging to the respective houses, and take the receipt of the keeper of the state house for the same, who shall be answerable therefor. If the keeper refuse to sign such receipts, they shall report him to the governor, whose duty it shall be to appoint another keeper of the state house. The receipts of the keeper shall be filed with the secretary of state for safekeeping.

Certain memorials not to be acted upon unless published before session.

§ 8. No memorial or petition to the legislature, praying for the division of a county, the establishment of a new county, change of a county line, the change of the place for holding any court, or relating to any other local matter, shall be received or acted upon unless the purport or object of such petition or memorial shall have been published, in writing, at the door of the court house or other place of holding courts of the county or counties to be affected thereby, at least two months prior to the meeting of the legislature.

Notice required for memorials affecting ferry rights &c.

§ 9. No memorial or petition shall be received, or bill introduced into either house for the establishment of ferries, or other matters affecting private right or property, unless the parties interested shall have one month's notice, in writing, of such intended application, if known to the petitioners; if not known, the purport of such memorial, petition, or bill shall be published as required in the preceding section, and also inserted three weeks in some authorized newspaper within this state, at least one month prior to the meeting of the general assembly.

An act to change the time of meeting of the General Assembly—approved December 27, 1851.

When hereafter to be held.

A. 1851-2, 11.

That hereafter the stated biennial meetings of the general assembly of the commonwealth of Kentucky shall commence on the last day of December, except when that day falls on a Sunday, and then they shall commence on the day preceding.

CHAPTER LXIII.

LIMITATION OF ACTIONS AND SUITS.

ART. 1. Actions or suits for the recovery of real estate.
ART. 2. Possession of seven years, with title.
ART. 3. Actions other than for real estate.
ART. 4. General Provisions.

ARTICLE I.

Actions or suits for the recovery of real estate.

Does not apply to suits already commenced.

§ 1. The provisions of this chapter shall not apply to suits or actions already commenced, nor to cases in which the right of action has accrued, but the laws of limitations now in force shall be applicable to such cases according to the subject of the action, and without regard to form.

For recovery of real property.

§ 2. An action for the recovery of real property can only be brought within fifteen years after the right to institute it first accrued to the plaintiff, or to the person through whom he claims.

Infants, married women, or of unsound mind.

§ 3. If, at the time the right of any person to bring an action for the recovery of real property first accrued, such person was an infant, married woman, or of unsound mind, then such person, or the person claiming through him may, notwithstanding the period of fifteen years has expired, bring the action within three years after the time at which the person to whom the right first accrued ceased to be under such disability as existed when the same so accrued, or died, whichever has happened first.

Time not extended by disability not existing when right accrued, &c.

§ 4. The time within which an action for the recovery of real property may be brought, shall not be extended by reason of any disability which did not exist when the right to bring the action first accrued, nor by reason of any disability of the heirs of the person to whom the right first accrued.

As to real property, not extended in any case beyond 30 years.

§ 5. The period within which an action for the recovery of real property may be brought, shall not, in any case, be extended beyond thirty years from the time at which the right to bring the suit first accrued to the plaintiff, or the person through whom he claims, by reason of any death, or the existence or continuance of any disability whatever.

No continual claim.

§ 6. No continual claim upon or near real property shall preserve a right to bring an action.

For recovery of wife's land, conveyed jointly with her husband.

§ 7. An action by a female or her heirs, or devisee, or vendee, for the recovery of real property, for the conveyance of which she has jointly with her husband executed a deed, after her arrival at the age of twenty-one years, and acknowledged such execution before an officer authorized to take an acknowledgment of a married woman's deed, conveying her inheritance, can only be brought within three years next after she became discovert, or within three years next after the right to bring the action accrued to her heirs, devisees, or vendee, when she died during coverture.

Disabilities.

§ 8. If, in any case mentioned in the last section, the female, when she became discovert, was of unsound mind, the action may be brought by her, or those claiming under her, within three years next after the removal of such disability, or next after her death, whichever has or may happen first. And when the female dies during coverture, and her heirs are all under the disability of coverture, infancy, or unsoundness of mind, when the right to bring the action accrues to them, the action may be brought within three years next after the removal of such disability as to any of them.

Time not to be extended beyond 10 years.

§ 9. But the period within which an action for the recovery of real property, in any case mentioned in the seventh section of this article may be brought, shall not be extended beyond ten years from the time the female became discovert, or the right of her heirs, devisees, or vendee to bring the suit first accrued, whichever has or may happen first, by reason of any disability whatever.

ARTICLE II.

Possession of seven years, with title.

Limitation where title derived from commonwealth & possession for seven years.

M. & B. 1141.

§ 1. No action at law or in equity shall be brought under or by virtue of an adverse, interfering entry, survey, or patent, to recover the title or possession of land from an occupant where he, or the person under whom he claims,

has a connected title thereto in law or equity, deducible of record from the commonwealth, and has or shall have had an actual occupancy of the same by settlement thereon, under such title, for seven years before the commencement of the action, and such possession of land shall bar and toll the right of entry into such land by any person, under an adverse title or claim, and such possession as will bar the right to recover the same, shall vest the title in the occupant or his vendee.

Disabilities.

This limitation shall not apply to a person who is an infant, a married woman, of unsound mind, or out of the United States in the employment of the United States or of this state, at the time the cause of action accrued, nor until seven years after the removal of such disability; but the disability of one of several claimants shall save only his own right, and not that of another.

ARTICLE III.

Actions other than for real estate.

§ 1. Civil actions, other than those for the recovery of real property, shall be commenced within the following periods after the cause of action has accrued, and not after:

Certain actions to be brought within 15 years.

An action or suit upon a judgment or decree of any court of the United States, or of any state or territory thereof, the period to be computed from the date of the last execution thereon; an action or suit upon a recognizance, bond or written contract; an action upon the official bond of a sheriff, marshal, sergeant, clerk, constable or any other public officer, or any commissioner, receiver, curator, personal representative, guardian, committee, or trustee appointed by a court or authority of law; an action upon an appeal bond, or bond given on a supersedeas, attachment, injunction, order of arrest, or for the delivery of property, or for the forthcoming of property, or to obey or perform an order or judgment of court in an action, or upon a bond for costs, or any other bond taken by a court or judge, or by an officer pursuant to the directions of a court or judge, in an action, or after judgment or decree, or upon a replevin, sale or delivery bond taken under execution, decree, or warrant of distress, upon an indemnifying bond taken under a statute, or upon a bond to suspend a proceeding or sale under execution, distress warrant, order, or decree, or other judicial proceeding, or upon a bond or obligation for the payment of money or prop-

erty, or for the performance of any undertaking, shall be commenced within fifteen years after the cause of action first accrued.

Actions to be brought within 5 years.

§ 2. An action upon a contract not in writing, signed by the party, express or implied; an action upon a liability created by statute, when no other time is fixed by the statute creating the liability; an action for a penalty or forfeiture when no time is fixed by the statute or law prescribing the same; an action for trespass on real or personal property; an action for the profits of or damages for withholding real or personal property; actions for the taking, detaining, or injuring personal property, including actions for the specific recovery thereof; an action for the injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated; an action upon a bill of exchange, check, draft or order, or any indorsement thereof, or upon a promissory note, placed upon the footing of a bill of exchange; an action to enforce the liability of a steamboat or other vessel, or an action to enforce a mechanic's lien in those cases where the claim or lien upon the building is specifically given by statute; an action upon an account concerning the trade of merchandise, between merchant and merchant, or their agents; an action for relief on the ground of fraud or mistake, and an action to enforce the liability of bail, shall be commenced within five years next after the cause of action accrued.

Actions to be brought within 1 year.

§ 3. An action for an injury to the person of the plaintiff, or of his wife, child, ward, apprentice, or servant; an action for a malicious prosecution, conspiracy, arrest, seduction, criminal conversation, or breach of promise of marriage; an action for libel or slander; an action for the escape of a prisoner arrested or imprisoned on civil process; an action upon a merchant's account, for goods, wares, and merchandise sold and delivered, or any article charged in such store account, shall be commenced within one year next after the cause of action accrued.

In merchants' accounts; limitation computed from January 1.

§ 4. In every action upon such merchant's account as last above described, the limitations shall be computed from the first day of January next succeeding the respective dates or times of the delivery of the several articles charged in the account; and judgment shall be rendered for no more than the amount of such articles as were actually charged or delivered within the year preceding that in which the action was brought; and if any merchant or

Penalty for post-dating.

trader shall willfully post date any article charged in such account, or the receipt for the delivery thereof, or cause it to be done, he shall forfeit ten fold the amount of such article post dated, to be recovered by any person who may sue for the same, by action before that tribunal which may have jurisdiction.

Actions for fraud.

§ 5. In actions for relief for fraud or mistake, or damages for either, the cause of action shall not be deemed to have accrued until the discovery of the fraud or mistake, but no such action shall be brought ten years after the time of making the contract or the perpetration of the fraud.

To recover balance on open or current accounts.

§ 6. In an action to recover a balance due upon a mutual open and current account, concerning the trade of merchandise, between merchant and merchant, or their agents, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account claimed, or proved to be chargeable on the adverse side.

Actions upon bond of guardian, personal representative, &c; when right accrues.

§ 7. The right of action, upon the official bond of a guardian, personal representative, curator, of the sheriff, or other officer acting as personal representative, or of any other person receiving and holding money to be distributed to a ward, distributee, or devisee, under the order of court or by authority of law, of a ward, distributee, devisee, or other person entitled, who was an infant when such bond was executed, shall not be deemed to have accrued, unless otherwise expressed in said bond, before the plaintiff attained the age of twenty-one years. Where there are several wards, or several distributees, or devisees, or other beneficiaries secured by the same bond, who, or some of whom, were infants when the bond was given, the right of action of each one of such infants shall not be deemed to have accrued before he attained the age of twenty-one years.

Other actions for relief within 10 years.

§ 8. An action for relief, not provided for in this or some other chapter, can only be commenced within ten years next after the cause of action accrued.

Limitations apply to actions in name of commonwealth.

§ 9. The limitations prescribed in this chapter shall apply to actions brought by or in the name of the commonwealth, in the same manner as to actions by private persons, except where a difierent time is prescribed by some other chapter in this revision.

Writs of error; within what time.

§ 10. A writ of error to reverse a judgment or decree must be brought or sued out within three years next after the same was rendered.

If any person or persons entitled to such writ be, at the time the judgment or decree is rendered, an infant, a married woman, or of unsound mind, such person may, within two years next after the removal of the disability, sue out the writ, though such three years may have expired.

A writ of error to a judgment or order of the county court concerning a mill dam must be sued out within one year after the same was rendered.

ARTICLE IV.

General Provisions.

When action deemed to be commenced.

§ 1. An action shall be deemed to have been commenced at the date of the first summons or process issued in good faith from the court or tribunal having jurisdiction of the cause of action.

Effect of disabilities of infancy, marriage, &c.

§ 2. If a person entitled to bring any of the actions mentioned in the third article of this chapter, except for a penalty or forfeiture, was, at the time the cause of action accrued, an infant, married woman, or of unsound mind, the action may be brought within the like number of years after the removal of such disability or death of the person, whichever happened first, that is allowed to a person having no such impediment to bring the same after the right accrued.

When person entitled to bring action dies before limitation expires.

§ 3. If a person entitled to bring any action mentioned in the third article of this chapter, dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, the action thereon may be brought by his representative, after the expiration of that time, if commenced within one year after his death.

When before right of action accrues.

§ 4. If a person dies before the time at which the right to bring any action mentioned in the third article of this chapter would have accrued to him if he had continued alive, and there is an interval of more than three years between his death and the qualification of his personal representative, such representative, for purposes of this chapter, shall be deemed to have qualified on the last day of such period of three years.

When person liable to action dies.

§ 5. If a person against whom any action mentioned in the third article of this chapter may be brought, dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representative, devisee, or heirs, or all, after the expiration of that time, and within one year after the qualification of his personal

representative; and if there is no personal representative, the action may be brought against his heirs, or devisees, or both, after the expiration of the time limited for bringing the same, and within two years after his death.

Limitation to actions against personal representatives.

§ 6. No action against a personal representative who has settled his accounts, and made distribution of the whole assets in his hands, on any judgment or decree against such testator or intestate, or on any contract made by him, shall be brought after the expiration of seven years after the qualification of such representative.

Against heirs and devisees.

§ 7. No action upon a cause which accrued against a deceased person in his lifetime, shall, when his estate has been distributed and divided, be brought against his heirs or devisees, jointly with his personal representative, after the expiration of seven years from his death.

Against residents absent from state.

§ 8. If, at the time any cause of action mentioned in the third article of this chapter accrues against a resident of this state, he is absent therefrom, the period limited for the commencement of the action thereupon against him, shall be computed from the time of his return to this state.

Against one who obstructs prosecution of action by departing, absconding, &c.

§ 9. When a cause of action mentioned in the third article of this chapter accrues against a resident of this state, and he, by departing therefrom, or by absconding or concealing himself, or by any other indirect means obstructs the prosecution of the action, the time of the continuance of such absence from the state, or obstruction, shall not be computed as any part of the period within which the action may be commenced. But this section shall not avail any other person, notwithstanding another might be jointly sued with him if there had been no obstruction.

When judgment reversed.

§ 10. If an action is commenced in due time, and a judgment thereon for the plaintiff is reversed, the plaintiff, or, if he dies and the cause of action survives, his representative may commence a new action within one year after the reversal.

When plaintiff is alien enemy.

§ 11. Where the plaintiff is an alien, and a subject or citizen of a country at war with the United States, the time of the continuance of the war is not to be computed as part of the period limited for the commencement of the action.

When commencement of action stayed by injunction.

§ 12. When the commencement of the action is stayed by injunction, the time of the continuance of the injunction is not part of the period limited for the commencement thereof.

When plaintiff confined in penitentiary.

§ 13. The time of the confinement of the plaintiff in the penitentiary is not a part of the period limited for the commencement of the action.

Disability must exist when cause of action accrues.

§ 14. No person can avail himself of a disability in any action mentioned in the third article of this chapter, unless it existed when his cause of action accrued.

When several disabilities exist.

§ 15. When two or more disabilities co-exist in the same person at the time the right of action accrues, the limitation does not attach until they are all removed.

Action to redeem land mortgaged.

§ 16. After a mortgagee of real property, or any person claiming under him, has had fifteen years continued adverse possession, claiming the premises as his own, no action shall be brought by the mortgagor, or any one claiming under him, to redeem it.

To redeem personal property mortgaged.

§ 17. The provision of the last section shall apply in case of a mortgage of personal property, with the difference that the period within which the action to redeem may be brought, shall be five years.

Action upon foreign judgment or decree.

§ 18. When by the laws of any other state or country an action upon a judgment or decree rendered in such state or country, cannot be maintained there by reason of the lapse of time, and such judgment or decree is incapable of being otherwise enforced there, an action upon the same cannot be maintained in this state, except in favor of a resident thereof, who has had the cause of action from the time it accrued.

Upon causes of action arising in other states, &c.

§ 19. When a cause of action has arisen in another state or country, between residents of such state or country, or between them and residents of another state or country, and by the laws of the state or country where the cause of action accrued an action cannot be maintained thereon, by reason of the lapse of time, no action can be maintained thereon in this state.

Exceptions.

§ 20. The provisions of this chapter shall not apply in the case of a continuing and subsisting trust, nor to an action by a vendee of real property in the possession thereof, to obtain a conveyance.

CHAPTER LXIV.

MASTER AND APPRENTICE.

ART. 1. Duties and powers of County Courts to bind Apprentices, &c.
ART. 2. Master and Servant, rights and obligations of.

ARTICLE I.

Duties and powers of County Courts to bind Apprentices, &c.

Certain children to be bound out.

M. & B. 1161.

§ 1. The county court shall have jurisdiction to bind out infant children. It shall be the duty of the court to inquire after, and to put in apprenticeship, such poor orphans and other children within its knowledge, whose relatives or parents the court shall judge will not bring them up in moral courses. The court may, in its discretion, bind out the children of a man condemned to confinement in the penitentiary.

Notice to be given.

§ 2. Before an order shall be made, binding out any such child, the person with whom he shall reside shall be summoned to show cause to the contrary.

How a minor may be bound.

V. R. 530.

§ 3. Any orphan minor may be bound as an apprentice, by his guardian, or if no guardian, by his mother, with the consent, entered of record, of the county court of the county where the minor may reside.

Term of apprenticeship.

V. R. 530.

§ 4. The term of every such apprenticeship shall be until the minor attains the age of twenty-one years, if a boy; or eighteen years, if a girl.

The indenture.

V. R. 520.

§ 5. The writing by which any minor shall be bound an apprentice shall be signed by the master and the clerk of the county court, and shall specify the age of the minor, and what art, trade, or business he is to be taught; that the apprentice shall have proper medical attention, and shall be well fed and clothed, and treated with humanity, and the master shall be bound to give the apprentice a good new suit of clothes at the termination of his apprenticeship; and, if he be not a free negro, that he shall be taught to read and write, and common arithmetic, including the rule of three.

Restriction upon masters.

V. R. 530.

§ 6. No person, to whom a child shall be bound, shall have the right to take or send such child out of this state, nor to sell his term of service, or any part thereof, to any other person, nor to give another person the right to control such child.

§ 7. If an apprentice shall desert his master, he shall be liable to such master for all damage sustained by such desertion.

Liability for desertion. V. R. 532.

§ 8. If any person shall entice away an apprentice or servant from his master, he shall pay the master therefor three dollars for every day the apprentice, or servant, shall remain out of the service of the master; and any person who shall, knowingly, conceal, harbor, or employ such servant or apprentice, shall, in like manner, pay the master therefor three dollars per day for every day such apprentice or servant shall be so concealed, harbored, or employed.

Penalty for enticing away an apprentice.

V. R. 532.

§ 9. The county court of each county shall receive and hear the complaints of apprentices and hired servants, who reside in the county, against their masters for undeserved or immoderate correction, insufficient allowance of food, raiment, or lodging, or want of medical attention or instruction, and may make such order therein as is right and just, and may discharge the apprentice and bind him to another person, if it shall seem necessary.

County courts to hear complaints, &c.

M. & B. 1163.

§ 10. The court may, in the same manner, hear the complaints of masters against their apprentices or hired servants, for desertion without good cause, or other misconduct, and may oblige the latter to make retribution, by further service after the expiration of the time for which they were bound.

M. & B. 1163.

§ 11. If any apprentice or hired servant shall unlawfully depart from the service of his master, a judge of any court, upon complaint made to him by the master, or his agent, shall issue his warrant to apprehend such apprentice or servant, and bring him before him, or some other judge; and if the complaint shall be supported, the judge shall order the apprentice to be returned to his master, or may commit him to the county jail, there to remain not more than twenty days, if not sooner discharged by the master.

Apprentices and servants departing from master.

M. R. 496.

§ 12. The judge's warrant may be directed to any officer, or other person, by name, and shall empower him to convey the offender to the place of residence of the master, although it may be in another county, or to the jail of the county where the master resides.

To whom the warrant may be directed.

M. R. 496.

§ 13. The servitude of an apprentice shall cease at the death of the master.

M. R. 497.

ARTICLE II.

Master and Servant, rights and obligations of.

Servants to be compelled to execute their contracts.

M. & B. 1164.

§ 1. All white persons who shall come to this state under a contract to serve another in any occupation, shall be compelled to perform the contract specifically during the time thereof, or so much of the same as shall not exceed seven years. Infants under fourteen years, under contract entered into by their guardian or father, shall serve to the age of twenty-one years, or such shorter time as the contract shall fix.

To have sufficient food, clothing, &c.

M. & B. 1164.

§ 2. A servant bound to service shall be provided, by his master, with a sufficiency of wholesome food, clothing, and lodging, and medical attention, and at the end of his service, the servant shall receive from the master a good full new suit of clothes, suited to the season of the year.

How servant may be assigned.

M. & B. 1165.

§ 3. The master of such servant may assign the benefit of his contract to any person whom the servant may, in the presence of a judge of a court, consent to serve, the judge attesting such consent, which must be in writing. The right of such service shall, on the death of the master, pass to his personal representative or devisee.

When servant absconds.

M. & B. 1165.

§ 4. If such servant shall abscond, the necessary expenses paid by the master, in apprehending him and bringing him home, shall be re-paid by further service, after such rates as the county court of the county shall direct.

Contracts void.
M. & B. 1165.

§ 5. All contracts entered into between master and servant during the period of service, shall be void, except such as are clearly beneficial to the servant.

Negro, mulatto, or indian, not to hold white servant.

§ 6. No negro, mulatto, or indian, shall, at any time, hold or purchase any white servant; if so held or purchased, such servant shall be thenceforth free.

CHAPTER LXV.

MASTERS, AUDITORS, RECEIVERS, AND COMMISSIONERS IN CHANCERY.

Master commissioner.
A. 1851.

§ 1. The circuit court of each county shall, once in every four years, and oftener if a vacancy occurs, appoint a master commissioner for that court.

His oath.

1. Before the commissioner proceeds to act, he shall take an oath faithfully to discharge the duties of his office.

To settle insolvent estates.

2. He shall settle the accounts of insolvent estates adjudicated in the circuit court.

3. Such commissioner may be removed by the court. Removal le.

§ 2. The parties, or their attorneys may, in any case, select an auditor, a master, or other commissioner to settle the accounts of insolvent estates, to divide lands, negroes, or personal estate, or to allot dower, or for any other appropriate purpose. Parties may select auditor, &c.

§ 3. The parties, or their attorneys, may select a receiver or a commissioner to collect money. If they fail to make a selection, the court shall appoint one. Receiver.

1. No commissioner to collect money, nor receiver, shall act as such until he has executed a covenant, with good surety, to be approved by the court, binding him to discharge faithfully the duties of his station, and promptly to comply with all orders and decrees rendered in the cause. Covenant and surety.

2. The covenant must be payable to the commonwealth, and may be put in suit from time to time by any person aggrieved.

§ 4. No master or other commissioner, or auditor, shall receive more than three dollars per day, except by the consent of parties, for each day he shall be necessarily engaged in the business of his station, to be ascertained by his oath and other evidence. Compensation.

§ 5. Commissioners to execute deeds under the decrees of courts shall be allowed only one dollar and fifty cents for each deed, except when the parties consent to a greater allowance.

§ 6. The fees of auditors, commissioners, and receivers shall, in all cases, be taxed as a part of the costs.

CHAPTER LXVI.

MILITIA.

ART. 1. General Provisions.
ART. 2. Election and appointment of officers.
ART. 3. Provisions for raising, and the appointment of officers for, volunteer companies, &c.
ART. 4. Courts Martial.
ART. 5. Courts of Assessment.
ART. 6. Power of Governor to call militia into service.
ART. 7. Mode of altering boundaries of Battalions and Companies, and of making returns, &c.
ART. 8. Time and manner of officers taking oath of office; resignations, fines, &c.
ART. 9. Penalty for certain offenses.
ART. 10. Collector of fines appointed, and position of companies on parade.

ARTICLE 1.

General Provisions.

Divisions, brigades, regiments, &c.

§ 1. The enrolled militia shall be continued as at present organized in divisions, brigades, regiments, battalions, and companies.

L. 448.

1. Divisions, brigades, and regiments may be laid off, altered, and modified by the governor for the time being, as he may deem expedient.

2. The field officers of regiments shall have power to form, alter, and modify, from time to time, the boundaries of battalions and companies within their respective regiments, a majority concurring therein.

3. The adjutant of each regiment shall keep a record of the boundaries of battalions and companies as formed, altered, or modified.

Who exempt from militia duty.

§ 2. The following persons shall be exempt from militia duty: All persons under eighteen and over forty-five years of age; all negroes, mulattoes, and indians; the judges of the respective courts; the treasurer, auditor, attorney general, register of the land office, and their clerks; attorneys of the commonwealth; professors and tutors of public seminaries of learning; the public printer and such as may be necessarily employed in his office; ordained ministers of religious societies; keepers of public jails; and the guards employed in the penitentiary house.

L. 448.

1. But all of said persons between the ages of eighteen and forty-five years, except ministers of the gospel, ne-

groes, mulattoes, and indians, shall be liable to be called into service in a time of war.

2. All not exempted shall perform militia duty.

§ 3. Those who conscientiously scruple to bear arms shall not be compelled to do so, but shall pay an equivalent for personal services of one dollar per day for each muster.

Persons conscientiously scrupulous as to bearing arms. L. 418–19.

1. In case of a call for actual service, such persons shall be allowed to furnish an able-bodied substitute in lieu of their own personal services.

Substitutes.

2. If such substitute be not furnished, the captain of the detachment may hire a substitute for such conscientious person, who shall be bound to pay the substitute the sum agreed on by the captain, if the same do not exceed one dollar per day; and the same if not paid, may be recovered by the substitute in any court of record, and coerced by execution against his person or property.

ARTICLE II.

Election and appointment of officers.

§ 1. All militia officers whose appointments are not in this chapter otherwise provided for, shall be elected by the persons subject to militia duty within their respective companies, regiments, brigades, and divisions, in the manner following:

Officers elected, & terms of service. A. 1850–51, 386.

1. A captain, first and second lieutenant for each company, by the persons subject to militia duty therein—whose term of service shall be three years.

2. A colonel, lieutenant colonel, and a major for each regiment, by those subject to militia duty therein—whose term of service shall be four years.

3. A brigadier general for each brigade, by the persons subject to militia duty therein—whose term of service shall be five years.

4. A major general for each division, by the persons subject to militia duty therein—whose term of service shall be six years.

§ 2. The sheriff of each county, or his deputy, shall attend the regimental muster in his county, and, with the field officers of the regiment, shall superintend the election of the regimental, brigade, and division officers, as directed by this chapter.

Sheriff to attend election.

The company officers shall be elected at the times and places that the respective company musters are held, and shall be superintended by the lieutenant colonel or major

Company officers

to whose battalion the company is attached, who shall ascertain and decide the result of the election, and make return thereof as the sheriff is directed to do in case of field officers; and vacancies shall be filled in like manner.

Names and votes to be forwarded to governor.

1. The sheriff shall, within ten days after such election, forward to the governor, in a letter directed to the adjutant general, the names of all persons elected to offices within the respective regiments of his county.

2. He shall, in like time and manner, transmit the number of votes received by each person for brigadier generals and major generals, designating which office each person was voted for.

Tie.

§ 3. After the close of an election for any officer under the grade of a brigadier general, the sheriff holding the election shall ascertain the number of votes cast for each person for the respective offices; and in all cases where two persons receive the highest and an equal number of votes, the election shall be determined by lot in the presence of the officers superintending the election, and that person returned elected who is successful. If a similar tie takes place in the election of a brigadier or major general, the same shall be determined by lot in the presence of the governor and adjutant general.

Commissions.

§ 4. Commissions shall be issued and forwarded by the governor to the persons elected to each office.

Vacancies.

1. When vacancies occur in any of said offices, or in the absence of any of the officers, the next in rank shall discharge the duties thereof.

2. Vacancies shall be filled by election at the next regimental or company muster, and returns made and commissions shall be issued for the unexpired term, as is directed in other elections.

Officers to be appointed.

§ 5. The governor shall appoint the adjutant general and his other staff officers. The major generals, brigadier generals, and colonels of regiments, shall appoint their respective staff officers.

1. The governor shall issue their commissions.

2. The captains of companies shall appoint their non-commissioned officers.

3. All staff and non-commissioned officers shall hold their offices for the same periods of their respective principals.

Officers elected in June, 1851.

§ 6. The officers elected in June, 1851, shall hold their respective offices for the period prescribed in this chapter. All persons elected or appointed to office shall hold

the same until their successors are commissioned and qualified.

§ 7. In all calls for volunteers, either by the state or general government, the necessary officers shall be chosen, appointed, and commissioned as provided for in this chapter. Officers of volunteers.

§ 8. Each major general shall be entitled to two aids, and each division shall be entitled to one division inspector and one division quarter master. Officers of divisions, brigades, regiments, &c.

1. Each brigadier general shall be entitled to one aid, one brigade inspector, and one brigade quartermaster.

2. Colonels commandants of regiments shall have one adjutant, one quartermaster, one paymaster, one judge advocate, one surgeon, and one surgeon's mate; also, the following non-commissioned officers, to-wit: one sergeant major, one quartermaster sergeant, and one drum and one fife major.

3. The appointment of all division, brigade, and regimental staff, shall be announced by a general order of the officer making the same; and each staff officer shall remain in office during the term of the officer making such appointment, unless removed by such officer. Vacancies may be filled in the same manner that original appointments are made.

ARTICLE III.

Provisions for raising, and the appointment of officers for, volunteer companies, &c.

§ 1. The governor shall have power to provide for raising companies of cavalry, artillery, light infantry, and riflemen, agreeably to the laws of the United States, at his discretion; and when raised and organized, shall be subject to the laws and regulations of the United States and of this state. Power of governor to raise troops. L. 420.

§ 2. It shall be the duty of the major generals to receive from the adjutant general requisitions of troops made upon their divisions; and shall, without delay, make a detail on the brigades in their divisions, agreeably to the last returns made by the brigade majors, and shall issue his orders to the brigadiers accordingly; he shall attend the several regimental musters composing his division, once in every two years at least; and may, at any time, attend any muster or review, and give any order for disciplining the troops he may think proper. Duties of major generals.

Brigadier generals

§ 3. It shall be the duty of the brigadier generals to receive from the adjutant general or major general requisitions for troops on their brigades, and shall make a detail on their regiments, agreeably to the last returns made by the regiments of their strength, and give orders to the commandants thereof accordingly; it shall also be his duty to issue his orders, appointing the time of regimental and battalion musters, in each year, written notices of which he shall cause to be given to the commandants of regiments, on or before the first day of February in each year; he shall also furnish his major general with the days appointed for his regimental musters and reviews; he shall visit each regiment in his brigade annually, on their regimental muster days, and review them; and whenever present at any muster or review within his brigade, may order and direct the discipline and exercise thereof.

Duties of commandants of regiments.

§ 4. Commandants of regiments shall receive from the adjutant or brigadier generals requisitions for troops made on their regiments, and shall make a detail on the several companies composing the regiment, agreeably to the strength of the companies, and issue his orders to the respective commandants thereof accordingly; he shall receive the written orders of the commanding officer of the brigade for appointing the time of regimental and battalion parades in each year; and shall give like notice thereof to the commandants of battalions, on or before the fifteenth day of February annually, to which he shall add the time and place at which his regimental training shall take place; also the time and place of meeting of the court of assessment for the trial of those who have failed to do duty according to law. It shall be the duty of commandants of regiments to attend the regimental and battalion musters; to have the roll of officers called; to note delinquencies of company or platoon officers, and report the same to the court of assessment; or if a field officer be delinquent, the adjutant shall report him to the brigadier general. Commandants and field officers of regiments may attend any company muster within their respective commands, and give such orders for their discipline and training as they shall think proper. Commandants of regiments shall also notify their major and brigadier generals of the place at which their regimental and battalion trainings are to be held.

Upon notice of invasion or insurrection.

§ 5. It shall be the duty of the major and brigadier generals and commandants of regiments, upon receiving no-

tice of an invasion or insurrection, immediately to embody the whole, or such portion of their command as they may deem expedient for the emergency, and give the earliest notice thereof to their next superior officer, and to the governor.

Duties of commandants of battalions.

§ 6. It shall be the duty of commandants of battalions to receive the written orders of commandants of regiments, of the days on which regimental and battalion musters shall be appointed for the year, and give written notice thereof to the commandants of companies, within their respective battalions, on or before the first day of March, in every year, adding thereto the places of holding such musters and the court of assessment; they shall notify the commandants of regiments of the place at which they will muster, and shall exercise their battalions in person.

Duties of commandants of companies.

§ 7. Commandants of companies shall receive from the commandants of battalions written notices of the days and places where the regimental and battalion musters will be held in each year, to which commandants of companies shall add the days, time, and places appointed for their company musters, as well as the time and place of the sitting of the court of assessment; and they shall, on or before the fifteenth day of March in each year, deliver a notice, in writing, of the musters so ordered and the court of assessment, to the non-commissioned officers of his company, whose duty it shall be to receive, and deliver to or leave at the place of lodging or usual place of abode of each subaltern and non-commissioned officer, musician, and private in the company to which he belongs, a like written notice, on or before the first day of April in each year, but in all cases where persons may have removed into the bounds of any company, or arrived at the age of eighteen years, after the first day of April in any year, commandants of companies shall, as soon as possible, place them on his muster roll, and cause like notices to be served on them—three days notice of any muster shall be lawful; and shall, from time to time, cause all persons to be enrolled and notified to attend muster, who, from accident or neglect, were not previously enrolled and notified. When marching orders are given, captains commanding the companies detailed for service, may appoint some place within the bounds of the regiment or regiments from which their companies were detailed, where they may receive substitutes, in lieu of those detailed for service, provided they are able-bodied men, and such as they shall approve

Substitutes.

of; and if approved of, they shall receipt for the same to the person furnishing such substitute, which shall be evidence to the officer from whose company such detail is made, that such person is entitled to credit, which credit shall be entered in the company book for the time the detachment has served, and no longer; and if the substitute enlists in the army of the United States, the credit shall be given for the full time such detachment was detailed for service.

Nothing herein contained shall be so construed as to authorize the transfer of any receipt for a substitute, or discharge for service performed, so as to clear any other person from being subject to a detail for duty. Every person furnishing a substitute shall, notwithstanding, be bound to attend all musters directed by this chapter.

Duties of subaltern officers.

§ 8. It shall be the especial duty of the subaltern officers of companies to aid and assist in the exercise and discipline of the company, and to report every defalcation, contempt, ridicule, or disobedience, which shall be manifested in the government and exercise thereof.

Obedience to orders.

§ 9. All officers, of every grade, shall implicitly obey the orders of their superiors; and in case of the absence, death, or inability of any officer, the next in rank shall take the command, and discharge all the duties required by this act of his superior officer, during such vacancy, absence or inability.

Failure of brigadier general to notify time and place of musters.

§ 10. In case of the failure of any brigadier general to notify the commandants of regiments of the time of holding the regimental and battalion musters, within the bounds of their brigades, by the time prescribed by law, the commandants of such regiments shall proceed to appoint their own regimental and battalion musters; and in case of failure on his part, commandants of battalions composing such regiments, shall appoint, and give notice of the time and places of holding their battalion musters; and, in case of failure, commandants of companies shall give notice of their company musters.

Adjutant general; residence and duties.

§ 11. The adjutant general shall reside at the seat of government, or in its vicinity, and keep his office in the town of Frankfort; he shall obey all orders given him by the governor and commander-in-chief, in relation to the duties of his office; and shall keep a fair record of all orders and communications which he shall receive, from time to time; he shall receive the annual returns from the major and brigadier generals, from which he shall make

out a general return of the whole strength of the militia of this state, which he shall lay before the commander-in-chief for his inspection, on or before the tenth day of December in each year; one copy of which he shall, without delay, transmit to the secretary of war of the United States, and the other he shall file in his office; he shall provide blank abstracts of annual returns for divisions, brigades, regiments, and companies—which forms, when made out, shall exhibit the strength, arms, and accoutrements of such division, brigade, regiment, and company, and a description of the corps composing the same; and the public printer is hereby directed to furnish the same, on the application of the adjutant general, as may be required for the use of his office. When a detachment is ordered into the service of this state, or of the United States, he shall furnish the necessary blank muster rolls, morning, weekly, and monthly reports; and shall keep a record of all general and field officers in commission, from which a detail may be made, whenever it may be necessary. That it shall be the duty of the adjutant general, on or before the tenth day of December in each year, to report to the governor and commander-in-chief, the failure of any major general to make his return, within the time prescribed by law; and to report to each major general, the failure of any brigadier general in his division, for failing to make their returns within the time required by law. It shall be the duty of the adjutant general to receive from the governor and commander-in-chief, or from the secretary of state, all commissions or communications relating to the militia; and if they are intended for a division, to direct them to the commandant of such division; and if intended for any other officer, he shall forward them to the brigadier general commanding the brigade to which such officer belongs; it shall be his duty to frank all communications thus forwarded by mail, by indorsing his official name thereon. It shall be the duty of the adjutant general, once in every week, to deliver to the governor and commander-in-chief, or to the secretary of state, every communication which he shall have received, relating to the militia, which may be intended for executive action or consideration. It shall be the duty of the adjutant general, on or before the fifteenth day of February in each year, to transmit, by mail, to each major general, blank abstracts of annual returns of the strength of their divisions; and to each brigadier general, blank abstracts of the brigade, regiments, and

companies attached to their command. It shall also be the duty of the adjutant general to frank all letters or packages addressed to a major or brigadier general, by the quartermaster general, which shall be handed to him for that purpose; and shall receive all returns made to the quartermaster general, which he shall hand to him on application. It shall also be the duty of the adjutant general to attend and furnish any court of inquiry, which may be ordered by the governor and commander-in-chief, under the provisions of this chapter, when convened, with the names of the major generals who may have failed to make their annual returns for the year preceding, within the time prescribed by law; and shall, moreover, cause a notice to be served on the major generals charged with being in default, of the time of meeting of such court, at least twenty days previous to the sitting thereof; which notice shall be served by any general or field officer, or by any general staff officer, and by him returned to the adjutant general's office, with an affidavit of the service thereof, as soon as practicable.

Quartermaster general; residence and duties.

§ 12. The quartermaster general shall reside at the seat of government, or in its vicinity, and shall keep his office in the town of Frankfort; he shall keep a fair record of all orders and communications which he shall, from time to time, receive from the governor and commander-in-chief, and shall obey all orders from him, relative to the duties of his office; he shall collect, receive, and safely keep in the state arsenal all arms and military stores of every description, which shall be subject to the order of the governor and commander-in-chief. The quartermaster general shall, on or before the first day of December in each year, furnish the adjutant general with a general abstract, showing the number of arms and accoutrements, ordnance and ordnance stores, of every description, then in the arsenal. The secretary of state shall, from time to time, furnish the quartermaster general with a list of the officers, to enable him to direct the blanks to the several officers entitled thereto.

To whose orders subject.

§ 13. Aids-de-camp, division inspectors, and brigade majors, shall be subject to and execute the orders of their generals and adjutant general; division and brigade quartermasters, the orders of their generals and quartermaster general; and all regimental staff officers shall carry and execute the orders of their field officers.

§ 14. It shall be the duty of the brigade majors to attend the several battalion and regimental musters, to superintend and correct the training, if necessary; to examine the condition of the public arms particularly, and to report the condition of the same to his brigadier general, that he may make report to the quartermaster general. And when a detachment is ordered from his brigade, into the service of this state or of the United States, he shall make out triplicate muster rolls, one of which he shall forward to the adjutant general, one to the officer commanding the detachment, and one to the brigadier general of his brigade, to be filed by him. Duties of brigade majors.

ARTICLE IV.

Courts Martial.

§ 1. Courts martial shall be appointed for the trial of all officers for neglect of duty, disobedience of orders, or for disorderly and ungentlemanly conduct or behavior; they shall have power to cashier, reprimand, or fine, at their discretion, but subject to an appeal. Courts martial, for what offenses.

§ 2. Judge advocates, (except regimental) and provost marshals shall be appointed by the several courts martial hereafter ordered. It shall be the duty of the judge advocates to said court to take and safely keep a true statement of all proceedings, whether pleas, evidence, or defense, and the decision of the court thereon; to prosecute for the state, and to make out a fair copy of the proceedings of said court, with their sentence thereon, which, when signed by the president thereof, shall be delivered to the officer ordering such court martial, within twenty days after their adjournment. The provost marshal shall attend on and execute the orders of the court. Judge advocates, &c., their duties.

§ 3. General courts martial shall be ordered by the adjutant general, by command of the governor, whenever he may think it necessary, where a major general shall preside; and be composed of twelve additional members, two of whom, at least, shall be brigadier generals, and the others field officers. General courts martial.

§ 4. Division courts martial shall be ordered at the discretion of a major general, where a brigadier general shall preside; and to be composed of twelve additional members, two of whom, at least, shall be colonels, and the others field officers. Division courts martial.

§ 5. Brigade courts martial may be ordered at the discretion of a brigadier general, where a colonel shall pre- Brigade courts martial.

side; and be composed of twelve additional members, two of whom, at least, shall be field officers, and the others captains.

Regimental courts martial.

§ 6. Regimental courts martial may be ordered by the commandants of regiments, where a lieutenant colonel or major shall preside; and be composed of twelve additional members, two of whom, at least, shall be captains, and the others lieutenants, cornets, or ensigns.

To proceed to trial if majority attend.

§ 7. In all courts martial, whether general, division, brigade, or regimental, when the full number of officers summoned shall fail to attend, the court shall proceed to the trial, provided a majority of the members shall attend who have been summoned on said court; and no exception or challenge shall be made to any other member, if good cause be shown, to the satisfaction of the court. The proceedings of any courts martial authorized or ordered under this chapter, shall be submitted to the officer ordering the same, for his approval, or disapproval; and in case the sentence is disapproved, he shall, within twenty days, return the proceedings to the president of the court, with his objections, who shall again convene the court and reconsider the same; and if, after deliberation, they shall adhere to their former decision, the sentence shall stand confirmed, and the officer ordering the court shall issue his orders dissolving the same, and cause the sentence to be carried into effect, subject, however, to an appeal by the accused to the superior officer next in rank; and in case of a division court martial, to the governor and commander-in-chief for his final approval or reversal.

Proceedings when sentence disapproved.

Opinion not to be reversed for the want of formality

The opinion of any court martial shall not be reversed or set aside for the want of any formality of proceeding, or the use of any technical terms; and that it appear from the face of the proceedings of the court, that the accused had a fair and impartial trial on the merits of the case.

Who shall be tried in respective courts martial.

§ 8. In general courts martial, none shall be tried below the grade of a general officer; the adjutant and quartermaster generals, who shall rank as brigadiers; in division courts martial, none shall be tried below a field officer or division staff; in brigade courts martial, field officers and brigade staff may be tried, and a captain, if good cause be shown; in regimental courts martial, all officers below the grade of a field officer, as well as the regimental staff officers, shall be tried.

Oath of judge advocate.

§ 9. Upon the convening of either of the courts herein directed, the president thereof shall administer to the judge

advocate the following oath or affirmation: "You do solemnly swear (or affirm) that you will truly and faithfully execute the duties of the office of judge advocate to this court, so long as you remain in office, to the best of your ability, and according to the laws of this state and of the United States; and that you will not, when secrecy is required, disclose or discover the opinion of this court, unless to the officer ordering the same, until he has approved or disapproved the sentence of the court; nor will you, at any time, disclose or discover the opinion of any particular member of the court martial, unless required to give evidence in a court of justice: so help you God;" which oath shall be deemed sufficient for such judge advocate while he continues to act. The judge advocate shall then proceed to qualify the president and members of the court, by administering to them the following oath or affirmation: "You, and each of you, do solemnly swear (or affirm) that you will well and truly try and determine, according to evidence, agreeably to justice, the best of your understanding, and the laws of this state, and of the United States, between the commonwealth of Kentucky, or of the United States, and the prisoner to be tried; and that you will not disclose the opinion of this court martial until made public by the proper officer; nor will you, at any time, disclose the vote or opinion of any particular member thereof, unless called upon by a court of justice to give evidence: so help you God." Whereupon, the court shall proceed to the business laid before them, and adjourn from day to day till finished; of which a complete record shall be made, and signed by the president and judge advocate, when the court shall be adjourned. Upon the disclosure of the sentence of any court martial, the accused may appeal therefrom to the officer next superior in rank to the one ordering the court, by filing a written notice with the officer to whom the appeal is made, within thirty days after the sentence is published; whose duty it shall be to order up before him the proceedings of such court for his final decision, which shall be given in thirty days.

Oath of president and members.

Appeal.

§ 10. Any officer, non-commissioned officer, musician, or private, or any private citizen, having cause of complaint against any commissioned officer, shall make out his charge in due form; and having made oath, before some justice of the peace, that the charges he is about to exhibit are true, to the best of his knowledge and belief, and file the same with the governor and commander-in-chief, ma-

Upon charges against an officer, sworn to and filed

jor general, brigadier general, or commandant of a regiment, to whom the officer charged is directly responsible by his station in the line; the governor, major general, brigadier general, or commandant of a regiment, with whom the charges shall be filed, may, at his discretion, order a court of inquiry, or an arrest and court martial, for the trial of such officer; and the court so ordered, shall meet in thirty days from the time of an arrest; of the time and place of meeting, the officer arrested shall have at least fifteen days notice, together with a copy of the charges exhibited against him.

Who may order courts martial.

Time of meeting and notice.

If, upon the meeting of such court, it shall appear, from the absence of witnesses, inability (from sickness) of the parties to attend, or for any good cause shown, a fair and impartial trial could not then be had, the court may adjourn to a future day, not exceeding three months at any one time.

May be adjourned.

§ 11. Commandants of regiments are authorized and directed to order courts martial, or courts of inquiry, at any time when it may appear to them necessary, to try persons for failing to do duty, or persons failing to perform tours of duty, when called on for that purpose, or for the trial of any non-commissioned officer or private, who may hereafter desert from the service of the state, or of the United States, or to excuse any person (disabled or for other cause) from doing militia duty during their disability, or for the trial of delinquents of any description.

Courts martial ordered by commandants of regiments.

Nothing herein contained shall be so construed as to alter the day on which the annual court of assessment shall meet.

§ 12. The judge advocate of every general, division, or brigade court martial, or court of inquiry, which may be ordered under the provisions of this act, shall be allowed the sum of two dollars per day, for his services while attending the court; the provost marshal shall be allowed one dollar per day, and each witness, legally summoned by process, from the president of the court, fifty cents per day for attendance, with an addition of mileage, as in other cases.

Pay of judge advocate.

ARTICLE V.

Courts of Assessment.

§ 1. A court of assessment of fines on delinquents shall be held for each regiment on the third Thursday in October

Court of assessment of fines.

in each year; which court shall be composed of a majority of the captains of such regiment, the eldest of whom present shall preside; but if any captain be absent, the next officer in rank in such company shall attend. The court, together with the regimental judge advocate and the provost marshal, may proceed to business; but in the absence of any judge advocate, the court may proceed to appoint one, *pro tempore*; all commissioned company officers may attend, who, *ex officio*, shall be members of the court. Previous to their proceeding to do any business, the president shall administer to the judge advocate the following oath or affirmation: "You do solemnly swear, (or affirm) that you will truly and faithfully execute the duties of judge advocate to this court, so long as you remain in office, to the best of your ability, and according to the laws of this state: so help you God;" and the judge advocate shall, in like manner, proceed to qualify the members, by administering to them the following oath: "You, and each of you, do swear (or affirm) that you will truly and diligently inquire of, and decide upon the several delinquencies reported to you, and in every case decide according to law, and the best of your skill and understanding, without favor or hope of reward: so help you God." The court being thus organized, shall proceed to examine all returns of delinquents laid before them; to have the delinquents called to show cause why judgment should not be awarded against them for failing to do their duty according to law; and to deliver their opinion in every case to the judge advocate, who is hereby directed to make a fair record thereof. The court of assessment shall also have the power of excusing from militia duty persons claiming to be over forty years of age, and persons disabled, during such inability, and of hearing evidence to determine the same; they shall have power to adjourn from day to day, and to compel the attendance of absent members; and when their business is completed, the president shall sign the record of their proceedings, and the court for that year shall be dissolved.

Oaths.

Proceedings.

§ 2. Within twenty days after the adjournment of every regimental court of assessment, the judge advocate thereof shall make out three fair lists of the fines assessed, and deliver the same to the commandant of the regiment, who shall furnish the regimental paymaster with one copy, the high sheriff of the county with one other copy, on or before the first day of February ensuing, in each year, for

Judge advocate to make out list of fines for paymaster, sheriff, &c.

which he shall take his receipt, and one copy he shall retain. Any judge advocate failing to make out and hand to the commandants of regiments, the list of fines assessed within the time prescribed by this chapter, shall be fined at the discretion of a regimental court martial, in any sum not less than ten dollars, nor more than one hundred dollars; and any commandant of a regiment failing to place such lists of fines in the hands of the sheriff, on or before the first day of February in each year, shall be tried and fined at the discretion of a brigade court martial, in any sum not less than twenty dollars, and not exceeding one hundred dollars, and may, in addition thereto, be cashiered. Each and every sheriff, or deputy sheriff, shall receive of, and receipt to, the commandants of regiments, for all lists of fines against delinquents, adjudged by any courts of assessment, inquiry, or courts martial, and, on refusing so to do, shall be fined one hundred dollars, to be recovered of him on motion of the regimental paymaster, made before the county court. The sheriff, into whose hands the lists of fines assessed by the court may be placed, shall have power to apply for and receive the same; levy, and make distress therefor, as in cases of county levy, if payment be withheld; and shall be entitled to the same fees for distress as are allowed in the collection of the public revenue. At the sitting of the annual courts of assessment, the sheriffs may return to said court, upon oath, a list of all insolvent delinquents of whom he cannot collect the fines, for their examination; and such of the insolvent list as the court may allow and approve of, the sheriff shall have a credit for in his settlement with the paymaster. And it shall be the duty of the judge advocate, within ten days from the adjournment of the court, to furnish the regimental paymaster with a certified copy of the insolvent delinquents thus allowed by the court. On or before the first day of January in each year, the sheriff shall settle with, and pay over to the regimental paymaster all sums by them collected, and for which they are accountable, (reserving a commission of nine per cent. upon the amount paid to the regimental paymaster,) for which he shall take his receipt therefor, a copy of which he shall have recorded in the next succeeding county court, for the county of which he is sheriff; but in case the sheriff shall fail or refuse to settle with, and pay to the paymaster as aforesaid, the regimental paymaster shall immediately proceed, by motion in the county court, in the same manner

Penalty for failure

Sheriff's duty and powers.

Insolvent delinquents.

Sheriff to make settlement.

that moneys are recovered by the counties against their public collectors, to collect and recover the money due from the sheriff and his deputies, or either of them. That, hereafter, when a court martial or court of inquiry may be ordered, under the provisions of this chapter, and the president of said court shall not attend, the next highest officer in rank, who may be present, shall act as president of said court.

Bond and oath of paymaster.

§ 3. The regimental paymaster shall, before he acts as such, enter into bond, with sufficient security, in the county court, to be approved by the court, to the commonwealth of Kentucky, in the sum of one thousand dollars, conditioned for the just fulfillment of all the duties enjoined on him by this chapter; which bond shall not be void on the first or any subsequent recovery; and shall also take the following oath or affirmation, to be administered by the presiding officer of the court, or by the clerk thereof: "You do solemnly swear that you will, as paymaster to the ——— regiment of Kentucky militia, truly and honestly perform the duty as such to the best of your knowledge and capacity; and that you will render a just and true account, when called upon by the proper tribunal."

Settlement with paymaster, &c.

§ 4. It shall be the duty of the field officers of every regiment to call upon, and settle the accounts of the regimental paymaster, in the month of January in each year, and oftener if they think proper; which settlement, signed by themselves and the paymaster, they shall cause to be recorded in the court of their county, at the next court after such settlement is made, and the clerk of the court shall perform the services without fee. The money collected and paid to the paymaster shall be subject alone to orders drawn by the commandant of the regiment, for regimental purposes, to-wit: the purchase of regimental and battalion standards, drums, fifes, bugles, &c., music at the several regimental, battalion, and company musters; the purchase of arms, teaching military music, &c. All orders given by the commandant of the regiment on the paymaster, for the payment of money, shall be filed and preserved by him, as vouchers in his settlement.

To what orders money subject.

Claimants to be paid according to seniority.

§ 5. That it shall be the duty of the regimental paymaster, in the payment of claims, to respect seniority, and pay no younger claims, while those of an older date are outstanding, provided the elder claimant has given due notice to the paymaster of his claim; and the paymaster, in settling with the sheriff, shall not allow younger claims that

may have been purchased up by him, until all the older claims which may have been presented to him for payment, shall have been discharged. The regimental paymaster shall be allowed, as a compensation for his services, six per cent. on all money received and disbursed by him. That, upon the failure of any regimental paymaster to pay over, to the orders of the commandant thereof, the whole, or any part of the funds belonging to the regiment, in his hands, the same may be recovered on motion of the claimant or commandant of the regiment, in the county court where such paymaster's bond may be filed; and the said court is authorized to give judgment against such paymaster and his security, together with ten per cent. damages thereon, provided ten day's notice shall be given of such motion. That it shall be the duty of the paymaster or paymasters of regiments, from which a new regiment may be formed hereafter, to liquidate, in the presence of the paymaster of the new regiment, the accounts of the same; taking into consideration all debts that are due, and in favor of, as well as those against such regiment or regiments, at the time of formation, having regard to colors, drums, and fifes in the possession of either; and if it shall appear that there is a balance in favor of the new regiment, it shall be paid over to the paymaster thereof, in proportion to the number of men taken from the old regiment; but if it shall appear that the old regiment is in debt, then, in that event, the new regimental paymaster shall assume a like proportionable part of said debt, and pay the same under the rules and regulations prescribed by law respecting seniority of claims.

Paymaster's compensation

Duty when new regiment formed.

§ 6. That it shall be the duty of the judge advocate of every court of assessment, upon the application of the commanding officer of each company within his regiment, to furnish such officer with a list of all fines assessed on every member of his company, at the preceding court of assessment; and it shall be the duty of every commandant of a company, at his April muster in each year, to make public declaration to his company of the names of each and every person fined, belonging thereto, at the last annual court of assessment held for his regiment.

Judge advocate to furnish list of fines to commander of company.

§ 7. When any person shall, after being fined by any court of assessment, inquiry, or court martial, remove into the bounds of another regiment, or into any other of the counties of this state, without the paying the same, it shall be lawful for the president of such court, or the command-

When person fined removes into bounds of another regiment.

ing officer of the regiment where such fine was imposed, to send a certified copy of such fine into the county where such delinquent shall have removed, and put the same into the hands of the sheriff of said county, who shall proceed to collect and account therefor, in the same manner that other fines are collected and accounted for. It shall be the duty of the commandants of regiments, on or before the first day of March in each year, to re-list with the sheriff of his county all such fines as were returned delinquent by the sheriff in the preceding year, which were allowed by the court of assessment, (except those who have removed,) under the same penalties of each, for neglect to re-list, or for refusing to collect or account for, as is provided in the first section of this article.

Delinquents to be re-listed.

§ 8. All courts martial, courts of inquiry, and courts of assessment, may issue summons for witnesses; or, previous to the sitting of such courts, the president thereof, or any field officer, being a member of the court, may issue such summons or subpœna; the process to be served by the provost marshal, or any sheriff or constable; and if such witness fail to attend, without a reasonable excuse, he shall be fined by the court in any sum not exceeding three dollars. And it is hereby declared, that the several courts provided for in this chapter possess competent power to carry into execution the regulations granted.

Witnesses may be summoned; fined for failing to attend.

§ 9. And whereas, it may happen that the officers of regiments may be prevented by bad weather, or by unavoidable accidents, from holding their regimental courts of assessment on the day of their annual meeting, or a sufficient number to compose said court may not attend; in such cases the court shall stand adjourned from day to day, until a sufficient number shall attend to form a court; and those attending shall have power to send for absent members, and award such fines for non-attendance as they may think reasonable, not less than five nor more than ten dollars each per day. The powers herein granted may be exercised by any court ordered under this chapter.

Members failing to attend, court to stand adjourned from day to day.

§ 10. It shall be the duty of the adjutants of regiments, at the regimental drill and battalion musters, to note and report all delinquencies of captains, subalterns, and regimental staff officers which may happen; and shall return such lists of delinquents to the next court of assessment held in his regiment; which court shall have power to fine such delinquents for their neglect. The adjutant shall keep a record of the bounds of his regiment, battalions, and

Adjutant to note and return delinquencies of captains, &c.

companies, and also of all modifications or boundaries of new companies made hereafter.

Captains to return delinquencies

§ 11. It shall be the duty of all captains and commandants of companies to make a due return of all delinquencies which may happen within that year, either as to absence, arms, or accoutrements, and as to a failure or refusal to perform duty when present; also, of all non-commissioned officers, musicians, and privates, who may have produced disturbance at any muster of their companies, battalion, or regiment; which return shall be delivered to the judge advocate on or before the third Thursday in October, in each year.

One known to be sick not be returned.

1. No captain or other officer shall be bound to return any person as a delinquent, who, to his knowledge, or the knowledge of any creditable person present, was sick, or unable to attend by reason of any bodily infirmity, or was absent from the county on indispensable business, at the time of such muster.

Excuses to be made on oath.

2. All excuses shall be made on oath, which may be administered by the captain or commanding officer of the company. Commandants of companies shall, at their regimental muster in each year, make a public proclamation of all the delinquents they are about to return to the court of assessment. It shall be the duty of commandants of companies, at their April musters annually, to appoint their non-commisioned officers, and as often thereafter as may be necessary to fill vacancies, who shall not be compelled to serve more than one year; and it shall also be their duty, on or before the tenth day of May, annually, to furnish the sergeant major of the regiment to which he belongs, a list of the names of such appointments, which the sergeant major shall keep to detail therefrom when necessary. Commandants of companies shall have power to discharge any person from militia duty, upon his making an affidavit before some justice of the peace, and producing his certificate thereof, that he is, from the best information he can obtain, over the age of forty-five years.

Proclamation of delinquents to be made.

Non commissioned officers.

Commandant of company may discharge from militia duty.

List of persons notified of muster to be returned on oath.

§ 12. All non-commissioned officers who deliver notices to the subaltern officers, non-commissioned officers, musicians, and privates, of the times and places of holding musters, shall return to their respective commandants of companies, on oath, from time to time, a list containing the names of the persons by them notified; and if not delivered by them within the time prescribed by law, he shall note the time such notice was delivered; which oath com-

mandants of companies are hereby authorized to administer; which list or lists commandants of companies shall return to the regimental judge advocate, on or before the day on which the court of assessment meets, to be by him laid before the court; which shall be sufficient evidence of notice having been served; and upon any charge, in writing, lodged with the judge advocate of such court, prior to or during its sitting, of a failure or neglect of any officer, for which he may, by law be subject to a fine, it shall be lawful for the court when the officer or officers are below the grade of field officers, to determine the same; subject, however, to an appeal to the court of appeals.

Fines to be paid into public treasury.

§ 13. All fines assessed and collected under any of the provisions of this chapter, on any general, or general staff officer, shall be paid into the public treasury; and it shall be the duty of all officers ordering such courts, to cause a list of the fines so assessed to be placed in the hands of the sheriff of the county in which such delinquent resides, within thirty days after a final decision is had thereon, and take duplicate receipts of the sheriff therefor, one of which he shall transmit to the auditor of public accounts, by mail or otherwise, who shall cause the sheriff to settle and account for, as in case of other public dues, within six months after such lists shall have been placed in his hands.

List to be placed in hands of sheriff.

Field officers to form court of appeals.

§ 14. The field officers of each regiment, or a majority of them, are hereby constituted a court of appeals, who, with the regimental judge advocate, shall meet on the first Monday in May, in each year, who, having taken an oath before the judge advocate to act impartially, shall have power to remit all fines assessed in their regiments, (those on themselves excepted,) if, in their opinion, they have been unjustly assessed. All persons fined at a regimental court of assessment, conceiving themselves aggrieved thereby, shall and may, at any time previous to the first Monday in May next succeeding the sitting of the court of assessment, appeal therefrom to the court of appeals. In all cases, appeals shall be taken in the following manner, to-wit: The person appealing shall go before some justice of the peace for his county, and make oath that he considers himself aggrieved by the decision of the court of assessment, and shall state his defense in writing, and take such magistrate's certificate of appeal, as well as of his defense and excuse, and file the same with the commandant of the regiment, or the judge advocate, which shall be sufficient for such appeal to be heard.

How appeals taken.

Failure to appeal in writing not to debar hearing.

In case any person should fail to make such appeal in writing, it shall not debar his being heard before the court of appeals upon the merits of the case. Any excuse or defense made before the court of appeals or assessment, shall be on oath, which shall be administered by the judge advocate of the court. The court of appeals shall meet and sit at the same place where the regimental court of assessment, held in the preceding October, shall have assembled, and shall confirm or reverse the decision of the regimental court of assessment. The regimental judge advocate shall attest and record the proceedings of said court, or, on his failure, they shall appoint one *pro tempore;* and shall, within ten days after the adjournment of said court, certify to the sheriff of the county the decision had on all cases where the fines assessed had been remitted; and also to furnish the regimental paymaster with a copy, to enable him to settle with the sheriff. It shall be lawful for the court of appeals to adjourn from day to day, if necessary for the trial of all appeals before them; and if a majority of the court fail to attend, they may adjourn until the first Monday in June following, and continue in session until the business is completed.

General court of inquiry, when ordered, & of whom composed.

§ 15. It shall be the duty of the governor and commander-in-chief, annually, if necessary, to order a general court of inquiry, where a major general shall preside, and to be composed of at least four and not more than eight additional members, consisting of brigadier generals and field officers, none of whom to be delinquents in making their annual returns for the preceding year, to meet at the capitol, in the town of Frankfort, in the month of April or May, to inquire into the delinquency of any major general who may be reported to them by the adjutant general for failing to make the annual returns, and to impose the fines annexed by law for such offense.

If major general ineligible, a brigadier general shall preside, &c.

If it shall so happen that the major generals are ineligible on account of their own delinquency, then the president of such court shall be chosen from the brigadier generals; and if the president detailed shall not attend, a majority of the remaining members shall be sufficient to constitute a court, the eldest and highest in grade of whom shall be president thereof. And the court thus ordered having convened, shall proceed to hear and determine all such cases of delinquency as shall be laid before them by the adjutant general; but shall, previous to entering on the duties assigned them, take the following oath, which shall

Proceedings.

be administered by the president: "You do solemnly swear that you will truly and faithfully inquire into such delinquencies as shall be submitted to you, and shall assess the fines therefor, as shall seem just, without favor, partiality, or affection: so help you God;" which oath shall be administered to the president by any member of the court. And on the trial of all delinquencies, as here provided for, the court shall not adjudge as good ground of defense, the allegation of the party charged, that any brigadier general under his command had failed to make his annual return; and this provision shall apply, in all cases, on the trial of officers of any grade, for failing to make their annual returns.

Oath.

Failure of brigadier general to make return not good defense.

§ 16. And the court of inquiry thus established, shall have power, when convened, to appoint a recorder or clerk, and provost marshal, who shall take an oath, to be administered by the president, well and truly to perform the duty assigned them.

Power of court to appoint recorder and provost marshal.

§ 17. The president of the courts herein established, shall cause a list of the fines imposed on each delinquent to be placed in the hands of the sheriff of the county where such delinquent officer resides, and take his duplicate receipt therefor; one copy of which he shall transmit to the auditor of public accounts; and the sheriff shall collect and account therefor in the same manner as is directed by the thirteenth section of this article.

List of fines to be placed in hands of sheriff.

§ 18. In all cases where a division, brigade, or regimental court of inquiry may be ordered, to examine into the nature of any accusation or imputation against a commissioned officer, the court shall consist of at least three, and not more than five members, the eldest and highest in rank of whom present shall preside. They shall appoint some suitable person as recorder, to reduce the evidence and proceedings to writing; but they shall not give their opinion on the merits of the case, unless they be thereto specially required by the officer ordering the court. These courts shall have power to summon witnesses, and examine them on oath. The party accused shall also be permitted to cross-examine and interrogate the witnesses, so as to investigate fully the accusation in question. The proceedings of all courts of inquiry and of courts martial, shall be authenticated by the signature of the president and recorder or judge advocate, and to be delivered to the officer ordering the same.

When court ordered to examine accusation against commissioned officer; of whom composed, and how to proceed.

ARTICLE VI.

Power of Governor to call Militia into service.

Governor may call militia into service.

§ 1. The governor and commander-in-chief, for the time being, shall have power, whenever he deems it necessary, to call into the service of this state, any number of the militia that he may deem expedient and necessary; and a tour of duty, when employed in the service of this state, shall be estimated at thirty days from the day of rendezvous; and no militia man shall be compelled to serve for a period of more than one hundred and twenty days in succession. When called into the service of the United States, each militia man or corps shall receive a credit for a tour of duty for every thirty days he may serve, provided in every case the service shall have been rendered. And whenever detachments shall be made from this state, for the service of the United States, they shall be made agreeably to the acts of congress then in force, taking into view, the time, the rank, and the number of officers to the number of men required; and if, at any time, different regulations shall be made by congress, requiring divisions, brigades, regiments, battalions, and companies, to correspond with the organization of the armies of the United States, the governor shall, and he is hereby authorized to conform to such regulations, by the appointment, when elected by the detachment, if necessary, of such additional officers or otherwise, agreeably to the laws regulating the militia of this state, and the militia and armies of the United States.

Thirty days a tour.

None compelled to serve more than 120 days.

Detachments for the service of the United States, how made.

When requisition made by president adjutant general to detail general and field officers.

§ 2. It shall be the duty of the governor, when requisitions are made on the militia of this state, by the president of the United States, or by any officer authorized to make the same, for the service of the United States, to cause the adjutant general to detail the general and field officers from among such officers in commission as the interest of the service may require.

Governor authorized to call volunteers into service.

§ 3. The governor and commander-in-chief shall, and he is hereby authorized, in all cases of calls on the militia, for the service of this state or of the United States, either by drafts or volunteers, to order into the service the whole or any part of the volunteer corps of this state, whether artillery, cavalry, light infantry, or riflemen, by corps or companies, as such, if such troops are required, or will be received; but if not, they shall be detailed to serve as infantry of the line.

When requisitions for troops are made, for the service of the United States, any of the volunteer corps may be attached to any division, brigade, or regiment, in such manner as the governor may direct; but if such company shall not have a sufficient number of men for duty, so as to complete the number required by the act of congress for a company, then, and in that case, the governor shall attach another light company so as to complete the same, with a due proportion of officers from each company, as near as may be; and the number of officers, non-commissioned officers, musicians, and privates, detailed by companies from the light corps, shall go as a credit to the division, brigade, or regiment from which they were ordered and belonged; and the balance of the requisition, if any, shall be made from the infantry of the line; and when the call shall be for either volunteers or drafts, and any light company or corps, being ordered, shall fail or refuse to march, every officer, non-commissioned officer, musician, or private, thus failing or refusing, shall suffer all the fines and penalties as shall or could be inflicted, for like failure, on the infantry of the line.

When volunteer corps attached to division, brigade, &c., for service of United States.

Penalty for refusing to march.

§ 4. In all cases where a volunteer company of cavalry, artillery, light infantry, or riflemen shall be raised, the men enlisting therein shall not be discharged from their duty in the regiment or company to which they belonged until such troop or company shall have been organized; and no non-commissioned officer or private shall quit the same, after such organization, without the consent of the commandant of such troop or company, while he continues to reside in the bounds thereof, or a dissolution of said company.

Members of volunteer companies, when discharged from duty in regiments, &c.

ARTICLE VII.

Mode of altering boundaries of Battalions and Companies, and of making returns, &c.

§ 1. The field officers of each regiment in this commonwealth shall have power, and may, from time to time, alter and regulate the boundaries of the battalions and companies belonging to their regiments, so as to make them contain, as nearly as is convenient and practicable, the same number of privates, so that each company shall not consist of less than sixty-four rank and file; and no person shall be permitted to join any volunteer corps, if it reduce the company to which he belongs to a less number than sixty-four rank and file; nor shall any new or volunteer company be hereafter organized, which shall not consist of

Field officers may change boundaries of regim'nts

Number of rank and file in company.

at least thirty-six rank and file; and if, at any time, any company shall be reduced to a less number than forty-five rank and file, the field officers of the regiment to which such company belongs, shall dissolve the same, and incorporate the members thereof with the adjoining companies; and in case of the refusal of persons to serve as company officers, so as to have any company unofficered for the space of twelve months, the field officers shall, at the expiration of that time, and sooner, if they think necessary, dissolve the same, and attach the men residing within the boundary to the adjoining companies. They shall, at all times, furnish the adjutant with any alterations of boundary, either of battalions or companies, who shall keep a record thereof.

When company may be dissolved.

§ 2. All officers shall reside within the bounds of the division, brigade, regiment, or company to which they may severally belong; and the residence of every militia man in this state shall be considered to be at the place where he has his lodging.

Residence.

§ 3. Any officer acting in the absence of his superior officer, shall perform all the duties required of his superior, and shall be subject to the same penalties imposed on such superior, for a failure to perform the duties devolving on him by reason of such absence.

Officer acting in absence of superior.

§ 4. Commandants of companies shall, after their military exercises are over, in the month of April, in each and every year, proceed to make out duplicate annual company returns, agreeably to the forms prescribed by the adjutant general; in which shall be expressed the military strength, arms, and accoutrements of such company; and, after countersigning the same, shall deliver one copy to the adjutant of the regiment to which he belongs, on or before the tenth day of July, in each year, and file the other for the use of the company.

Duplicate annual company returns.

§ 5. Commandants of regiments shall themselves, or cause their adjutants so to do, make out, from the company returns, on or before the tenth day of August, in each year, duplicate regimental returns, agreeably to the forms prescribed by the adjutant general; and, after having examined and signed the same, shall transmit, or cause his adjutant to transmit, one copy to the brigadier general of his brigade, on or before the first day of September, in each year, and retain one copy for the use of the commandant; and in case of the failure of any captain to make his return, the colonel or adjutant shall use the last return

Duplicate regimental returns.

made by such company, in completing the regimental return.

Triplicate brigade returns.

§ 6. That it shall be the duty of each brigadier general to make, or cause his brigade major to make out, from the regimental returns of his brigade, triplicate brigade returns, agreeably to the forms prescribed by the adjutant general, on or before the tenth day of September, in each year, for their examination and signature; one of which returns he shall forward to the major general of his division, and the other to the adjutant general, on or before the tenth day of October in each year, and file one for his own use. But in case any commandant of a regiment in his brigade fails to make his annual return, the brigadier general or brigade major shall take the last return made by said regiment, to complete the return of the brigade. They shall also cause their quartermaster to make out two fair estimates, from the returns of the regimental quartermasters, agreeably to forms furnished by the quartermaster general, and lay the same before him, for his examination and signature, on or before the tenth day of September, each year; one copy of which he shall transmit to the major general of his division, and file one for his own use.

Quartermaster's estimates.

Duplicate abstracts of division returns.

§ 7. It shall be the duty of each major general to make out, or cause their division inspectors to make out, from their brigade returns, duplicate abstracts of division returns, agreeably to the forms prescribed by the adjutant general, on or before the first day of November in each year, and after having examined and signed the same, he shall transmit one copy to the adjutant general, on or before the fifteenth day of November in each year, and retain one for his use. But in case of the failure of a brigadier to make his annual returns, the major general shall not be thereby excused from making his return, but shall use the last return made by the brigadier, to complete his own.

Day of receipt of returns to be noted.

§ 8. It shall be the duty of the commandants of regiments, or their adjutants, to note, on each company return, the day on which it is received, and to return to the annual court of assessment all those who may have failed to make their returns within the time prescribed by law; and the brigadier general or brigade inspector shall note, on each regimental return, the day on which it was received. It shall be the duty of the major general, or his division inspector, to note, on each brigade return, the day on which it was received. It shall be the duty of the adjutant gene-

ral to note the day on which he may receive the returns of the major generals of division or brigade returns; and, in case of the failure of any brigadier general to forward his return to the adjutant general within the time prescribed by law, he shall immediately report the same to the major general to whose division such brigadier general belongs. If the commandants of regiments fail to make their returns within the time prescribed by law, it shall be the duty of the brigadier general, to whose brigade such commandant of regiment may belong, to order a brigade court martial, to assess the fines for such failure. And it shall be the duty of each major general, on the failure of any commandant of a brigade within his division, to make his annual return to such major general, and to the adjutant general, within the time prescribed by law, to order a division court martial for the trial of, and to assess the fine on, such brigadier general for such failure.

Courts martial to be ordered to assess fines for failures.

§ 9. There shall be, in the month of October in each and every year, a regimental muster, at such place as the commandant thereof may direct, where every field, platoon, and regimental staff officer, non-commissioned officer, musician, and private belonging to said regiment, shall attend, armed and equipped according to law.

Regimental muster.

§ 10. There shall be a battalion muster in every battalion, at such place as the commandant thereof shall direct, in the month of May, in each and every year, where every officer, non-commissioned officer, musician, and private, belonging thereto, as well as the commandant of the regiment, and regiment staff, shall attend, armed and equipped according to law.

Battalion muster.

§ 11. There shall be one company muster in the month of April, in each and every year, to be appointed at the discretion of the commandants thereof, as to time and place; the place of mustering shall be a rallying point for said company in case of insurrection or invasion; where every commissioned, non-commissioned officer, musician, and private attached thereto, shall attend, armed and equipped according to law.

Company muster.

§ 12. The commanding officers of brigades shall have power to order the commissioned officers of any two or more of the regiments of his brigade which lay most contiguous, to be trained together, at some place within the bounds of his command, to continue not less than two nor more than four days, and to encamp on the ground, at his discretion; which training, if ordered, shall be in the month

Brigade training.

of September; and the officer ordering the same shall superintend the training thereof in person, and shall be governed by the rules and articles of war which govern the army of the United States; of which training he shall notify the commandants of regiments in his orders for the annual musters.

Drill muster.

If there be no brigade training in any one year, commandants of regiments shall appoint a regimental drill muster, in the month of April or May, before the battalion musters, to continue not less than two nor more than four days, at his discretion, at which every commisssioned and regimental staff officer, sergeant, and musician shall attend, and to encamp on the ground, at the discretion of said commandant.

Mode of training &c., at several musters.

§ 13. At the several musters herein directed to be held, the troops shall be trained by the commandants thereof, at least three hours on each day, agreeably to the discipline of "Scott's Exercise," or such other as may be adopted by congress for disciplining the army and militia of the United States. The rolls shall be called at each muster herein provided for, and the delinquents noted, as to absence, arms, accoutrements, or refusal or failure to perform the duties required, when present. It shall be the special duty of the commandants of companies to examine the condition of the public arms, at every muster, and particularly at the time of making their annual returns.

Regimental training in lieu of drill, battalion, & regimental musters.

§ 14. When no brigade training is ordered, in any year, commandants of regiments may dispense with the drill, battalion, and regimental musters; and in lieu thereof, may order a regimental training, in the month of September, within the bounds of his regiment, to continue not less than two nor more than three days, at his discretion, at which every officer, non-commissioned officer, musician, and private, belonging to the regiment, shall attend, armed and equipped according to law.

Disobedient mutinous, or disorderly conduct.

§ 15. If any officer, non-commissioned officer, musician, or private, shall behave disobediently or mutinously, when on duty, at any parade or training, or before any court or board directed to be held by this chapter, or shall attempt, by fantastical dress, or in any other manner, to ridicule or produce confusion in the same, the commanding officer present, or the court or board, shall have power to confine him under guard, during the parade or sitting of the court; and, moreover, if he be a commissioned officer, he shall be cashiered and fined by any court or board, in any sum not

exceeding fifty dollars; and if a non-commissioned officer, musician, or private, may be confined in like manner, and be subject to a fine, in any sum not exceeding twenty-five dollars. And if any private citizen, or by-standers, shall molest or insult any officer or soldier, while on duty, or shall be guilty of disorderly conduct, as above described, the commanding officer, or the court or board, shall have power to confine him under guard, during the parade or sitting of the court or board, and he shall also be subject to a fine, in any sum not exceeding twenty dollars, to be collected as other fines.

Exemption from execution, arrest, &c.

§ 16. All arms, ammunition, and equipments of every militia man shall be exempt from executions and distresses at all times; and their persons from arrest, except for treason, felony, or breach of the peace, while going to, continuing at, or returning from musters, or any military court; and when detailed for the service of this state, or of the United States, and after receiving marching orders, no arrest or process in civil cases shall be served on them, and they shall be exempt therefrom during their continuance in service.

Orders to be recorded.

§ 17. Brigade inspectors, adjutants of regiments, and commandants of companies shall severally keep a book in which all orders shall be recorded, whether directed to or emanating from them or their commanding officers.

ARTICLE VIII.

Time and manner of officers taking oath of office; resignation, fines, &c.

Time and manner of resignation.

§ 1. That, hereafter, when any person accepts a military commission, he shall not be permitted to resign the same, except in the month of January, in each year; and all resignations shall be made in the following manner, to-wit: All company and regimental staff officers shall tender their resignations to the commandants of regiments; regimental field and brigade staff officers, to the commandants of brigades; brigadier generals and division staff officers, to the commandants of divisions; and major generals, adjutant general, and quartermaster general, to the governor and commander-in-chief.

Officer resigning, &c. to deliver public arms, &c. to next in command. Fine for failure.

§ 2. It shall be the duty of every officer, previous to his resigning or removing out of the bounds of his command, to deliver the public arms, if any, the laws, rolls, and returns that may be in his possession, to the next officer in command, and take his receipt therefor. Any person fail-

ing so to do, shall be subject to a fine of any sum not exceeding fifty dollars, to be assessed by any court martial or court of assessment, notwithstanding such officer may have resigned or removed out of the bounds of his command; which fine, if on a regimental (other than field) officer shall be applied to the use of said regiment.

Officers required to take oath.

§ 3. It shall be the duty of every officer hereafter elected or appointed in the militia of this state, within twenty days after receiving his commission, and before he acts under the same, to appear before some justice of the peace in the county in which he resides, or before the county court, who shall administer to such officer the following oath or affirmation: "You do solemnly swear (or affirm) that you will support the constitution of the United States and of this state; that you will be faithful and true to the commonwealth of Kentucky, so long as you continue a citizen thereof; and that you will faithfully execute the office of ———, according to law and the best of your understanding;" and also the oath prescribed by the law more effectually to suppress the practice of dueling. A certificate thereof shall be indorsed on the commission at the time of taking the oath; and the officer thus qualified shall be obeyed and respected accordingly.

Duplicate of oath to be filed.

§ 4. Every regimental officer taking the aforesaid oath, shall, within twenty days thereafter, file with the adjutant of his regiment a duplicate of the aforesaid oath, which shall be preserved with the papers of his office; and any officer failing to take such oath within the time prescribed by law, and filing copy of same with the adjutant, shall be subject to a fine of not less than three nor more than five dollars; and the adjutant shall report all such delinquent officers to the regimental court of assessment.

Fine for failing to take oath.

Penalty for exercising duties of office before taking oath.

§ 5. If any officer, before he shall have taken the oath prescribed by this act, shall exercise any of the duties of such office, he may, if a field officer, be fined in any sum not exceeding fifty dollars, at the discretion of a brigade court martial; if below the rank of a field officer, he may be fined in any sum not more than twenty five dollars, to be assessed by a regimental court, and to be applied to the use of said regiment.

Twelve months absence considered a removal.

§ 6. If any commissioned officer shall absent himself from the duties of his command for the space of twelve months, unless he be employed in public business, it shall be deemed equivalent to a removal, and his office vacated, and the governor, major general, brigadier general, or com-

mandant of a regiment, as the case may be, shall immediately proceed to cause such vacancy to be filled. And if any commissioned officer shall labor under any bodily infirmities, mental disability, or habitual drunkenness, the governor, major general, brigadier general, or commandants of regiments, as the case may be, shall order a court of inquiry; and if, on investigation, they shall report to the officer ordering the court, that the officer charged does labor under such bodily infirmity, mental disability, or habitual drunkenness, to such extent as to disqualify such officer for the faithful discharge of his duties as such, and the officer ordering the court shall approve the report of said court, the office shall thereafter be considered vacated; and the governor, major general, brigadier general, or commandants of regiments, as the case may be, shall take proper measures for filling such vacancy.

How office vacated when officer labors under bodily infirmity, mental disability, or habitual drunkenness.

In all cases where the opinion of said court shall go to vacate the office of any officer, above the rank of captain, the governor and commander-in-chief shall first approve the same.

§ 7. The following shall be the uniform and equipments of the several officers of the militia of this state, in which they shall appear at all times, when required to attend any parade or court directed by this chapter: Every general officer, blue coat and pantaloons, made in the fashion of the United States uniform, red sash, yellow buttons, gilt or gold epaulets, boots, spurs, a round black hat, black cockade and stock, white plume, gilt small sword or hanger, and pistols and holsters. Each division and brigade staff officer, a plain blue coat and pantaloons, and, in all other respects, to conform to that prescribed for general officers, with the exception of the number of epaulets, as hereafter provided for. Each regimental field officer, blue coat and pantaloons, made in the fashion of the United States uniform, with white buttons, silver epaulets, round black hat, black stock and cockade, white plume, tipped with red, red sash, boots, spurs, pistols, and holsters, and white small sword or hanger. Every company officer, a plain blue coat and pantaloons, a round black hat, black stock and cockade, red plume, silver epaulet, small sword or hanger. The regimental staff officers shall wear the same uniform prescribed for company officers, except that their plumes shall be white, tipped with red, and shall have pistols and holsters.

Uniform and equipment of officers.

1. Chaplains, surgeons, and surgeons' mates, shall not be compelled to appear in any uniform, but to wear a black plume.

2. All officers may be permitted to wear uniforms in the style of the United States' uniform.

3. The division inspectors, quartermasters, and brigade major, shall wear two epaulets; brigade quartermasters and aid-de-camp, one epaulet, to be worn on the right shoulder; captains, one epaulet, on the right shoulder, and all subaltern and regimental staff officers, one epaulet on the left shoulder.

Pay of adjutant, regimental judge advocate, and provost marshal.

§ 8. Adjutants of regiments shall be allowed one dollar and fifty cents per day for attending battalion, drill, and regimental musters; regimental judge advocates shall receive one dollar and fifty cents per day, when attending any of the courts authorized under this chapter; and provost marshals, one dollar per day when attending as aforesaid; all of which shall be paid out of the funds of the regiments to which they belong.

Rate of fines.

§ 9. That the fines to be inflicted, under the provisions of this chapter, shall, without a reasonable excuse, be assessed as follows, viz: On any major general, for a failure to perform the duty or duties enjoined on him by this chapter, any sum not less than twenty nor more than fifty dollars, and for failing to make his annual return, within the time prescribed by law, fifty dollars. On every brigadier general, for failing to make his annual return, within the time prescribed by law, forty dollars, and for failure to perform any other duty or duties required of him by this chapter, any sum not less thad fifteen nor more than forty dollars. On the adjutant general, for failing to perform any duty or duties required of him by this chapter, any sum not exceeding fifty dollars, and for failing to make his annual return, one hundred dollars. On the quartermaster general, for failing to perform any duty or duties enjoined on him by this chapter, any sum not exceeding fifty dollars. On the commandant of each regiment, for failing to make his annual return within the time prescribed by law, twenty-five dollars; for failing to settle with the paymaster of his regiment, one hundred dollars, and for failing to perform any other duty or duties required by this chapter, in any sum not less than five nor more than twenty dollars for each offense. On every lieutenant colonel or major, failing, when notified, to attend to settle with the paymaster, seventy-five dollars, and for failing to perform any

Major general.

Brigadier general.

Adjutant general.

Quartermaster general.

Commandant of regiment.

Lieutenant colonel or major.

other duty or duties required by this chapter, any sum not less than five nor more than fifteen dollars, for each offense.

Captain. On every captain, for failing to make his annual return, within the time prescribed by law, ten dollars, and for failing to perform any other duty or duties required of him by this chapter, any sum not less than five nor more than ten dollars, for each offense.

Lieutenant, ensign, or cornet. On each lieutenant, ensign, or cornet, for failing to perform any of the duty or duties required of them by this chapter, any sum not less than three nor more than five dollars.

Sergeant major, &c. On each sergeant major, quartermaster sergeant, drum and fife major, sergeant and corporal, for failing to perform any of the duty or duties enjoined on them by this chapter, any sum not less than one dollar and fifty cents, nor more than four dollars, for each offense.

Private. On every private, for disobedience of orders, three dollars; for failing to attend musters, not less than one nor more than three dollars.

Aid-de-camp. On every aid-de-camp, for failing to obey the orders of his major or brigadier general, or for failing to comply with any duty or duties required of him by this chapter, any sum not less than five nor more than fifteen dollars.

Division inspector, &c. On every division inspector or quartermaster, or brigade inspector or quartermaster, for failing to obey the orders of their generals, or for failing to perform any duty or duties assigned or required of them by this chapter, any sum not exceeding fifteen dollars for each offense.

Adjutant. On every adjutant, for disobedience of orders, or for failing to perform any of the duty or duties enjoined on him by this chapter, any sum not less than three nor more than ten dollars.

Paymaster. On regimental paymaster, for failing to enter into bond for a faithful discharge of his duties, within three months from the receipt of his commission, any sum not exceeding fifty dollars; for failing to settle with the sheriff, or field officers of his regiment, annually, as required by this chapter, any sum not less than fifty nor more than one hundred dollars, and for any other failure to perform duty, five dollars for each offense.

Surgeon, &c. On any surgeon or surgeon's mate, for failing to attend a court or board, for the examination of invalids, five dollars, and for failing to perform any other duty or duties required of them, five dollars for each offense.

Quartermaster. On every quartermaster, for failing to perform any duty or duties required of him by law, or disobedience to his commanding officer, five dollars for each offense.

Judge Advocate. On every judge advocate, for a failure to comply with any duty or duties required of him by law, not otherwise provided for

herein, five dollars for each offense. And the commanding officers of divisions, brigades, and regiments are hereby authorized to order courts martial, or courts of inquiry, at their discretion, for the trial of and to assess the fines on any delinquent; which fines shall be collected and accounted for agreeably to law.

Courts martial to be ordered to assess fines.

ARTICLE IX.

Penalty for certain offenses.

§ 1. There shall be courts martial or courts of inquiry ordered, whenever necessary, to hear complaints of inability, and for the trial of all officers, non-commissioned officers, musicians, and privates who fail or refuse to march when ordered into the service of this state or of the United States. Commandants of companies, when mustered into the service of this state or of the United States, finding any part of his command fail in complying with the orders they shall have received, shall report the same to the commandant of the regiment from which such delinquent detail was made; whereupon a court shall be ordered for the trial of such person, notice being first given in writing and left at the house of such delinquent officer or soldier, or his place of residence at the time he was detailed for service; and, upon proof being made to the court of such notice being given, they shall proceed to the trial in the same manner as if the accused appeared and plead not guilty. And if a commissioned officer, the court shall cashier him, and fine him to the amount of three months' pay of such officer, when in service, unless a reasonable excuse be given for such failure. And any non-commissioned officer, musician, or private, failing or refusing to march, when ordered into service of this state or of the United States, shall, without a reasonable excuse, be fined in like manner, in any sum not less than sixty nor exceeding one hundred dollars, and be imprisoned two months; and the commandant of the regiment to which such delinquent belongs may order any officer of the regiment, with a sufficient guard, to arrest the offender and commit him to any jail in this state; and the jailer shall receive and confine him during the time of his sentence by the court, whose jail fees shall be paid as in other cases. And if any person shall desert from the service, it shall be the duty of any and every officer knowing such person to be a deserter, to apprehend and deliver him over to any subsequent officer detailed for service, or to any jailer in

Officers or privates failing or refusing to march when ordered into service, to be tried by courts martial.

Notice of trial.

Sentence.

May be arrested and placed in jail.

Desertion.

this state; and if to an officer, he shall be taken and detained in service until he shall have completed the time for which he was detailed, and shall have one-half his pay stopped; and any private citizen apprehending such deserter, and delivering him to any officer as aforesaid, and taking his receipt therefor, such person shall be entitled to a credit for the length of time said deserter was detailed to serve; which receipt shall be assignable if granted to any person whatever.

Person arresting deserter to have credit for the time he has to serve.

§ 2. That the non-commissioned officers of any company of the militia of this state, shall not exceed more in number than one-eighth part of the rank and file of each company, and as near as may be, in that proportion; but shall, at no time, exceed eight in number.

Non commissioned officers.

§ 3. When any major general, brigadier general, commandant of a regiment or battalion, shall be detailed from the militia, for the service of this state or of the United States, such officer shall select the staff to which he is entitled from the line of staff officers within the bounds where such detail was made; and any staff officer, so detailed for service, and failing or refusing to march, shall be cashiered and fined at the discretion of a court martial.

Major general, &c., detailed, may select his staff.

§ 4. All officers holding commissions in any company, either light or company of the line, that may be reduced below the number required by this chapter, their commissions shall, on the dissolution of such company, cease and be of no effect from and after such dissolution, and they shall be subject to militia duty as privates.

Officers of companies dissolved by reduction of numbers.

§ 5. Where any officer, non-commissioned officer, musician, or private, belonging to any society holding a community of property, shall be fined by virtue of this chapter, and refuse, or is not able to pay such fine, it shall be the duty of the sheriff, or other proper officer, to call on the agent or superintendent of the common stock or firm of such society or compact for the amount of such fines; and in case the agent or superintendent be absent, or refuse to pay the same, it shall be the duty of the sheriff or officer to execute and sell as much property belonging to said community, or compact, as shall be sufficient to pay the fine or fines, and the costs.

Fine of officer, &c., belonging to society holding community of property, how collected.

§ 6. While the militia are in the service of this state, or of the United States, the several oaths which officers are required by law to take, may be administered by any commissioned officer belonging to the detachment.

When in service, any commissioned officer may administer oaths required.

Uniform of volunteers to be approved by brigadier general.

§ 7. Brigadier generals shall approve of the uniform of any independent or volunteer company, raised within his brigade; and when the uniform is thus approved, each non-commissioned officer, musician, or private who appears on parade without uniform, shall be fined fifty cents for such failure.

Fine for appearing without.

Fines of members of volunteer companies to be for use of corps.

§ 8. All fines assessed on members of any independent or volunteer company, whether artillery, cavalry, light infantry, or riflemen, shall be applied exclusively to the use of such corps; and it shall be the duty of the regimental paymasters to keep the accounts of each corps separately and distinctly from the other funds of their regiment; and the funds thus arising shall be applied to the use of such companies, upon orders drawn by the commanding officer of the regiment, after deducting a fair proportion of the expenses incurred in the collection and paying over the same.

Delinquents to be returned to court of assessment.

§ 9. Commanding officers of regiments and battalions shall return a list of delinquent officers to the court of assessment, for all trainings or courts directed by this chapter, and, on failure thereof, the adjutant shall report such officer to the brigadier general.

Adjutant not to command at parade or drill.

§ 10. That no adjutant shall take the command at any battalion or regimental parade or drill, after the troops are formed, and the officers stationed; and if any field officer, at any parade, whose duty it is to command, shall fail to do so, the officer next in rank shall take the command, and exercise the troops; and, after discharging the duties of the day, he shall report the delinquent officer, for failing to do his duty according to law.

Non-attendance of field officers, &c., at musters, to be reported, &c.

§ 11. That at each of the musters, where the law requires the brigade inspectors to attend, he shall note and return to his brigadier general all the regimental field and staff officers who failed to attend such muster, whose duty it shall be to order a brigade court martial to assess the fines against them. And in case the brigade inspector shall not attend, it shall be the duty of the commanding officer present, to note and make such return. And it shall be the particular duty of commandants of regiments to return, to the major general, the failure of their brigadier general to review their regiments annually, and the major general shall order a division court martial to assess the fines accordingly. Commandants of regiments are required, on the failure of their major generals, accompanied by his staff, to review the regiment once in two years, to

report the same to the adjutant general, who shall order a court martial to assess the fines for such failure.

ARTICLE X.

Collector of fines appointed, and position of Companies on parade.

Carrier of orders may be selected.

§ 1. Each major general, brigadier general, and commandants of regiments shall have power to select from within the bounds of their commands, some fit person to carry their orders, who shall be exempt from attending musters, except for the purpose of draft; which carrier shall not be compelled to serve for more than one year;

Fine for refusing to serve.

and, on his refusal to serve, he shall be fined three dollars for each offense. Nor shall any officer transmit, by mail,

Orders by mail.

to any other officer, any communication on which the officer receiving the same is subject to pay postage.

Company 20 miles distant need not attend muster.

§ 2. No militia company, whose place of mustering exceeds twenty miles from the place designated for battalion or regimental parade, shall be compelled to attend the same, but the commandant of such company shall muster the same, on the same day, at the usual muster ground.

Collector of fines may be appointed.

§ 3. That the majority of the field officers and captains, in any regiment, shall have power, and are hereby authorized, to appoint some fit person, in lieu of the sheriff, to collect the fines assessed in the regiment; which collector shall, at the next county court, enter into bond, with approved security, in at least double the sum to be collected, and shall have the same power to collect, and be responsible for the same, in the same manner as is provided for in the case of sheriffs, and shall have the same compensation for his services.

Volunteer companies entitled to right on parade.

§ 4. That at all battalion or regimental parades, independent or volunteer companies shall be entitled to the right of the battalion or regiment; but at all courts or boards,

Officers rank according to date of commission.

officers shall take rank agreeably to the date of their commissions, and if any two or more of the same grade hold commissions of equal date, their rank shall be decided by lot.

Lieutenant colonels and majors.

§ 5. Lieutenant colonels shall command the first battalion in the regiment to which they belong, and the majors shall command the second.

It must appear by record that a majority of the

§ 6. At every regimental board of officers, convened for the purpose of making examinations to fill vacancies, it shall be made to appear upon the record that a majority

of the field officers and captains of the regiment were present, after which they shall proceed to announce the persons recommended for each particular office; and the record thus made out, and signed by the presiding officer of the court, he shall cause to be handed to the brigadier general commanding the brigade to which such regiment belongs, or, in case of his absence, to the major general commanding the division, who shall frank and transmit the same to the adjutant general, by mail, to be laid before the governor and commander-in-chief.

regimental board were present to fill vacancies.

Record must be transmitted to adjutant general, & laid before governor.

§ 7. That the major generals and brigadier generals shall, in future, transmit, by mail, to the adjutant general, all estimates for camp equipage, annual returns, and all communications of every description having relation to the militia; which returns, letters, or packages, they shall frank, by indorsing their official name thereon. And all officers of every grade, having communications to make to the executive, on the subject of the militia, shall have the same transmitted to the adjutant general, in the manner herein described.

Estimates, returns, &c., to be transmitted to adjutant general.

§ 8. All officers receiving, from the adjutant general, orders, notices, commissions, blank abstracts of annual returns, or any other communication, designed for their divisions, brigades, or regiments, shall, without delay, transmit them to the officer or officers entitled to the same.

If they are intended for regimental officers, they shall be transmitted to the commandant thereof, who shall distribute them accordingly.

Officers receiving orders, &c., to forward to persons for whom intended.

§ 9. All other laws now in force in this state, having relation to the militia, are hereby repealed.

Other laws repealed.

CHAPTER LXVII.

MILLS.

Mode and manner of proceeding to condemn land for Mills.
Duties and responsibilities of owners of Mills.

§ 1. A person owning land on a water course, the bed whereof belongs to him or the commonwealth, and desiring to build on such land a grist mill or other mill or manufactory, useful to the public, and needing a dam in or across the water course, or the raising of an established dam, or the cutting or enlarging of a canal, above or below, may,

How land may be condemned for dam, &c.

M. & B. 1212. V. R. 125.

by petition, in writing, filed in the county court of the county where the principal part of the land lies which is asked to be condemned, obtain therefrom a writ of *ad quod damnum*, for the purpose of making the necessary condemnation, which shall embrace all the land demanded, whether lying in the same county or not.

Notice of application, how given.

§ 2. Ten days notice of the intended application must be given to every person whose right will be affected by the proposed taking or overflow of land, if known, and a resident of the state; but if unknown, or not a resident, written notice must be posted at the court house door on the first county court day of the previous month, and published twice in a newspaper printed in the county, if any such there be.

Jury to be impannelled.

§ 3. The writ shall be directed to the sheriff of the county, commanding him to summon and impannel a jury of twelve disinterested and discreet freeholders of the county, on or near the land to be condemned, and on a day to be named in the order and the writ. If the writ cannot be executed on the day appointed, the proceeding shall be adjourned by the sheriff from day to day till executed.

What jury shall inquire and report

§ 4. The jury, after being sworn by the sheriff to make a true and impartial inquest, shall inquire, and report in writing over their signatures, what ought to be the height of the proposed dam, or how much the existing dam ought to be raised; whether, if the same be granted, the mansion house of any person, or the outhouses, yard, garden, or orchard thereto belonging, will be taken or overflowed; whether and in what degree ordinary navigation and the passage of fish will be obstructed, and if by any, by what means such obstruction may be obviated; and whether the health of the neighbors will be injured by the stagnation of water or otherwise. The jury shall also report, by metes and bounds, as much of the land, not exceeding one acre, which is not owned by the applicant, or covered by the bed of the stream, and which will be needed for the dam and abutment, and not exceeding one hundred feet in width, for what may be needed for the canal, and shall say what will be a just compensation to each owner therefor. They shall also report what lands will probably be overflowed or deprived of water, or otherwise injured by the dam or canal, and what will be a just compensation to the respective owners therefor; and whether the mill or manufactory is or will be useful to the public.

Leave not granted until persons interested have notice.

§ 5. The inquest shall be handed to the sheriff and returned by him to the clerk of the court, with the writ, for the inspection of all concerned. If it appear by the inquest that any person not notified of the proceeding, and not attending the inquest, will be injured by granting the leave, it shall not be granted until such person has had reasonable notice to show cause against the same. It shall stand for hearing on the first day of the term next after the return of the writ, if it be returned ten days before the commencement of the term, and if not, then on the first day of the next term.

When leave not granted.

§ 6. If, from the inquest or other evidence, it shall appear to the court that, by granting such leave, the mansion house of any one, other than the applicant, or the outhouses, or a part of the yard, garden, or orchard thereto belonging, will be overflowed or taken, or that any other legally established mill will be materially injured thereby, or that the health of the neighbors will be annoyed, the leave shall not be granted. But if it shall not so appear, the court shall then grant or refuse the leave, as may seem to it proper. If it be granted, the court shall lay the applicant under such terms and conditions as may seem right, taking care that ordinary navigation and the passage of fish shall not be obstructed, nor the convenient passage of the water course impeded.

Conditions when granted.

Owner of land may cross canal with fencing, &c.

§ 7. Whenever such leave is granted, the owner or person in possession of the land through which any canal may be cut, may cross it with such fencing, water gates, and bridging as are necessary and will not prevent the flow of water through the canal.

Water not to be drawn from another mill pond.

§ 8. No person shall, by reason of such leave, draw the water from the mill pond of another existing at the time of the leave, or otherwise do any thing injurious to a vested right in any water works then existing on the water course.

Title of land condemned vested in applicant.

§ 9. The applicant to whom such leave may be granted, shall, upon paying the several parties entitled thereto the compensation ascertained by the judgment of the court, or upon paying the same into court for their use, become vested with the fee simple to the land so designated by the inquest and judgment, have a writ of possession therefor, and otherwise proceed according to such leave.

When title shall revert.

§ 10. If the applicant shall not, within one year after the leave obtained, commence in good faith the proposed work, and within three years so far finish it as to have the

mill or manufactory in good condition for use, or if the same be destroyed and become unfit for use, and the rebuilding or repair thereof be not so commenced within a year and finished within three years from the time of such destruction or getting out of repair, the title to the land so obtained under the condemnation shall revert to the former owner, his heirs or assigns, and all the privileges obtained under the leave granted shall cease, unless the owner of the mill and privileges shall at such time be an infant, *feme covert*, imprisoned, or of unsound mind, in which case he shall be allowed the same time after such disability is removed, if the time so excepted does not exceed, in the whole, the term of seven years.

Effect of inquest upon actions.

§ 11. No such inquest, or the judgment thereon, shall bar any prosecution or action which could be maintained if this chapter were not enacted, except for an injury foreseen and estimated by the inquest.

Leave may be revoked for failure to comply with conditions.

§ 12. If the terms and conditions upon which the leave is granted are not fulfilled and substantially complied with by the applicant, so that the public or any individual does or might receive detriment thereby, upon conviction thereof under the presentment of a grand jury, the leave shall be revoked and the dam ordered to be abated by the circuit court.

Owner of mill to keep sealed measures.

§ 13. Every owner or occupier of a mill grinding for toll, whether established by law or otherwise, shall keep therein and use sealed measures of half bushel and peck, and a toll dish sealed, and shall measure all grain by strike measure, under the penalty of two dollars and fifty cents for every such failure, recoverable, with costs, before a justice of the peace, for the use of the informer.

Precedence in grinding; toll, &c.

Every miller shall well and sufficiently grind the grain brought to his mill, for the consumption of the person bringing or sending, in due time, and in the order that the same shall be brought, giving the preference only to what may be necessary for his own family use. He may take for toll one-eighth part, and no more, of all grain, of which the remaining part shall be ground into meal; and one sixteenth part, and no more, of that, the remainder of which shall be ground into hominy or malt. For any violation of these rules as to time, order, or quality of the grinding, or as to the amount of toll taken or demanded, the owner or occupier of the mill shall forfeit two dollars and fifty cents to the party injured, recoverable, with costs, before a justice of the peace.

§ 14. No owner or occupier of a mill within the limits of any town, or within a mile thereof, shall permit his hogs to run at large at such mill, under the penalty of two dollars for every day's continuance of such offense, recoverable, with costs, for the use of the informer, before a justice of the peace.

Not to allow hogs to run at large.

CHAPTER LXVIII.

NAMES MAY BE CHANGED.

§ 1. Any person of the age of twenty-one years, and not a married woman, may have his or her name changed by the county court in which he or she resides.

Names of adults. A. 1850-51, 24.

§ 2. The father, or if dead, the mother and guardian, or if no mother is living, the guardian alone of an infant, may in like manner have its name changed.

Of infants.

§ 3. The original name, age, and place of birth, and the name to which the change is made; and the names of an infant's father or mother, if known, and of the person on whose motion the change is made, must be entered on the order book of the court.

Change to be entered on order book.

§ 4. The clerk of every court shall keep an alphabetical index for each order book, referring to the proper page in which each person's name is changed, giving the name from and to which it is changed.

Index to be kept.

CHAPTER LXIX.

NOTARY PUBLIC.

Appointment, powers, and duties of.

§ 1. The governor shall nominate, and by and with the advice of the senate, appoint as many notaries public as to him may seem necessary, who shall hold their respective offices for the term of four years.

Appointed by governor for four years. M. & B. 1228.

1. He shall fill vacancies in that office occurring in the recess of the senate, which appointments shall expire at the end of the next session of the senate.

Vacancies.

2. The commission of the governor, on making the appointment, must designate the limits within which the notary is to act.

Commissions.

Oath.

3. Before a notary acts he must take an oath, in the county court of his county, that he will honestly and diligently discharge the duties of his station.

Obligation with surety.

4. He must, also, in the same court, give an obligation, with good surety, for the proper discharge of the duties of his office.

Writings signed or sealed by a notary, evidence. M. & B. 1:28-9.

§ 2. All instruments of writing, to which, by law, the signature or seal of a notary is required and is placed, shall be received as evidence without any other or further authentication.

CHAPTER LXX.

OCCUPYING CLAIMANTS.

ART. 1. Mode of assessing value of improvements, and collecting same.

ART. 2. Guardians, Committees of Lunatics, &c., may compromise suits.

ARTICLE 1.

Mode of assessing value of improvements, and collecting same.

Value of improvement to be paid by successful party.

M. & B. 1231.

§ 1. If any person, believing himself to be the owner, by reason of a claim in law or equity, the foundation of which being of public record, hath or shall hereafter peaceably seat and improve any land, but which land shall, upon judicial investigation, be decided to belong to another, the value of the improvements shall be paid by the successful party to the occupant, or the person under whom and for whom he entered and holds, before the court rendering judgment or decree of eviction shall cause the possession to be delivered to the successful party.

Justice summoned and jury impanneled.

§ 2. The court in which the judgment or decree of eviction shall be rendered, at the request of either party, shall direct the clerk of said court to issue a *venire facias* to the sheriff of the county in which the land is situated, commanding him to summon a justice of the peace of his county, and also to impannel a jury of twelve discreet and impartial freeholders, not of kin to either party, to meet upon the premises recovered, on a day to be named in the writ.

Jury sworn.

§ 3. The justice of the peace shall administer to the jurors, after they have been selected, the following oath: You, and each of you, do solemnly swear, that you will

impartially, and to the best of your skill and judgment, discharge the duties required of you in the present case, by the provisions of the law concerning occupying claimants.

Duty of justice.

§ 4. The justice shall swear the witnesses, preside over the inquest and trial, decide all matters of law, preserve order, and may adjourn from day to day until the jury shall have completed the inquest. In case the jury first summoned fail to attend, or, after being sworn, shall fail to agree and render their verdict, the justice of the peace shall direct the sheriff to summon another jury, on a day to be named in his mandate in writing. The justice shall make out and return to the clerk's office whence the writ issued, a complete record of the proceedings before him, together with the original writ, verdict, and assessment of the jury, certified by him. Either party shall have the right of challenge to the jurors allowed in civil cases; and any deficiency in the jury may be supplied by summoning others.

First jury failing

Record of proceedings.

Challenge of jurors.

Duty of jury.

§ 5. After the jury shall have been sworn, it shall be their duty, from an examination of the premises, and upon such legal evidence as either party may produce—

Damages.

1. To assess the damages, if any, which may have been done the land by cultivation, and unnecessary waste of timber after the suit was instituted.

Rents.

2. The rents and profits which have accrued after final judgment or decree of eviction.

Value of improvements.

3. The value of the improvements upon the land from which the occupant is to be evicted. Which inquest and verdict shall be signed by the jurors.

Inquest may be quashed.

§ 6. The court to whom the inquest is returned may, upon the motion of either party, for good cause, quash the same, and award a new writ as often as it may be deemed necessary to the ends of justice.

Summons for witnesses.

§ 7. The clerk issuing the writ, or the justice summoned to preside, shall issue summons for the witnesses, whose attendance shall be coerced by the justice as in other cases.

Copies of inquest.

§ 8. The clerk shall make out two copies of the inquest, and deliver one to each party, on request. The party demanding the inquest shall pay to the sheriff, for his services, four dollars; to the justice and each of the jurors rendering a verdict, one dollar per day; which shall be taxed in the bill of costs against the adverse party, if the court shall give judgment for any amount against him.

Costs.

Duty of court upon inquest returned.

§ 9. The inquest, when returned, shall be docketed as other causes, and stand for trial at the first term. The court

shall, after deducting the lesser from the greater assessments, give judgment for the remainder in favor of the occupant or successful claimant, as the case may be. The rent, from the day of the inquest till the time fixed for issuing the writ of possession, shall be computed by the court at the same rate per year as that fixed by the jury for the previous years.

Occupant to remain in possession until claim satisfied, & to have lien

M. & B. 1239.

§ 10. The occupant shall remain in possession of the premises free of rent, after judgment in his favor for improvements, until the same shall be satisfied; and he, or the person entitled, shall have a lien upon the land recovered from him to satisfy the said judgment, and may enforce it by suit in equity, order of court, or other procedure, but without interest when he has remained in possession.

Crop.

§ 11. The occupant shall be entitled to the crop growing on the land at the time of judgment of eviction and order for possession. If any part of the land, at the time of eviction, has no crop growing upon it, and there be no claim for improvements unsatisfied, the court may order the possession of such part to be delivered at any time.

ARTICLE II.

Guardians, Committees of Lunatics, &c., may compromise suits.

Guardians, committees of idiots, &c., may compromise suits.

M. & B. 1238.

§ 1. If a guardian of an infant, or committee of an idiot or lunatic, shall believe that he can save the estate or advance the interest of the ward, idiot, or lunatic, by a settlement, in whole or in part, of a controversy concerning the lands of such infant, idiot, or lunatic, by compromise of the matter in suit, he shall have power to do so with the approbation of the court; and all bonds, agreements, sales, and conveyances, by him executed, with the approbation of the court, in furtherance or execution of such compromise, shall bind the infant, idiot, or lunatic, and their estate; and the conveyances so made shall pass the estate of the idiot, lunatic, or infant.

Liabilities not avoided, &c.

§ 2. No person shall, by the relinquishment of his title to the commonwealth of any part of a tract recovered of a defendant in any suit, avoid the liabilities imposed upon him by this chapter.

CHAPTER LXXI.

OFFICE AND OFFICER. (a)

Sales of offices prohibited.
Offices incompatible.
Official bonds.

§ 1. No office or post of profit, trust, or honor under this commonwealth, whether civil or military, legislative, executive, ministerial, or judicial, nor the deputation thereof, in whole or in part, shall be sold or let to farm by any person holding or expecting to hold the same.

Sales of offices illegal.

M. & B. 1242. V. R. 84, 85.

Such person so selling or letting, and the person so buying or receiving the letting, or with whose knowledge the same has been bought for him by another, shall be dis-

Persons engaged in, disqualified.

(a) The acts which follow were passed and approved during the session of 1851-2. Many of the provisions will be found in the revised statutes, but we prefer to publish the acts as they passed:

An act to prescribe the term of office for the inferior offices of this Commonwealth—approved November 24, 1851.

That all commissions for notary public, and other inferior offices, not provided for by law, which may be issued by the executive, shall be for the term of four years. A. 1851-2, 3.

An act to prohibit certain officers from trafficking in claims on county treasuries—approved December 20, 1851.

That from and after the passage of this act, it shall not be lawful for any county judge, justice of the peace, or county attorney, to traffic for, purchase, or speculate in any claim or claims, to be allowed by the court of claims of the county of which he or they may be said judge, justice of the peace, or attorney; and that, for any violation of the provisions of this act, he or they may be punished by fine in a sum twice the amount of the claim so bought as aforesaid, upon the presentment or indictment of a grand jury. A. 1851-2, 9.

An act dispensing with commissions to certain officers of this Commonwealth—approved December 27, 1851.

That all laws now in existence by which the governor of this state is required to issue commissions for constables, marshals, county attorneys, commissioners of tax, coroners, clerks of county and circuit courts, cadets of the Kentucky Military Institute, and cadets of the Western Military Institute, be and the same are hereby repealed, and said officers shall respectively be authorized to enter upon the duties of their offices so soon as they receive certificates of their election and qualify and execute bond, as now required by law. A. 1851-2, 10.

qualified from holding such office or post, or the deputation thereof; and upon conviction, shall be expelled therefrom.

Contracts void.

V. R. 84, 85.
M. & B. 1468.

§ 2. Every contract or security made or obtained in violation of the preceding section shall be void, except that a bond of indemnity from a deputy and his sureties to a sheriff, sergeant of the court of appeals, clerk, or marshal shall not be void.

Officer convicted of felony vacates his office.

M. & B. 1244, 1246.
V. R. 85.

§ 3. If any officer or deputy holding any such office or post as is mentioned in the first section of this chapter, shall be convicted of bribery, forgery, perjury, or any felony by a court of record in or out of this state, his office or post shall be vacated by such conviction; and though a pardon should be afterwards granted to him, it shall not avoid the forfeiture.

Official acts before removal of officer good.
M. & B. 1247.

§ 4. All judgments rendered or acts done by such person by authority or color of his office, before his removal or such conviction, shall be good and valid, notwithstanding any thing by him done to incur a forfeiture.

Vacation of office

M. & B. 1251.

§ 5. When a person in office shall accept another office or employment incompatible with the former office, such former office shall be vacated by the acceptance of the latter.

Incompatible offices.

§ 6. A person holding an office, post, or employment under this state or the United States, which is incompatible with a seat in the legislature, shall not be voted for as senator or representative, until he has resigned his office, post, or employment, nor until a duplicate of his resignation has been filed in the clerk's office of the court of the county in which he resides; and all votes given for him before such resignation is so filed, shall be void.

M. & B. 1252-3.
L. 391, 465, 512.

§ 7. The offices of justice of the peace or judge of the county court shall be deemed incompatible with that of surveyor, sheriff, deputy sheriff, coroner, constable, jailer, or assessor; as shall also the last seven with each other. The offices of justice of the peace, judge of the county court, sheriff, jailer, or coroner shall also be deemed incompatible with that of clerk or deputy clerk of a court.

Official bonds.

§ 8. Where any bond is or may be required by law, with or without penalty, from any person holding office, post, or employment under this state, or about to hold the same, or from a person who is or is about to become guardian, executor, administrator, curator, committee of an idiot or lunatic, or to assume any other like trust or employment, there shall be taken from such person and his sureties, in

lieu of a bond, except where otherwise required by the revised statutes, a covenant to the commonwealth of Kentucky, in substance that the principal shall faithfully discharge the duties of the office, trust, or employment. But a bond or covenant taken in any other form shall, nevertheless, be binding on the parties thereto, according to its terms.

Suits on.

§ 9. Suits may be brought from time to time on any such covenant or bond hereafter given, in the name of the commonwealth, for her benefit or for that of any county, city, town, society, or person injured by a breach of the covenant or condition, at the proper costs of the party suing, against the parties jointly or severally, and together with the personal representative, heirs and devisees or distributees of such of them as may be dead; and the recovery against principal and surety shall not be limited by the amount of the penalty named in such bond.

Nor shall the recovery be restricted only to such duties or responsibilities as belonged to the office, post, trust, or employment at the date of the covenant or bond, but may include any such duties or responsibilities thereafter imposed by law or lawfully assumed.

Bond to be given, when.

§ 10. No officer from whom a bond is required shall enter upon the duties of his office, until the required bond is given. A breach of this provision, or a failure to take the oath of office prescribed by law, shall be a misdemeanor; and on conviction thereof, such officer shall be removed from office by the judgment of the court where such conviction is had.

By whom oath may be administered.

§ 11. The official oath of any officer may be administered by any judge or justice of the peace.

Effect of not giving bond in time.

§ 12. If the official bond is not given and the oath of office taken within a month of the time when the officer was elected or received notice of his appointment, or of the time when his appointment ought to take effect, the office shall be considered vacant, and he shall not be re-eligible thereto for two years.

Officers to take oath of office.

§ 13. Every person, before entering on the performance of the duties of any office for the state, or any district, county, city, or town, shall take the oath of office prescribed by the constitution, and the revised statutes, in lieu of all other oaths heretofore required by law; and every person, before entering on the duty of executor, administrator, guardian, curator, or committee of an idiot or lunatic, or any other like trust or employment, in lieu of all other oaths

heretofore prescribed, and not required in the revised statutes, shall take in substance the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully perform the duties of ——— according to law."

CHAPTER LXXII.

PARTNERSHIPS.

How Partnerships may be formed and dissolved.
Liabilities of Special Partners.

Limited partnerships.

§ 1. Limited partnerships for the transaction of mercantile, agricultural, mechanical, and manufacturing business, or for the mining and transporting of coal, may be formed upon the terms, and subject to the conditions and liabilities prescribed in this chapter; but none such shall be formed for the purpose of banking, brokerage, or insurance.

A. 1849-50, 24.

Special partners.

§ 2. Such partnership may consist of one or more persons as general partners, with the powers and responsibilities of partners, and of one or more persons as special partners, who, contributing a specific amount of cash, actually paid in as capital, shall not be personally liable for the debts or responsibilities of the partnership, except as herein named, nor have any power to bind the partnership, or manage its affairs.

Written statements.

§ 3. The persons desiring to form such partnership shall sign a written statement, showing the name and place of residence of each partner, the name or style of the firm, who are general and who are special partners, the amount contributed by each special partner, the general nature of the business to be transacted, the place or places at which the business is to be transacted, and the duration of the partnership. One or more of the general partners shall verify by affidavit the truth of the statement as to the amount paid in by any special partner.

To be recorded.

§ 4. Such statement and affidavit shall be acknowledged or proved before and recorded by the clerk of the county court of the county or counties in which the place or places of business is or are situated, in the same manner as deeds are acknowledged, proved, and recorded.

To be published.

No limited partnership shall be deemed to be formed or allowed until such record is made, nor until such statement shall have been published once a week for four successive

weeks, in a newspaper printed in each of the places where the business is to be carried on, if there be any such paper published there; and if not, then in the newspaper published in the place nearest thereto.

If any part of such statement be false, the special shall be liable as general partners. If statement false.

§ 5. The partnership shall be deemed to be dissolved when there is a change in the partners, in the nature of their business, or a withdrawal of capital, or a diminution thereof, otherwise than by a loss in business, or the defraying of such personal expenses of living as may have been originally agreed for; and if the partnership be thereafter carried on, and such act done with the knowledge of any special partner, it shall, as to him, be deemed a general partnership. When partnership deemed dissolved.

§ 6. Every renewal or continuance of a limited partnership shall be made, recorded, and published in the same manner as is required for the original statement, except that there need not be any re-payment of the cash capital advanced by the special partners. How renewed.

§ 7. The business shall be conducted under a firm name, composed exclusively of the name or names of some or all of the general partners, without the addition of the word "company," or any equivalent term. Firm name.

If the name of any special partner be used by the firm with his consent, or if he make any contract or transact any business for the firm, as agent or otherwise, he shall be deemed a general partner. But he may examine the condition of its affairs, and advise as to conducting its business, without so becoming a general partner. Special partner using name of firm

§ 8. If the whole or part of the capital advanced by a special partner be withdrawn by him, he shall be responsible to creditors therefor, with interest from time of withdrawal. Capital withdrawn.

§ 9. If the partnership become insolvent, no special partner shall be paid as a creditor of the firm, or receive the benefit of any lien in his favor as such, until all the other creditors of the firm are satisfied. When insolvent.

§ 10. No sale, transfer, or charge upon the property or effects of the firm, or any member thereof, made for the purpose of giving a preference or priority to one over others of his or its creditors, shall be valid against its creditors, if made when he or the firm is insolvent, or in contemplation of insolvency. Transfers giving priority.

Dissolution advertised.

§ 11. No dissolution of a limited partnership, otherwise than by its terms, or the operation of law, shall take place, unless the same be advertised in the manner herein prescribed by its formation.

How partners sued.

§ 12. The general partners shall sue and be sued, as if they were the only partners, except in cases where the special partner is liable as general partner, when he may be sued with the others, or, if judgment has been obtained against them, he may be sued separately.

Liability of special partners.

§ 13. Special shall be liable as general partners, unless the firm keeps up, at each of its places of business, a plain and legible sign, giving the style of the firm, with also the words "limited partners."

CHAPTER LXXIII.

PATROLS.

ART. 1. Appointment and duties of.
ART. 2. Special Patrol Companies.

ARTICLE 1.

Appointment and duties of.

Appointed by county courts.

M. & B. 1257. L. 467.

§ 1. County courts shall, once in each year, divide their respective counties into as many districts as the public peace and good order of society may require, and appoint, in each district, a company of patrols, to consist of one captain, and not exceeding three men, to continue in service twelve months, unless removed by the county court for neglect of duty, or improper conduct. None but discreet and sober men shall be appointed patrols; they shall take an oath, before a justice of the peace, faithfully, impartially, and diligently to perform the duties of patrols. But patrols shall have jurisdiction co-extensive with the whole county.

Hours of service to be prescribed. L. 467.

§ 2. The county court shall prescribe the number of hours, in each month, the said company shall be on duty, in their bounds.

Duties of.

§ 3. Patrols shall visit negro quarters, and all suspected places, and places of unlawful assemblies of slaves, within their respective precincts.

Slaves without a pass, or offering any thing for sale

§ 4. A slave found at unlawful assemblies, or strolling from one plantation to another, or found in a town or city without a written pass for the time, from his master or over-

seer, or person having the control of him; or who shall sell, or offer to sell, any commodity, or have the same in his possession for sale, without the written authority of his master, or person controlling him, specifying the article to be sold, shall be punished by and at the discretion of the captain of the patrol, by any number of stripes not exceeding ten; or he may be taken, by the patrol, before a justice of the peace, and may, by the order of the justice, be punished by stripes, not exceeding thirty-nine.

Without written authority, may be punished.

§ 5. Patrols shall each be paid by order of the county court, out of the county levy, a sum not exceeding one dollar for each ten hours they may have been purposely engaged in the performance of their duties. At the court of claims for the county, patrols shall present their claims for services, specifying the number of hours each has been engaged, and verified by the oath of the patrol, upon which the court shall fix the amount to be paid.

ARTICLE II.

Special Patrol Companies.

Special companies, how appointed, and their powers.

§ 1. The county courts for counties bounded by the Ohio river, if they think proper, may, at any time, appoint for their respective counties a strong and active patrol, to consist of sober, discreet citizens, not to exceed thirty in any county, whose duty it shall be to guard and watch the places for crossing the river, and such other points and places as may be designated by the court; to notice the condition and situation of all water craft upon the Kentucky shore of the Ohio river; to report to the proper authority all delinquencies and violation of laws, by those having charge of or right to keep such water craft. Said patrol may also exercise the powers prescribed to patrols in the first article of this chapter. They shall have power to arrest, without warrant, any person found lurking about, with intention to afford assistance, by advice or otherwise, to any slave to escape from his master, or who may be lurking about for any harmful purpose to the community.

L. 467.

Persons arrested by, how to be disposed of.

§ 2. Any free person arrested under the authority of the first section of this article, shall be taken before a justice of the peace, and if such person be not of good fame and behavior, or if believed by the justice of the peace to be guilty of the offense described in said section, he shall give bail, in a reasonable sum, to appear at the next circuit court for said county, and answer to the charge of evil

fame, or evil behavior, or the charge of violating the provisions of said first section. The circuit court shall have power to demand further bail of such person, and may, if believed to be guilty of any offense punishable by law, cause him to be prosecuted for the same. If the person fail or refuse to give the bail required by the justice or the court, he shall be committed and dealt with as other offenders failing to give bail.

To continue in service for twelve months, unless dismissed by the county court.

§ 3. The patrol, appointed under this article, shall continue in service twelve months, unless sooner discharged by the county court. Any member of the patrol may be dismissed by the county court, and another appointed in his place. The county court shall appoint the captain and four lieutenants for each company of patrols. The officers and men, before entering upon their duties, shall take an oath faithfully, diligently, and impartially to discharge their duty, as special patrols.

Orders of captain to be obeyed.

§ 4. All orders touching the duties of said patrol, issued by the captain, or given by him or a lieutenant in person, shall be obeyed by the officers and men; and a willful refusal to obey or execute them, shall be punished by fine,

Penalty.

not exceeding five dollars, to be recovered by warrant before a justice of the peace.

May be required to give bond.

§ 5. The county court may require of the patrols, appointed under this article, jointly or severally, to give bond and surety for the faithful discharge of their duties, which may be put in suit by any person aggrieved or damaged by their acts as such.

Fee for apprehending fugitive slaves.

§ 6. For every fugitive slave apprehended by said patrol, or any member thereof, in the county of the residence of his master or owner, and delivered, or lodged in jail, so that the master or owner gets the slave, there shall be paid twenty-five dollars; if apprehended in any other county, fifty dollars, to be paid by the owner of said slave.

The number of hours' service may be fixed by county court.

§ 7. The county court may limit, by an order, the number of hours in each month, in which the patrol shall be on duty, or leave the same to the sound discretion of the captain. The officers and men shall each be paid out of the fund created for that purpose, a sum not exceeding one dollar and fifty cents for every twelve hours purposely engaged in the discharge of their duties.

How paid.

§ 8. The county court shall, from time to time, create a fund to pay the expenses of said patrol, by a poll tax on each slave in the county, not exceeding one dollar on each

black tithable; which fund shall not be expended or used by the county court for any other purpose.

CHAPTER LXXIV.

PENITENTIARY.

ART. 1. Concerning the Keeper.
ART. 2. Concerning the Clerk.
ART. 3. Concerning Convicts.
ART. 4. Concerning health of Convicts.
ART. 5. Concerning Guards and Assistant Keepers.
ART. 6. Concerning the instruction of Convicts.
ART. 7. Visitors, and their duties.
ART. 8. Contracts.
ART. 9. Miscellaneous provisions.

ARTICLE I.

Concerning the Keeper.

Keeper elected.

§ 1. A keeper of the state penitentiary shall be elected every fourth year, by a joint vote of the two houses of the general assembly. M. & B. 1315. A. 1847-8, 21.

Term of office.

1. The present incumbent shall remain in office until the first of March, 1855, unless he sooner vacates the same; but his successor may be elected at the session of the general assembly in the year 1853.

2. He shall have the sole management of the institution.

3. He shall continue in office four years from and after the commencement of his term of service, and until a successor is appointed and qualified.

Oath and bond.

§ 2. The keeper shall, before entering on the duties of his office, take the oath prescribed by the constitution, and enter into an obligation, with good sureties, approved by the governor, in the office of the secretary of state, stipulating that he will faithfully perform the duties of keeper of the penitentiary, according to law, and pay over and account for any money or other thing advanced to him by the state, or that has or may come to his hands, at the proper time and manner, and to the proper person, as required by law, and that he will pay to the state her share of the profits of the institution, at such times as the law may require. M. & B. 1317.

May be suspended.

§ 3. The keeper or clerk may be suspended by the governor, for good cause, when the general assembly is not in

session, and may be removed from office by the joint vote of the two houses of the general assembly.

Vacancy filled.

M. & B. 1317.

§ 4. When, from any cause, the office of keeper, or clerk of the penitentiary is vacant, or an incumbent is suspended, the governor shall appoint another person to discharge the duties thereof for the residue of the time, or until the suspension ceases.

1. The person appointed by the governor must take an oath, and give such surety as is prescribed in this chapter.

2. Suit may be instituted on any of such obligations, from time to time, by any person aggrieved.

Duties of keeper.

M. & B. 1316.
L. 487.
A. 1847-8, 22.

§ 5. The keeper shall procure the raw material to manufacture for the institution; and

1. Dispose of any articles manufactured therein.

2. Provide for clothing and victualing the convicts.

3. And for their guard and safe keeping.

4. Defray all expenses of the institution, and see that accurate accounts of purchases, sales, receipts, and disbursements are kept, and that proper vouchers for disbursements are taken and preserved.

Report.

A. 1847-8, 23.

§ 6. The keeper shall make a biennial report to the general assembly, within the first week of the session, of the condition, operations, and business of the institution, for each year, and to the governor during the month of December of any year in which the general assembly does not convene.

ARTICLE II.

Concerning the Clerk.

Clerk appointed.

A. 1847-8.

§ 1. The governor shall, by and with the advice of the senate, biennially appoint a clerk of the penitentiary, who shall continue in office for the term of two years, and until his successor is appointed and qualified.

Oath and bond.

A. 184 -8, 24.

§ 2. Before the clerk enters on the duties of his office he must take an oath faithfully and impartially to perform the same.

1. He shall also execute and file in the secretary's office an obligation, with good sureties, to be approved by the governor, for the due and faithful performance of the duties of his office.

Liable to indictment and fine.

A. 1847-8.

2. Besides the responsibility of the clerk and his sureties on his bond, he shall be liable to be indicted and fined not exceeding one thousand dollars, and imprisoned not exceeding six months, for willfully making any false or fraudu-

lent entry, or for failing to make an entry with a fraudulent intent.

§ 3. The clerk shall receive an annual salary of one thousand dollars, in quarterly payments to be made by the keeper out of the profits of the institution. Salary. A. 1847–8.

§ 4. The clerk of the penitentiary shall file and preserve the record of the conviction of each convict, and the certificate of his character, from the court that convicted him; and also keep a register describing him, and stating the time of his confinement, and for what offense he is confined, and when received into the institution. His certified copy from such record shall be *prima facie* evidence. Duties of clerk. V. R. 791.

§ 5. He shall keep a true and faithful account of all the transactions, of every kind, relating to the business, contracts, expenditures, and income of the institution.

He shall keep a journal, ledger, and cash book, in which the accounts of the institution shall be fully and fairly entered, according to the usual mode of book-keeping, and post up the accounts at the end of each week.

§ 6. The books of the clerk shall be, at all times, open to the inspection of the legislature, or any of its committees or members, and to a like inspection of the commissioners of the sinking fund, or any of its members, and of the board of visitors, or any of its members, and of the governor. Books open to inspection.

ARTICLE III.

Concerning Convicts.

§ 1. Every person sentenced to confinement in the penitentiary of this commonwealth, shall, as soon as practicable after the conviction, be removed by the proper officer, at the public expense, to the jail and penitentiary house, and be kept therein during the period for which he is sentenced. Removing convicts. M. & B. 1305.

§ 2. The penitentiary house and cells therein, as now erected, and as may be hereafter enlarged or altered, shall be appropriated to the purpose of confining such persons as have or shall be sentenced to confinement therein. But the males and females shall be kept separate and apart from each other. House, cells, &c. M. & B. 1305.

§ 3. That the character of convicts may be known, it shall be the duty of the court in which each conviction takes place to make out and transmit to the keeper a short account of the circumstances attending the crime committed by such convict calculated to aggravate or extenuate Character of convicts. M. & B. 1305.

the same—the character of the convict as proved on the trial, whether he had previously been convicted of or prosecuted for a felony, and what had been his general moral character.

Contagious disorders. M. & B. 1305.

§ 4. To prevent the introduction of contagious disorders into the penitentiary, every person who is sentenced to hard labor therein shall be washed, cleansed, and lodged and kept separately until it shall be certified by a physician that he is fit to be received among the other prisoners.

Clothing, food, labor, &c. M. & B. 1306-7.

§ 5. Convicts shall, during their confinement, be clothed in coarse materials, uniform in make and color, so as to distinguish them from other citizens.

1. They shall be well fed, on plain, coarse, and healthy diet.

2. So far as their age, health, and sex will allow, they shall be kept at hard labor as many hours each day, (except Sundays,) as the season will permit, allowing a half hour's rest for each meal.

3. But not exceeding eight hours in November, December, and January; nine hours in February and October, and ten hours the residue of the year.

4. The heads of convicts may be shaved at the discretion of the keeper.

5. Convicts shall be confined in solitary cells on Sundays, except at intervals of divine service, instruction, and meals.

Who admitted. M. & B. 1307.

§ 6. No person, except the keeper and his deputies and servants, the governor and members of the general assembly, shall, without the permission of the keeper, enter the walls of the penitentiary.

Cells locked, &c.

1. The doors of the lodging rooms and cells shall be locked and all light therein extinguished at nine o'clock every night.

Watchmen.

2. One or more watchmen, if necessary, shall patrol the jail each night at least once in every hour from dark until the period of commencing labor in the morning.

Conversing prohibited. M. & B. 1311.

§ 7. No person, except the governor or a visitor, shall converse with or mix among the convicts, except in the immediate presence of the keeper or an assistant, and with his consent. It shall be the duty of the keeper to prohibit any two or more of the convicts from conversing, sleeping, or in any manner associating together, except so far as the nature of their employments may require it.

Trial of convicts.

§ 8. On the trial of a convict confined in the penitentiary for a crime committed during the time for which he is

convicted, the other convicts, (except such as have been convicted of perjury,) shall be competent witnesses. M. & B. 1312.

§ 9. The keeper shall establish rules and regulations for the government of the convicts, with the approval of the visitors, not inconsistent with law. In case of disobedience of any convict in performing his duty, or in case of a violation of such rules, the keeper may inflict at his discretion, not exceeding ten stripes on the offender, or confine him in a cell not exceeding forty-eight hours for each offense. Keeper to establish rules. M. & B. 1311.

§ 10. The infant children of a convict shall, for and during the time of confinement, be regarded as orphans, and may have guardians appointed by the county court, and may be bound apprentices; and the whole proceedings, both with regard to them and their estate, shall be such as is directed by the act concerning guardians, and masters and apprentices. Convict's children

1. A convict may dispose of his estate by last will and testament. Will.

2. On his discharge from confinement, so much of his estate as has not been legally disposed of shall revert to him. Estate reverts.

3. The period of his confinement in the penitentiary shall not be computed against a convict under any statute of limitation. Time not computed in statute of limitation.

4. When a convict is discharged from the penitentiary, the keeper shall furnish him with five dollars in money and comfortable clothing. Furnished at discharge.

§ 11. When any person sentenced to confinement in the penitentiary by a court of the state or of the United States, shall, at the time of such sentence, hold an office under this commonwealth, such office shall be vacated from the time of his sentence. Office vacated by conviction. M. R. 795.

ARTICLE IV.

Concerning the health of Convicts.

§ 1. The walls of the cells and apartments of the penitentiary house shall be whitewashed with lime and water twice every year. The floors of the cells shall be washed once every week, or oftener if necessary. Cleansing, &c. M. & B. 1307.

§ 2. An infirmary shall be kept fitted up in the penitentiary, and when a convict is sick, on the recommendation of the physician employed for the institution, he shall be removed to such infirmary, and his name entered on a book to be kept for that purpose. Infirmary, physician, &c. M. & B. 1307.

1. The keeper shall employ a physician to attend on the convicts.

A. 1842-3.

2. When such physician shall report to the keeper that the convict is in a proper condition to quit the infirmary, and return to his or her employment, the report shall be entered in the book, and the convict shall be again put to labor.

3. Convicts may, at stated times, be permitted to work or to walk for their health in the yard of the penitentiary, but in either case in the presence or view of the keeper or his assistant.

Exercise.

ARTICLE V.

Concerning Guards and Assistant Keepers.

§ 1. The keeper shall employ not less than four suitable persons as guards, for the safekeeping of the prisoners, and at least two suitable persons as assistant keepers.

Guards appointed.

A. 1847-8.

1. Appointments under this section must be approved by the governor.

2. Before an assistant keeper or guard enters on the duties of his station, he must take an oath that he will faithfully and honestly discharge the duties thereof.

ARTICLE VI.

Concerning the instruction of Convicts.

§ 1. The keeper of the penitentiary shall procure one sermon to be preached to the convicts, by a minister of the gospel, each Sunday.

Divine service, instruction, &c. M. & B. 1315.

1. He shall, moreover, cause the convicts who have not learned reading, writing, and arithmetic, to be taught at least four hours every Sunday.

A. 1847-8, 25.

2. The whole expense of such sermons and teaching shall not cost more than two hundred and fifty dollars per annum.

3. The books belonging to the library in the penitentiary shall be given out to convicts and returned every week, so that they may be well taken care of.

ARTICLE VII.

Visitors, and their duties.

§ 1. The clerk of the court of appeals, treasurer, and register of the state, shall be a board of visitors for the penitentiary.

Visitors, their duties.

1. They, or one of them, shall visit said institution at least once per month, and ascertain the health of the con-

A. 1847-8.

victs, the manner of dieting them, the cleanliness of the cells, and the manner in which the convicts are treated; and

2. They shall biennially report to the general assembly concerning all these subjects, and from time to time report to the governor any misconduct on the part of the keeper.

ARTICLE VIII.

Contracts.

Contracts.

§ 1. It shall not be lawful for the keeper to purchase raw material, stock, or provisions, or any other article for the institution, on a credit, without the written consent of the governor, filed with the clerk. A. 1847-8, 25.

1. All contracts made with the keeper of the penitentiary, or any of its officers, for and on behalf of the institution, whether for the payment of money or property, to or by the institution, shall be payable at the office thereof.

2. When anything is owing the institution, a demand may be made at another place.

Capital.

§ 2. The keeper of the penitentiary shall be bound to furnish capital to carry on the same, but the state shall loan him, in materials and manufactured articles on hand and money, ten thousand dollars, upon which he shall annually pay the interest to the commissioners of the sinking fund, until he returns the capital so furnished. A. 1847-8, 24.

Profits.

§ 3. The state shall have two-thirds of the net profits of the institution, and the keeper the other third; but the keeper shall guarantee an annual profit of five thousand dollars, clear of all expenses, interest, and losses. A. 1847-8.

Repairs.

§ 4. The keeper shall keep in good repair the penitentiary, together with all buildings appurtenant thereto; also, all engines, machinery, tools, and utensils used therein, at the cost of the institution, and deliver them up in such repair at the end of his time, and for any default herein he shall be chargeable in the final settlement of his accounts.

ARTICLE IX.

Miscellaneous Provisions.

U. S. convicts.

§ 1. Persons convicted in this state under the laws of the United States, may, when sentenced thereto, be confined in the penitentiary of this commonwealth, and the keeper thereof is required to receive and receipt for such convicts; M. & B. 1312. A. 1843-4, 39, 40.

and when so received, they shall be subject to the same rules and regulations as state convicts.

1. But such convicts shall be received on the terms and conditions proposed by the joint resolutions of the congress of the United States, approved 23d September, 1789. (*a*)

2. The keeper of the penitentiary may demand and receive from the proper authorities of the United States compensation, semi-annually, for keeping and supporting such prisoner.

Slaves.
A. 1844-5, 82.

§ 2. Slaves received into the penitentiary by the keeper must at all times be kept separate and apart from the convicts, and be kept confined in the cells at night.

Penalty for aiding escape.
M. R. 796.

§ 3. Any person who shall convey or cause to be conveyed into the penitentiary, any instrument, tool, weapon, or other thing adapted to or useful to aid any convict in making his escape therefrom, with intent to facilitate such escape, and any person who, by any means, aids any convict in his endeavor to escape, whether such escape be effected, or attempted, or not, and any person who shall forcibly or fraudulently rescue or attempt to rescue any convict held in custody under a conviction to imprisonment in the penitentiary, shall be punished by imprisonment therein not less than one nor more than ten years, and shall be fined the sum of five hundred dollars.

Keeper, &c., permitting escape.

§ 4. If the keeper, or any officer or other person in the penitentiary, shall voluntarily suffer a convict confined therein to escape, or in any way consents to or aids in such escape, he shall be punished by imprisonment in the penitentiary for not less than one nor more than ten years.

United States Statutes at large, vol. 1, p. 89.

(*a*) RESOLVED *by the Senate and House of Representatives of the United States of America in Congress assembled*, That it be recommended to the legislatures of the several states to pass laws making it expressly the duty of the keepers of their gaols, to receive and safe keep therein all prisoners committed under the authority of the United States, until they shall be discharged by due course of the laws thereof, under the like penalties as in the case of prisoners committed under the authority of such states respectively; the United States to pay for the use and keeping of such gaols, at the rate of fifty cents per month for each prisoner that shall, under their authority, be committed thereto, during the time such prisoner shall be therein confined; and also to support such of said prisoners as shall be committed for offenses.

Approved September 23, 1789.

§ 5. No spirituous liquors shall be used or drunk in the penitentiary under any pretext, except only such as may be prescribed by a physician. Liquors.

§ 6. Tobacco may be furnished to convicts in such quantities as the keeper may deem proper. Tobacco. A. 1847-8, 25.

CHAPTER LXXV.

POOR AND POOR HOUSES.

Penalty for introducing poor persons from other States.
Poor Houses, and their management.

§ 1. No person shall bring into this state from another state, or introduce from any county in this state into another county, any poor person, (except his father, mother, or child,) who is likely to become chargeable to the county in which such person may be introduced. Bringing in poor. M. & B. 1323.

1. Any person offending herein shall, on the warrant of a justice or judge of the county court of the county aggrieved, be apprehended and recognized with proper sureties to appear before the next county court to answer for such offense. Arrest of offender.

2. On his failure to give such sureties he shall be committed to jail until court, or until bail is given. Committed in default of bail.

3. The county court may require such person to give an obligation, with good surety, that the poor person so introduced shall not become chargeable to the county. Security may be required.

4. On his failure to do so he shall be committed to the jail of the county, and shall, after reasonable notice, be sold, for twelve months, as a vagrant. On failure, sold as vagrant.

§ 2. Each county court shall have the power to purchase and receive a conveyance for not exceeding two hundred acres of land, to hold in trust for the purpose of erecting a poor house thereon, and for the use, sustenance, and accommodation of the poor of their respective counties. Land for poor house. M. & B. 1325.

1. The court may contract for erecting a poor house and other improvements on the land so purchased, and may purchase furniture for the house, and implements and other necessary property for the institution. Erecting house &c

2. The court shall have power to levy a sum sufficient to pay for the land and the necessary improvements and repairs to be made thereon, and to support the poor of the Tax to pay for.

county, and to pay the superintendent and other persons employed in the institution.

Superintendent. M. & B. 1326.

3. To appoint one or more superintendents of the poor house and premises, and of the poor of the county whom the court may order to be kept in the poor house.

His power.

4. And to vest the superintendent with power, by coercion, to cause any able bodied poor person, kept at such house, to labor.

Receiver.

5. To appoint a suitable person to receive the money levied for that institution, and to apply the same to the support of the poor in such house, and to allow such receiver a reasonable compensation for his services.

To give security.

6. The court shall require of the receiver so appointed an obligation, with good surety, for the faithful appropriation and just account of all the money received by him; and the collecting officer shall pay over to such person the money levied to carry on the institution.

Tenure of office.

§ 3. Superintendents and receivers shall each hold their offices during the pleasure of the court.

Beggars.

V. R. 262.

§ 4. Every person going about begging, or staying in any street or other place to beg, shall, on the warrant of the presiding judge of the county court, be sent to and kept at the poor house; if able to work, and a male, he may be proceeded against under the vagrant laws.

Receiver shall report.

§ 5. The person appointed to receive and disburse the poor house funds shall annually report his receipts and disbursements to the county court for its approval.

Poor supported.

M. & B. 1324.

Medical aid.

§ 6. The county court in term time, or the presiding judge in vacation, shall have the power to order a poor person to be taken to the poor house and supported, and to cause medical aid to be employed at the public expense for such of the poor of the county as may be proper.

CHAPTER LXXVI.

PORT-WARDENS.

Powers, duties, and fees of.

County court to appoint.

M. & B. 1327.

§ 1. The county courts of the several counties having a town or city situated on the bank of the Ohio or Mississippi river, or situated on the bank of any other river in the state, where the back water reaches from any state dam, shall annually appoint not less than three nor more

than four persons, residents of such town or city, as port-wardens of the same, who shall hold their offices respectively for four years, and until their successors are appointed and qualified.

Certificate of appointment.

§ 2. A port-warden, before entering on the duties of his office, shall receive a certificate of his appointment from the clerk of the court, and take before him the oath of office prescribed by the constitution.

Examination of vessels, &c.

§ 3. Upon the application in writing of any person interested, it shall be the duty of a port-warden to examine the condition of any vessel navigating a river of this state; also, the condition of any cargo or lading on board the same, and the storage thereof; also, the condition of any cargo which, within the twenty-four hours next previous to such application, may have been unladen from such vessel.

Previous notice.

1. Before making such examination, if it be on the application of the master or owner of the vessel, he shall first give notice thereof to the owner of the cargo, or his agent, or to any insurer, or his agent, intended to be affected thereby, if such owner, insurer, or agent be within the place. If the application be from an owner of cargo, like notice shall be given to the master, owner, or agent of the vessel, or to the insurer or his agent, if such master, owner, insurer, or agent be within the place.

Statement of result.

2. After making the examination, and hearing such proof as either side may produce, he shall make out and sign a statement, in writing, showing the result thereof; and if there be damage, making a fair estimate thereof, and stating the manner and time when the same probably occurred; and if the vessel be not fit for navigation, or the transportation of cargo, stating wherein the deficiency exists.

Record.

3. He shall keep a record of any such statement, and give a certified copy thereof to any one applying for it.

Statement evidence.

4. Such statement or copy, certified over the signature of the port-warden, shall be *prima facie* evidence of the facts stated therein as to the condition of the thing examined, and the amount of damage or injury.

Other port warden may be called in.

§ 4. Either party may demand the assistance of another port-warden in making the examination and statement; and if the two cannot agree, they shall call in a third, any two of whom concurring may make and sign the statement, which may be recorded and certified by either of them.

Fees.

§ 5. There shall be paid to each warden, for his services, by the person applying therefor, the following fees:

For the inspection of a vessel or cargo, one dollar.

For attending at the unlading of a vessel, one dollar.

And if detained at such attendance more than one hour, for each additional hour, twenty-five cents.

For each certificate or copy of a record, fifty cents.

CHAPTER LXXVII.

PUBLIC ARMS AND ACCOUTREMENTS.

Mode, places, manner of keeping, &c.

Where kept.

M. & B. 148–9.

§ 1. The public arms and accoutrements of the state shall be kept at the seat of government, in the state arsenal, under the superintendence of the quartermaster general.

To be kept in order L. 43.

§ 2. Such arms and accoutrements shall be cleansed and kept in good order from time to time.

Expense, how paid.

1. The expenses thereof shall be paid out of the treasury.

2. They being certified by the governor to the auditor of public accounts.

Auditor to report sum paid. L. 43.

§ 3. The auditor shall report to each session of the general assembly the sums expended under this chapter.

Arms drawn only on order of governor.

L. 44.

§ 4. The public arms and accoutrements shall not be drawn from the state arsenal and distributed, except upon the order of the governor, and then only by and among such militia companies and persons as in the governor's opinion may be required by the public safety.

Quartermaster general to report to governor.

§ 5. The quartermaster general shall, at each session of the general assembly, report to the governor the quantity, quality, and description of public arms and accoutrements in the state arsenal. If any have been drawn by the order of the governor, he shall state the quantity, and by whom drawn.

Arms drawn to be accounted for.

§ 6. All arms and accoutrements which may be drawn from the state arsenal under the provisions of this chapter, shall be accounted for or returned when the cause authorizing the withdrawal has ceased to exist.

When drawn, receipt to be taken

§ 7. When any arms or accoutrements are drawn from the state arsenal, as herein provided, the quartermaster general shall take the receipt of the person drawing the

same, therein reciting the quantity and quality drawn, and stipulating that the same are to be accounted for or returned when the cause for which they are drawn shall cease to exist; which receipt, with the order of the governor, shall be filed away in the quartermaster general's office, and carefully preserved.

Suits for arms not returned.

§ 8. If the arms and accoutrements so drawn from the state arsenal are not returned in proper order within a reasonable time after the exigency upon which they may be drawn has ceased, the quartermaster general shall institute the proper procedure, in the name of the commonwealth, to coerce the return of the same, or to recover their value, or the amount they may be injured.

Result to be reported.

1. He shall report the result of the suit, and what part of the arms and accoutrements he has regained, and what amount he has realized for those not regained.

Sum recovered.

2. The net amount of money recovered shall be laid out in the purchase of other arms and accoutrements, to be deposited in the public arsenal, and in like manner reported to the governor.

Reports to general assembly.

§ 9. The governor shall lay all the reports made to him as herein directed before the general assembly.

CHAPTER LXXVIII.

PUBLIC BUILDINGS.

ART. 1. Superintendent of.
ART. 2. Expenditures for repairs, &c.
ART. 3. Public County Buildings.
ART. 4. Penal remedies for injuries to Public Property.
ART. 5. Colleges and Churches.

ARTICLE I.

Superintendent of.

Librarian ex officio superintendent. M. & B. 274.

§ 1. The state librarian shall be, *ex officio*, superintendent of the public property of the commonwealth at the seat of government.

Duty of superintendent.

1. The superintendent shall have under his care the capitol, and all other public property at the seat of government, not placed in the charge of others, and shall protect the same, as far as practicable, from depredation and injury. V. R. 116.

Air, clean, &c.
M. & B. 274.

2. He shall attend and frequently air, clean, and keep from injury the various rooms, and the carpeting and furniture, in the capitol.

Keep keys.
V. R. 117.

3. He shall keep the keys of the capitol, and of the committee and court rooms therein.

Public square.
V. R. 117.

4. He shall keep the public square around the capitol clean and in good order.

Chambers not to be used in recess.
V. R. 118.

5. He shall not permit, during the recess of the general assembly, the senate chamber or the chamber of the house of representatives to be used.

ARTICLE II.

Expenditures for repairs, &c.

Furniture.
M. & B. 273.
V. R. 116-17.

§ 1. The superintendent of public property shall purchase, under the orders of the governor, from time to time, such furniture as may be required in the capitol, state court rooms, and public offices, and governor's house.

Fences.

1. He shall, under like orders, cause any of the public buildings, and the fences around the same, to be properly repaired.

Fuel and lights.
V. R. 117.

2. He shall also contract for and have supplied all the fuel and lights required for the use of the general assembly, secretary's office, the rooms of the auditor, treasurer, register, librarian, and president of the board of public works, and court rooms. But no expenditure shall be approved by the governor or money paid from the treasury for the same, unless it was in compliance with a contract, in writing first made by the superintendent and approved by the governor.

Contracts to be first made.

Payment from treasury.
M. & B. 273.

3. Upon a statement of the expenditures embraced in this section, containing the items, approved and countersigned by the governor, the auditor of public accounts shall issue his warrant on the treasury, for the amount thereof, in favor of the superintendent.

Inventory of furniture, &c., at end of governor's term
V. R. 117.

§ 2. When the term of office of the governor expires, or he vacates his office, the superintendent shall take an inventory of all the public property and furniture in the governor's house and outhouses, and deliver the same to the auditor of public accounts, to be preserved in his office.

Old furniture to be sold.

1. He shall sell such old furniture in the capitol and governor's house and outhouses, and in any of the public offices, as may no longer be fit for use, first obtaining from the governor an order approving of the sale.

2. The proceeds of such sale shall be paid into the public treasury, and an inventory of the articles sold returned to the auditor of public accounts, to be kept in his office. Proceeds paid into treasury.

§ 3. A statement of expenditures for repairs, fuel, water, light, and furniture, containing the items, shall be returned to the governor, and laid before each session of the general assembly, and entered on the journals of both houses. Expenditures to be reported to general assembly.

§ 4. Such superintendent shall institute the proper civil procedure in the name of the commonwealth, against any person for any injury or intrusion which may be committed on the public property embraced in this and the preceding articles. Suits by superintendent.

1. The net proceeds recovered shall be paid into the public treasury. Proceeds.

2. The treasurer shall report to the next general assembly the sums thus paid over, and all sums paid to him for articles sold. Treasurer to report.

ARTICLE III.

Public County Buildings.

§ 1. The jailer of each county shall, by virtue of his office, be superintendent of the public square, court house, clerk's offices, jail, stray pen, and other public county buildings at the seat of justice. Jailer ex officio superintendent. M. & B. 275.

1. Such superintendent shall have the power, and it shall be his duty, to institute and carry on the appropriate civil procedure in the name of the county, for any injury or intrusion which may be committed on any of the county property named in this article. Suits by.

2. The net proceeds of any such recovery shall be paid to the county court in aid of the county levy. Net proceeds.

§ 2. Each county court, during the period a court house is being built or repaired, may rent another house, not farther than a quarter of a mile from the public square, in which the courts for that county may be holden until the court house is built or repaired. Court house rented. M. & B. 274.

1. May, in like manner, rent a house within the same distance of the public square for a clerk's office or jail, during the period of erecting a new one, or the repair of an old one. Clerk's office.

2. The rent of any such house shall be paid out of the county levy. Rent paid out of county levy.

ARTICLE IV.

Penal remedies for injuries to Public Property.

Trespassing on public property.

M. & B. 273.

§ 1. Any person trespassing on any of the public property of the commonwealth, or of a county, shall be liable to be presented therefor, and fined at the discretion of a jury, in addition to his civil liability.

Proceeds of fines.

1. The net proceeds of the fine for a trespass on the public property of the state shall be paid into the public treasury, and reported by the treasurer to the next general assembly.

2. The net proceeds of the fine for a trespass on the public property of a county shall be paid to the county court, in aid of the county levy.

ARTICLE V.

Colleges and Churches.

Injuries to colleges & churches.

M. & B. 275.

§ 1. Like remedy, civil and penal, shall be given to the trustees of any college, seminary, school, church, public charity, or house of public worship, against any person for any injury to or intrusion on the buildings or grounds or property attached thereto, as is given for a similar injury or intrusion on the public property of the commonwealth or of a county.

Proceeds of fines.

1. The net proceeds of the recovery in any such procedure, civil or penal, shall be paid over to the trustees entitled thereto.

Civil action not impeded by death of trustee.

2. A civil action for such injuries shall not be impeded by the death, resignation, or removal of one or more trustees, but the same shall progress as if he or they were still acting.

CHAPTER LXXIX.

PUBLIC PRINTER.

ART. 1. How appointed.
ART. 2. His duties and compensation.

ARTICLE I.

How appointed.

Election.

M. & B. 1335.

§ 1. A public printer for the commonwealth shall be elected biennially, by a joint ballot of the two houses of the general assembly, who shall continue in office for two

years from and after the first Monday in August next succeeding his election.

ARTICLE II.

His duties and compensation.

§ 1. He shall keep his office at the seat of government. Office.

1. He must insert the words "public property" in books printed for the state. Duties.

2. And publish in his paper advertisements for the sale of non-residents' lands.

3. He shall do all the public printing required by either house of the general assembly, or by law.

§ 2. Paper for the public printing shall be furnished at the public expense, by the auditor of public accounts. Paper. A. 1845-6.

§ 3. The public printer shall receive for the public printing done by him the following prices: Compensation.

1. For printing the acts, journals, public documents, and other books and pamphlet work, not rule or figure work, in small pica type, and in type of less size than small pica, per one thousand ems, fifty cents. Acts, journals, &c.

2. For rule and figure work, in the same kind of type, for each one thousand ems, one dollar. Rule and figure work.

3. For plain rule work, or plain figure work, in type as above, for each one thousand ems, seventy-five cents. Plain rule.

4. For composition on all bills, reports, or resolutions, on cap paper, or in folio form, per one thousand ems, one dollar. Bills, &c.

5. For plain blanks, per quire, on cap or letter paper, fifty cents. Plain blanks.

6. For ruled blanks, on letter or cap paper, one dollar per quire. Ruled blanks.

7. For ruled blanks, on post and similar sized paper, one dollar and fifty cents per quire. Ruled blanks, post.

8. For advertising lists of non-residents' lands, per tract, twice a month for three months, twenty-five cents. Non-residents' lands.

9. For advertising land to be forfeited to the state for the non-payment of taxes, twice a month for three months, twenty-five cents per tract. Forfeited lands.

10. For press work, per token, (or two hundred and forty impressions,) whether on book work, bills, resolutions, or reports, seventy-five cents. Press work.

11. For transferring any report, document, or other matter, after having once been set in type, to either the journals of the senate or of the house of representatives, or to Transferring.

the legislative documents, when the same is requisite, ten cents per one thousand ems.

Auditor may advance.

12. The auditor of public accounts may advance to the public printer, from time to time, as the work may progress, any sum not exceeding eighty per cent. of the amount of public work actually done by him, under legal authority.

CHAPTER LXXX.

REAL ESTATE.

Fee simple.
Estate tail.
What an estate for life.
Contingent Remainder.
Joint estate.
Effect of warranty in certain cases.
Resulting trusts.
Liens for purchase money.
Covenants to repair.

N. Y. R. 718.

§ 1. The commonwealth of Kentucky is deemed to have possessed the original and has the ultimate property in and to all lands within the state.

Land titles allodial.

N. Y. R. 718.

§ 2. All land titles in this state are declared to be allodial, and (subject to escheat) the entire and absolute property in the same is vested in the owners, according to the nature of their respective estates; except

8 Dana, 295, 296.

§ 3. That the right of eminent domain in and to all real estate resides and remains in the commonwealth.

Acts of the husband not to prejudice rights of the wife.

M. & B. 581-2.

§ 4. No judgment of eviction suffered by a husband, or feoffment or conveyance made by him of the inheritance or freehold of his wife, or other act done by him, shall operate as a discontinuance, or shall prejudice or impair her right of action, or the right of entry of her or her heirs, or such as have right after her death.

Effect of a disseizin and death of a disseizor.

M. & B. 562.

§ 5. The dying seized of a disseizor shall not be such descent in law as to take away the right of entry of any who have such right at the death of the disseizor, unless he shall have had fifteen years peaceable possession after the disseizin was committed.

Effect of a deed or will.

§ 6. Any interest in or claim to real estate may be disposed of by deed or will in writing.

Any estate may be made to commence *in futuro*, by deed in like manner as by will, and any estate which would be good as an executory devise or bequest, shall be good if created by deed. V. R. 500.

§ 7. Every estate in land created by deed or will, without words of inheritance, shall be deemed a fee simple, or such estate as the grantor or testator had power to dispose of, if a less estate be not limited by express words, or by necessary inference. V. R. 501.

Estates tail turned into estates in fee simple.

§ 8. All estates heretofore or hereafter created, which in former times would have been deemed estates in tail, shall henceforth be held to be estates in fee simple; and every limitation on such an estate shall be held valid, if the same would be valid when limited upon an estate in fee simple. V. R. 501. M. & B. 442.

How certain limitations in a deed or will to be construed.

§ 9. Every limitation in any deed or will, contingent upon the dying of any person, without heirs, or heirs of the body, or issue, or issue of the body, or children, or offspring, or descendant, or other relative, shall be construed a limitation to take effect when such person shall die, not having such heir, or issue, or child, or offspring, or descendant, or other relative living at the time of his death, or born within ten months thereafter, unless a different limitation be plainly declared on the face of the instrument creating it. V. R. 501.

Deed to a man for life and then to his heirs, &c.

§ 10. When any estate shall be given by deed or will to any person for his life, and after his death to his heirs, or the heirs of his body, or his issue or descendants, the same shall be construed to be an estate for life only in such person, and a remainder in fee simple in his heirs, or the heirs of his body, or his issue or descendants. V. R. 501.

A contingent remainder. V. R. 502.

§ 11. A contingent remainder shall in no case fail for the want of a particular estate to support it.

Certain acts not to affect remainders.

§ 12. The alienation of a particular estate on which a remainder depends, or the union of such estate with the inheritance by purchase or descent, shall not operate by merger, or otherwise to defeat, impair, or affect such remainder. V. R. 502.

The right of survivorship between joint tenants.

§ 13. Joint tenants may be compelled to make partition, and when a joint tenant shall die, his or her part of the joint estate, real or personal, shall descend to his or her heirs, or pass by devise, or go to his personal representatives, subject to debts, curtesy, dower, or distribution. M. & B. 876. V. R. 502.

§ 14. The preceding section shall not apply to any estate which joint tenants have as executors or trustees, nor to

an estate conveyed or devised to persons in their own right, when it manifestly appears, from the tenor of the instrument, that it was intended that the part of the one dying should belong to the others; neither shall it affect the mode of proceeding on any joint contract, judgment, or decree.

Contingent remainders valid in certain cases.

M. & B. 443.

§ 15. When any estate shall, by deed or will, be 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 death of his or her parent, shall take the estate in the same manner as if he or she had been born in the lifetime of the parent, notwithstanding no estate shall have been conveyed to support the remainder after the death of the parent.

Effect of attornments, &c.

M. & B. 444.

§ 16. The attornment of a tenant to a stranger shall be void, unless it be with the consent of the landlord, or pursuant to or in consequence of the judgment, order, or decree of a court. A conveyance or devise of a rent, reversion, or remainder, shall be valid without an attornment of the tenant; but no tenant who shall pay the rent to the grantor before notice of the conveyance, shall suffer any damage thereby.

Effect of warranties, &c.

M. & B. 110.

§ 17. A deed and warranty of land purporting to pass or assure a greater right or estate than the person can lawfully pass or assure, shall operate to convey or warrant so much of the right and estate as such person can lawfully convey, but shall not pass or bar the residue of the right or estate purporting to be conveyed or assured.

M. & B. 110.

§ 18. If the deed of such grantor warrant the estate purporting to be conveyed against him and his heirs, and any estate, real or personal, shall descend to the claimant, or come to him by devise or distribution on the side of the grantor, then he shall be barred for the value of the estate that shall so descend, or come to him by descent, devise, or distribution.

M. & B. 110.

§ 19. If in time after any real or personal estate shall come to the claimant by descent, devise, or distribution from the grantor, then shall the tenant recover from him of the estate warranted, the value of the estate that so comes to him by descent, devise, or distribution. The recovery shall be by writ from the court in which the plea was pleaded.

Resulting trusts.

N. Y. R. 722.

§ 20. When a deed shall be made to one person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the latter.

§ 21. Such deeds shall be deemed fraudulent, as against the existing debts and liabilities of the person paying the consideration. N. Y. R. 729.

§ 22. The provisions of the section before the one next preceding this, shall not extend to cases where the grantee shall have taken a deed in his own name without the consent of the person paying the consideration, or where the grantee, in violation of some trust, shall have purchased the lands deeded with the effects of another person. N. Y. R. 728.

Trust estates liable for debts.

§ 23. Estates of every kind held or possessed in trust shall be subject to the debts and charges of the persons to whose use or for whose benefit they shall be respectively held or possessed, as they would be subject to, if those persons owned the like interest in the property held or possessed as they own or shall own in the use or trust thereof. M. & B. 443.

Certain sales of trustees invalid.

§ 24. No sale made of any property, by a trustee, by virtue of a deed of trust or pledge to secure the payment of debts, shall be valid, nor shall the conveyance by such trustee pass the title of the property specified in such deed or pledge, unless the sale thereof shall be in pursuance to a decree or order of a court, or the maker of such deed or pledge shall join in a writing evidencing the sale. M. & B. 449.

Constructive effect of deeds.

§ 25. Every deed shall, unless an exception be made therein, be construed to include all buildings, privileges, and appurtenances of every kind attached to the lands therein conveyed. V. R. 504.

How liens for purchase money may be reserved.

§ 26. When any real estate shall be hereafter conveyed, and the purchase money or any part thereof shall remain unpaid at the time of the conveyance, the grantor shall not thereby have a lien for the same, unless it be expressly stated in the deed what part of the consideration remains unpaid. V. R. 510.

Feigned recoveries.

§ 27. Recoveries by fraud, craft, or covin, upon feigned and untrue titles, against landlords, caused and suffered by them to put the termers out of possession, may be falsified by said termers for their terms only, in such wise and form as tenants of the freehold shall and may do by the course of the common law, when such tenant of the freehold was neither privy nor party to the recovery. M. & B. 1108.

§ 28. The said termers and their representatives and assigns shall retain, hold, and enjoy their terms according to their leases, notwithstanding such recoveries, against the persons recovering, as they should or might have done M. & B. 1108.

against the lessors, if such recovery had not been had or suffered.

M. & B. 1109.

§ 29. The landlords and their representatives and assignees shall have like remedy, after such recovery, against the termers and their representatives and assignees, for the rents reserved, and like action for waste, as if the recovery had not been had.

M. & B. 1110.

§ 30. No execution shall be affected by any such feigned recovery; but all persons having or entitled to have any lands in execution, shall have like remedy to avoid and falsify such recoveries as is provided for termers.

Assignees of reversion, or grantees of estate may maintain actions on the leases of grantee or assignee.

M. & B. 1110.

§ 31. Grantees or assignees of reversions, and their heirs, personal representatives, and successors, shall and may have and enjoy like advantages against lessors, their personal representatives and assignees, by entry, or for doing waste, or other forfeiture, and shall have the same advantages, benefits, and remedies by action for the non-performance of any covenant or agreement contained and expressed in any lease, grant, or obligation, against the lessees, grantees, or their personal representatives or assignees, as the said lessors or grantors, or their heirs or successors, ought, should, or might have had.

M. & B. 1110.

§ 32. Grantees and lessees of lands for term of years, or for life or lives, their personal representatives and assignees, shall and may have like action, advantage, and remedy against all and every person, their heirs, personal representatives, successors, and assignees, who shall have any gift or grant of the reversion of the same lands so let, or any part thereof, or any covenant or agreement contained in the grant or lease, as the same grantees or lessees might or should have had against the said grantors or lessors, their heirs and successors.

Construction of a covenant to repair.

V. R. 506.

§ 33. No covenant or promise of a lessee, that he will repair or leave the premises in repair, shall have the effect, if the buildings are destroyed by fire or otherwise, without fault or negligence on his part, of binding him to erect such buildings again, unless the contrary be expressly provided.

§ 34. The absolute power of alienation shall not be suspended, by any limitation or condition whatever, for a longer period than during the continuance of a life or lives, in being at the creation of the estate, and twenty-one years and ten months thereafter.

CHAPTER LXXXI.

REGISTER.

Covenant with surety.

§ 1. The person elected register of the land office, or appointed to fill a vacancy therein, shall, before entering on the duties of the office, give a covenant to the commonwealth for the faithful discharge of its duties, with good surety, worth not less than ten thousand dollars. M. & B. 1341.

By whom surety approved.

1. The form of the covenant must be approved by the attorney general, and the sufficiency of the surety approved by the governor, attorney general, and auditor, or by two of them; and if such surety afterwards become insufficient, they, or any two of them, may require a new covenant, with good additional surety, to be given within a named period, of not less than thirty days, after notice to the register.

When surety becomes insufficient.

Left with auditor.

2. The covenant, when executed, must be left with the auditor for safe keeping.

When given.

3. If such covenant be not given within thirty days after election or appointment, or such new covenant given within the time directed, the office shall be deemed vacant.

Land office.

§ 2. The land office shall be under the care and control of the register, who may, from time to time, appoint not more than two deputies to aid him therein.

Fees.

§ 3. All fees, including that for issuing the patent, shall be paid on filing a survey. If the register give credit to any one for fees, he shall account therefor as if they had been paid.

Presses, stationery, &c.

§ 4. The register shall keep his office supplied with the necessary presses, books, stationery, and implements; an account of which, approved by the governor, shall be paid by the treasurer on the warrant of the auditor.

Warrants partially appropriated.

§ 5. He shall deliver to the owner any land warrant in his office only partially appropriated, with an indorsement showing how much remains to be appropriated.

Books, &c.

§ 6. He shall not suffer any of the books or papers of his office to pass into the hands of any unauthorized person, nor shall he permit any one but his clerks to have access thereto.

Omissions supplied.

§ 7. The register shall supply upon the record the omission of the name of a governor to a patent, when the original patent with the governor's signature thereto is produced to him, showing the omission; and the omitted

name of the governor may also be supplied when it appears from official indorsements on the papers in the office, or by official marginal notes, that the patent regularly issued and was delivered to the proper person.

Where any former register has omitted to affix the seal of office to any official deed, the register may supply the omission on the original deed, and it shall have the same effect as if it had been originally affixed thereto when made.

Advice of attorney general.
M. & B. 165.

§ 8. He shall take the advice, in writing, of the attorney general in all cases new and difficult which may arise in his office, which shall be his indemnity for all proceedings had in conformity thereto.

Copies.
M. & B. 188.

§ 9. "A copy attest," shall be sufficient authentication of any record or paper in the land office, when signed by the register or his deputy.

CHAPTER LXXXII.

REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES. (*a*)

Persons celebrating marriages to keep a registry, &c
A. 1851-2, 358.

§ 1. That it shall be the duty of all clergymen or other persons, who shall hereafter celebrate or perform the marriage ceremony within this commonwealth, to keep a registry of all marriages celebrated by them, showing the names, ages, residence, and place of birth of the persons married, whether they were single or widowed, and the time of the marriage.

Surgeons and physicians to keep a registry.

§ 2. It shall be the duty of all physicians, surgeons, and midwives to keep a registry of all births and deaths at which they have professionally attended, showing, in cases of births, the time and place of birth, name of the father, and maiden name of the mother, and their residence, sex and color of the child, together with its name, if it shall receive one, and whether it was born alive or dead; and showing, in cases of death, the time, place, and cause of death, the name, age, sex, color, and condition, (whether single, married, or widowed,) name and surname of parents, occupation, residence, and place of birth of the deceased: *Provided*, that in case of a birth of a slave, the

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(*a*) We publish this act of the last session as a separate chapter, without any alteration of its language or terms.

name of the owner shall be given in place of the names of the parents, and, in case of the death of a slave, the owner's name may be given in place of the condition, occupation, and residence: *And, provided further*, that when two or more physicians, surgeons, or midwives may have attended professionally at any birth or death, that physician, surgeon, or midwife who is oldest in attendance, shall make the registry.

§ 3. It shall be the duty of clergymen, physicians, &c., above named, to deposit in the county clerk's office of the counties in which such births, &c., occur, on or before the 10th day of January in every year, the said registry, or a copy thereof, embracing the period of one year, ending on the 31st day of December last preceding the time of deposit; and the clerk shall deliver copies of the same to the assessor.

Assessors of tax to perform certain duties.

§ 4. It shall be the duty of the assessors, while making their lists of taxable property, to ascertain and record, in a list separate from the list of taxable property, all the births, marriages, and deaths which shall have occurred within their respective counties in the twelve months ending on the thirty-first day of December last preceding the time of assessment, with all the items of time, place, &c., herein directed to be inserted in the registries above named; and they shall make strict inquiry of all heads of families, and shall use the registries of clergymen, &c., above named, in order to obtain correctly the information herein required. They shall return said lists of births, &c., with the registries of clergymen, &c., aforesaid, to the clerks of the county courts at the same time they return their lists of taxable property; and the clerks shall copy said lists of births, &c., and transmit the copies to the auditor of public accounts with the lists of taxable property. The clerks shall be paid at the same rates they are paid for copying the list of taxable property. The assessor shall be allowed two cents for each birth, marriage, or death recorded as herein directed, to be paid in the same manner as for making the lists of taxable property: *Provided*, that it shall be lawful for any assessor to record, separately, the time, place, &c., of any birth, marriage, or death which may have occurred prior to the time which the list then being made embraces, or which may have occurred within this commonwealth; for every entry so made, the party causing it to be done shall pay the assessor two cents.

Duties imposed on the auditor.

§ 5. It shall be the duty of the auditor to make, from all the lists of births, marriages, and deaths so transmitted to him, tabular statements showing, in a condensed form, the information herein required to be preserved, keeping the statistics of each county separate; and to cause five hundred copies of the same to be printed in pamphlet form, on or before the first day of January in every year; to transmit not more than five nor less than two copies to each county court clerk's office in this commonwealth, one of which shall be forever carefully kept in such office, and the remainder distributed for the use of the citizens of their respective counties. He shall cause to be printed suitable blanks for the use of assessors, clergymen, physicians, &c., with separate columns for each of the items of information herein required, and send a sufficient number of said blanks to the clerks of each county court for distribution. He shall annex to said blanks such instructions as he may deem necessary to secure the faithful execution of this act.

Assessor may administer oath.

§ 6. To enable the assessors to obtain full and correct information touching the facts herein required to be ascertained, they shall have full power to swear and interrogate any person in their respective counties for that purpose; and it shall be the duty of all such persons, when thereto required by the assessor, with or without oath, to give him, fully and truly, all the information he or she may possess touching any of said facts.

Duties of clerks.

§ 7. The several county court clerks shall forever carefully preserve the lists of births, &c., and the registries of clergymen, &c., herein required to be returned to them for the use of the public.

Records to be evidence in courts.

§ 8. The said lists of births, marriages, and deaths, returned to the clerks of the county courts by the assessors, as also the original tabular record herein required to be made and kept by the auditor, or a duly certified copy of any birth, marriage, or death from either of them, given and certified by the keeper of such records, shall hereafter be admitted and received, in all courts in this commonwealth, as *prima facie* evidence of any such birth, marriage, or death therein recorded or so certified.

Penalties for failing to discharge the duties imposed

§ 9. Any person failing to discharge and perform any of the acts or duties herein imposed and required to be done, shall, for every such failure, be fined in a sum not less than five nor more than twenty dollars, to be recovered by warrant before a justice of the peace, or by presentment by the grand jury.

CHAPTER LXXXIII.

REVENUE AND TAXATION.

ART. 1. Rate of Taxation on real and personal estate.
ART. 2. Specific Taxation on real and personal estate.
ART. 3. Penalties on Peddlers.
ART. 4. Revenue specifically devoted to the Sinking Fund.
ART. 5. What estate shall be listed for Taxation—form of Tax Book.
ART. 6. The Assessor, and his duties.
ART. 7. Board of Supervisors.
ART. 8. Duties of Circuit and County Court Clerks in relation to the Revenue.
ART. 9. Collection of Revenue.
ART. 10. Payment of Revenue by Banks and other Corporations into the Treasury.
ART. 11. Tax on the Lands of non-residents.
ART. 12. Proceedings against Sheriffs, and others, to compel the payment of Revenue into the Treasury.

ARTICLE 1.

Rate of Taxation on real and personal estate.

Seventeen cents upon the $100.

§ 1. An annual tax of seventeen cents upon each one hundred dollars of value of the real and personal estate directed to be assessed for taxation, shall be paid by the persons assessed—ten cents thereof for the ordinary expenses of government, five cents for the use of the sinking fund, and two cents for the support of common schools.

M. & B. 1336, 1289. L. 509. A. 1843, 75. A. 1849, 26.

Rate of tax upon silver-ware, carriages, watches, &c.

§ 2. The following description of personal estate, viz: gold, silver, and other metalic watches; clocks composed, in whole or in part, of metal or wood; gold and silver plate; piano-fortes; riding or pleasure carriages, buggies, and gigs; stage coaches, omnibuses, and all descriptions of vehicles for the transportation of persons or passengers, by whatever name known or called, including the harness thereof; whether in use or not, shall be taxed thirty cents upon each one hundred dollars of the value thereof, except such as are kept for sale in the store or shop of any merchant or manufacturer thereof. These shall be taxed as other estate owned by the merchant or manufacturer.

When due.

§ 3. Taxes shall be due and payable in the same year in which the estate is assessed.

Lien on estate for the revenue.

§ 4. The commonwealth shall have a lien for the revenue tax and county levy on the estate of each person as-

M. & B. 1304, 1306

sessed for taxation, which shall not be defeated by sale or alienation.

ARTICLE II.

Specific Taxation on real and personal estate.

Tax on bank stock

§ 1. On bank stock, or stock in any moneyed corporation of loan or discount, fifty cents on each share thereof, equal to one hundred dollars, or on each one hundred dollars of stock therein, owned by individuals, corporations, or societies.

On drugs, medicines, & nostrums.

A. 1848, 51.

§ 2. On the gross amount of the sales of drugs, medicines, or nostrums, owned by persons other than citizens of this state, and sent to this state and sold and retailed, five per cent., to be paid by the person or agent selling the same, to the clerk of the county where the same shall be sold, at the end and expiration of each three months, to be accounted for and paid over as other public moneys. The agent or vender of such drugs, medicines, or nostrums shall render, on oath, an account of the amount of such sales, and pay the tax as aforesaid. Any person violating the provisions of this section, or failing to perform the duties required thereby, shall be subject to a fine of fifty dollars, to be recovered by motion in the name of the commonwealth, before the circuit court, or by presentment or indictment by the grand jury.

Tax on tavern license, coffee houses, ten pin alley or bowling saloon, and on peddlers on rivers.

M. & B. 1391.
L. 513.
A. 1849, 45.

§ 3. The tax on licenses shall be as follows:

On a license to keep a tavern, ten dollars. (*a*)

On a license to a coffee-house keeper, or other person licensed by a city or town to retail spirituous liquors, ten dollars.

The tax on a license to keep a nine or ten pin alley, or bowling saloon, for twelve months, shall be as follows:

If the population of the county, including all cities and towns therein, shall exceed ten thousand souls, twenty dollars; if under that number, ten dollars. When the proprietor or keeper has more than one alley or table in the same building, he shall pay tax on each one.

On a license to sell or peddle goods, wares, or merchandise, on the Ohio, Mississippi, or any other river within this state, in any one county bordering on said rivers, or through which any such river may run, for twelve months, ten dollars.

(*a*) See chapter "Taverns, Tippling Houses, &c."

§ 4. On a license to a merchant to sell spirituous liquors, five dollars. Licenses to merchants shall be granted by the county court only upon satisfactory evidence that the applicant is in good faith a merchant, and his business is that of retailing merchandise; and that he has not assumed the name and business of a merchant with the view and object of obtaining a license to sell spirituous liquors.

On merchants to sell spirituous liquors.

A. 1839, 45.

On a license to the keeper or owner of any itinerant or other menagerie, circus, or theatrical performance, one dollar per day for each day's exhibition thereof for each one hundred voters resident in the county in which such exhibition, show, or performance may be made, exclusive of cities whose population is above twenty thousand souls, in which cities the tax shall be twenty dollars for each day. The number of days for which the license is granted shall be stated on the face thereof.

On a circus, menagerie, or theatrical performance.

A. 1849, 45.

On a license to a peddler for the whole state, fifty dollars for twelve months. The license shall give a description of the person to whom it is granted; and before peddling in any county other than the one in which the license was issued, he shall present the same to the clerk of such county, who, upon being satisfied, shall certify to the genuineness of his license. A failure so to present his license shall subject the peddler to the same penalty as though he had peddled without a license. On a license to a peddler of watches, silver-ware, jewelry, or gilt ware; or of goods, wares, and merchandise; or to peddlers and itinerant venders of pills, medicines, and nostrums; twenty dollars for twelve months, for each county named in the license. On a license to a clock peddler, twenty dollars for twelve months, for each county named in the license.

On peddlers.

A. 1845, 37.

§ 5. On a license to sell or peddle for three months, in one or more counties, for each one hundred voters in the counties named in such license, fifty cents.

On peddlers in county.

L. 474, 513.

On a license to peddle goods or clocks, or other commodity in a county, exclusive of the city or town thereof whose population is above forty thousand, for three months, fifty cents for each one hundred voters in said county, exclusive of those resident in the city or town; the number of voters to be ascertained by the assessors' books.

On a license to peddle goods, merchandise, or clocks, in a city or town whose population exceeds forty thousand, for twelve months, thirty dollars; for six months, twenty dollars; and for three months, ten dollars.

On stud, jack, or bull.

On a license to stand a stud horse, jack, or bull, in the state of Kentucky, an amount equal to the greatest sum charged for the service of the same, whether that sum be for the season or insurance; which license shall expire on the thirty-first day of December, in each year. The applicant for such license shall state, on oath, the largest amount he intends to charge, directly or indirectly, for the services of said stud, jack, or bull; and if in property or other thing, the value of the same.

License, by whom granted.

L. 472.

§ 6. A license to keep a tavern shall be granted in the mode prescribed by the law regulating taverns and tavern-keepers; all other licenses named in this article, except licenses to merchants to retail spirituous liquors, shall be granted by the clerk of the county court, under the seal of his office, upon the applicant producing to him the receipt of the sheriff of the county for the payment of the tax, or payment of the same to the clerk, and taking the oath before the clerk, as required above.

Licenses not assignable.

§ 7. But one person, and he the person named in such license, shall sell under or exercise the privileges granted by the same. Licenses granted under this article are not assignable, nor shall the clerk give copies or duplicates thereof.

No license to be granted by a city until applicant has paid state tax.

A. 1849, 42.

§ 8. No license shall be granted by the authorities of any town or city of this state, authorized to grant licenses to a tavern or coffee-house keeper, or other person, to retail spirituous liquors, or to keep a nine or ten pin alley or bowling saloon, until such applicant shall have paid to the clerk of the county court the state tax imposed by law; neither shall such license be granted for a longer time than twelve months. Persons required by this section to obtain a license, if they exercise the privileges thereof under a license granted by the authorities of a town or city, without having first obtained the license from the county clerk, as above required, shall be subject to the penalties and disabilities imposed for keeping tippling houses. If the person be the keeper or owner of a nine or ten pin alley or bowling saloon, he shall forfeit and pay two hundred dollars.

License to keep a nine pin alley, &c., to be granted only to persons of good character, on giving bond.

A. 1849, 45.

§ 9. A license to keep a nine or ten pin alley or bowling saloon shall be granted by the county court to persons of good character only, upon payment of the tax, and execution of a bond, with good surety, in the penalty of one hundred dollars, conditioned that no gaming, no riotous or disorderly conduct shall be allowed upon said alley, or

within said saloon, or in the building containing the same. For a violation of the condition of his bond, the principal and surety, or either of them, may be proceeded against by suit or indictment, and, for each violation, the amount of the aforesaid penalty recovered for the benefit of the commonwealth. (*a*)

Penalty for keeping saloon without license.

A. 1849. 46.

§ 10. The keeper, owner, and all persons concerned, directly or indirectly, in setting up or keeping any nine or ten pin alley or bowling saloon, without first having obtained a license therefor, shall, jointly and severally, forfeit and pay the sum of one hundred dollars for each offense.

Clerk to report to auditor.

§ 11. The clerk shall, by the first day of September, in each year, report to the auditor of the state an abstract of the licenses granted by him and by the county court under this article, stating the amount of tax paid to him and to the sheriff for the same; also, the amount of other public moneys received by him for taxes or otherwise. The amount so paid and received shall be accounted for as other revenue.

(*a*) The following act, passed at the last session of the legislature, imposes a tax upon a license for billiard tables in the cities of Louisville and Lexington.

An act to amend an act, entitled, an act to charter the city of Louisville, approved March 24, 1851, and for other purposes—approved January 7, 1852.

A. 1851-2, 687.

§ 1. That, hereafter, the general council of the city of Louisville shall have power to grant licenses for billiard tables and Jenny Lind tables, to be kept in said city; and all the regulations of the sixth article of an act, entitled, an act to charter the city of Louisville, approved March 24, 1851, in regard to licenses for bowling alleys, shall be and are hereby made applicable to the licenses hereby authorized.

§ 2. Before any license for a billiard or Jenny Lind table shall take effect, the grantee thereof shall pay to the clerk of the Jefferson county court, in addition to the tax charged by the city of Louisville, the sum of two hundred dollars, and procure said clerk's certificate of such payment on the back of said license; for every such certificate the clerk shall be entitled to fifty cents, to be paid by the applicant.

§ 3. Said clerk shall account for the moneys so received by him, under the second section of this act, as for other taxes, and the same shall be carried to the credit of the sinking fund of the state of Kentucky.

§ 4. The provisions of this act shall, in all respects, be applicable to the city of Lexington.

Persons not deemed peddlers.

A. 1843, 81.

§ 12. The following persons shall not be deemed peddlers:

Citizens of Kentucky who sell articles grown or manufactured by themselves.

Who deemed peddlers.

A. 1845, 37.

§ 13. Persons retailing goods, wares, and merchandise, not the product or manufacture of this state, or offering to sell the same, other than a resident merchant who has listed his goods for taxation, shall be deemed peddlers.

Tax on law process.

M. & B. 1366.
L. 516.
A. 1845.

§ 14. Tax on law process, the recording of deeds, powers of attorney, official copies and seals, shall be as follows, and paid in advance:

On each original suit or proceeding in law or equity, except proceedings before a justice of the peace, commenced with or without original process;

Appeal.

On each appeal to the circuit court, from an inferior tribunal;

Traverse.

On each traverse of forcible entry or detainer;

A procedure to revive judgment.

On each procedure to revive a judgment or decree;

On each deed or power of attorney to convey real or personal estate;

On the seal of any court required by law to keep a seal—fifty cents.

Writs of error.

On each writ of error from the court of appeals, one dollar.

Appeal to court of appeals.

On an appeal to the court of appeals, two dollars.

Verdict.

L. 356.

On each verdict of a petit jury in the circuit court, four dollars. The same tax shall be paid when the parties withdraw a jury, or the plaintiff sustains a nonsuit after the jury is sworn.

Copies from register's office.

A. 1843, 86.

On each copy of a patent or survey from the register's office, fifty cents; copy of any entry or land warrant, twenty-five cents; recording plat and certificate, and patent on same, twenty-five cents; copy of an assignment, twelve and a half cents; registering a survey and issuing a patent on same, one dollar.

State seal.

On the seal of the commonwealth, two dollars.

Clerk's commission.

M. & B. 399.

§ 15. Clerks shall be allowed, upon a settlement with the auditor, five per cent. commission on all taxes or revenue collected by them.

Secretary of state and register to account.

§ 16. The secretary of state and the register of the land office shall render an account of all fees paid to them, verified by oath, on the first Monday in January in each year, and file the same with the auditor of the state, and pay into the treasury all fees and taxes paid to them, respectively. On failure thereof, beside their liability for the tax

and money received, they shall each be fined one hundred dollars for every offense.

ARTICLE III.

Penalty on Peddlers.

Penalty for selling to or dealing with a slave.

A. 1845, 37.

§ 1. If any peddler shall sell or offer to sell any commodity to a slave without the consent, in writing, giving to such peddler leave to deal with him by the master, owner, or overseer, he shall be fined fifty dollars for each offense, to be recovered by warrant before a justice of the peace in any county in this state, or upon presentment of a grand jury; and upon a failure to pay the same, shall be confined in the jail of the county for thirty days.

Penalty for selling without a license.

M. & B. 1259, 1388. L. 471.

§ 2. Any person who shall, without a license, peddle goods, wares, or merchandise; drugs, medicines, or pills; clocks, watches, jewelry, or silver ware; or other thing for the sale of which a license is required first to be obtained; shall be fined for each offense fifty dollars, to be recovered as is provided in the first section of this article, and shall be committed to the jail unless the fine is paid. In proceedings against peddlers under this article they shall be held to reasonable bail.

Sheriffs and other officers to see law executed.

L. 472. M. & B. 1259.

§ 3. Sheriffs, county attorneys, judges of the county courts, justices of the peace, police judges and marshals of towns and cities, and constables, shall see that the provisions of this chapter, which relate to licenses to be granted to peddlers, tavern keepers, and all others, are complied with, and prosecute offenders and delinquents in the name of the commonwealth, for violations of the same; and to that end may require all such persons to produce their licenses—a failure to produce which, when so required, shall be conclusive evidence against such person of his guilt.

How fines and penalties to be recovered.

§ 4. In all cases where a fine or penalty is imposed by the provisions of this and the other articles of this chapter, the mode of recovering and enforcing the same shall be by suit or indictment, in the name of the commonwealth, to be instituted without a prosecutor, unless in cases where a different mode may be directed or authorized. In cases where jurisdiction is given to justices of the peace, if the defendant require it, a jury shall be impanneled to try the facts.

ARTICLE IV.

Revenue specifically devoted to the Sinking Fund.

Penalty.

A. 1843, 67.

§ 1. If any person shall carry on, conduct, or engage, directly or indirectly, in the business of a broker or exchange dealer, by the purchase or sale of bank notes, money, bills of exchange, drafts, checks, treasury notes, state stocks, or stocks of the United States, or by the charge of premium for the acceptance or indorsement upon bills or negotiable paper, or shall by any other means carry on said business without a license, beside the tax imposed, he shall forfeit and pay to the commonwealth one thousand dollars.

Tax on broker.

A. 1845, L. 516.

§ 2. The annual tax on the license to a broker or dealer in exchange shall be as follows:

When the amount of capital employed, or business expected to be done, whichever is greatest, is under five thousand dollars, fifty dollars.

Over five thousand and under ten thousand dollars, seventy-five dollars.

Over ten thousand and under fifteen thousand dollars, one hundred dollars.

Over fifteen thousand and under twenty thousand dollars, one hundred and twenty-five dollars.

Over twenty thousand dollars, one hundred and fifty dollars.

How license to be obtained.

A. 1843, 89.

§ 3. The clerk of the county court shall grant to the applicant a license to carry on the business of broker or exchange dealer, when the following conditions are complied with:

The applicant shall state the place or the county at or in which he intends to carry on said business. He shall state, on oath, to be administered by the clerk, the amount of capital and the highest amount of business expected to be done. He shall pay to the clerk the tax due under the second section of this article. The certificate of which oath, and the receipt of the clerk for the tax, specifying the place in which the business is to be conducted, under the seal of office, shall be a license to the person applying, but to no one else; and not to him in any other place.

Tax on insurance companies.

A. 1843, 89.

§ 4. The tax on an agent of any insurance company or association of individuals, acting without the authority of an act of incorporation granted by the commonwealth of Kentucky, to effect insurance against losses or damage of

any kind, to life or to property, on water or on land, in or out of this commonwealth, in any way or manner, or on agencies to grant annuities, shall be two dollars and fifty cents upon each one hundred dollars of the premium received or agreed to be received, by such agent, or other person for him, for insurance effected, or upon policies granted.

Agents, their duty.

A. 1843, 90.

§ 5. The agents referred to in the foregoing sections shall, on the first Mondays in May and November, in each year, file with the clerk of the county court of the county in which he resides and transacts business, a true and correct list and statement of all such premiums received, or agreed to be received, within the six months next preceding, verified by his oath before the clerk, and pay to the clerk the tax aforesaid. The agent or person who violates any of the provisions of this and the two preceding sections, or fails to comply with the same, beside the amount of tax, shall forfeit and pay one thousand dollars; and the principals of such agents shall also be liable to the like penalty, and may be proceeded against by proper remedies in law or equity, whereby to secure and compel the payment of the same.

Tax on playing cards.

Bond given.

A. 1843, 91.

§ 6. Before selling playing cards, by retail or otherwise, in this state, the owner, his agent, or the vender thereof, shall obtain from the clerk of the county in which such sale is made, a license to authorize him to sell playing cards by wholesale and retail. He shall execute bond, with approved surety, that he will pay to the clerk of the county court, at the end of each three months, twenty-five cents upon each pack of playing cards he may have sold within the last preceding three months; also, that he will file with the clerk a statement, upon oath, of the number of packs of cards sold. A violation of any of the provisions of this section shall subject the offender to the payment of fifty dollars for each offense, beside the tax secured by the bond.

The revenue collected under the provisions of the six preceding sections shall be placed to the credit of the sinking fund, upon the books of the treasury.

Penalty on tavern keepers, merchants, &c.

M. & B. 1332, 1781.
A. 1849, 45.

§ 7. Any person who shall keep a tavern or house of public entertainment, or any merchant who shall sell spirituous liquors, without having obtained a license therefor, shall, on conviction, pay sixty dollars. And any person who shall stand a stud, jack, or bull without a license, shall

be fined ten dollars and three times the highest amount charged for the service of the same.

Contracts of sale without license, void.

M. & B. 1383.

§ 8. All contracts for the sale of clocks, or of goods, wares, and merchandise, by peddlers, of spirits by tavern keepers, or for the use, service, or season of a stud, jack, or bull, without the license required by law, shall be void.

General penalty.

§ 9. When duties are required of persons, or acts are forbidden to them, in any of the articles in this chapter, and the penalty may not have been prescribed in the article, the penalty shall be one hundred dollars for each offense.

ARTICLE V.

What estate shall be listed for Taxation—Form of Tax Book.

§ 1. The tax book shall be in the following form:

Tax book.

L. 514.

		Persons' names.
		Land.
		County.
		Water course.
		Value of Land.
		Town Lots.
		Value of Town Lots.
		White Males over 21 years of age.
		Slaves over 16 years.
		Total Slaves.
		Value of Slaves.
		Horses and Mares.
		Value of Horses and Mares.
		Mules.
		Value of Mules.
		Jennies.
		Value of Jennies.
		Cattle.
		Value of Cattle over fifty dollars.
		Stores.
		Value of Stores.

		Studs, Jacks, and Bulls.
		Rates per Season.
		Tavern License.
		Children between 6 and 18 years old.
		Free White Persons that are Blind.
		Free White Persons that are Deaf and Dumb.
		Hogs over six months old.
		Value under the Equalization Law.
		Total value at 17 cents per $100.
		Value of Pleasure Carriages, Barouches, Buggies, Stage Coaches, Gigs, Omnibuses, and other Vehicles for Passengers.
		Value of Gold, Silver, and other Metalic Watches and Clocks.
		Value of Gold and Silver Plate.
		Value of Pianos.
		Total Value at 30 cents per $100.

A sufficient number of blank copies thereof shall be printed by the public printer, under the direction of the auditor, and transmitted to the clerk and assessor of each county by the first day of January in each year. (*a*)

(*a*) *An act requiring Assessors of Tax to return the names and Post Offices of the Deaf and Dumb Children, in the several counties—approved February* 17, 1851.

That from and after the present year, it shall be the duty of the several assessors of tax within this commonwealth to return on the back of their books, respectively, the names of each of the deaf and dumb children between the ages of seven and twenty-one years, inclusive, in their said several counties, together with the name of the post office nearest the place of residence of each mute. A. 1850-51, 28.

An act to extend the duty of Commissioners of Tax—approved March 8, 1851.

That from and after the tenth day of January next, it shall be the duty of the several commissioners of tax in this commonwealth to open a column in their respective books, in which shall be listed the number of hogs over six months old, in each of the counties of this state; which said lists of hogs shall be reported by said A. 1850-51, 36.

Estate taxed.

§ 2. All estate, real and personal, and all interest in such estate, named and specified in the tax book aforesaid, shall be assessed for taxation, and the tax paid by the owner or possessor thereof, to the person authorized by law to receive the same.

Property exempt from taxation.

M. & B. 1373.

§ 3. Houses of public worship, and lands held under the laws of this state by any denomination of christians or profession of religion, for devotional purposes, to the extent of five acres; and the land upon which any seminary of learning is erected, to the extent of five acres, held fiducially or individually; and any custom house, post office building, court room, or other necessary offices or hospitals built or owned by the United States, including the lots or ground on which they are erected; and all libraries, philosophical apparatus owned by any seminary of learning, and all church furniture and books, for the object and uses of religious worship, shall be exempt from taxation, and may not be listed with the assessor.

Lands valued without regard to conflicting titles. M. & B. 1370.

§ 4. Lands and town lots shall be valued for taxation, including the improvements thereon, without reference to any conflicting title.

ARTICLE VI.

The Assessor, and his duties.

Penalty, if assessor refuses to accept office.

§ 1. Any person elected or appointed assessor of tax who shall fail to accept the office and assume the duties thereof, shall forfeit the sum of five hundred dollars.

Oath of office.

M. & B. 1383. L. 510, 512.

§ 2. The assessor and his assistants, before they enter upon the duties of their office, in addition to the oath prescribed in the constitution, shall also swear that they will fix a fair and full value on all the property listed by them, without favor or partiality; that they will diligently search and inquire, so that no person is passed over or shall fail to have an opportunity to give in his list of taxable proper-

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commissioners, in like manner as other lists of property are now, by law, required to be reported by said commissioners.

An act in relation to the Blind Children in Kentucky—approved January 9, 1852.

A. 1851-2, 361.

That from and after the present year, it shall be the duty of the commissioners of tax in each county in this commonwealth to ascertain and return, on the back of their books, respectively, the names and ages of all blind children under twenty years of age, in their respective counties, together with the name of the post office nearest to the residence of each.

ty; and that they will truly report all persons who shall fail and refuse to give in a list of their taxable estate after being duly called on for that purpose, or who have given in a false or fraudulent list, or refused to give in the amount of their residuary estate, as required by law.

Bond.

M. & B. 1380.

§ 3. The assessor of tax shall also, at the same time, give bond with good surety for the faithful discharge of the duties of his office, which bond shall be kept by the clerk; and, for a violation or breach thereof, suit may be instituted at the instance of the commonwealth, or any person aggrieved, and recovery had thereon, from time to time, to the extent of the injury sustained.

When to commence duties of office.

M. & B. 1380. L. 512.

§ 4. He may commence the duties of his office on the tenth day of January in each year, and shall complete his list and return his tax book to the clerk of the county by the first day of May in each year.

To apply at residence of tax payer before he returns him delinquent.

M. & B. 1380.

§ 5. The assessor, or his appointed assistant, before he returns any one as a delinquent, shall apply at his residence for a list of his taxable property, and in case of his absence, leave a written notice with some white person of the household over sixteen years of age, of the time and place in his county such person shall meet the assessor and give in his list; and if he fail to attend and give in such list, then the assessor shall report the person to the clerk of the county court as delinquent.

Penalty.

§ 6. If the assessor report any one as delinquent, under the above section, without having performed the duties required of him in said section, he shall be fined ten dollars, and he and his surety shall be liable to suit upon his bond for damages.

Compensation and mode of payment.

L. 518. M. & B. 1380.

§ 7. The county court shall certify to the auditor of the state the amount due to the assessor for his services under this article, after he shall have completed his tax book and returned the same. The amount allowed shall not exceed eight cents for each list of taxable estate, and the same shall be paid by the treasurer of the state upon the warrant of the auditor.

Oath to be administered by county court.

L. 511, 519. M. & B. 1380.

§ 8. Before the county court shall grant such certificate of allowance, the assessor, and his assistants, if any, shall take in open court the following oath: "I do swear that I have not received from any person a list of taxable property and returned the same, until the person rendering the list had made oath to the truth of the schedule." A deduction of fifty cents shall be made from the assessor's compensation for each list he shall fail to report for taxation. Twenty

per cent. of the allowance for services shall be retained by the auditor until after the court of claims in the county of the assessor, on or before which time the sheriff shall report, on oath, to the county court a list of all persons, with their taxable estate, so far as known to him, who were omitted by the assessor. The report of the sheriff so far as approved by the court shall be certified to the auditor, who shall draw his warrant on the treasury in favor of the assessor for the amount due after making the deductions aforesaid.

Sheriff to report, and report sent to auditor.

§ 9. The assessor of tax and his assistants are authorized to administer the oaths required to be taken by persons listing their estate with them for taxation.

Assessor and assistants to administer oaths.

§ 10. All estate taxed according to its value shall be valued in gold and silver, as of the tenth day of January preceding; and the person owning or possessing the same on that day shall list it with the assessor and remain bound for the tax, notwithstanding he may have sold or parted with the same.

Estate valued in gold and silver as of 10th of January.

M. & B. 1379, 1385.

§ 11. Slaves shall be listed for taxation by the owner thereof, and not by the persons who may have possession by hire or upon bailment.

Slaves to be listed by owner.

M. & B. 1387.

§ 12. Persons listing their estate with the assessor, shall state, separately, the tracts of land and number of acres in each tract, the value thereof and where situated, giving the water courses and description of title, as well as he knows; the number of town lots, in what town or city situated, and the value of each; the number of slaves over and under sixteen years of age, and value; the number of horses, mares, mules, and jennies, and their value; the number of cattle, and their value over fifty dollars; and also all other estate owned by them and subject to taxation, with the value thereof on the tenth day of January preceding.

Description of estate to be given.

L. 511, 512.

§ 13. The assessor or his assistant shall administer to persons listing their property the following oath: "You do swear that this list of taxable estate, given in by you, contains a full and complete list, and the best description of the same you can give, of all and every species of property belonging to you, or in your possession subject to taxation, on the tenth day of January last; and that no removal of property or omission has been made, or any method or device adopted or practiced, whereby to evade the payment of taxes by you; and that you will true and perfect answer

Oath to be taken by person listing estate.

M. & B. 1385.

make to such questions as may be asked you concerning your taxable estate."

Assessor shall require amount to be fixed on oath.

A. 1848, 80.

§ 14. At the same time the assessor shall require the person referred to in the preceding section, to fix, upon oath, a sum which will cover the amount he was worth on the tenth day of January, from all other sources, exclusive of his estate listed for taxation; also, bank stock taxed in this state; the estate owned and taxed in another state; crops growing on the lands listed for taxation; articles manufactured in the family for its use; provisions and poultry on hand for domestic consumption. In making this estimate, the person may deduct the debts which in good faith he owed as principal at the time. (*a*)

Merchants, &c., when to list their goods, &c.

A. 1845, 81.

§ 15. Merchants and grocers shall list the goods and groceries on hand on the tenth day of April in each year. They shall state, on oath, the full value thereof, exclusive of the articles manufactured in families within this state. The assessor shall call upon all merchants and grocers within his county or district, for their list of taxable prop-

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(*a*) *An act to amend an act, entitled, an act to amend the Revenue Laws, approved February* 10, 1845—*approved January* 9, 1852.

A. 1851-2, 362.

§ 1. That the first section of an act, entitled, an act to amend the revenue laws, approved February 10, 1845, be so amended, that hereafter it shall be the duty of the several assessors of tax in this commonwealth, after having taken the list of all property required to be specifically listed, to require each person, on oath, to fix the amount he or she is worth from all other sources, on the day to which said list relates, after taking out his or her indebtedness from said amount he or she is worth, exclusive of property in lands, slaves, or other property not within this commonwealth, but subject to taxation by the laws of the country where situated, and the said assessors shall take from the said amount, so assessed and listed, the sum of one hundred dollars, and set down and list the balance for taxation, upon which the same *ad valorem* tax shall be paid as on other property subject to taxation by existing laws: *Provided*, that the growing crop on land listed for taxation, articles manufactured in the family for family use, all the poultry raised for family use, and the provisions on hand for family use, shall be exempt from taxation.

§ 2. That the indebtedness which is hereby directed to be deducted from the value of a man's property, shall be a just debt or debts owing, and created for a valuable consideration, and not with a view to lessen the amount of his taxable property; and the assessor, in taking in the list of his taxable property, shall swear the person listing property for taxation to the facts herein stated and required, and, upon such person refusing to take said oath, he or she shall not be entitled to the deduction of his or her indebtedness from the value of his taxable property.

erty, between the tenth day of April and the first of May in each year. (*a*)

Assessor to value the estate taxed

M. & B. 1373, 1385.

§ 16. The assessor shall, from his own knowledge and from the statements of the person listing property for taxation, and such other evidence as he may be able to obtain upon oath of witnesses sworn by him, fix a full and fair value upon all the estate listed with him for taxation, which is taxed according to its value, and enter the same, with the value thereof, in the order and manner prescribed, in the tax book, giving also the aggregate value.

Assessor to list his estate with the clerk.

§ 17. The assessor and his assistants, at the time of returning his tax book, shall give in a list of their taxable estate to the clerk, who shall administer the necessary oaths, and enter the list, with its value, in the tax book at the end thereof, attested by the clerk; and a failure or refusal to give in such list shall subject the assessor, and his assistants, if any, to the same penalties and liabilities imposed upon other persons for the like offense. The clerk shall proceed in the manner prescribed to the assessor, to obtain a list of said estate, and enter it upon the tax book, and report the person refusing or failing, as delinquent.

To return names of tavern keepers, owners of studs, jacks, &c.

M. & B. 1383.

The assessor shall make and return, with his tax book, a list of the names of all tavern keepers, owners or keepers of stud horses, jacks, and bulls, who have obtained a license under this chapter. The list to be returned shall be copied in the book returned to the auditor.

State in its proper place names & information required.

L. 516.

§ 18. The assessor shall state in his tax book, in the appropriate place, and in its proper name or title, the persons, things, and information designated in the form of the tax book.

Return qualified voters every eighth year.

Con. art. 2, § 6.

§ 19. In the year one thousand eight hundred and fifty-seven, and every eighth year thereafter, the assessor shall make due return, with his tax book, of the number of qualified voters resident within his county; and when a town or city within his county shall have assigned to it a separate representation, in either house of the general assembly, he

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(*a*) The commissioners, in their report to the legislature of 1850, retained the provisions of the act of 1845, page 81, which impose a tax on merchandise imported and sold after the 10th of April, as will be seen by the sixteenth section of the sixth article, chapter Revenue and Taxation, as adopted by the legislature, session acts, page 277. The last legislature repealed this sixteenth section. Goods imported after the 10th of April, if sold before the 10th of April in the succeeding year, are not, by the law as now modified, subject to be taxed.

shall make a separate report of the qualified voters in such city or town.

Penalty on delinquents.

M & B. 1374.
A. 1844, 78, 79.

§ 20. If any person fail and refuse to give a list of his taxable property, when legally called upon for that purpose by the assessor or his assistant, or give in a false and fraudulent list, or refuse to give the amount he is worth, as required by the fourteenth section of this article, he shall be adjudged a delinquent, and fined not exceeding one hundred dollars and costs, and be subjected to the payment of three times the amount of the tax upon his estate.

Names of delinquents to be returned.

M. & B. 1374.
L. 510.
A. 1844, 78, 79.

§ 21. The assessor, at the time he returns his tax book, shall also return the names of all delinquents described in the preceding section, and shall, as to fraudulent delinquents, state in what the falsehood or fraud consists.

Delinquents summoned.

M. & B. 1374.
A. 1844, 78, 79.

§ 22. The clerk shall issue a summons in which he shall state the offense in general terms, against each of the delinquents, returnable to the next term of the county court, which shall hear and determine the case upon motion, giving to the defendant the right to have a jury to try the facts, if demanded; which jury shall be composed of by-standers, and summoned by the sheriff. If the defendant be found guilty, the court shall enter judgment for the fine, and triple tax and costs. The court shall fix the value of the taxable estate upon which to impose the tax from their own knowledge, upon the statement of the defendant made upon oath, or upon such evidence as they may be enabled to obtain; and execution shall issue for the fine, triple tax, and costs. The fine and tax shall be certified by the clerk to the auditor of the state, and accounted for by the sheriff as other public moneys.

Sheriffs to return delinquents.

M. & B. 1374.

§ 23. When it shall be known to the sheriff that any person has failed to give in a list of his taxable property in any year when it shall be liable to taxation, he shall report such person to the clerk of the county, to be dealt with, fined, and taxed, as delinquents reported by the assessor. No sheriff or assessor shall be liable to costs in proceedings against delinquents reported by them.

Certain persons may list their estate with clerk.

M. & B. 1374.
L. 518.

§ 24. Any person who has failed to give in his list of taxable property because he was not called upon by the assessor, may, after the assessor has returned his tax book, list the same with the clerk of the county court, at any time before the first day of September, who, on taking the same, shall be governed by the law regulating the duty of the assessor of tax.

Court may excuse a delinquent.

L. 518.

§ 25. The county court, before a judgment is given against a delinquent, may, if they are satisfied that the defendant was not willfully in default, direct the clerk to take the list of taxable property of such delinquent in the manner prescribed by law. The lists aforesaid shall forthwith be certified to the sheriff and auditor, to be charged to the sheriff and accounted for by him, as other revenue. In such cases the county court may excuse the delinquent from the payment of the fine and triple tax, upon payment of costs of prosecution.

How book to be made out & proved before returned

L. 516.

§ 26. The assessor shall make out his tax book in a fair and legible hand, in alphabetical order, and add the amount of valuation of the estate in each column, also the aggregate thereof, and prove its accuracy before he returns the same.

ARTICLE VII.

Board of Supervisors.

Supervisors, when to meet.

§ 1. The judge and clerk of the county court shall, by virtue of their offices, constitute a board of supervisors of tax for each county. They shall convene at the clerk's office of the county on the first Monday in May, in each year, and may continue in session for six days, if necessary.

Their duties.

§ 2. It shall be the duty of said board to examine with care the tax book of each year, to correct any errors of the assessor, whether in fact or in relation to the valuation of the estate listed, and, in cases where they shall be of opinion that the estate has been incorrectly valued, to fix the same at its proper value.

Assessors to attend.

§ 3. It shall be the duty of the assessor and his assistants to attend the sessions of said board, and give evidence and information concerning the business before them, upon oath, when required. And the said board shall have power to compel the attendance and examination of witnesses before them, to enable them to discharge their duties.

May receive list of estate.

§ 4. The board, during its sessions, may receive the tax list of any person omitted by the assessor, and enter the same in said tax book. They shall keep a record of their proceedings, and correct the tax book thereby. They shall annex their certificate, that they have examined, corrected, and approved the same, and left it with the clerk for safe keeping.

Book to be certified, and auditor to settle, &c.

§ 5. The clerk shall certify to the county court the approval of the tax book, and the county court shall enter the fact upon record. On the presentation of a copy of

the order, the auditor shall settle with the assessor, and pay him as is provided in the sixth article.

Names of persons omitted to be certified to county court.

§ 6. The board of supervisors shall report to the county court the names of persons, liable to taxation, omitted by the assessor in his tax book, by which report the county court shall be governed in their report of the delinquency of the assessor; and the county court shall, also, ascertain the amount of taxable property of all such persons, certify the same to the auditor, and furnish the sheriff with a copy of such additional lists.

M. & B. 1386.

Clerk to receive tax book and notify supervisors, &c.

§ 7. If the assessor should not return his tax book by the first day of May, the clerk may receive it from him when returned, and proceed to execute the duties required of him, as though returned in time; and shall notify the members of the board of supervisors, who shall convene and perform the duties required of the board. The assessor, for such failure, shall be amerced one hundred dollars.

M. & B. 1375.

ARTICLE VIII.

Duties of the Circuit and County Court Clerks in relation to the Revenue.

Duty of county court clerk when book is returned, &c.

1. The clerk of the county court, after the examination and approval of the tax book, shall make two copies thereof—one for the sheriff, and the other for the auditor of the state. He shall test the accuracy of the extensions and additions of said book, make additions of each column and the aggregate amount, and copy on each page the same amount of matter, and no more, that is upon the original tax book. He shall deliver the copy to the sheriff on or before the first day of June, and take his receipt therefor; which, together with the other copy, he shall transmit, by mail or otherwise, to the auditor of the state, by the first day of July in each year.

L. 516.

Errors may be corrected by county court.

§ 2. A person improperly charged with any levy or tax, before he has paid the same, may make proof thereof to the court of the county in which the assessment was made, and the court may correct the same. A certificate of the fact by the clerk, if delivered to the sheriff, shall exonerate the person from the payment of so much as may be decided to be a wrongful assessment; which certificate, if produced, shall entitle the sheriff to a credit for the amount, in his official settlement.

M. & B. 1367.

Tax on land twice paid, how corrected.

§ 3. If taxes have been twice paid upon land under the same title, in the same year, upon proof thereof before the

M. & B. 1365.

county court, within twelve months after such payment, the county court may order the tax to be refunded to the applicant by the sheriff, if not paid into the treasury; and, if so paid, to be refunded by the treasurer, upon the warrant of the auditor.

Delinquent list verified by oath.

M. & B. 1368.

§ 4. The county court, before they allow and certify any delinquent list, upon the application of the sheriff, shall administer to the sheriff and his deputies the following oath: "You do swear that this list of insolvents and delinquents, now before the court, and returned by you, is just and true, as you believe, according to the knowledge which you have; and that you will true answers make to all questions asked you touching said lists, and the efforts made by you to collect the amount thereof." The court shall then proceed to examine the sheriff, to ascertain the truth of the facts, and, upon such answers and other evidence, and their own knowledge, to allow such portions of the lists as may be right; which being certified as allowed, shall entitle the sheriff to a credit in his official settlement.

Clerks to account for money received by them.

L. 361.
M. & B. 354.

§ 5. Circuit and county court clerks shall make out an account of all moneys they have received up to the first day of each circuit court of their county, and pay over so much thereof to the trustee of the jury fund as the court by order may direct. The amount to be paid shall be certified to the auditor of the state, and credited respectively to the clerks in the settlement of their accounts.

The clerks shall transmit to the auditor an abstract of all judgments rendered in their courts for the benefit of the commonwealth, to be charged to the sheriff and accounted for by him.

Officers, sureties, &c., may be sued jointly and separately.

§ 6. Clerks of courts, sheriffs, and all other public officers, and their sureties, and the heirs, distributees, devisees, and personal representatives of each, may be proceeded against by suit or motion, jointly or severally, for their liabilities or defalcations, by the commonwealth in her own right.

Clerks to exhibit to court amount of public money received by them, & transmit same to auditor.

M. & B. 1368.

§ 7. Clerks of circuit courts, at the term next preceding the first day of January, and clerks of county courts, at the October or November term of their county courts, shall exhibit to their respective courts a statement, in writing, of all taxes and other public moneys received by them, of whom, for what, and when received, for twelve months next preceding; which shall be verified by them, upon

oath, and entered of record, and the original, certified with the order of court, shall be transmitted by them to the auditor of the state. The amount thereof, after deducting five per cent. for commissions, and such other sums as they may have, by order of court, paid over to the trustee of the jury fund, they shall pay into the public treasury, on or before the first day of January in each year.

If any clerk shall fail to perform the duties required of him in this section, he and his sureties shall, upon judgment, pay the full amount of money in his hands, and twenty per cent. damages thereon.

A list of licenses to be furnished circuit court.

§ 8. The clerk of each county court shall furnish to the clerk of the circuit court, to be laid before the grand jury at each term, a list of the names of all persons to whom he or the county court has issued a license, under this chapter, and for what granted.

M. & B. 1382.
A. 1849, 42.

When the old tax book may be used.

§ 9. If, from any cause, the tax book for the year be not returned by the assessor, the clerk of the county court shall copy and deliver to the sheriff the tax book of the previous year, by the first day of June, take his receipt therefor, and transmit the same to the auditor. By this tax book the sheriff and auditor shall be governed in the collection and payment of the tax into the treasury for that year, so far as it exhibits the amount thereof.

A. 1844, 29.

Clerk and sheriff to report amount of money received by sheriff for licenses.

§ 10. The clerk of the county court shall file the receipts of the sheriff for all money paid to him for licenses granted, a copy of which he shall transmit to the auditor by the first day of January in each year. The sheriff shall also, by the same day, report to the auditor the amount received by him for licenses. He shall be entitled to a commission of three per cent. upon the amount received by him and paid into the treasury.

A. 1849, 46.

Sheriff's bond to be sent to auditor.

§ 11. The county court clerk shall, within one month after the sheriff executes his bond for the collection of revenue, transmit the same to the auditor of state, and retain a copy thereof in his office. A failure to do this shall subject him to a fine of three hundred dollars.

M. & B. 350.

Clerk's fees.

§ 12. The fees of the clerk of the county court for services rendered under the provisions of this chapter, and not elsewhere provided for, shall be as follows:

M. & B. 766.

For copying tax book for sheriff and auditor, for each line across the page of each copy, including the name of the person and the last number of total value, one cent; to be ascertained by the auditor and paid at the treasury.

For issuing a license under this chapter, twenty-five cents, paid in advance.

For taking bond when required, twenty-five cents, to be paid by the applicant, in advance.

A. 1843, 17. If a tax book returned by the clerk shall contain such errors in the extensions and additions as to make it doubtful as to the true amount of revenue due upon the same, the auditor shall return the book to the clerk for correction. The clerk shall not be paid for said book, but shall be charged by the auditor for the expense of transmitting and returning said book.

ARTICLE IX.

Collection of Revenue.

Sheriff collector of revenue.

A. 1844, 29.

Forfeiture of his office, &c.

M. & B. 1464.

§ 1. The sheriff, by virtue of his office, shall be collector of the revenue. If he fail or refuse to execute bond, with surety, as required by law for the collection of the revenue, he shall forfeit his office. If, after he gives the bond, he fail to pay into the treasury, by the time prescribed by law, the whole revenue due to the commonwealth, and collected by him, he shall also forfeit his office. A quietus by the auditor, for the revenue tax of the preceding year, shall be produced by each sheriff to the county court, at the January, February, or March term.

County court may appoint collector.

§ 2. When the sheriff fails to give bond for the collection of the revenue, the county court shall appoint a collector of revenue for that year, and take bond, with good surety, for the faithful execution of the duties required by law. Such collector shall be governed by the laws regulating the duties of sheriffs in the collection of revenue; and he and his sureties, their executors, administrators, devisees, and heirs, shall be jointly and severally liable to the commonwealth, and all others, in the same manner that the sheriff and his sureties would have been.

Bond given, and worth of surety &c

M. & B. 1457.

M. & B. 355.

§ 3. The sheriff shall enter into bond, with surety, for the collection of the revenue and public dues, at the January or February term of the county court in each year. The county court shall judge of the sufficiency of the surety; and in no case shall sureties be taken who are not jointly worth, after the payment of all their debts and liabilities, a sum equal to the aggregate amount of revenue to be collected for the year. The commonwealth shall also have a lien, from the date of said bond, upon the real estate and slaves of the sheriff, then owned, or afterwards acquired by him, which shall not be discharged until the

sheriff obtains his quietus for all the revenue and public dues he is bound for.

§ 4. The bond of the sheriff, for the collection of the revenue and all other public dues, shall be in substance as follows: Form of bond. M. & B. 1457, 1464. A. 1846, 20. A. 1850, 51.

"We, A. B., the sheriff of ——— county, Kentucky, and C. D. and E. F., his sureties, bind and oblige ourselves, jointly and severally, to the commonwealth of Kentucky, that the said A. B., sheriff of ——— county, shall, by himself or deputies, during the present year, collect, account for, and pay into the treasury of the state, and to other persons entitled thereto, according to law, all taxes and public dues; also, all fines, amercements, and penalties directed or authorized by law to be collected or received by him, in the year, within the county of ———. M. & B. 1456.

"Witness our signatures, this —— day of ———." M. & B. 1457.

The obligors in said bond, their devisees, heirs, executors, or administrators, may be made liable, by suit or motion, jointly or severally, for a breach of the same, until the whole amount of the sheriff's liability shall be discharged.

§ 5. The sheriff, from and after the first day of June, in each year, shall collect the taxes due in his county, and, upon failure by the persons bound therefor to pay the same, may distrain the slaves, goods, and chattels, owned by, or in the rightful possession of, the persons from whom tax is due, notwithstanding the existence of any lien upon the same; and may proceed to sell the title of such person in so much thereof as will pay the tax due, and all costs, in the mode prescribed by law. He may retain the amount of tax, county levies, and other public dues against individuals, out of any claims allowed by the commonwealth or the county court to such individuals, notwithstanding any assignment of the same. Taxes, when due and how collected. M. & B. 1385. L. 513.

§ 6. The sheriff shall account for and pay all taxes and other public moneys for which he is bound, into the treasury, by the fifteenth day of January, in each year. Upon failure to do so, he and his sureties shall be liable therefor, and compelled to pay the amount of tax due, and six per cent. interest on the same from the first day of June preceding till paid, and costs of suit, beside the damages imposed in the third section of the twelfth article. When paid into the treasury. M. & B. 1385. A. 1848, 9.

§ 7. A sheriff shall deposit, at any time before the fifteenth day of January, if authorized and required to do so in writing by the auditor of state, the whole or any part of May be deposited in bank.

the revenue collected by him, in any bank within the state of Kentucky, and within one hundred miles of the residence of the sheriff, to be named by the auditor, to the credit of the treasury, taking three receipts of the cashier of said bank stating the amount deposited, and when, and by whom. One of these shall be forwarded to the treasurer, and one to the auditor of state. The amount thereof shall be credited to the sheriff in his settlement with the auditor.

Sheriff to pay to trustee of the jury fund when required.

L. 374.

§ 8. The sheriff shall pay over to the trustee of the jury fund, out of any public money in his hands, the amount he may be required to pay by the order of the circuit court of his county, to meet any deficiency in said fund. He shall take duplicate receipts for the same, one of which he shall forthwith transmit to the auditor, and, upon the settlement of his accounts at the treasury, shall be credited with the amount so paid.

Commissions for collecting.

A. 1849, 9.

§ 9. Sheriffs shall be allowed, by the auditor, the following commission upon the sums collected and accounted for, or paid into the treasury, in each year:

Upon the first thousand dollars eight per cent., on the second thousand six per cent., on the third thousand five per cent., on the fourth thousand four per cent., and all above four thousand three per cent.

Duty of sheriff before he distrains for tax.

M. & B. 1363, 1385, 1454

§ 10. The sheriff, before he makes distress for taxes, shall tender the person from whom the tax is due, if resident in the county, a receipt, in which he shall specify the taxable estate with which such person is charged, the value and amount thereof, and the tax due. If he shall distrain before the tender of such list and receipt, he shall forfeit and pay to the person aggrieved double the amount of such tax, and such damages as he may sustain, to be recovered by suit in his own name.

Sale to be advertised.

§ 11. The sheriff shall, after having advertised, at the court house, the time and place of sale for at least ten days, sell at public auction, for money, so much of the estate distrained for taxes as will pay the tax and costs. If the sheriff make illegal or unreasonable seizure and distress for taxes, he shall be liable in damages to the party aggrieved.

How tax on land collected, if no personal estate be found.

M. & B. 1377.
A. 1849, 56.

§ 12. If there be no personal estate which the sheriff can distrain for tax on real estate, and the owner of the land or town lot shall fail to pay the same, fifty per cent. shall be added to the amount of tax for the first year, and one hundred per cent. for the amount due for the second year. The

sheriff, at the same time he returns his insolvent list, shall report to the auditor, verified by his oath in open court, a list of all such lands and town lots, the name and residence, when known, of the persons bound for the tax, the county or town where situated, and such other description of the same as he may be able to give, and the amount of the tax due thereon; and where two years of tax shall be due, the auditor shall certify the fact to the sheriff of the county where the land is situated. The said sheriff shall advertise the said list for at least one month, at the door of the court house; and if the tax and costs be not paid, he shall, at the first term of his county court, publicly proclaim said list, and the amount of tax due on each tract, and forfeit the same: which shall vest in the commonwealth all the title the delinquent had in said lands and town lots. Lands and town lots, so forfeited, may be redeemed by the owner, or any person for him, within two years, by paying into the treasury the amount of said tax and costs, and one hundred per cent., per annum, interest on the whole amount.

How delinquents to be dealt with.

M. & B. 1362, 1369, 1385.
L. 517.

§ 13. If any person bound for tax shall be insolvent, or shall have removed out of the county with his estate, after he was assessed for tax, and before a sufficient time to collect it had elapsed, the sheriff shall, at the court of claims of his county, make out two lists—one of insolvents, the other of removals, stating therein the amount of tax due from each individual, the property assessed, and the county or place to which they may have removed—the facts stated in each list shall be verified on oath—which lists the county court shall carefully examine, and strike therefrom such as they may know, or have evidence to believe, are not insolvent, or who have not removed, or whose tax could have been collected before removal, by reasonable diligence on the part of the sheriff. The list, certified by the clerk, if produced to the auditor before suit or motion is commenced against the sheriff, shall entitle the sheriff to a credit for the amount; and the auditor shall transmit the lists of delinquents, with the amount of the tax due, to the sheriff of the proper county, for collection, who shall collect and account for the same as other revenue.

Receipt of treasurer to be filed with auditor.

M. & B. 1367.

§ 14. The sheriff shall, upon payment of money into the treasury, take the receipt of the treasurer and file it with the auditor, who shall credit him thereby; and when the whole revenue and public dues collected by the sheriff shall have been accounted for or paid, the auditor shall give to said sheriff a receipt in full. All money paid into

the treasury shall be charged on account, by the auditor, to the treasurer.

Sheriff may collect after expiration of office.

M. & B. 1458.

§ 15. Sheriffs shall have the same power, for twelve months after the expiration of their term of office, to collect any arrearages of revenue which fell due during their official term, and for which they are and were responsible, as they had before the expiration of their term of office.

Successor may collect arrearages of tax.

M. & B. 1461.

§ 16. If a sheriff die or resign, or is removed from office, his successor shall proceed to collect any arrearages of tax or public dues, and shall account for the same, as other public revenue collected or to be collected by a sheriff.

In what court suits may be instituted against sheriffs, &c., for revenue, &c.

L. 1?2.

§ 17. Suits and motions against sheriffs and their sureties, public debtors, and all others required to pay money into the treasury, or do any other act required by law to be done connected with the payment of money into the treasury after it has been collected, or the giving the auditor information upon the subject of the collection and payment of the revenue into the state treasury, may be instituted in the general court and prosecuted as prescribed by law. (*a*)

ARTICLE X.

Payment of Revenue by Banks and other Corporations into the Treasury.

Cashiers of banks to pay tax into treasury.

L. 509.

Penalty.

§ 1. The cashier of a bank and the treasurer of any other institution whose stock is taxed, shall, on the first day of July in each year, pay into the treasury the amount of tax due. If such tax be not paid, the cashier and his sureties shall be liable for the same and twenty per cent. upon the amount, and the said bank or corporation shall thereby forfeit the privileges of its charter.

Railroad, bridge, and turnpike companies to settle & pay tax.

L. 130.

§ 2. Railroad, bridge, and turnpike companies in which the state is a stockholder, shall each settle and state the affairs of the company on the first day of January and July in each year, and exhibit the gross amount of tolls and items of expenditure, the specific amounts for repairs and other expenses, and debts due to, and the outstanding debts due by the company, to whom due, and the amount thereof. A copy of this statement shall, within ten days thereafter, together with a copy of the bond of the treasurer of the company, be transmitted to the auditor of the state. They

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(*a*) After this chapter was approved, the legislature abolished the general court, and transferred the jurisdiction to the Franklin circuit court. ☞ See chapter on Courts.

shall also make a dividend of the profits, if any, at least once in each year, and pay to the stockholders and to the treasury of the state the amount due to each, on or before the tenth day of January, in every year.

Penalty.

§ 3. If any railroad, bridge, or turnpike company shall fail or refuse to perform the duties enjoined in the preceding section, the president, directors, or managers thereof shall be fined not less than one hundred dollars each, and made personally liable therefor.

Directors, &c., liable.

§ 4. If the commonwealth's portion of the dividend be not paid as required in the second section of this article, the president, directors, or managers, and the treasurer and his sureties, in office for the time, and their heirs and personal representatives, jointly or severally, shall be fined the sum of five hundred dollars, and made liable for the amount due to the commonwealth, and to be proceeded against as defaulting sheriffs.

ARTICLE XI.

Tax on the Lands of non-residents.

Land listed with auditor.

§ 1. The lands of non-resident proprietors shall be listed with the auditor of public accounts for taxation, in a book to be kept by him for that purpose. If not so entered, they shall be thereby forfeited, and the title vested in the commonwealth.

M. & B. 1082, 1084, 1086.

Oath to be administered.

§ 2. The auditor may administer an oath to the persons entering lands with him for taxation, and require from such person a description of each tract of land, its situation and probable value, and from his statement, or such other evidence as he can obtain, assess the value of said land, including all improvements thereon, without reference to the validity of title; which valuation shall stand for three years, when a new estimate of value shall be made.

M. & B. 1086, 1092.

Valuation, how corrected.

§ 3. Non-residents who shall think themselves aggrieved by the valuation of their lands, may apply to the county court of the county in which the seat of government is situated, and upon evidence given of the true value of said land, without regard to the validity of the title, have the valuation corrected by producing to the auditor a copy of the order of said court.

M. & B. 1092.

When tax to be paid.

§ 4. Taxes due for lands of non-resident proprietors shall be paid into the treasury of the state, on or before the tenth day of February in each year. If not paid, fifty per cent. shall be added to the amount for the first failure; for the second year, the tax shall be double; and if not paid for

M. & B. 1086, 1093, 1094.

Additional tax.

three consecutive years, the tax shall also be increased one hundred per cent. for the third year. The auditor shall advertise the same for three months succeeding the end of the third year, in the newspaper of the public printer, twice in each month, stating the amount of tax and cost due on each tract; and if the amount of tax be not paid before the end of three months, the title shall thereby vest in the commonwealth, and the auditor shall make the appropriate entry upon his books.

Forfeited for non payment of tax.

The land so forfeited for non-payment of the tax, &c., due as above, may be redeemed by the owner, or any other person for him, within one year after such forfeiture and investment of title, by the payment of the amount of tax for which it was forfeited, and interest on the same, at the rate of one hundred per cent. per annum.

May be redeemed.

M. & B. 1093.

§ 5. If the auditor fail to perform any of the duties required of him by this article, he shall be fined two hundred dollars for each offense.

Penalty on auditor

ARTICLE XII.

Proceedings against Sheriffs, and others, to compel the payment of Revenue into the Treasury.

§ 1. If any sheriff, clerk, or other person authorized to collect or receive the public money, revenue, or tax, shall fail to account for or pay into the treasury, as required by law, the auditor shall proceed, in the name of the commonwealth, by motion or suit, without notice to the parties, to collect the same, by judgment and execution against such sheriff, clerk, or other person, and their sureties, and their heirs, distributees, devisees, and personal representatives, jointly and severally, at the next or any subsequent term succeeding such defalcation.

Suits, &c. against defaulters.

M. & B. 354.

§ 2. The motions or suits, in the preceding section mentioned, shall be docketed for trial on the third day of the term. The auditor shall file with the clerk of the court a memorandum, in writing, of the names of the parties, the amount due from each defaulter against whom judgment is demanded, and also a copy of the official bond, if any. The clerk shall docket said motions or suits in the order in which the names stand on said memorandum.

When tried—duty of auditor.

§ 3. Judgments, when given against the defendants, in the cases referred to in the two preceding sections, shall be for the principal due, with its legal interest, and the twenty per cent. damages on the amount of the principal.

Damages and interest.

Jury may be impanneled.

§ 4. If any of the defendants shall, upon oath, deny the execution of the bond, or instrument whereby they are sought to be made liable, a jury of by-standers shall be impanneled to try the facts. All other facts may be tried by the court. Nothing but a quietus, or receipt, from the auditor of the state, of the fact of payment of the taxes or money claimed, shall be admitted on the trial. No tender of payment, nor any offset, shall be pleaded or given in evidence.

Indulgence to principal no discharge of surety.

L. 159.

§ 5. If any sheriff, or other person bound for the collection of public revenue or other public dues, shall obtain indulgence or further day to pay the same into the treasury, by any act of the legislature, such indulgence or delay shall not discharge the sureties from any liability to which they would be subject, if such delay had not been granted; and in all such cases, if the party indulged shall fail to pay the money by the day fixed in the statute, the auditor shall, on the third day of the next or any succeeding term, proceed against such defaulter and his surety, as though no such indulgence had been given.

Lien on the estate of defendants.

M. & B. 350.

§ 6. Judgments, in the name of the commonwealth, against sheriffs and other public collectors, their sureties, or the heirs, devisees, or personal representative of any of them, shall bind the estate, legal and equitable, of all the defendants to said judgments, from the commencement of suit till satisfied. No execution thereon shall be stayed by replevin or sale on credit, but, in all such cases, the estate taken in execution shall be sold for money.

False return on execution—penalty for.

§ 7. If any officer shall make a false return on such execution, he shall be fined twenty dollars, upon notice and motion, and subjected to the payment of the whole amount of said execution, and costs.

Failure to pay money or return execution.

M. & B. 350.

§ 8. Officers, and their deputies, failing to levy executions in the name of the commonwealth, or withholding any such executions, and not making return thereof for one month after the return day, or failing to pay the money when collected, shall, together with their sureties, be liable, on motion, for the amount of said execution, and thirty per cent. damages thereon.

New execution to issue.

§ 9. When executions in the name of the commonwealth have been levied upon estate, but the same remains unsold, or the demand unsatisfied, and the time of the officer who levied the execution has expired, any new execution or final process may, at the discretion of the attorney general, be issued to the officer by name who made the levy.

If the execution was levied by a deputy, he shall, in that case, as well as all others, give the name of his principal. Every failure so to do, shall subject his principal to a penalty of fifty dollars.

Name of principal officer to be returned.

§ 10. When the estate of the defendant in execution, upon judgment against defaulting public officers, may be encumbered by a previous *bona fide* mortgage, deed of trust, or other incumbrance or prior lien, whereby the officer cannot legally levy the same, he shall make return of all the facts known to him, or of which he is informed, giving the date and consideration of such deed, to whom made, when recorded, the evidences of any prior lien, and the names of the parties who claim the same. The attorney general may institute proceedings against the parties, to have their claims and demands, if just, satisfied, and all incumbrances removed, and the proceeds of the sale of the estate rightfully applied.

When estate is incumbered, duty of officer.

M. & B. 357.

§ 11. If any person shall attempt to stop or injure the sale of the estate under execution, of any public debtor, by any fraudulent execution, conveyance, or incumbrance, he shall forfeit and pay three hundred dollars.

Penalty for obstructing execution.

M. & B. 352.

§ 12. If return be made on executions against sheriffs and their sureties, or other public defaulters, that there was no sale, for the want of bidders, the auditor may direct the estate levied upon to be removed from county to county, for sale, as often as may be necessary. The costs of removal to be paid out of the sale of the estate, as other costs; and the officer who levied the execution shall have power to sell the same in any county to which the estate may be removed. If real estate be levied on, the place of sale may be changed to another county; and the officer shall have the same power and authority to sell and convey said estate, which he had in the county where the levy was made.

When estate levied on may be sold in another county.

§ 13. If in settlements with the auditor, a mistake has been committed, the same may be corrected, by application to the general court, within two years. Notice of such application, specifying the error or mistake, shall be served upon the auditor, or upon the public debtor, as the case may be.

Mistake in settlement, how corrected.

M. & B. 349.

§ 14. The general court, as well as the circuit court, shall have jurisdiction of all suits, in law or equity, necessary to be instituted by the auditor to enable him to collect the public revenue, and other demands or penalties due the commonwealth, or to have satisfaction made of judgments,

Jurisdiction of court.

M. & B. 355.

in the name of the commonwealth. The auditor may employ agents and additional counsel to aid in the preparation and prosecution of all suits instituted to enforce the payment of judgments and demands against public debtors, and, by written contract, stipulate with them for a reasonable compensation, or make said compensation conditional—not exceeding twenty per cent. on the first three hundred dollars, and ten per cent. on the remainder. The attorney general is not to receive any compensation in such cases, beyond his salary and legal fee. When the services have been rendered, the amount agreed upon shall be paid to the agents or additional counsel out of the public treasury, upon the warrant of the auditor. When the money is collected, if the fee is conditional, it shall be paid out of the same. Neither the attorney general, nor any attorney of the commonwealth, nor counsel employed by the auditor, shall receive the money due and owing to the commonwealth from any public debtor, sheriff, or other officer.

Additional agents and counsel may be employed.

No attorney to receive money from public debtor

§ 15. Upon a judgment, in the name or for the use of the commonwealth, a *capias pro fine*, or any other final process, may issue, from time to time, until the judgment be satisfied.

Capias pro fine.

L. 131.

§ 16. Upon the return of "no property found" on an execution, or on a *capias* that the person is not taken, or if taken, that the debt is not paid, a proceeding in chancery, in the name of the commonwealth, may be instituted, and the choses in action, or other equitable estate of the defendant, collected and subjected to the payment of the amount of the judgment and costs of suit.

Proceedings in equity may be instituted.

L. 131.

CHAPTER LXXXIV.

ROADS AND PASSWAYS.

ART. 1. Public Roads.
ART. 2. Passways.

ARTICLE 1.

Public Roads.

§ 1. Applications shall be allowed for opening roads only for the convenience of traveling to the county court house, to a public warehouse, an established town, landing, ferry, mill, lead or iron works, the seat of government, a

Application to open roads.

M. & B. 1303, 1405. L. 521, 522.

salt lick, house of public worship, poor-house, coal or iron banks, or to a lock and dam.

Viewers.

M. & B. 1392. N. Y. R. 517-18. V. R. 267.

§ 2. When any person shall make application to the county court to have a new road opened or a former one altered or discontinued, or to have the privilege of erecting gates across any such road, the court shall appoint two or more fit and able persons to view the ground along which the road is proposed to be conducted; and when an alteration is proposed in a road, to view the route of the old road, and the proposed route.

When it is proposed to discontinue a road, to view the same; and where the proposition is to erect gates across a road, to view the road and the places where it is proposed to erect the gates.

Viewers to be sworn, and duties.

M. & B. 1393. V. R. 267.

§ 3. Before such view shall take place, the viewers shall be sworn faithfully and impartially to execute the duties assigned them. 1. The viewers may examine other routes than that proposed, and may report in favor of that which they prefer, with their reasons for the preference, describing the route so laid out by metes and bounds, and by courses and distances. 2. They shall report the conveniences and inconveniences which will result as well to individuals as to the public, from the opening of such road, the alteration or discontinuance of a road, or the erection of gates across a road.

Surveyor may be sent with viewers.

M. & B. 1394.

§ 4. The viewers shall report the names of the proprietors and tenants of the land over which a road or an alteration in a road is proposed by them to run; the court may direct the surveyor of the county to attend the viewers, and make out and return a map or diagram of the routes viewed, and to report such other facts touching the matter as either party may require.

Proprietors to be summoned.

M. & B. 1394. V. R. 267.

§ 5. Upon the report of the viewers, on an application to establish or alter a road, unless the opinion of the court be against the application, it shall award process to summon the proprietors and tenants of the lands over which the viewers may propose the road to run, to show cause, if any, against the same. The summons shall be executed on such of them as may be in the county, and on the agent of such as are not.

Damages may be fixed without writ

V. R. 267.

§ 6. Upon the return of the process so executed, if the court has enough before it to enable it to fix upon a just compensation to the proprietors and tenants over whose land the road or the alteration of a road is proposed to run, and they are willing to accept what the court deems just,

it may determine the matter without a writ of *ad quod damnum*.

When ad quod damnum to issue.

§ 7. A writ of *ad quod damnum* shall be awarded, if desired by any proprietor or tenant, or if the court see cause for awarding the same; such writ shall command the proper officer to summon and impannel a jury of freeholders of the county, not related to either party, and not residing within one mile of the proposed road, to meet on the land of the proprietors and tenants over which it is proposed for the road or the alteration in the road to run, at a certain time and place, of which notice shall be given them by the officer.

Who jurors; where to meet.

M. & B. 1394. V. R. 269.

Duty of jury.

§ 8. The jury, after being duly sworn by the officer, shall view the lands of the proprietors and tenants so named, and ascertain what will be a just compensation to each for the land proposed to be taken, and the additional fencing which will be thereby rendered necessary, and the damage to the residue of the tract beyond the peculiar benefits which will be derived to such residue from the road. If a person claiming damages has only an estate for life or years, and the remainder in fee belongs to another, the jury shall apportion the damages between them.

M. & B. 1395. V. R. 268. M. R. 231.

Damages, how estimated and apportioned.

Jury, where to meet; may adjourn; inquest to be signed.

§ 9. If the jury shall not be sworn on the day specified, or one shall be sworn and disagree, and be discharged, the officer shall execute the writ on such other day as he may appoint, notice thereof being given to the parties interested. 1. If the inquest cannot be completed in one day, the officer shall adjourn the jury from day to day until its completion. 2. When completed it shall be signed by the jurors and returned by the officer, together with the writ, to the clerk's office whence it emanated.

M. & B. 1395. V. R. 269.

Proceedings on return of inquest.

§ 10. The court shall, upon the report, inquest, and other evidence, determine whether the road shall be established or altered, as recommended by the viewers; and may, on the report of the viewers and other evidence, determine whether a road shall or not be discontinued, or whether gates may or not be erected across a road; and if the decision be in favor of erecting gates, the court shall fix the site of such gates, and the description of gate to be erected, which, in all cases, shall be done at the cost of the applicant.

M & B. 1395. V. R. 268.

Notice of application.

§ 11. Before any order shall be made appointing viewers to report on a proposition to discontinue a road, or to erect gates across a road, the person applying for such order shall give one month's previous notice of such applica-

M. & B. 1401. L. 522.

tion, by notice in writing, posted up at the court house door of the county, and at three of the most public places in the vicinity of the road.

Repairing gates.

M. & B. 1410.

§ 12. The county court may, after the occupant of the premises upon which gates shall be erected across a road has had ten days previous notice of the proceeding, order the surveyor thereof to have the gates repaired, removed, or abolished, (if the public good requires it,) at the expense of the occupier of the land. But the order shall allow the occupant reasonable time to repair, remove, or abolish the gates, and to remove or change his fences, so as not to endanger the crop or other property of the occupant.

Expenses of repairs.

§ 13. If the occupant shall fail to repair, alter, or abolish the gates as ordered by the court, and the same shall be done by the surveyor under the provisions of the preceding section, and the occupant shall, on demand, refuse to pay the expense thereof, the surveyor of the road shall report the facts to the county court; and it shall, thereupon, enter judgment against such occupant for the expense and costs.

Damages, costs, &c.

M. & B. 1395.
V. R. 268.

§ 14. When a road is opened or is altered, the county court shall levy the amount of damages assessed at the next court of claims, and the legal costs of the procedure, and the costs which the defendant shall have expended in his defense; except that when the record shows that the sum allowed by the jury to the defendant is not more than the court has consented to allow him before awarding the writ of *ad quod damnum*, such defendant shall be adjudged to pay the costs occasioned by such writ.

Roads opened upon conditions.

§ 15. But the court may open or alter a road on condition that all or a part of the sum required to be paid to the proprietor and tenant, and the cost of procedure, shall be paid by the person applying for the same, or on condition that the applicant shall wholly or in part open or alter the road.

Costs, when application refused.
M. & B. 1396.

§ 16. If the court shall be of the opinion that the road ought not to be opened or altered, the applicant shall be adjudged to pay the costs of the proceeding.

Town lots, burying ground, &c.
M. & B. 1396.
N. Y. R. 514.
M. R. 2c9.

§ 17. No road shall be ordered to be opened through any lot of land in any town, or through any orchard, or burying ground, or buildings, or any yard, without the consent of the owner.

Width of roads.

M. & B. 1400, 1403.

§ 18. Roads shall be opened thirty feet wide. But the court may, on proper evidence, increase the width of a road near a town to fifty feet, first paying the proprietor of the

land over which it shall run a reasonable compensation therefor, or may diminish the width in other places to not less than fifteen feet.

Ditching roads.

A. 1843-4, 35.

§ 19. The county court shall have the power to order each or either side of any road, or a part thereof, to be ditched and kept ditched not exceeding three feet deep, and the dirt from the ditches thrown up in the centre of the road, at the expense, *pro rata*, according to the list of revenue tax, of the persons living in that road precinct, to be discharged in labor, and the use of implements, carts, and wagons.

Penalty for filling up ditch.

A. 1843-4, 35.

§ 20. Any person who shall willfully fill up such ditch or any part of it, or place any obstruction therein, shall be liable to be presented and fined not exceeding fifty dollars.

Road precincts.

M. & B. 1396.

§ 21. The county court shall divide all the roads in each county into precincts, and as often as may be necessary appoint a surveyor in each precinct, whose duty it shall be to superintend the road therein, and see that the same is cleared and kept in good repair and ditched and kept ditched on one or both sides, when so ordered by the court. No surveyor shall be allowed to resign his place under such appointment, under two years, if he continues to reside in the precinct so long.

Duty of surveyor.

Not to resign for two years.

Who to work on roads.

M. & B. 1396, 1407.

§ 22. All male persons over sixteen and under fifty years of age, who are able to labor, except licensed ministers of the gospel, shall be assigned to work on some road.

Penalty for failure.

M. & B. 1396.

§ 23. Every person so assigned to work on a road, who shall fail to attend with proper tools, without a reasonable excuse, when required by the surveyor of his precinct, or who shall fail to labor when in attendance, or to furnish a proper substitute, shall be fined one dollar and twenty-five cents for each day he shall fail to attend, or shall attend and refuse to labor, by warrant in the name of the commonwealth. The fine shall be paid by the owner of slaves, and in the case of an infant by the father, guardian, or master, and be applied to the improvement of the road.

Duty of clerk & sheriff in relation to surveyors.

M. & B. 1396, 1402.

§ 24. The clerk of each county court shall, within ten days after the appointment of a surveyor of a road, deliver a copy of the order to the sheriff of the county, containing a full and complete description of the precinct, and take his receipt therefor. 1. The sheriff, within fifteen days thereafter, shall deliver a copy of the order and the description of the precinct to the surveyor, and return the original to

the clerk's office of the circuit court, with the time of the service of the copy indorsed thereon, which indorsement shall be evidence of the facts therein stated. 2. The clerk shall, moreover, fix up in the court house, once in every year, a list of the names of all the surveyors of roads in his county, designating the precinct of each surveyor. 3. Every clerk or sheriff failing to perform the duties prescribed in this section shall be fined two dollars and a half for each neglect.

Indexes.

M. & B. 1397.

§ 25. Each surveyor of a road shall cause to be erected and kept up at the forks or crossings of every public road an index on a post or tree, with plain inscriptions thereon, in large letters, directing to the most noted place to which each of the roads shall lead; the cost of which shall be levied at the next court of claims.

Timber, &c., from adjacent lands.

M. & B. 1397.

§ 26. When a bridge, or causeway, or culvert, shall be necessary on any road, the surveyor shall cause the same to be made, and shall keep it in repair; and for that purpose may cut and take from the lands of any person adjoining, so much timber, earth, and stone as may be necessary. He shall have the same valued by two credible persons, selected by him for that purpose; but no timber, earth, or stone shall be taken from any town lot.

When horses, &c., may be impressed.

M. & B. 1397, 1405, 1409.

§ 27. When any wheel carriage, plough, draught horse, oxen, gear, or driver shall be necessary for the making, altering, or repairing of any road, bridge, causeway, or culvert, if the surveyor cannot obtain the use of them by contract, any justice of the peace may, by his warrant, empower the surveyor to impress such carriages, plough, draught horse, oxen, gear, and driver, as may be necessary, belonging to any person in his precinct. The surveyor shall have the services of such wheel carriage, plough, draught horses, oxen, and driver, as he may impress, valued for the time he uses the same, by two disinterested persons, whose valuation, certified by the surveyor, or his certificate of the amount agreed to be paid by him when he obtains the same by contract, shall entitle the owner to have the same levied at the next court of claims.

Exemptions.

M. & B 1401.

§ 28. The county court may exempt any person from working on a road because of infirmity. No person shall be compelled to work on more than one road, except in originally clearing out the same.

Calling out hands, &c.

M. & B. 1404-5.

§ 29. No surveyor of a public road shall call out hands to work the road on a muster or an election day, or the first day of the term of any court. 1. Two days previous no-

tice shall be given of the day a hand is required to work on a road. 2. A surveyor may call out all or a part of the hands of his precinct, at any time, to remove obstructions in a road at other than the regular times of working the same. 3. Such hands so called on and working shall be exempted, for the length of time employed, at the regular time of working the road. 4. The surveyor may direct a person liable to work on a road in his precinct to notify the hands, and such person shall be credited with one day's work for such service.

Dividing water courses.

§ 30. When any water course shall be the dividing line between counties or precincts, the surveyors shall be bound to work to the middle of such water course, removing all obstructions, and shall keep the fords in good passable order.

M. & B. 1403.

Owner of ferry.

§ 31. The owner or occupier of a ferry shall keep the roads leading to and from the same between high and low water mark in good repair. 1. But if high water ever extends further than to the top of the first principal bank of the river, then the owner or occupier of the ferry shall only keep the roads leading from the same in repair to the top of such bank. 2. The owner or occupier of a ferry shall be subject to the same fines for neglecting his duty under this section that the surveyor of a road is subject to in a like case.

M. & B. 1403.

When county to build bridge, &c.

§ 32. When a bridge or causeway shall be necessary on a road, and the expense of erecting the same is too great to impose on the precinct, the county court of the county shall have the same erected, and levy the cost thereof on the county.

M. & B. 1398.

Bridge, &c., between two counties.

§ 33. When the county court of any county shall deem it advisable to erect a bridge or causeway over any place between that and an adjoining county, the court shall appoint a commissioner, and notify the court of the adjoining county thereof, and request the latter to appoint a like commissioner; and it shall be the duty of the court so requested to appoint such commissioner. The persons so appointed shall meet at the place proposed for erecting the bridge or causeway, and agree on a plan for the same, and contract for the erection thereof; and each of said county courts shall levy one-half of the cost of such work on its county.

M. & B. 1398.

County refusing, mandamus to show cause.

§ 34. When the county court of one county shall think it expedient to build a bridge or causeway, and shall appoint a commissioner on its part as provided in the preceding

M. & B. 1398.

section, and the court of the adjoining county shall refuse to appoint a commissioner, or when the county court of one county shall deem it necessary to open a road to the county line for the convenience of traveling to some public place in another, and the county court of such other county shall refuse to continue the road through such county, the circuit court of the county so refusing may issue a writ of mandamus to the county court, requiring it to show cause why an order shall not be entered up directing the appointment of the commissioner, and the erection of such bridge or causeway, or the opening of the road.

Peremptory mandamus.

M. & B. 1398.

§ 35. When the mandamus is returned, the circuit court shall hear and consider such evidence touching the matter as either party may adduce, and shall either dismiss the proceeding or award a peremptory mandamus, as may seem proper.

Owners of pier heads, dams, &c.

M. & B. 1399.
V. R. 270.

§ 36. When a public road crosses a dam, race, or pier head, the owner or occupier thereof shall constantly keep the same in repair at least twelve feet wide at the top, through the whole length thereof, and keep a bridge across the race or pier head of like width, with strong rails on each side of the pier head, flood gates, or any waste cut through or around the dam, under the penalty of one dollar and fifty cents for every twenty-four hours. But when a mill dam or pier head shall be carried away by flood, or otherwise be destroyed, without the fault of the owner or occupier, he shall not be liable to such penalty until one month after the dam and pier head shall be rebuilt or repaired.

Felling tree across road, &c.

M. & B. 1399.

§ 37. Any person who shall fell a tree into a public road, or into any stream of water above a public bridge over the stream, and shall not remove the same within forty-eight hours, or shall cut, pull up, or destroy or deface any stone, or post, or finger board, erected for the direction of travelers, or the indexes, or the inscriptions thereon, he, or his parent if an infant, or his owner if a slave, or his master if an apprentice, shall pay a fine of ten dollars for every such offense.

Erecting fence across road.

§ 38. When a fence shall be erected across a public road, the owner or tenant of the land on which the fence shall be erected, shall pay a fine of one dollar for every twenty-four hours the fence shall continue across the road.

§ 39. When the surveyor of a public road shall fail to perform his duty, he shall be fined not less than two dollars and fifty cents, nor more than ten dollars. Surveyor, failure of duty. M. & B. 1402.

§ 40. No appeal or writ of error shall lie to the court of appeals from the decision of a county court ordering a new road to be opened, or refusing such order, or ordering an alteration in a road, or refusing the same, or discontinuing a road, or refusing such discontinuance, allowing gates to be erected across a road, or refusing to allow the same, or abolishing such gates. 1. But in all such cases the party aggrieved may prosecute an appeal or writ of error within one year to the circuit court of the county, which latter court shall have jurisdiction, without a jury, to try the law and facts of the case. 2. And from the decision of the circuit court, either party may prosecute an appeal or writ of error to the court of appeals, and the latter court shall have jurisdiction only of matters of law arising on the record of such case. Writs of error and appeals. M. & B. 1408.

ARTICLE II.

Passways.

§ 1. Whenever it shall appear to a county court that it is absolutely necessary for a citizen to have a private passway over the land of one or more persons in the county, to enable him to attend courts, elections, a meeting house, a mill, or a warehouse, the court shall appoint viewers, as in case of a road; who being first sworn to discharge their duties faithfully and impartially, shall go upon the lands of the person through which the passway is proposed, whether arable or not, and shall report to the court whether or not a private passway is absolutely necessary to the applicant for the purpose aforesaid; and if favorable to the passway, they shall in their report designate the exact route for the same, by metes and bounds, course and distance, and the width thereof, which in no case shall exceed fifteen feet. Private passways. M. & B. 1254, 1256. Viewers.

§ 2. The applicant for viewers shall give the persons through whose land the passway is proposed, ten days previous notice of the intended application. Notice of application. M. & B. 1254.

§ 3. The viewers shall make out a report of their proceedings and sign the same, and deliver a copy thereof to the proprietors of the lands over which the proposed passway is to run, ten days before the court acts thereon. Viewers' report. M. & B. 1254.

§ 4. When the report of the viewers is returned to the court, each proprietor may apply for and obtain a writ of Writ of ad quod damnum. M. & B. 1254.

ad quod damnum, upon the return of which, or if no such writ be applied for, the court may proceed to establish a passway on the principles of this chapter, or to refuse the same, as to them shall seem proper.

Damages & costs. L. 466.

§ 5. No passway shall be established without the consent of the owners, until a writ of *ad quod damnum* shall issue as in case of a road, and the damages to the owner of the land shall be assessed, which damages, and the costs of the whole proceeding, shall be paid by the applicant before the passway shall be established.

Gates. M. & B. 1255.

§ 6. Any gates that shall become necessary by the establishment of a passway, shall be erected and kept up at the expense of the applicant for the passway.

Obstructing passways, injuring gates, &c. M. & B. 1255.

§ 7. Any person who shall put any obstructions in a passway, or shall prop open, pull down, injure, or leave open a gate erected across the same, shall, if a free person, be fined four dollars, and if a slave, be whipped by order of a justice of the peace ten lashes; the fine to be laid out in repairing the passway or gate.

How passways may be changed. M. & B 1255.

§ 8. When the proprietor of lands over which a passway may be established shall wish to change the same, he shall give the applicant for the passway ten days previous notice, and may thereupon apply to the county court; and the court shall appoint viewers to view the proposed change, who shall be sworn as on original applications, and shall go on the grounds and report the conveniences and inconveniences of making the change. 1. Upon the return of the report the court shall, as to them may seem proper, make the proposed change or not. 2. But before such change shall take effect, the proprietor shall open the new route, and remove and put up the gates across the same, at his own expense, and pay the other costs of the procedure.

How discontinued. M. & B. 1256

§ 9. Passways may be discontinued by the court in the same manner as roads.

Appeals and writs of error. M. & B. 1256.

§ 10. The law regulating appeals and writs of error in road cases, shall apply to and govern proceedings concerning passways.

Town lots, burying grounds, &c.

§ 11. No passway shall be established through any town lot, orchard, burying ground, buildings, or yard, without the consent of the owner.

An act for the benefit of persons holding lands lying back of other lands, in the vicinity of any of the navigable streams in this state—approved December 6, 1851.

A. 1851-2, 5.

WHEREAS, it is important to many of the citizens of this commonwealth, who are the owners or occupiers of lands lying back of other lands, in the vicinity of any of the navigable streams in the commonwealth, that they be enabled to convey the products of their lands, as grain, timber, coal, &c., to the navigable streams, in order to convey the same to market. Therefore,

County court may establish certain roads.

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the several county courts shall have the same power to establish roads, not exceeding twenty feet wide, to any navigable stream within their respective counties, under the same rules and regulations that govern them in establishing other public roads, as now prescribed by law.

Roads may be established to coal banks.

Proceedings therefor.

§ 2. That any person or persons owning any large and extensive coal bank, or mine of iron ore, or any iron works, within three miles of any navigable stream in this commonwealth, shall have the right to apply to the county court of the proper county to establish a road from such banks, mines, or works, to the most convenient and suitable landing on such navigable stream; on which road the court may, if it deem the object of sufficient public importance and utility, allow the applicant to erect and keep a railway, with the necessary fixtures and appurtenances; and the court may further condemn and appropriate to that purpose a sufficient quantity of ground at said landing for a depot, to be used by the said applicant, not exceeding two acres. No such railway shall be established or permitted, and no such depot allowed, until the court shall have appointed viewers, and proceeded in all respects as in cases of application to establish public highways, under the laws at the time in force, giving to the owner or owners, tenant or tenants of the land over which such road is proposed to be run or made, the same notice, and the same right to claim an assessment of damages, as is given in cases of application to establish public highways.

Land to be condemned for that purpose.

Damages to be apportioned in certain cases.

§ 3. That in every inquest which may be had under the provisions of this act, the jurors shall, if any of the lands are held for a term of years, or by other tenure less than a fee simple, apportion the damages between the holder of the particular estate, and those in reverson or remainder.

§ 4. That no such road or depot shall be established, until the damages assessed by the jury are paid or tendered.

Damages to be first paid.

§ 5. The court shall, by its order, make the necessary requisitions on the applicant to make and keep in repair, at suitable points on said road, suitable grades and causeways, to enable the owners of the land to pass the same; and the occupants of said road shall at all times be liable to the owner for the value of any stock killed or injured by the running of cars on said road.

Further proceedings.

CHAPTER LXXXV.

SALARIES.

§ 1. That the officers hereafter named shall respectively receive an annual salary, to be paid out of the treasury quarter yearly, as follows:

Paid quarterly.

A. 1850-51, 393. Amount.

The governor, twenty-five hundred dollars;

The secretary of state, seven hundred and fifty dollars;

The attorney general, three hundred dollars;

The treasurer, seventeen hundred dollars;

The librarian, keeper of the state house and public grounds, four hundred dollars;

The register of the land office, twelve hundred and fifty dollars;

The adjutant general, one hundred and fifty dollars;

The quartermaster general, one hundred dollars;

The clerk of the secretary of state, six hundred and sixty-six dollars;

The first clerk in the land office, six hundred dollars;

The second clerk in the land office, five hundred dollars;

The judges of the court of appeals, each, fifteen hundred dollars;

The judges of circuit courts, each, fourteen hundred dollars;

The chancellor of the Louisville chancery court, fifteen hundred dollars;

The attorneys for the commonwealth, each, three hundred dollars;

The superintendent of public instruction, seven hundred and fifty dollars;

The president of the board of internal improvement, one thousand dollars;

§ 2. The officers of the general assembly shall, respectively, receive a daily compensation from the treasury, as follows: Officers of general assembly.

The clerks of the senate and house of representatives, each, seven dollars.

The second clerks of the two houses, each, six dollars;

The door keepers and sergeants-at-arms of the two houses, each, three dollars.

CHAPTER LXXXVI.

SALE OF THE REAL ESTATE AND SLAVES OF INFANTS, &c.

ART. 1. Lands worth less than one hundred dollars to the share.
ART. 2. Slaves held jointly.
ART. 3. Lands generally.
ART. 4. Sale of vicious Slaves.
ART. 5. Sale of Land and Slaves of Married Women.
ART. 6. Miscellaneous Provisions.

ARTICLE I.

Lands worth less than one hundred dollars to the share.

§ 1. Whensoever any lands shall descend to two or more heirs, any one of whom is an infant, or of unsound mind, a married woman, or resides out of the state, and the share of each heir is not of greater value than one hundred dollars, the court of equity for the county in which the land, or the greater part thereof, lies, may, on the petition of one or more of the heirs, decree a sale of the same. M. & B. 290.

ARTICLE II.

Slaves held jointly.

§ 1. When slaves are held in joint tenancy, or tenancy in common, or otherwise by several parties, and cannot be divided in kind, a court of equity may, on the petition of one or more of the parties interested, decree a sale of such slaves, and a distribution of the proceeds. But no such decree shall be rendered in contravention of the deed or will under which the slaves are held. M. & B. 307.

§ 2. All persons interested must be made parties to the proceedings under this article.

ARTICLE III.

Lands generally.

Land of infant, idiot, or lunatic; circuit court may decree sale. M. & B. 806. L. 2. 1. A. 1850, 389, 291.

§ 1. The real estate of an infant, idiot, or lunatic, held by descent, devise, or by contract, whether in possession, reversion, or remainder, may, on a petition to the circuit court of the county in which the same, or the greater part thereof, lies, be decreed to be sold.

Not to contravene will, &c. L. 271.

1. But no sale of land shall be decreed in contravention of the will, deed, or contract under which it is held.

Petition.

2. The petition must be filed by the statutory guardian or committee, and alledge his belief that the sale will redound to the benefit of the infant, idiot, or lunatic, and must be verified by his affidavit.

Title papers.

3. The title papers under which the land is held must, in all cases, be filed with the petition.

Who to be made parties. A. 1850, 389.

4. The wife and children, if any, if none, his next of kin, of a lunatic or idiot, must be made parties to the petition, and no sale of the land or slaves of an idiot or lunatic shall be made except to the extent that it plainly appears by written evidence that such sale is necessary to pay his debts, or for his maintenance.

5. All the persons interested in the land, and the statutory guardians of the infants, if any, who are not petitioners, must be made parties.

Share of defendant objecting not to be sold.

6. If any objection is made to the sale by any of the defendants to the petition, the shares of such defendants shall not be decreed to be sold. In such case, the land may be divided, and the part of those desiring a sale may be decreed to be sold.

§ 2. Before a court shall have jurisdiction to decree a sale of infants' lands—

Commissioners to report value, &c., of estate.

1. Three commissioners must be appointed to report, and must report under oath to the court, the net value of the infant's real and personal estate, and the annual profits thereof, and whether the interest of the infant or idiot requires the sale to be made.

Proof. M. & B. 808.

2. Proof may be taken or required by the court, showing the propriety and expediency of such sale, or the reverse.

Guardian or committee to give covenant with surety.

3. The guardian of each infant, and the committee of each lunatic or idiot, whether a petitioner or defendant, must enter into a covenant to the infant or lunatic or idiot, with good surety, to be approved by the court, stipulating a faithful discharge of all his duties under this act, and

under any order or decree of the court in pursuance thereof.

If the guardian or committee of an infant, idiot, or lunatic fails to give such covenant, the interest of such infant, idiot, or lunatic shall not be sold; and any decree, sale, or conveyance thereof shall be void.

Land and slaves held in trust may be sold.

§ 3. Sales of lands and slaves held in trust may be made under the provisions of this chapter, variant from the provisions of the deed, and the proceeds re-invested for the benefit of those for whom the trust is held, if the sale and re-investment are made by the consent of the donor of the trust. All persons interested, and the donor, must be made parties to the proceedings.

ARTICLE IV.

Sale of vicious Slaves.

Upon petition of person holding life interest.

§ 1. Any person holding a life interest in a slave may, by petition to the circuit court of the county in which the slave is so held, verified by his affidavit, stating that such slave intends to run away to a free state, or is of vicious character, or is ungovernable, and making the persons interested in remainder parties, procure a decree for the sale of such slave, and a proper division of the proceeds.

A. 1850, 392.

Requisites.

1. Before a decree is rendered in such case, proof of the allegations of the petition must be made, if controverted by the remainder men.

2. The court must, in its decree, secure that part of the proceeds going to infants or other persons laboring under a disability.

Any interest may be sold.

§ 2. Any interest held in a slave may be sold as provided in the last preceding section, on a petition to the circuit court, filed by the personal representative of a decedent, setting forth the facts as stated in that section.

A. 1850, 391.

Requisites.

1. The petition must be verified by the oath of the petitioner.

2. It must be proved to the satisfaction of the court that a sale of such slave would redound to the interest of the estate.

3. All persons interested must be made parties.

ARTICLE V.

Sale of Lands and Slaves of Married Women.

On petition of husband or next friend.

§ 1. The lands or slaves of a married woman, or any interest therein, may be decreed to be sold on the petition of

A. 1850, 391.

her husband or next friend, she being made a defendant to the same; and if the husband be not the next friend, he must also be made a party.

Petition.

1. The petition must set forth and exhibit her evidence of title, and her interest in the lands or slaves, and state that a sale thereof would redound to her interest, and be verified by the affidavit of the petitioner.

Wife's consent requisite.

2. No such decree shall be rendered until she files an answer to the petition, consenting to the sale, and shall acknowledge the same on privy examination before the court, or before a commissioner appointed to take the same.

Parties.

3. All parties interested in the estate, and the trustees of the land or slaves, if any, and the donor of the same, or his personal representative, must be made parties to the petition.

When land held jointly.

4. When the land of a married woman is held jointly with others, a joint sale may be decreed, if assented to by the others; if not, a partition may be decreed, and the married woman's part may be decreed to be sold.

When slaves held jointly.

5. When an interest in slaves is held by a married woman jointly with others, such slaves, if not susceptible of a division in kind, may be decreed to be sold, and the proceeds to be equitably divided.

Petitioner to give covenant.

6. No decree shall be entered under this article until the petitioner shall enter into a covenant, with good surety, approved by the court, to the commonwealth, for the benefit of such married woman and her heirs, stipulating a faithful discharge of all his duties under this chapter, and under any order or decree of the court in pursuance thereof.

Or sale void.

7. If no such covenant is given, the decree, sale, and conveyance made under it, shall be void.

Suits thereon.

8. Suit may be instituted on the covenant, from time to time, by any person interested.

Proceedings same as sale of infants' lands.

9. The proceedings under this article shall, in other respects, be the same as are required to procure the sale of infants' lands; and no sale of land or slaves shall be made under this article, if in the opinion of the court such sale would be in contravention of the deed or will under which the same are held, and unless the court believes that such sale will be beneficial to the married woman.

ARTICLE VI.

Miscellaneous Provisions.

Commissioner to be appointed.

§ 1. The court rendering a decree under any of the provisions of this chapter, shall appoint a suitable person as commissioner to carry the decree into effect, and to collect the proceeds of the sale. M. & B. 807.

To report.

1. He must report all his acts to the court for its approval.

Conveyance of title.

2. After the sale money for land is paid, the court may, by a commissioner, cause the title of the land to be conveyed to the purchaser, without warranty. There shall in all cases be a lien on the land for the sale money and interest.

3. The deed must be acknowledged before and approved by the court.

Proceeds of sale of infant's lands, &c., to whom paid over.

§ 2. The proceeds of the sales of an infant's lands and slaves shall be paid over to his guardian; of a lunatic or idiot, to his committee; and of a married woman, to the petitioner.

May be re-invested.

§ 3. The proceeds of the sales of infants' lands and slaves may be re-invested in lands or slaves in or out of this state, as the court may order, and shall, until so invested, be subject to the order and control of the court.

Or kept at interest.

1. If not re-invested, the proceeds shall be kept at interest until the maturity or death of the ward, and then paid over, with the accruing interest, to the person legally entitled thereto.

Of land, &c., of idiots, &c.

2. The proceeds of the land and slaves of an idiot or lunatic shall be paid over to his committee, and kept at interest, under the control of the court; and shall, with the interest, be paid to the person entitled thereto, when so ordered by the court, or at the death of the idiot or lunatic.

Qualification of sections, &c.

3. The two preceding subsections, and the original section, are subject to this qualification: that the court may order such part of the proceeds of sales to be laid out for the maintenance or education of an infant, as is authorized by the chapter on Guardian and Ward; and such part of the proceeds of the sales of an idiot's or lunatic's lands or slaves to be laid out for his maintenance, as is authorized by the chapter on Idiots and Lunatics.

Proceeds of sale of married woman's lands, &c.

§ 4. The court ordering a sale of a married woman's lands or slaves, shall cause the proceeds of the same to be re-invested in lands or slaves in or out of this state, subject

to the same uses, limitations, and trusts as the lands or slaves sold were held.

Descent or distribution not to be changed.

§ 5. The descent or distribution of the proceeds, or of the property in which the proceeds of lands or slaves sold under any decree of court is invested, shall not be changed from what would have been the course of descent or distribution if no sale had been decreed or made.

Sales, where & how made.

§ 6. All sales under the provisions of this chapter shall be made at the court house door of the county where the estate or property sold shall be, unless otherwise ordered by the court. The sale shall be at public auction, and on a reasonable credit, proper notice thereof being given.

CHAPTER LXXXVII.

SALT AND SALTPETRE WORKS.

ART. 1. Works to be inclosed.
ART. 2. Water conveyed over the lands of others.

ARTICLE I.

Works to be inclosed.

Salt and saltpetre works to be inclosed.

M. & B. 1414.

§ 1. The owner and occupant of salt works and saltpetre works within this state shall keep the same, and the grounds upon which the brine or bittern water, or saltpetre water is drained or deposited, inclosed by a good substantial fence, house, or wall, so as to prevent the stock of other persons from having access to the same. When such fence, house, or wall is not so kept, and the stock of another is injured by the brine, bittern, or saltpetre water, the owner and occupant of said works shall jointly and severally forfeit and pay five dollars each for every twenty-four hours such works may have been left uninclosed, and shall also pay to the party injured such damages as he may have sustained by the injury or destruction of his stock. The penalty and damages to be recovered by appropriate remedies.

Abandoned wells to be filled up.

§ 2. Wells and pits sunk for salt water, or any other purpose, when they shall be abandoned or not used, shall be filled up, or inclosed as provided in the above section, by the owner or occupant of the grounds, or the persons who sunk the same; and for every twenty-four hours the same are left uninclosed or unfilled, the occupant of the land, the owner thereof, or the person who sunk the well or pit,

shall jointly and severally be liable to the same penalty and responsibility prescribed in the first section of this chapter.

ARTICLE II.

Water conveyed over the lands of others.

Water conveyed over lands of another.

§ 1. When the owner or lessee of a salt well or spring shall desire to convey in pipes or troughs the water therefrom to a point more convenient to fuel, he may do so when necessary, over the lands of another, upon the conditions and terms herein prescribed:

Viewers appointed.

1. He shall apply to the county court of the county in which the land over which he desires to run his pipes or troughs lies, whose duty it shall be to appoint three impartial freeholders of the county as viewers of the ground along which the water is to be conveyed, who shall, before they enter upon the duties required, take an oath faithfully to view and mark the route along which it is proposed to convey the salt water.

Their report.

2. Said viewers shall make and sign a report to the court of the route, and the names of the owners of the land over which it passes.

Route not to pass through garden, &c.

3. No such route shall pass through the yard, garden, or meadow, or between the dwelling and spring or other buildings of any owner or occupant of land, without the consent, in writing, of such owner and occupant.

Summons against owners.

4. Upon the return of such report, a summons shall be issued, returnable to the next court, against the persons owning and occupying the land over which it is proposed to conduct salt water by the route described in said report, if they are resident in the state; if any of them are non-residents, a warning order shall be made against them to appear at the next term, and show cause, if any they have, why the applicant should not have the liberty of conveying salt water over thier land as proposed by the report.

Writ of ad quod damnum.

5. Upon the return of the summons executed, if any of the parties summoned or warned desire it, the court shall award a writ of *ad quod damnum*, commanding the sheriff to summon twelve impartial housekeepers of his county to meet on a day and a place upon the premises to be fixed in said writ. The jury shall be sworn and charged by the sheriff impartially to view the lands through which the salt water is to be conducted, and to affix in their verdict the amount of damage it will be to the respective owners or occupants who desired such writ, taking into their estimate

Proceedings thereon.

the value of the land appropriated, as well as any other inconvenience to the owner or occupant. The inquest shall be signed by the jurors, and with the writ returned by the sheriff to the county court. The court for good cause may, on motion, set aside the inquisition and award a new writ; if no such motion be made, the court shall, if the applicant request it, enter up judgment or order for the exercise of the privilege desired. But before he shall enter upon the land, he shall pay into court the amount assessed by the jury for the use of the party in whose favor it has been assessed, and pay the legal costs of the proceedings; and if he abandons the motion, or declines to accept the right, the court shall give judgment against him for costs, in favor of the defendants.

Damages and costs to be paid before land entered upon.

§ 2. Under and by virtue of this order of the county court, the party applying for the privilege shall have right of ingress and egress upon the premises, to erect and repair the pipes or troughs necessary to conduct the salt water, as provided in the first article of this chapter.

Right of ingress and egress.

§ 3. If the jury first impanneled does not complete the whole inquest in one day, they may be adjourned from day to day until the same be finished; or if, from any cause, they fail to agree, or the jury be not impanneled at the time and place named in the writ, the sheriff shall summon a jury to meet on the premises, on some other day, of which he shall give the parties reasonable notice, in writing, and there and then proceed, as herein provided, to execute the commands of said writ.

Jury may be adjourned.

If they disagree, new jury.

CHAPTER LXXXVIII.

SCHOOLS AND SEMINARIES.

ART. 1. School Fund.
ART. 2. Board of Education.
ART. 3. Superintendent.
ART. 4. Commissioners.
ART. 5. Districts.
ART. 6. Trustees.
ART. 7. Teachers.
ART. 8. Common School defined.
ART. 9. Seminaries.

ARTICLE 1.

School Fund.

Auditor to keep accounts.

§ 1. The auditor shall keep the accounts in relation to the school fund dedicated by the constitution to sustaining a system of common schools, allow no expenditures on that account beyond the annual revenue of the fund, and see that no county draws more than its proper proportion.

A. 1845, 45.
A. 1849, 27-28.
A. 1850, 29.
A. 1851, 33.

To apportion revenue.

1. He shall apportion, each year, the revenue from the fund, among the several counties of the state, according to the number of free white children in each between the ages of six and eighteen years, as shown by the returns of the assessors in his office. The apportionment shall be made from the first to the tenth of December of each year, and if the return for any county be not then in, he shall use its return of the preceding year.

Balance to credit of county.

2. His accounts shall show what remains to the credit of any county at the end of each year.

Net revenue to be distributed.

3. The net revenue of the fund is the sum to be distributed, and whatever expenses may be incurred according to law by the board of education, shall be first paid out of the gross revenue of the fund. No part of said income shall be expended by the establishment of any school or seminary, other than common schools, in each county.

Revenue paid into treasury.

§ 2. The revenue of the school fund, and the proceeds of all taxes levied in aid thereof, shall be paid into the treasury, but shall never be drawn or appropriated otherwise than pursuant to this chapter, in aid of common schools.

Disposition of balance not called for.

§ 3. The balance to the credit of the counties, not called for each year, shall be transferred by the board of educa-

tion to the commissioners of the sinking fund; and the governor shall execute to the board of education a bond of the state therefor, redeemable at the pleasure of the legislature, and not transferable, bearing six per centum interest, payable annually, and specifying therein the amount due to each county. The interest accruing to each county may, at the call of the school commissioners, be used for common school purposes in such county, and shall be paid by the commissioners of the sinking fund.

ARTICLE II.

Board of Education.

Who to compose it

§ 1. The attorney general, the secretary of state, and the superintendent of public instruction, and their successors in office, shall be a body politic and corporate, with perpetual succession, by the name and style of the board of education for the state of Kentucky, subject to alteration and repeal by the legislature.

May hold real estate.

1. The corporation may take, hold, and dispose of real or personal estate for the benefit of the common schools of the state.

Superintendent president.

2. The superintendent shall be president of the board, but any two of its members may control its corporate action.

To keep record.

3. The superintendent shall keep a record of the proceedings of the board, and its corporate acts shall be attested by his signature, or by the signatures of the other members, and his or their private seal or scroll shall stand in lieu of a corporate seal.

Board to make regulations for the schools.

4. The board shall, from time to time, adopt regulations for the government of the common schools, recommend the course of instruction therein, and the class books to be used.

Instruction prescribed.

5. The instruction prescribed by the board shall not go beyond the elements of a plain education in English, including grammar, arithmetic, and geography.

Form of return.

6. The board shall prescribe the form of returns to be made by county commissioners and trustees, and the superintendent shall distribute printed copies thereof.

ARTICLE III.

Superintendent.

Superintendent to report biennially.

§ 1. The superintendent shall, biennially, make report to the legislature of the condition of common schools, and their prospects; the amount and condition of the school

fund; how its revenue has been disbursed, and the increase it may require; and as to the practical working of the common school system of the state, with suggestions as to any alterations it may seem to require.

To visit and lecture.

1. He shall also visit and deliver a public lecture on the advantages of common schools, in at least twenty-five counties annually, until he visits all the counties of the state; after which time he shall be employed at least one week in every month in visiting such counties where he may deem his services will be of most avail in promoting the establishment of common schools.

Annual report to auditor.

2. He shall, on or before the first day of every February, make a detailed report to the auditor, of all the school districts which have been organized, and in which a common school has been kept according to law during the preceding year; the names of the several school commissioners in each county, and of the counties to which he has given certificates, as entitled to distribution during the year.

Office.

3. He shall keep his office in the city of Frankfort, or in some city or town within sixty miles thereof.

When to enter on duties.

4. He shall enter on the duties of his office as soon as he has taken the oath of office under his commission.

ARTICLE IV.

Commissioners.

County court to appoint commissioners.

§ 1. The county court of each county, where it has not already been done, shall appoint one, two, or three commissioners for common schools in the county, remove them for neglect of duty or misfeasance, and fill any vacancy that may occur.

Oath and surety.

1. A commissioner, before commencing his duties, shall take the oath of office, and give a covenant to the commonwealth, with sufficient surety to be approved by the court, for the faithful discharge of his duties as commissioner.

Term of office.

2. He shall hold his office for the term of two years, and until a successor is appointed and qualified.

Commissioners a corporation.

3. The commissioner or commissioners for each county shall be a body politic and corporate, by that name, with perpetual succession, and, as such, may receive, hold, and dispose of real and personal estate for the use and benefit of the common schools of the county, or of any district therein. His or their private seal or scroll shall stand in lieu of a corporate seal.

Where to reside.

4. One of them shall reside at or conveniently near to the county seat, unless it constitute a separate district under the control of its local authorities.

Accounts to be settled.

5. He or they shall, once a year, or oftener if required, settle his or their accounts with the county court, and immediately thereafter a certificate thereof, from the clerk of the court, shall be forwarded by the commissioner to the superintendent, who shall, in like manner, be notified by the clerk of every person appointed and who qualifies as commissioner, and of any vacancy in the office, if not filled at the first court after it occurs; and the superintendent shall keep a regular register of all such settlements and appointments.

Defalcations.

6. For any pecuniary defalcation of a commissioner or commissioners, the board of education in office for the time being may, by motion, after ten days notice, recover judgment in the county court, with damages at the rate of twenty per cent. per annum, against him or them and his surety, or their sureties, or against his or their heirs, devisees, and personal representatives, or either of them, the recovery to be for the benefit of the district the rights and interest of which are affected by such pecuniary defalcation.

Compensation.

7. Each commissioner shall receive for his services one dollar a day for every day he is necessarily employed in the discharge of the duties of his office, to be paid out of the county levy; but he shall not be paid for more than twenty days in any one year.

Commissioners to report annually.

8. It shall be the duty of the commissioners, or of a majority of them, or of their chairman, to make an annual report to the superintendent, on or before the first Monday in December, showing—*First.* The districts in which a common school is properly reported to them, as having been regularly kept for at least three months during the year, and which he or they believe to have been so kept. *Second.* The number of free white children between six and eighteen years of age, in each of such districts. *Third.* The number of months the school has been so kept, with the highest, lowest, and average number of children in attendance during the time. *Fourth.* The amount of the cost of each scholar for three months. *Fifth.* The amount received from the state for the preceding year, and how distributed; and the disposition of the surplus, if any.

Chairman, when one may act for all

9. When they appoint a chairman they shall notify the superintendent thereof. Any one may act for the whole, during the absence of the other two from the county.

10. A majority of them, or their chairman, shall, on or before the tenth day of January in each year, draw an order on the auditor for the distributable share or proportion of the county, out of the school fund, required for the common schools in operation in the county the preceding year; which amount shall be ascertained by the proportion of the number of children of the proper age in the districts where common schools have been established and kept, compared with the remainder of such children in said county. The order, when countersigned by the superintendent, and accompanied by his certificate that the schools, as claimed, have been kept in the county during the preceding year, shall entitle the holder to a warrant on the treasury for the share of the fund to which such county shall be entitled as above.

To draw order on auditor.

How amount ascertained.

Countersigned by superintendent.

11. The money so received shall be distributed among the trustees of the different common schools in the county, in proportion to the number of children in each district, towards defraying the expenses of the school for the year. But no school shall receive for that purpose more than one hundred dollars for any one year.

How money distributed.

12. A commissioner, when he resigns, vacates, is removed, or goes out of office, shall, within ten days thereafter, deliver to the other commissioners, or his successor, any money, property, effects, books, or papers remaining in his hands as commissioner; and for failure herein he shall be fined not more than one hundred dollars.

Commissioner going out of office.

13. The commissioners or their chairman shall keep a record of their proceedings, and a detailed account of all moneys received and disbursed by them, or either of them; but no commissioner other than the one receiving money, shall be responsible therefor.

Commissioners to keep record.

ARTICLE V.

Districts.

§ 1. The school districts in the several counties, as now established, shall remain until altered by the commissioners. The commissioners shall have power to alter or abolish any districts that now are or may hereafter be established, and create new districts. Where it has not already been done, they shall proceed, from time to time, to lay off their county into convenient school districts.

Changing and forming districts.

1. No district shall contain more than one hundred, nor less than twenty free white children, between the ages of six and eighteen years.

Number of children.

Report of bounds.

2. The commissioners shall make a detailed report of the bounds of each school district, as laid off or altered by them, and return the same to the office of the county court clerk, where it shall be kept and recorded in a book for that purpose, for public inspection.

Districts may include parts of two counties.

3. The commissioners of two adjoining counties, where the division line intersects a neighborhood whose convenience requires it, may lay off a district composed of parts of both counties. The trustees of such district shall report to the commissioners of both counties, and they shall report to the superintendent, and make distribution to the trustees as for a fractional district.

Common schools in cities & towns.

4. Where a city or town establishes and maintains a system of common schools adequate to the teaching of all the children therein applying for instruction, the same shall be deemed one district. Such city or town shall, through its school agent or other officer deputed for that purpose, make its annual report to the commissioners for the several schools therein, in a similar manner to that required from trustees of a district; and shall, in the proportion which the whole number of children therein between six and eighteen years of age bears to the whole number of children in the county, receive annually from the commissioners its portion of the money due to the county from the school fund. The commissioners shall have no control over such district, but the same shall be governed, in all respects, by the regulations of the local authorities.

ARTICLE VI.

Trustees.

Election of trustees.

§ 1. An election shall be held at the school house of each school district from nine o'clock in the morning till two o'clock in the evening of the first Saturday of April of each year, for the election of three trustees for the district for one year, and until others are elected and qualified. The qualified voters of the district shall be the electors, and any widow having a child between six and eighteen years of age, may also vote in person or by written proxy. A commissioner, a justice of the peace, a constable, or any person selected by a majority of the voters present at the hour for commencing, shall be the judge of the election, give the casting vote in case of a tie, give a certificate of election to the persons elected, and, if not a commissioner, receive one dollar for his services, to be paid out of the county levy. When a new district is formed, an election

of trustees to hold the office until the ensuing first of April, and until successors are qualified, may be held, in like manner, at any time or place, ten days notice of the time and place having been first given by a commissioner, by written notice posted at three public places in the district. In case of failure or neglect to elect trustees in any district on the regular day, the election may be held on any other day, after like notice has been given by a commissioner or one of the incumbent trustees.

Trustees to keep record.

1. The trustees shall keep a record of all elections, and of their proceedings, and a detailed account of all money received and disbursed by them, or either of them; but no trustee other than the one receiving money shall be responsible therefor.

To appoint collector.

2. They may appoint a collector to collect all sums due the teacher, by subscription or otherwise, and allow him reasonable compensation therefor.

Select teachers, &c.

3. They may select a qualified teacher, remove him at pleasure, and agree with him as to compensation.

Be body corporate

4. They and their successors shall be a body politic and corporate, with perpetual succession, by the name of the trustees for their school district, and, as such, may take, hold, and dispose of real and personal estate for the maintenance, use, and benefit of the common school of their district, and receive and enforce payments of subscriptions for the like purpose. Their private seals or scrolls shall stand in lieu of a corporate seal.

May hold lands.

5. They may take, by purchase or donation, not exceeding two acres of land for the purpose of erecting thereon a school house, provide for and procure the erection of the same, take care of the house and its inclosures, making all necessary repairs, and provide the necessary furniture and fuel, and recover for any damage that may be done to the property in their charge. The trustees may, with the assent of a majority of those voting at an annual election, change the location of the school house, sell the old site, and use the proceeds towards procuring a new one; or, if the terms of any gift shall so require, the old site shall revert to the donor; or the question may be determined by a vote taken at any other time, ten days notice of the time and place of voting having first been given by advertisements posted at three public places in the district.

Change location of school houses.

To report to commissioners.

6. They, or a majority of them, shall, on or before the tenth day of November in each year, make and deliver to one of the commissioners a report, verified by their affida-

vits, showing—*First.* The number of free children between the ages of six and eighteen, residing in their district. *Second.* The whole time that a common school has been kept in the district during the year, by a qualified teacher. *Third.* The highest, lowest, and average number of children in attendance during that time. *Fourth.* The cost of tuition for each child for three months, according to the highest number in attendance at any one time. *Fifth.* The amount of money received from the state for the preceding year, and how disposed of. Or, if they cannot verify the statement as to the attendance of the children by their own affidavits, it may be done by the affidavit of the teacher, or any other person acquainted with the facts.

Scholar suspended or expelled.

7. The teacher may suspend and the trustees expel a scholar for disorderly or immoral conduct.

Trustee going out of office.

8. A trustee, when he resigns, vacates, is removed, or goes out of office, shall, within ten days thereafter, deliver to the other trustees, or his successor, any money, property, books, or papers in his custody as trustee; and for failure herein, he shall be fined not more than one hundred dollars.

Report on oath.

9. A commissioner may administer the oath required of a trustee, teacher, or other person, in making the report for a district.

Visiting schools.

10. One of the trustees shall visit the school at least once in each week, see that the regulations for its government are complied with, and that the teacher performs his duty. They shall perform this duty in rotation.

Vacancy.

11. In case of a vacancy in the office of a trustee, or his refusal to act, the other trustees shall appoint another to supply his place till it is filled at a regular election. A trustee in office failing or refusing to perform his duty, shall be fined five dollars, on motion of a commissioner, before a justice of the peace.

Trustees to invite indigent children to attend.

12. It shall be the duty of the trustees to invite and encourage all the indigent children in the district to attend the school, and to inform them and their parents that such is their right, for which the state pays, though they themselves may contribute nothing towards paying the expense of the school. The annual report of the trustees shall always show that this duty has been performed.

ARTICLE VII.

Teachers.

Examination of teachers.

§ 1. The commissioners may appoint one or more competent persons as examiners of teachers, whose duty it shall be carefully to examine all applicants as to their qualifications to teach the elements of a plain English education. A certificate of qualification from an examiner shall constitute a qualified teacher for the county; or the examination may be made and the certificate granted by a commissioner. The certificate may be permanent, or only for a year, may be revoked by the commissioners, and shall not be granted to an applicant of known bad moral character. The person making the examination may charge the applicant a fee of fifty cents therefor.

ARTICLE VIII.

Common School defined.

What shall be deemed a common school.

§ 1. The object of this chapter is to carry into effect the intention of the people of Kentucky, as expressed in their constitution, in promoting the establishment, throughout the state, of a system of common schools, which shall be equally accessible to the poor as to the rich. It is therefore declared, that every school which is put under the control of trustees and commissioners pursuant hereto, which has been actually kept for three months during the year, by a qualified teacher, and at which every free white child in the district, between the ages of six and eighteen years, has had the privilege of attending, whether contributing towards defraying its expense or not, and none other, shall be deemed a "common school," within the meaning of this chapter, or entitled to any contribution out of the school fund.

May be select school for part of year.

§ 2. Nothing in the last section shall preclude a school which is kept for a part of year as a common school, from being kept for the balance of the year as a select or private school, to which none but contributors may have the privilege of sending pupils. That the commissioners' books be altered by the auditor to conform to the requirements of this chapter.

ARTICLE IX.

Seminaries.

County courts to hold lands in trust for seminaries.

§ 1. When five or more persons shall obtain a right to not more than two acres of land, for the purpose of estab-

M. & B. 1418.

lishing a seminary or neighborhood school house, the same may be conveyed to the county court of the county, who shall hold it forever in trust for the uses and purposes of a seminary or school.

Trustees.

1. The conveyance shall designate five trustees, who shall hold their offices for the term of two years, or until their successors are appointed.

Election of trustees.

2. On the second Monday of January, of the second year after the conveyance, and on the same day every second year thereafter, an election of five trustees shall be made by a meeting of the contributors towards procuring the ground and erecting the school house, and of the parents or guardians of the children then in attendance, or who may have attended the school at any time during the preceding year. The meeting to be held at the school house, or at some convenient place in the neighborhood, to be designated by a magistrate of the district, between the hours of nine and twelve o'clock in the morning. The right of voting shall only be in the contributor himself, during his life.

Term of office.

3. The trustees so elected shall hold office two years, or until successors are elected.

Vacancy.

4. Any vacancy occasioned by death, resignation, removal from the county, or refusal to serve, shall be filled by the other trustees for the balance of the term.

By-laws.

§ 2. The meeting of patrons and contributors may, from time to time, establish by-laws for the government of the trustees and the school or seminary, and alter or repeal the same.

Trustees to control.

§ 3. Subject to the by-laws, the trustees shall have full control and management of the property, and may sue for any trespass thereon or injury thereto, in their own names, and shall also have, in like manner, the control and management of the school.

Donations and subscriptions.

§ 4. The trustees may receive donations or subscriptions for the benefit of the school, enforce the latter by suit, or assign the same, in whole or in part, and transfer the right of action therefor to the assignee.

Record.

§ 5. The trustees shall keep a record of their own proceedings, and of those of any meeting of the contributors and patrons.

An act to amend an act to encourage the general diffusion of Education—approved December 13, 1851.

A. 1851-2, 7.

That where two school districts adjoin it shall be lawful for the children in either of such adjoining districts to be taught in and at such school house as shall be most convenient to them: *Provided, however*, that their tuition fees shall be paid over to the trustees of that district in which they may be taught, and that no change contemplated or authorized by this act shall be made without the assent of a majority of the trustees of said school districts.

An act for the benefit of Common School Districts in this Commonwealth—approved January 3, 1852.

Power to draw money.

A. 1851-2, 28.

§ 1. That the commissioners and trustees of common schools shall be and they are hereby allowed to draw from the public treasury, on all reports from their respective school districts for the years 1850 and 1851, which shall have come to the hands of the superintendent of public instruction by the first day of March, 1852, the same sums of money that they could have drawn had said reports been returned in the time required by law.

Commissioners, when to make report.

§ 2. That the commissioners and trustees for all common school districts, in which district schools were for the first time organized in the year 1851, according to law, and in which schools were taught according to law for three months before the end of said year, be and they are hereby allowed until the first day of April, 1852, to return their reports; and if said reports shall in other respects comply with the requisitions of the law, they shall entitle the districts from which they are made to the same sums of money to which they would have been respectively entitled had they been returned in time; and the superintendent of public instruction shall cause the same to be paid according to and in conformity to law.

CHAPTER LXXXIX.

SECRETARY OF STATE.

ART. 1. Concerning his powers.
ART. 2. Concerning his duties.

ARTICLE I.

Concerning his powers.

Appointment of assistant secretary.

M. & B. 1434.

§ 1. The secretary of state, with the assent of the governor, may appoint an assistant secretary, who, in case of the absence or indisposition of the principal, may do the business of his office in his name; and the secretary shall be responsible for the acts of such assistant.

Oath.

§ 2. Before the assistant secretary acts under such appointment, he must take the oaths prescribed by the constitution.

Porter.

A. 1848-9, 10.

§ 3. The secretary of state may employ a porter to attend on his office, the office of the register of the land office, and the office of the board of internal improvement, at a sum not exceeding one hundred and fifty dollars per annum, to be paid out of the treasury on the secretary's order.

ARTICLE II.

Concerning his duties.

Seal.

§ 1. The seal of this commonwealth shall be provided and kept by the secretary of state.

Residence.
M. & B. 1434.

§ 2. The secretary of state must reside at the seat of government, and shall have such powers and discharge such duties as may be required by law.

Tax for affixing seal.

§ 3. No tax shall be demanded by the secretary of state for affixing the seal of the commonwealth to a commission or grant, except for commissioner of deeds, for which a tax of five dollars shall be paid.

Inspecting and filing papers.

M. & B. 1435.

§ 4. The secretary of state, at the close of each session of the general assembly, shall inspect the papers and documents which remain with the unfinished business, and carefully file in his office such as he considers worthy of preservation, with proper labels affixed thereto, designating the session to which the same belong.

Exchanging copies of laws.
M. & B. 1425.

§ 5. He may exchange with any state of this union copies of the laws of this state for copies of the laws of such

other state; those which he exchanges to be bound in the same manner as those received.

§ 6. He may, in like manner, exchange the decisions of the court of appeals of Kentucky for the decisions of like value of the supreme appellate court of any other state in the union. Exchanging decisions. L. 213.

§ 7. He shall have the custody of the books, records, deeds, maps, and papers belonging to his office, or that may be deposited therein, and shall arrange and preserve the same. Custody of books, &c. M. R. 148. V. R. 148.

Copies of records and papers in his office, certified by him, shall, in all cases, be evidence equally with the originals. Copies of records evidence.

§ 8. The secretary may, as often as necessary, purchase for the use of the commonwealth such books as the law requires to be distributed. Purchasing books, &c. L. 213.

1. He shall deliver the same to the persons legally applying therefor.

2. The auditor of public accounts shall draw his warrant on the treasury in favor of the secretary for the amount such books may cost.

§ 9. When a judge is, by impeachment or address, removed from office, the secretary of state shall notify the clerk of the court of which he was judge of such removal, to be filed by the clerk in his office. The removal must also be recorded in the secretary's office. Removal of judges. M. & B. 1434.

§ 10. The secretary of state shall, monthly, receive from the auditor of public accounts a report of the interest paid on any bond issued by the state, to whom and when paid, and record the same in a well bound book, and carefully file and preserve the reports. And it shall, moreover, be his duty to report to each general assembly, within the two first weeks of its session, the amount of each monthly payment so returned. Payment of interest on state bonds. L. 56–7.

CHAPTER XC.

SERGEANT.

Appointment of Sergeant.
His duties and fees.

§ 1. A sergeant of the court of appeals shall be appointed by that court, and the office filled by the court whenever Appointed by court. M. & B. 1445.

a vacancy occurs. If a vacancy occur during the recess of the court, it shall be filled by the appointment of the chief justice until the fifth day of the court's next sitting.

May be suspended.

§ 2. The court, or in vacation the chief justice, may suspend the powers of the sergeant, and, for good cause, the court may, after ten days notice, remove him from office. It may also, at any time, require additional security in his official covenant, and suspend or remove him for not giving the same.

Term of office.

§ 3. The sergeant shall hold his office for the term of four years from the time of his appointment, and until his successor is qualified.

Qualifications.

1. He shall be a citizen of the state, at least twenty-five years of age, and before entering on the duties of the office shall give a covenant to the commonwealth for the faithful discharge of the duties of his office, with surety to be approved by the court, who shall be good for at least ten thousand dollars.

Surety.

Deputies.

2. He may, with the approval of the court, appoint one or more deputies, and remove them at his pleasure.

Duties.

3. He shall perform towards the court of appeals all the duties required by law from a sheriff towards a circuit court.

Fees.

4. He shall receive sixty-two and half cents for each person upon whom he serves a notice or summons, and for all other services rendered by him as sergeant, he shall receive the same fees and compensation as is allowed by law to sheriffs for similar services, and collect his fee bills in the same manner. Moreover, he shall receive three cents for every mile necessarily traveled in the execution of any summons or other similar process, out of the county in which the court is held. But if more than one defendant is included in the same process, and resides or be found on or near the same route, mileage shall be charged only for the one most remote. It shall be in the discretion of the court whether to allow mileage to be taxed in the bill of costs, against a party who did not order process to be directed to the sergeant.

Process directed to him.

5. The original or final process of the court may be directed to him or to the sheriff of any county, except that an execution for costs from the court of appeals shall not be directed to the sergeant.

Failure in duty.

6. For any breach or neglect of duty he shall incur the same fines and penalties as are prescribed by law against sheriffs for like breach or neglect.

7. For all fees for services rendered the commonwealth, he shall exhibit his account to the court, and upon its allowance and certificate therefor, the auditor shall issue his warrant, directing the same to be paid out of the treasury. Accounts allowed by court.

§ 4. The like remedy may be had on the official covenant of a sergeant as is allowed on the official bond or covenant of a sheriff, with the like recovery. Remedy on covenant.

CHAPTER XCI.

SHERIFFS, JAILERS, AND CORONERS.

ART. 1. Sheriffs.
ART. 2. Jailers.
ART. 3. Coroners.

ARTICLE I.

Sheriffs

§ 1. Whenever a commission shall be issued to any person as sheriff, the secretary of state shall certify the fact, and the clerk of the court in which the sheriff shall execute bond shall also certify the fact, and the names of the sheriff and each of his sureties, to the auditor of public accounts. M. & B. 1452.

§ 2. Every sheriff, before he enters on the duties of his office, shall, in addition to the oath prescribed in the constitution, take the following oath in the county court of his county: Oath and bond of sheriff. M. & B. 1458.

"I, A. B., do swear that I will do right, as well to the poor as to the rich, in all things belonging to my office of sheriff; that I will do no wrong to any man for any gift, reward, or promise, nor for favor or hatred; and in all things I will faithfully and impartially execute the duties of my office, according to the best of my skill and judgment—so help me God."

§ 3. He shall also give an obligation to the commonwealth, in substance as follows: M. & B. 1455, 1557.

"We, A. B., principal, and C. D. and E. F., sureties, hereby covenant to and with the commonwealth of Kentucky, that the said A. B., sheriff of ——— county, shall, by himself and deputies, well and truly discharge all the duties of said office, and pay over to such persons, and at such times as they may respectively be entitled to the same,

all money that may come to his or their hands as sheriff. This —— day of ———."

Surety to be given.

§ 4. The sureties in the bond must be good for the amount of all moneys, except what is payable into the state treasury, which will probably pass through the sheriff's hands during his continuance in office. They shall be approved by the county court, and the bond taken by its clerk under its supervision, and witnessed by him or his deputy, and may be put in suit, from time to time, at the cost of any person injured by the acts or omissions of the sheriff, or any of his deputies.

Office of, how vacated.

§ 5. Whenever a sheriff shall cease to be a resident of the county in which he shall be sheriff, or shall accept any office of trust or profit under the federal government, or any incompatible office under the state government, or shall be convicted of treason or felony, the county court shall enter such fact on its records, and that his office is thereby vacated.

Deputy, how appointed.

M. R. 166.

§ 6. Every sheriff may, by and with the approval of the county court, appoint his own deputies, and may revoke the appointment at his pleasure. Before any deputy shall proceed to execute the duties of his office, he shall take the oath required to be taken by the sheriff.

Special deputies.

M. & B. 1469.

§ 7. A sheriff may, by writing, empower any person to execute an original or mesne process. The person, so appointed, shall indorse his action on the instrument empowering him, and shall make affidavit to the truth of the indorsement and attach the same to the process, and deliver the indorsement and affidavit to the sheriff or his deputy, to be returned to the proper office. The indorsement, made as above directed, shall have the same validity and effect in law as if made by the sheriff.

Liability of sheriff for deputy.

§ 8. The sheriff shall be responsible for the acts of the person appointed under the preceding section, and the person appointed shall be liable to a prosecution for perjury if he willfully make a false indorsement verified by his affidavit.

Time allowed to close busines after expiration of office.

M. & B. 1458.

§ 9. A sheriff and his deputies may, for two years after the expiration of his term of office, collect his distrainable fee bills, or those of any other officer, which may have become due and payable and placed in his or his deputy's hands for collection during his term of office, and may make distress for the same, and with his sureties, shall be liable to the person entitled to such fees.

Duties of, in the execution and return of process.

§ 10. Each sheriff shall, by himself or deputies, execute and make due return of all notices and all process legally issued, directed, and delivered to him, against any person or property in his county, or upon any river or creek adjoining thereto. He shall return the time of service of each notice and process, and the time of the levy of each execution, what levied on, when he sold the property seized, who to, and what for, and all other matters touching his duty, and shall subscribe his own name to the return, and, if he be deputy, the name also of his principal.

M & B. 1459.

When defendant is not found.

§ 11. No officer shall return on any process at law, directed to him, that the defendant is not found within his county, unless he shall actually have been at the defendant's residence and have left a true copy of the process. If the defendant be not found by the officer, and be not a resident of the county, the sheriff shall so return.

M. & B. 1459.

Process not executed on sabbath.

§ 12. No process or notice on which any legal proceedings are to be founded, except as herein provided, shall be executed on Sunday; the execution of either on that day shall be void. But a writ of *habeas corpus*, or process on a charge of treason, felony, or for a riot or breach of the peace, or upon an escape out of custody, may be executed on Sunday.

Nor upon a day of election.

§ 13. No civil process of arrest shall be executed upon any legal voter attending an election held by authority of law, at which he has a right to vote, or in going to, or returning from, such election, he using reasonable diligence in traveling to and from such an election. The execution of any such process contrary hereto, shall be void.

Bonds taken without law void.

§ 14. No sheriff, or other officer, shall take any obligation of or from any person in his custody, for or concerning any matter relating to his office, otherwise than such as is specially directed by law. Every obligation taken by any such officer, by color of his office, in any other manner or form, shall be null and void.

M. & B 1460.

No greater fee than that allowed by law to be taken

§ 15. No sheriff shall demand or take any other or greater fee or reward for any service or business by him done, than such as shall be allowed by law.

Time of receiving executions indorsed.

§ 16. Every sheriff shall, on the receipt of an execution, indorse on the back thereof the day of the month and the time of the day he received the same.

To collect fines, officers' fees, &c.

§ 17. It shall be the duty of each sheriff and his deputies to receive and collect fines and forfeitures, and all officers' fees listed with him or any of his deputies, and due and payable in his county, during his term of office, and

to account for and pay over the same to the persons entitled thereto, at the time and in the manner required by law.

Account of fees to be given before distress.

M. & B. 1461.

§ 18. Every sheriff shall, upon request, deliver to the person from whom fees are demanded, or to his agent, an account stating distinctly every item of the demand, and offer to give a receipt for the same, before he shall have the power to make his distress therefor.

When distress for fees, &c., may be made.

§ 19. Distress may be made for all officers' fees, after the first day of May next succeeding the rendering of the services, and for fees of witnesses in one month after the allowance of the same by the proper authority. The right of distress shall continue for three years from and after it commences, and no longer.

Penalty for a false return.

§ 20. Any sheriff who shall, knowingly, make a false or illegal return on any process, or fee bill of any person, by color of his office, more than is justly due, shall be liable to the person injured thereby for triple the damage that shall be assessed therefor.

Certain persons not to be sureties for.

§ 21. No person who is jailer, or coroner, or judge or clerk of a county court, or county attorney, shall be received as surety for a sheriff in his official bond; nor shall the jailer or sheriff, or any of his deputies, or any county court judge, clerk, or county attorney, be surety for a coroner in his official bond; nor shall any sheriff, coroner, or any of the persons aforesaid, be surety for the jailer in his official bond.

Deputy liable to principal.

M. & B. 1461.

§ 22. When a deputy sheriff shall so act, or omit to act, as to render his principal responsible, and the latter shall discharge such responsibility, the deputy shall be liable over to the principal for all damages and costs, legal and extraordinary, which the latter shall be put to on account of such act or omission.

When sheriff dies, deputy to complete business in his hands.

M. R. 168.

§ 23. When a sheriff shall die, or otherwise vacate his office, his deputies shall complete the execution of any process in his or their hands, and their acts or omissions in this particular shall be considered as embraced in his official bond.

Demand for money collected.

§ 24. A person entitled to money collected by a sheriff or his deputy, may demand the same from the sheriff, by himself, his attorney at law, or any other person having his written authority therefor.

Duty of county court.

M. R. 167.

§ 25. It shall be the duty of the county court of each county, at the January term next after the sheriff shall give his official bond, and oftener or sooner as they may deem

proper, to examine into the sufficiency of the sureties therein, and, if the same be found insufficient, to rule him to give other sureties, and upon his failure to do so, the court shall enter up an order suspending him from acting until he give such sureties, or vacate his office.

Exempt from militia duty.

§ 26. The sheriff and his deputies shall be exempted from militia duty and from serving on juries.

To execute persons condemned to be hung.

§ 27. It shall be the duty of each sheriff, by himself, or his deputies, to execute all persons condemned to be hung, and to convey all persons to the penitentiary condemned to confinement therein; and to execute the sentence of the court in other criminal and penal cases. But the court may, for good cause, order the coroner or jailer to act in the place of the sheriff, in the discharge of those duties.

May summon persons to aid him Stat. of Westminster, ch 39. Watson, 60.

§ 28. Any sheriff or deputy sheriff, or other like officer, may command and take with him, if need be, the power of the county, or a part thereof, to aid him in the execution of the duties of his office, civil and criminal.

When doors may be broken open to execute civil process. Watson, 58, 59, 215

§ 29. A sheriff or other officer may, in the execution of a writ of *habere facias possessionem*, or writ of seizin, break open either the outer or inner door of a dwelling, or any other house on the premises, during the day time.

Watson, 58, 59, 172

§ 30. If, in levying a *fieri facias*, the outer door of the dwelling house of the defendant, in which his property is, be fastened, the sheriff or other officer shall not break open the same to seize the property. But if the outer door be open, the officer may enter, and if need be, may break open any inner door to enable him to reach the property. He may break open the outer door of any other than the dwelling house of the defendant in the execution, to enable him to seize the defendant's property, during the day time.

Watson, 172-3.

§ 31. The sheriff or other officer may break open the outer, or any other door of the dwelling or other house of a third person, in which the property of the defendant in the execution is fraudulently concealed or kept.

§ 32. The sheriff or other officer shall have the same power to break and enter the dwelling and other houses of any person, in executing any other civil process, which is given him to seize property under execution.

In criminal and penal cases, when doors may be broken open.

§ 33. In executing penal or criminal process, requiring an actual arrest, or writ of *habeas corpus*, the sheriff or other officer may break open the outer or any other door of the dwelling or other house of the defendant, or of any

other person, if it be necessary to enable him to make the arrest.

§ 34. But if the process do not require an arrest of the defendant, then the officer shall have the same powers, and no more, that are given him in the execution of civil process.

§ 35. If a sheriff shall agree with any person, for a sum certain or other thing, or any kind of compensation or gratuity, to himself or another, to appoint or continue such person or another as his deputy, such agreement shall be deemed a sale of the deputation, and subject both the sheriff and deputy to removal from office on conviction thereof.

May take bail or receive money after process is executed in certain cases.

§ 36. When a sheriff, or other officer, is, by any process, authorized to receive money from the defendant, or to take bond, bail, or recognizance, before he is committed to jail, the sheriff or other officer shall exercise the same power after his commitment.

Payment on execution after return day.

§ 37. Any payment made to a sheriff or other officer, or his deputy, on an execution, after the return day thereof, and while the same remains in his hands, shall, to the extent thereof, be deemed a satisfaction of so much of the same; and the officer and his sureties in his official bond shall be responsible therefor in the same manner as if the payment were made before the return day.

ARTICLE II.

Jailers.

To give bond. M. & B. 861.

§ 1. The jailer of each county shall enter into an obligation, in the county court, with good surety, to be approved by the court, in substance as follows:

"We, A. B., jailer of ——— county, and C. D. and E. F., his sureties, do hereby covenant and agree with the commonwealth of Kentucky, that the said A. B. shall well and truly execute and do and perform every duty and act as jailer aforesaid, which is or may be required by law, during his continuance in office; and that he will, in proper time, pay over to the persons entitled thereto any money which may come to his hands as jailer. Given under our hands, this —— day of ———."

Which bond may be attested by the clerk, and be put in suit from time to time, by any person injured by the act or omission of the jailer.

Exempt from militia duty.

§ 2. Every jailer shall be exempted from militia duty and from serving on juries.

§ 3. The county jailer shall also be circuit court jailer for his county, and as such shall discharge and perform all the duties and acts which the law may prescribe.

Powers & duties.

§ 4. The jailer of each county shall receive all persons into the jail who shall be lawfully committed thereto, and safely keep such persons until properly discharged. He shall treat them with humanity, and furnish them with proper food and lodging during their confinement, and shall deliver over such as die in jail to their friends, if requested, or have them decently buried, at the expense of the county.

M. & B. 862.

United States may use jails.

§ 5. The United States shall have the right to use the jail of any county, by paying the jailer the same fees allowed by the state. Any jailer shall receive and confine in jail persons properly committed under the laws of the United States, until lawfully discharged.

M. & B. 863.

To reside in or near the jail.

§ 6. Each jailer shall have the custody, rule, and charge of the jail in his county, and of all persons in the jail, and shall keep the same himself. He shall not reside more than two hundred yards from the jail, and where it is such as admits the residence of a family therein, he shall reside in the jail. A violation of this section shall be deemed a misfeasance in office, and the court may suspend the jailer therefor.

M. R. 169.

To deliver jail and contents to his successor.

§ 7. Each jailer, when he goes out of office, shall deliver over to his successor the custody of the jail, with its furniture and appurtenances, and of all the persons therein, with all warrants, mittimuses, and other official papers, by which prisoners shall have been committed to his custody, or by which they have been liberated therefrom.

M. R. 169.

When sheriff to act as jailer.

§ 8. When the jailer is legally committed to jail, or from any cause the office of jailer of any county shall become vacant, or the jailer shall be legally suspended from the discharge of his official duties, the sheriff of the county shall take the custody of the jail, and of the prisoners therein, and perform and discharge all the duties of jailer, until a successor to the jailer shall be elected or appointed and qualified, or until the suspension shall cease.

M. R. 170.

If, for any cause, the sheriff cannot or ought not to act, the presiding judge of the county court may so certify, and, by writing, designate a responsible person, who shall act for the occasion.

County court may suspend.

§ 9. Each county court shall have power to suspend the jailer of the county from acting as such, for such period as

M. & B. 861.

it may deem right, when the public interest shall imperatively require the same; but the ground on which the suspension shall be made must, in every instance, be entered on the order book of the court. The presiding judge of the county court may, for any cause he deems sufficient, by his order in writing, during vacation, exercise the same power until the meeting of the next county court

May execute process in civil and criminal cases.

§ 10. Process from any court may, in a civil or criminal case, be directed to, and executed by, the jailer of the county, when it shall be made to appear, by affidavit to the clerk of the court, that the sheriff and coroner of the county are interested in the cause, or are, by affinity or consanguinity of kin, as near as second cousin to the defendant, or where one of said officers is so of kin, and the defendant is surety for the other in his official bond, or the other is so partial to the defendant, or is so prejudiced against the person suing out the process, as not to do him justice; or where both of said officers are so partial or so prejudiced, or they and the deputies of the sheriff are sick and unable to act, or are absent from the county; or one is sick and the other is absent, or one of said offices is vacant, and some of said objections shall apply to the other; or where some one of the grounds of objections aforesaid shall apply to one of said officers and another of said grounds shall apply to the other; or in a criminal case, where said officers are implicated in the crime with the defendant, or one is so implicated, and some one of the grounds aforesaid shall apply to the other; or where in any case, civil or criminal, its emergency requires immediate action, and no sheriff, nor the coroner, can, in all probability, be procured in time to meet the emergency—in all such cases the law applicable to sheriff shall govern the jailer.

County court to see that jail is kept clean, &c.

§ 11. It shall be the duty of the county court, from time to time, to prescribe rules for the government and cleanliness of the jail, and the comfort and treatment of prisoners; and the judge of the county court shall inspect the jail at least once a month, and shall have power, by fine or otherwise, to enforce the rules and punish the jailer for neglect thereof, or disobedience thereto.

ARTICLE III.

Coroners.

To give bond. M. & B. 461.

§ 1. Every coroner, before he enters on the duties of his office, shall enter into a covenant in the county court, with

good sureties to the commonwealth, in substance as follows:

"We, A. B., coroner of ——— county, and C. D. and E. F., his sureties, do covenant to and with the commonwealth of Kentucky, that the said A. B. shall well and truly perform every duty which may be required of him by law, during his continuance in office, and will well and truly pay over to such persons at such times as they may be entitled thereto, any moneys that may come to his hands as coroner. Given under our hands, this —— day of ———."

Who may sue on bond, &c.

§ 2. The covenant shall be witnessed by the clerk or his deputy, and the sureties shall be approved by the court. The covenant shall be held to embrace every duty which is by law imposed on the coroner to perform. It may be put in suit from time to time, at the cost of any person injured by the acts or omissions of the coroner.

Duties of.

M. & B. 461.

§ 3. It shall be the duty of the coroner of any county, upon request made, to come and inquire, and upon the view of any person slain, drowned, or otherwise by misadventure or suddenly killed, or where any house be broken, to hold an inquest of twelve good and lawful housekeepers of the county, summoned by himself, upon their oaths to inquire, and say in this manner: If they know in what manner the person came to his death; where, how, and by whom, and who were present; who are culpable of the act or of the force; are they persons of discretion, and can they speak.

To arrest and commit persons found guilty, &c.

M. & B. 462.

§ 4. If any person be found culpable of murder, manslaughter, or of house-breaking, or of being accessory thereto, the coroner shall forthwith arrest and commit such person to the jail of his county, or cause it to be done by his precept, there to be confined and dealt with according to law. If the person who shall be found culpable, shall have fled, the coroner, or a person deputized in writing by him, may summon aid, and pursue and apprehend him wherever he may be found in the state, and take and commit him to the jail of his county, as above directed.

Evidence, &c., to be reduced to writing, and returned.

M. & B. 462.

§ 5. The coroner shall commit to writing the substance of the evidence given before such jury, designating each witness and his testimony. He shall, furthermore, recognize the witnesses examined before him to appear before the circuit court on a designated day, and shall forthwith return the recognizances, with the inquest and testimony so taken, to the circuit court clerk's office of his county.

Corpse to be buried. M. & B. 463.

§ 6. The coroner shall bury the dead bodies of persons over which an inquest is held, or present them to their friends to do so, if required.

Writs may be directed to coroner.

M. & B. 463.

§ 7. A writ may, in any case, be directed to the coroner of the county, where an affidavit shall be filed with any county, or circuit, or other court clerk, showing that any one of the grounds of objection stated in the tenth section of the second article, relating to jailers, applies to the sheriff.

When office vacated by removal.

M. & B. 464.

§ 8. Where the coroner of a county ceases to reside therein, the county court of the same shall enter the fact on its record, and also that his office is thereby vacated. Any act or omission for which a sheriff may be suspended or his office be declared vacant, shall authorize the county court to suspend the coroner, or declare his office to be vacant.

What executions to be directed to coroner or jailer.

M & B. 465.

§ 9. Executions issued on a judgment or decree rendered upon process served by the coroner, shall be directed to and acted on by him. If the process be served by the jailer, the executions on the judgment or decree shall be directed to and acted on by him.

Writs of error by sheriff, jailer, and coroner.

§ 10. The sheriff, jailer, or coroner may prosecute an appeal or writ of error to the court of appeals from the decision of the county court, to reverse any order suspending either of them from acting, or declaring either of them to have vacated his office. But such appeal or writ of error shall not, during its pendency, have the effect to suspend such order.

How successor of sheriff, coroner, or jailer to be appointed in certain cases.

M. & B. 1466.

§ 11. Whenever the office of sheriff, jailer, or coroner shall become vacant, before the expiration of his constitutional term of office, the county court of his county shall convene and appoint his successor, who shall be commissioned by the governor for the residue of the term for which his predecessor was elected.

How vacancy filled, if one year of term remains.

§ 12. Whenever the office of sheriff, jailer, or coroner shall become vacant, and one year of the term remains unexpired, the county court of his county shall order an election to be held to fill the vacancy, according to law; if there be less than a year unexpired, then the county court shall convene and appoint a successor, to be commissioned by the governor, for the residue of the term.

CHAPTER XCII.

SINKING FUND.

ART. 1. Resources of Sinking Fund.
ART. 2. Duties of Auditor and Treasurer in relation to.

ARTICLE 1.

Resources of Sinking Fund.

What constitutes the sinking fund.

L. 292, and subsequent sess. acts.

§ 1. The public revenue and income from the following sources, viz: the tax of five cents upon each one hundred dollars of taxable estate specified in the chapter on revenue and taxation; the tax imposed on bank stock, and on the capital, dividend, or income of all other monied corporations or institutions, except the Farmers bank of Kentucky; the tax upon brokers; the tax upon the agents of any insurance company, including the fines and forfeitures, which may be recovered of either; the net dividends upon the stock owned by the state in any bank, or other institution; the premiums on the sale or exchange of state bonds heretofore, or which may hereafter be made; the dividends of the state upon stock owned in any turnpike, or other road, bridge, or public work; the profits arising from works of internal improvements constructed by the state, or in which the state is now, or may hereafter become interested; the income or profits of the state in any railroad company, the amount due, or to become due from such company; the profits of the state arising from the operations of the penitentiary; the assets of the bank of the commonwealth, debts due, or to become due to said institution, or to the state on account of the same; the interest of the state in the stock or debts due, or liabilities existing on account of the old bank of Kentucky; the proceeds of sales or leases of water privileges, at the locks and dams built by the state; the stock held by the commissioners of the sinking fund in any bank; the revenue derived from the tax imposed by the second section of the first article of the chapter on revenue and taxation; the tax on playing cards; the interest due and payable upon the loan of the state to the keeper of the penitentiary; the surplus revenue over ten thousand dollars which may remain in the treasury at the end of each fiscal year; and such other tax or fund, which, by any law now in force, or hereafter enacted, has been or may be set apart for that purpose, shall constitute the sinking fund of Kentucky; and the same shall be sacredly

To what devoted. devoted to the payment of the principal and interest of the public debt of the state, and to no other uses or purposes whatever.

Who constitute commissioners of sinking fund. § 2. The governor of the commonwealth, the president of the bank of Kentucky, and the president of the Northern bank of Kentucky, and their successors, shall *ex officio* constitute the commissioners of the sinking fund of Kentucky, and by that name have corporate existence; may sue and be sued, and do and perform all things necessary to execute the duties required, and the powers given them by law. They may have and use a common seal, pass rules and by-laws for the government of the commissioners and of said fund, not inconsistent with the laws of this commonwealth.

Corporate powers

Auditor ex officio secretary; his duties. § 3. The auditor of public accounts shall *ex officio* be secretary of the board of commissioners of the sinking fund of Kentucky; he shall keep a faithful record of the proceedings, acts, orders, and doings of said board, subject to the inspection of the legislature, or a committee thereof, at all times when required.

Governor president. Two compose board. § 4. The governor shall be president of the board, and any two of the commissioners shall be competent to compose a board for the transaction of business.

Commissioners to control funds. § 5. The funds, estate, and income belonging to, or set apart by law for the use of the sinking fund, shall be vested in, and controlled by the said commissioners, and when injured, withheld, or abstracted, may be sued for and recovered either in their corporate name, or in the name of the commonwealth of Kentucky.

Duties and powers of commissioners. § 6. It shall be the duty of the commissioners of the sinking fund, by the means and income of said fund, to protect the credit of the state, by a faithful and prompt application of the same to the payment of interest and principal of the public debt when due. They shall, for that purpose, and to the extent of the annual income of said fund, deal in exchange; may deposit in any of the banks of this state, or in the Savings bank of Louisville, any of the money of said fund upon terms which may be agreed upon by the parties. They shall have power to purchase stocks in any of the banks of Kentucky; to apply any surplus on hand at any time to the extinguishment of any portion of the public debt of the state, by payment or purchase of the bonds at or under the nominal value. They shall have power to subscribe and pay in, if the means of said fund are not needed to pay the interest on the pub-

A. 1846, 37.

May deal in exchange.

May purchase bank stock.

lic debt, or cannot be applied to the payment or purchase of the state bonds, the stock in the bank of Louisville, and the bank of Kentucky, which has been reserved for the commonwealth of Kentucky. No more stock shall be subscribed in either of the said banks, at any one time, than the commissioners shall have surplus funds to pay for at the time.

May subscribe stock reserved for state.

§ 7. The commissioners shall make a report to the general assembly, during the first week of each session thereof, of the condition and application of the sinking fund for each of the two preceding years, with such suggestions as they may deem proper as to its improvement and future management; and shall, when required, give to the legislature information concerning said fund.

Report to general assembly.

L. 293.

§ 8. All bank stock purchased or subscribed for by the commissioners of the sinking fund, shall be held as a part of said fund.

Bank stock purchased part of the fund.

§ 9. The stock in any bank or incorporated company, held in the name of the commissioners of the sinking fund of Kentucky, may be represented and voted in all meetings or elections, by proxy constituted by order in writing by the commissioners.

May vote stock by proxy.

§ 10. If either of the presidents of the banks shall refuse to serve as commissioner of the sinking fund, the governor shall fill the vacancy until the end of the next session of the general assembly.

Vacancy—governor may fill.

§ 11. The keeper of the penitentiary shall report, under oath, semi-annually, to the commissioners of the sinking fund, the profits of the institution, and pay the state's proportion thereof into the treasury, to the credit of said fund. If he fail or refuse to make a report, or make a false or fraudulent report, or if he shall fail to pay over the sum due, he shall forfeit and pay to the commonwealth, for the use of the sinking fund, five hundred dollars for each offense, to be recovered by action, or suit, or presentment, in the name of the commonwealth, and also shall be liable, by suit, for the amount due, with legal interest and costs of suit.

Keeper of penitentiary to report to commissioners.

Penalty for failure.

L. 322.

ARTICLE II.

Duties of Auditor and Treasurer in relation to.

§ 1. The auditor and treasurer shall keep the account of the income and expenditures of the sinking fund in separate books, so as to exhibit the amount paid into the trea-

Accounts.

sury, and from what source; and the amount paid out, and upon what authority, and for what purposes.

How money paid and drawn.

§ 2. No money shall be paid into or drawn from the treasury on account of the sinking fund, but in the manner prescribed in the ninth and tenth sections of the chapter prescribing the duties of treasurer.

When auditor shall issue warrant.

A. 1845, 67.

§ 3. The auditor shall issue no warrant upon the treasury, to the credit of the sinking fund, unless a copy of the order of the board of commissioners, requiring such warrant, shall be presented to him by the president of the board; and he shall report to the board of commissioners

To report monthly

of said fund, at the expiration of every month, the amount paid in and the amount drawn from the treasury on account of the sinking fund.

All orders to be entered.

§ 4. All orders for the payment or expenditure of money by the board on account of the sinking fund, shall be entered upon the books of said commissioners.

How deposits in bank made.

§ 5. When the commissioners shall deem it advisable to have the money, or any part thereof, to the credit of the sinking fund, withdrawn from the treasury and deposited in any bank, in or out of this state, an order of record for that purpose shall be made, in which order the bank or banks shall be named; upon the production of a copy of such order by the president of the board, the auditor shall issue his warrant for the amount in favor of the president of the board, whose duty it shall be to make the deposit in the bank, to the credit of the commissioners of the sinking fund of Kentucky.

Bonds and coupons to be cancelled.

§ 6. The commissioners shall, upon the payment of the bonds of this state, or coupons of interest, cancel and register the same in such mode as they shall deem best.

§ 7. Interest shall not be paid upon any state bond heretofore issued, payable in six years after date, from and after the first day of February, 1848.

CHAPTER XCIII.

SLAVES, RUNAWAYS, FREE NEGROES, AND EMANCIPATION.

ART. 1. Who shall be deemed Slaves.
ART. 2. Of the importation of Slaves.
ART. 3. Dealing with Slaves, and suffering them to go at large.
ART. 4. Of insane and infirm Slaves, and suffering them to go at large.
ART. 5. Of the abduction and stealing of Slaves, removing them out of the State by boatmen and others, and exciting them to rebellion.
ART. 6. Of Runaway Slaves.
ART. 7. Of felonies committed by Slaves and Free Negroes.
ART. 8. Of misdemeanors by Free Negroes.
ART. 9. Emancipation of Slaves.
ART. 10. Slaves emancipated subject to the payment of debts.
ART. 11. Free Negroes immigrating to this State.

ARTICLE I.

Who shall be deemed Slaves.

Who are slaves.

§ 1. No persons shall be slaves in this state, except such as are now slaves by the laws of this commonwealth, or some other state or territory of the United States, or such free negroes as may hereafter be sold into slavery under the laws of this state, and the future descendants of such female slaves.

M. & R. 1477.

Who are mulattoes or negroes.

§ 2. Every person who has one-fourth, or other larger part of negro blood, shall be deemed a mulatto, and the word negro, when used in any statute, shall be construed to mean mulatto as well as negro.

M. & B. 1219.

Slaves personal estate.

§ 3. Slaves, after this chapter takes effect, shall be deemed and held to be personal estate. They shall be distributed in kind, without sale, when practicable.

M. & B. 1476.

When and how sold to pay debts of decedent.

§ 4. Slaves shall not be sold by the personal representative, unless, for the want of other assets, it be necessary to pay the debts of the decedent. Nor shall slaves, specifically devised, be sold by the personal representative or a creditor, but by a decree of court, which may be obtained in a summary way, on petition, after ten days' notice, in writing, to the devisee. Suits may be maintained by the personal representative, for the recovery of slaves, or injuries to slaves devised.

M. & B. 1476.

May be sued for by personal representative.

When sold for debt.
M. & B. 625.

§ 5. Slaves may be taken and sold for debt, when there is not a sufficiency of other personal estate within the jurisdiction of the officer.

Free negroes not to hire or own slaves except in certain cases.
V. R. 458.

§ 6. No free negro shall be capable of acquiring, in fee, or holding or owning for any length of time, as hirer, or otherwise, any slave, other than the husband, wife, parent, or descendant of such free negro.

When the gift of a slave is valid.

M. & B. 1480.

§ 7. No gift of a slave shall pass the title, or be good against creditors or purchasers, unless it be made by will, duly proved and recorded, or by deed in writing acknowledged by the donor before the clerk of the county of his residence, or attested by two witnesses, and proved by one of them before such clerk, and lodged for record, except where the possession of the slave, at the time of the gift, be in fact delivered to the donee, and in good faith continued with him; nor shall such gift, when evidenced by deed recorded, affect the rights of a pre-existing creditor of the donor, until the donee shall, in good faith, have had three years' continued possession of said slave.

The owner of slaves for life to list each year the same with clerk.

Penalty for failure

A. 1844, 84.

§ 8. Every owner of a slave, for his own or another's life, and the guardian or husband of such owner, shall, on the first day of January, or within sixty days thereafter, within each year, file with the clerk of the county in which he resides a statement, in writing, of the names, sex, and ages of such slaves, which shall be recorded at the cost of the person in remainder, in a book to be kept for that purpose. If the owner, guardian or husband fail to file such annual statement, he shall be fined not exceeding fifty dollars for each offense, for the use of the person in remainder, to be recovered by suit or indictment, at the cost of the person suing. Sheriffs and assessors of tax shall report to the clerk of the circuit court the names of all persons, within their knowledge, who have failed to comply with the provisions of this statute.

Persons owning life estate in slaves not to remove them out of state.

M. & B. 1565.
L. 533.

§ 9. If any widow, or other person, holding a life estate in a slave, or the vendee, immediate or remote, of such tenant for life, shall remove, or permit the slave to be removed out of this state, without the consent, in writing, of the person in remainder or reversion, or his guardian if he be under age, such life estate shall be forfeited and cease, and the person in reversion or remainder may recover the slave, or he may recover of the person removing, or consenting to the removal, its value, with such other damages, besides the hire, as a jury may assess, not exceeding one-half the value of the slave removed. A court of chancery may, for

good cause shown, compel the tenant or owner of a life estate in a slave to give bond, with good surety, for the forthcoming of the slave at the termination of the same, and, upon a failure to give the bond, make such order and decree as may be equitable. (*a*)

ARTICLE II.

Of the importation of Slaves.

What slaves shall not be imported into this state.

M. & B. 1476.

§ 1. Slaves imported from a foreign country since the first day of January, 1808, or which may hereafter be imported from such country, or slaves who have been tried and convicted of felony in any other state or territory, shall not be imported into this state. Any person knowingly violating this section, shall be fined three hundred dollars for each slave so imported.

Penalty if imported as merc'andise

1 Littell, 246.

§ 2. No slave shall be imported into this state as merchandise, or for the purpose of sale or barter, in or out of this state, under the penalty of six hundred dollars for each slave so imported.

Immigrants may bring their slaves with them.

M. & B. 1482. A. 1849, 21.

§ 3. Immigrants to this state, intending to reside here, may bring with them, and citizens residing within this state may purchase and import into this state for their own use, such slaves as are not prohibited by the first section of this article.

Oath of immigrants.

M. & B. 1482.

§ 4. Immigrants bringing with them their slaves, as permitted in the next preceding section, shall, within sixty days after their arrival, take the following oath before a justice of the peace of the county of their residence: "I do swear, that my removal to the state of Kentucky, was with the intention of becoming a citizen thereof: that I have brought with me no slave with the intention of selling him:" which oath, certified by the justice, shall be recorded in the office of the county court, within sixty days. The two preceding sections shall not apply to travelers or sojourners in this state.

Who may import slaves into this state.

M. & B. 1483.

§ 5. Persons resident within this state, deriving title by gift, will, descent, distribution, or by marriage, to slaves, may import them, if they be not such as are prohibited by the first section of this article.

List of slaves imported to be filed with clerk. A. 1849, 51.

§ 6. A citizen importing slaves under the provisions of this article, shall, within forty days after such importation,

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(*a*) This section supersedes the act of the 24th March, 1851, which is repealed by the act adopting the revised statutes.

present to the clerk of the county court of his residence a true and correct list of such slaves, with their names, ages, and sex, verified by his oath. He shall also, before the clerk, take the following oath: "I do swear that I have purchased, or received, and imported into the state of Kentucky, the slaves named in the list this day made out by me, and filed with the clerk of ——— county, for my own private use; that they were not purchased, or received, and imported for sale, or speculation, or to be treated as merchandise; and that I do not believe any one of them has been imported into the United States since the first of January, one thousand eight hundred and eight; or that any one of them has been convicted of felony in any other state or territory." The list and oath affixed, shall be recorded by the clerk, in a book to be kept for that purpose. The fee to the clerk shall be fifty cents for each slave.

Oath of importer.

§ 7. If any citizen shall import into this state, under the provisions of this article, a slave, and shall sell said slave before the expiration of five years after such importation, or shall hire out such slave for a term of more than one year, or shall use any device whatever, whereby to evade the provisions of this article, he shall be fined the sum of six hundred dollars, to be recovered by indictment or suit in the name of the commonwealth; one-half to the use of the prosecutor or relator, and if there be neither, then the whole to the use of the commonwealth.

Penalty for selling such slave within five years.

A. 1849, 21.

§ 8. If any person shall buy a slave, knowing that he has been imported into this state contrary to the provisions of this article, or if he shall buy a slave imported by a resident citizen under the provisions of the third section of this article, within eighteen months after such importation, knowing the same, he shall be fined, for each slave, the sum of two hundred dollars, to be recovered as in the last section named.

Penalty for buying such slave.

A. 1849, 21.

§ 9. Slaves imported by citizens, under the provisions of the third section of this article, shall not be subject to sale, or be sold under execution, or other legal procedure for the payment of debts, unless all other estate of the debtor, subject to the payment of debts, shall be first exhausted, until after the expiration of eighteen months from such importation. If the defendant shall suffer or permit such slave to be sold, when he has other estate, he and the sheriff who makes the sale knowingly in contravention of this section, shall each be fined two hundred dollars for every slave so sold.

When slaves so imported may be sold under execution.

A. 1849, 21.

§ 10. A person taking an oath under the provisions of this article, knowing the same to be false, shall be guilty of perjury.

Perjury.
A. 1849, 22.

§ 11. Indictments, for importing slaves contrary to the provisions of this article may be found upon the personal knowledge of any one of the grand jury, or upon the oath of a credible witness. All suits or prosecutions, for a violation of the provisions of this article, shall be commenced within five years after the offense committed or cause of action shall have accrued, and not after.

When prosecutions under this chapter to be commenced.
M. & B. 1421.

ARTICLE III.

Dealing with Slaves, and suffering them to go at large.

§ 1. If the owner or hirer of a slave shall license him to go at large and trade as a freeman, or shall permit him to go at large and hire himself out for his own benefit, or that of another, he shall be fined forty dollars for each offense, to be recovered by a presentment of a grand jury, or suit in the circuit court.

Penalty for suffering slave to go at large and hire himself.
M. & B. 1474.

§ 2. Any person may, and officers shall, with or without warrant, arrest any slave as to whom there is a violation of the preceding section, and upon proof of the fact, by order of a justice of the peace, the slave shall be committed to jail, unless his master, or some person for him, enter into recognizance, with good surety, for the forthcoming of the slave at the next term of the circuit court to abide the order of said court. If the owner be found guilty, upon indictment, of having violated any of the provisions of said section, and fail forthwith to pay the fine and costs, the slave shall be sold therefor, in the same manner as slaves are sold under execution.

Such slave to be arrested, and how dealt with.

§ 3. If any person shall receive from, deal or trade with, a slave, for money or other thing, without the consent, in writing, of his owner, designating the article, commodity, or thing, in which such slave is permitted to deal or trade, shall forfeit and pay to the owner ten dollars, and four times the value of the commodity so bought or sold, to be recovered by a suit before a justice of the peace, when the sum claimed is under sixteen dollars, and when it exceeds that amount, by presentment of a grand jury in the circuit court.

Penalty for dealing with slave,
M. & B. 1474.

A slave offering to deal or trade with a free person, without such permit, shall be punished by order of a justice of the peace with a number of stripes not exceeding ten.

Slave may be punished.
A. 1850, 51.

Penalty for giving, &c., liquor to slave of another.

§ 4. If any person shall sell, give, or loan spirituous liquor of any description, to the slave of another, unless for the time being he shall have the rightful custody and care of such slave, without the written order of the owner, he shall be fined fifty dollars for each offense.

Penalty for giving permission to a slave to deal in spirituous liquors.

§ 5. If any master or other person give written permission to a slave to obtain or furnish him with intoxicating liquor, with intent he shall barter, or sell, or trade the same, or any part thereof, such master or other person shall forfeit twenty dollars, and give surety for his good behavior for twelve months. If the offender against either of the two preceding sections shall be a tavern keeper, or person licensed to retail spirituous liquors, his license shall be annulled by the judgment of the court; nor shall such license be granted him for two years thereafter.

Penalty for permitting slaves of another to remain on the premises.

M. & B. 1472.

§ 6. If any person having the control of a house or plantation, shall knowingly permit or suffer any slave not his own to remain in such house, or upon such plantation, for the space of four hours, without the leave of the owner of such slave, he shall forfeit and pay ten dollars for every such offense. If such person shall permit more than five negroes or slaves, not his own, at one time, to remain in his house, or on his plantation, he shall forfeit one dollar for each negro; which fines and forfeitures may be recovered to the use of any person suing for the same, before a justice of the peace, or by the presentment of a grand jury.

§ 7. The preceding section shall not apply to negroes owned by the same person, seated and located at different plantations, meeting by the consent of their owner or overseer, nor to negroes meeting at any public mill in the day time on the business of their owners, nor on the Sabbath day, nor to meetings on any other lawful occasion by the permission of their owner, nor to negroes attending upon divine service.

Penalty against a free negro for harboring slaves.

§ 8. If any free person shall be found in company with slaves or negroes, at any unlawful meeting, or shall harbor any slave, without the consent of the owner, he shall forfeit and pay fifteen dollars for each offense. If a slave harbor the slave of another person, he shall, upon conviction by the judgment of a justice of the peace, be punished by stripes, not exceeding twenty.

Riots, &c., how punished.

§ 9. Riots, routs, unlawful assemblies, breaches of the peace, and seditious speeches by slaves, shall be punished

with a number of stripes not exceeding thirty-nine, upon conviction by the judgment of a justice of the peace.

What is a good pass.

If a slave shall go from the residence of his owner without a written permit, specifying the place to which such slave is licensed to go, and the time of absence, he may be apprehended, taken before a justice of the peace, and punished by stripes, not exceeding thirty-nine, at the expense of the owner.

Penalty against a slave or free negro for assaulting a white person.

§ 10. If any slave shall assault a free white person, by his hand or by any other means, he shall, upon conviction before a justice of the peace, be punished with stripes, not exceeding thirty. If a free negro so assault a free white person, he shall, upon conviction by indictment, be fined not more than one hundred dollars, and imprisoned not more than three months.

When a slave may be punished for going on the premises of another.

§ 11. If any slave, without leave, in writing, from his owner, shall come upon the premises of a free white person, not being sent on lawful business, the owner of such premises, or the manager of the same, may punish such slave, for each offense, by the infliction of ten stripes.

Penalty for keeping or carrying a gun.

§ 12. If any negro shall keep or carry a gun, or other deadly weapon, powder, or shot, the same may be seized by any free white person; and upon due proof thereof, before a justice of the peace, it shall be forfeited, and vested in the person seizing; and if the negro offending be a slave, he shall, by a judgment of a justice of the peace, be punished by stripes, not exceeding thirty-nine; if a free negro, fined five dollars.

ARTICLE IV.

Of insane, aged, and infirm Slaves, and the abuse of them.

Penalty on the owner of insane or infirm slaves, for maltreatment.

§ 1. If the owner of an infirm, insane, or aged slave, or any person having such slave under his control, suffers him to go at large, or fails to make adequate provisions for his support, he shall be punished by fine not exceeding fifty dollars; and the county court, or other public authorities, charged with the supervision and care of the poor, or any city, town, or county, in which such slave may be found, shall provide for his maintenance, may charge such person, quarterly or annually, with a sum sufficient therefor, and recover it, from time to time, by a motion, in the name of the commonwealth, in the county court. If any person shall, by gift, sale, or otherwise, dispose of any insane, aged, or infirm slave, which is, or is likely to become, chargeable to the county, vendee, or donee, such person,

V. R. 458.

Duty and powers of county courts in such cases.

at the election of the county court, or other public authorities, may be proceeded against as the owner of the slave, under this section.

When slaves treated inhumanly may be taken and sold.

M. & B. 1481.

§ 2. If the owner of any slave shall treat him cruelly and inhumanly, so as, in the opinion of a jury, to endanger the life or limb of such slave, or materially to affect his health, or shall not supply his slave with sufficient wholesome food and raiment, such slave shall be taken and sold for the benefit of the owner.

Mode of proceeding in such cases.

§ 3. On the petition of any person, verified by oath, or upon the presentment of a grand jury, setting forth, substantially, the ill treatment of the slave, the court shall cause the owner of the slave to be summoned, and may, if it shall appear proper, direct the sheriff or other officer to take possession of the slave, and hire him out, pending the proceeding; and such judgment and orders shall be given by the court as the finding of the jury shall justify.

Slave hired may be reclaimed by owner for cruel treatment.

§ 4. If the hirer of a slave for a term of time shall treat him in the manner described in the second section, or shall fail to furnish such slave with food and raiment, the owner of the slave may proceed against him, by petition, in the manner prescribed in the third section, and, upon the facts, or any of them being found against the defendant, the court shall rescind the contract of hiring, upon equitable principles, and restore the slave to his owner.

A suit may be maintained by the owner, though not in possession, for whipping slave &c

M. & B. 1481.

§ 5. A suit may be maintained by the owner of a slave, though not in his actual possession, against any person who shall unlawfully whip, strike, or abuse such slave, and recover damages for such act, notwithstanding the said slave, by such whipping, striking, or abuse, may not have been rendered incapable of labor.

ARTICLE V.

Of the abduction and stealing of Slaves, removing them out of the State by boatmen and others, and exciting them to rebellion.

Stealing or enticing a slave to leave his owner.

M. & B. 1262.
A. 1845 25.
A. 1846, 21.
A. 1843, 87.
L. 464.

§ 1. If any free person not having lawful, or, in good faith, a color of claim thereto, shall steal, or shall seduce or entice a slave to leave his owner or possessor; or if he shall make, or furnish, or aid, or advise in the making or furnishing a forged or false pass, or deed of emancipation, or other writing purporting to liberate a slave; or if, in any manner, he aid or assist a slave to make his escape, or to attempt to make his escape from such owner or possessor,

he shall be confined in the penitentiary for a period of not less than two nor more than twenty years.

Penalty for making or forging a pass.

§ 2. A free person convicted of an attempt to persuade or entice away a slave from the service of his master, or owner, or the person in possession of the slave; or if convicted of the attempt to persuade or induce, by any means, a slave to run away from his master, or owner, or person in possession of him, shall be confined in the penitentiary for a period not less than two years nor more than five years.

An attempt to entice a slave to leave, penalty for.

§ 3. A free person suspected of an attempt to entice or take a slave from his owner or lawful possessor, upon complaint, on oath, to a judge of the circuit or county court, shall be apprehended, and brought before the officer issuing the warrant, or some other of equal jurisdiction in the county where the offense is charged to have been committed; and upon such attempt being proved to the satisfaction of the judge, he shall recognize such offender, with one or more good sureties, to be of good behavior during his stay or residence in this state, or for such other time as the judge shall think proper. If the accused shall fail to give such bond, or a bond with sufficient surety, that he will forthwith quit the commonwealth, and not again return, he shall be committed to the jail of the county, there to be kept until the next term of the circuit court, at which time he may, for sufficient cause, be discharged from confinement, with or without bail, as the court may adjudge.

A free person suspected, how to be dealt with.

A. 1845, 26.

§ 4. If any person shall be convicted of the offense of attempting to excite a slave to insurrection, he shall be confined in the penitentiary for not less than five nor more than twenty years.

An attempt to excite insurrection how punished.

A. 1846, 21.

§ 5. If any free person shall be convicted of the offense of knowingly concealing a stolen slave, or a slave enticed from the service of his master or owner, or of harboring a runaway slave, with the intention to prevent the owner from obtaining possession of such runaway, he shall be confined in the penitentiary for not less than two nor more than twenty years.

Penalty for concealing a stolen or runaway slave.

A. 1845, 26.

§ 6. If the owner, his driver, agent, or servant, of any mail stage, railroad car, or any other conveyance for the transportation of persons or property, suffer or permit a slave to go as passenger thereon, with or without pay, without the written request of his master or owner, unless accompanied by the master or owner, the person so offending

Penalty for carrying a slave in a stage, railroad car, &c., as a passenger.

I. 554.

shall be fined one hundred dollars, and shall, also, be answerable to the master or owner for all damages he may sustain thereby.

ARTICLE VI.

Of Runaway Slaves.

Runaways, how to be dealt with.

M. & B. 1411: L. 523. A. 1845, 10. A. 1847, 36.

§ 1. Every slave arrested as a runaway shall be taken before a justice of the peace, and, if there be reasonable cause to suspect that such slave is a runaway, the justice shall give a certificate of the fact, stating therein the county in which the slave was arrested, the name, if known, and description of the negro, the name and residence, if known, of his master, and the name and residence of the person who apprehended the runaway, and the amount due the apprehender, and, by his precept indorsed thereon, command him to deliver the slave to the jailer of his county, or, if the owner is resident in the county of the justice, to deliver the slave to the owner thereof.

Jailer's duty & fees

A. 1847, 36.

§ 2. If the slave be delivered to the jailer for safe keeping, the person apprehending him shall leave with the jailer the certificate of the justice, described in the first section, take the jailer's receipt for the negro, and the jailer shall keep said slave in a close jail until demanded by the owner, or his agent, and shall not deliver him then, until the fee or reward offered for taking up, expenses of keeping, jailer's fees, and costs, are paid to him. If he deliver the slave, without the payment of the fee or reward for taking up, or if the same be paid him, he and his surety shall be liable to the person taking up said slave, for the same. The jailer shall not be liable for a private reward, if he deliver the slave, not knowing that such reward had been offered by the master.

Liability of jailer.

Fee for apprehending runaway.

L. 523. A. 1847, 36.

§ 3. The compensation for apprehending a runaway slave, where no larger amount has been offered as a reward, shall be as follows, to be paid by the owner: If the slave be arrested in the county of the residence of his master, or the person who had the legal custody of him when he ran away, and delivered to the master, or the person from whom he escaped, or lodged in the jail of the county, ten dollars; when in any other county, twenty dollars. If the slave be arrested in a state where slavery is not allowed, and delivered to the owner at his residence in this state, one hundred dollars; if lodged in the jail of any county in this state, whether the master or owner reside in or out of this state, seventy-five dollars.

Jailer to advertise

A. 1845, 10.

§ 4. When a runaway slave shall be committed to jail, under the provisions of this chapter, the jailer shall, within ten days thereafter, advertise said runaway, in a newspaper nearest his residence, in which he shall give an accurate description of the slave, which advertisement shall be continued for six months, if the slave be not sooner claimed by his master. If said slave be not claimed within six months, the fact shall be reported by the jailer to the county court. The court shall cause the slave to be valued by two persons, and direct him to be sold; also, the time and place of sale, and the smallest sum for which the slave shall be sold.

If slave not claimed, to be sold

Manner of sale, and collecting the money.

§ 5. The sheriff shall sell the slave at the court house, upon a court day, to the highest bidder, after having advertised in a newspaper nearest his residence, for at least two months, the time and place of sale. The sheriff shall give, in said advertisement, a description of the slave. The slave shall be sold upon a credit of six months, with interest, the purchaser to give bond and good surety, to the commonwealth, to have the force and effect of a replevin bond. The bond shall be returned to the clerk's office of the county, and if not paid to the clerk when due, execution shall issue upon the same. The clerk and sheriff, and their sureties, shall respectively account for and pay over any money so received or collected by them, in the same manner as they account for public revenue.

Proceeds paid into the treasury.

§ 6. The sheriff, or clerk, shall pay over, by order of court, to the jailer and clerk the fees and costs due them, and to the person taking up, the fee or reward allowed. The sheriff shall be paid the costs of advertising the sale, and five per cent. for making the sale. The remainder of the sum for which the slave sold shall be paid into the public treasury, for the use of the owner of such slave, to be paid to such owner when demanded, without interest.

To be paid to the owner, and upon what evidence.

§ 7. The treasurer shall pay the amount so deposited, to the owner of the slave, upon the production of the judgment of the county court, by whose order the slave was sold, that the person claiming the same had, by legal and disinterested evidence, satisfied the said court that he was, at the time of the sale, the owner and master of said slave. A payment so made, shall forever exonerate this commonwealth from all claims or liability for the amount, to any other person.

Runaway to be furnished by jailer with clothes, &c.

§ 8. When an imprisoned runaway is not sufficiently clothed, the jailer shall furnish him with proper negro clothing, to be paid by the master or owner, as his other jail fees. (*a*)

ARTICLE VII.

Of felonies committed by Slaves and Free Negroes.

Penalty for burning houses, &c.

L. 482.

§ 1. If a free negro or slave willfully and unlawfully burn a court house, county or public prison, a clerk's office of a court, the capitol of the commonwealth, or any building upon the capitol square, the office of a county surveyor, a public office belonging to the commonwealth, or to any county, city, town, or corporation, or a tobacco house, warehouse, stable in which horses are kept, or a stable in a town, a still house, or a house or place where wheat, rye, Indian corn, hay, or any other commodity is usually kept, or a mill, or factory, or any shed attached to and appurtenant to a manufacturing establishment, or a house of public worship; or if he shall aid, abet, assist, counsel, hire, or command any person to commit any of said offenses, such free negro or slave, being thereof convicted, shall suffer death; or, if the offender be a slave, he may

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(*a*) *An act to regulate the duties of Jailers relative to runaway slaves—approved December* 6, 1351.

§ 1. That from and after the passage of this act, it shall be the duty of the several jailers in this commonwealth, when a runaway slave shall be committed to jail, under the provisions of existing laws, within ten days thereafter, to advertise said slave in the newspaper which has the publication of the laws of the state, in which he shall give an accurate description of the slave, and cause the same to be published for six months, if the slave be not sooner claimed by the master or owner.

§ 2. That when a runaway slave who is committed to jail is not sufficiently clothed, the jailer shall furnish him with proper negro clothing, and, when sick, with medical aid, to be paid by the master or owner, or out of the money for which said slave may be sold, under the provisions of the law regulating the sale of runaway slaves, after having remained in jail six months, as other jail fees are paid: *Provided, however*, that a physician, employed under the provisions of this act, shall not be allowed to charge and collect more than one dollar for each visit and medicine.

§ 3. That no physician's account for services rendered to runaway slaves, under the provisions of this act, shall be paid, unless the physician shall have obtained the affidavit of the jailer, sworn to before some proper officer authorized to administer oaths, stating that the medical aid, in his opinion, was actually necessary during the whole time the slave was under medical treatment, and that the services were actually performed by said physician.

be punished by any number of stripes not exceeding two hundred, to be inflicted at different times, not more than fifty at a time; and a free negro may be confined in the penitentiary for a period not less than two nor more than ten years.

Insurrection.

§ 2. If any slave or free negro shall conspire to rebel or make insurrection, he shall be guilty of felony, and upon conviction shall suffer death.

M. & B. 1287-8.

Administering poison.

§ 3. If any free negro or slave shall administer to any person poison, or other destructive thing, with the intention to destroy life, upon conviction he shall suffer death.

Murder or rape.

§ 4. If any free negro or slave be guilty of murder, rape committed upon a white woman of any age, or the attempt to commit such rape, or be accessory before the fact to either of the aforesaid crimes, upon conviction he shall suffer death.

Arson, robbery &c

§ 5. If a free negro or slave be guilty of arson, robbery, or of voluntary manslaughter, or of homicide, perpetrated in the commission, or the attempt to commit, any felony, upon conviction thereof, he shall suffer death; or, if the offender be a slave, he may be punished by a number of stripes not exceeding two hundred, to be inflicted at different times, not more than fifty at a time; and if he be a free negro, he may be confined in the penitentiary for a period not less than two nor more than ten years.

M. & B. 1288.

Consultation or advice to murder.

§ 6. If a free negro or slave consult about the murder or advise the murder of any person, he shall, on conviction in a circuit court, be punished by any number of stripes not exceeding one hundred.

M. & B. 1288.

Shooting or wounding with intent to kill.

§ 7. If any free negro or slave shall willfully and maliciously shoot at any free white person, with a gun or other instrument, with intent to kill such person, or shall willfully and maliciously wound a free white person, with intent to kill such person, or to kill any other, upon conviction he shall suffer death, or the punishment by stripes or confinement in the penitentiary, mentioned in the fifth section.

M. & B. 1291.

Blowing up, or attempting to blow up locks of canal.

§ 8. If any free negro or slave unlawfully and maliciously blow up, or attempt to blow up with gunpowder, or to burn, or by any act to destroy the locks of the Louisville and Portland canal, or the bridge of said canal, the locks or dams of the state upon any of the rivers thereof, or a public bridge over any water course, upon conviction thereof, he shall suffer death.

M. & B. 1294.

Delivering free papers or pass.

§ 9. If a free negro shall deliver to a slave the original free papers, or a copy thereof, of himself or any other

A. 1850, 48.

person, or if he write, or deliver to a slave a written pass, to go from one place to another, or a written authority for any purpose, in his name, or in the name of the owner, hirer, or other person, known or unknown, he shall be guilty of felony, and upon conviction, he shall be confined in the penitentiary for not less than one nor more than five years.

Larceny

§ 10. If a slave commit a larceny, he shall be punished with stripes, not exceeding thirty-nine. If a free negro commit larceny of any kind, he shall be punished in the manner and to the same extent as though he were a white person.

Injuring telegraph

§ 11. That if a slave molest or injure any line of electro-magnetic telegraph, its posts, piers, or the materials belonging thereto, he shall, by order of a justice of the peace, be punished by not more than thirty nine stripes.

Misdemeanor—punishment for.

§ 12. If a slave commit any misdemeanor, not specified in this chapter, he shall be punished with stripes. If a free negro commit any misdemeanor, not specified in this chapter, he shall be punished as though he were a white person.

Stripes, when punishment is not prescribed.

M. & B. 1286.

§ 13. In all cases when the punishment for offenses prescribed in this chapter is stripes, if the number be not specified for the particular offense, the number shall not exceed thirty-nine, and to be inflicted upon the bare back of the offender; and all crimes or offenses, committed by a free negro, or slave, which are punishable by stripes, are declared to be, as to them, misdemeanors.

Charge to, when a witness.

M. & B. 1478.

§ 14. Upon all trials, when a negro is to be sworn as a witness, the judge, or justice presiding, shall give to such negro the following charge: "You are brought hither as a witness, and by law, it is my duty to tell you, before you give your evidence, that you must tell the truth, the whole truth, and nothing but the truth; and that if it be ascertained that you tell a lie, and give false testimony in this matter, you must, for so doing, (if a slave,) receive thirty-nine stripes upon your bare back." If the witness be a free negro, "that he will, upon conviction of the offense, be confined in the penitentiary."

Punishment for false swearing.

M. & B. 1475.

§ 15. If the judge, or court, before whom a slave is called to testify, shall be satisfied that he has given false evidence, knowingly and willfully, he shall, after the trial is closed, cause the punishment imposed by the preceding section to be inflicted.

Penalty on a free negro.

§ 16. If a free negro shall, in any trial in which he shall give evidence, or in any oath required by law to be administered to him, and when administered by a person authorized, commit perjury, he shall be guilty of felony, and punished as though he were a white person.

Where final trials shall be had of slaves.

M. & B. 1491.

§ 17. The final trial of a slave, for offenses punished with death, shall be had in the circuit court of the county in which the offense was committed; and he shall be tried by a jury, in the same mode and manner as free persons are tried.

Master may defend.
M. & B. 1275.

§ 18. The master or owner of any slave may, on the trial of his slave for crimes or misdemeanors, defend him.

Slaves may be bailed in certain cases.

M. & B. 533.

§ 19. When any slave shall be charged with felony, the master or owner may bail such slave in those cases in which free persons are bailable, according to the laws regulating bail in criminal cases.

Fee for counsel.

M. & B. 1286.

§ 20. It shall be the duty of the master or owner, personal representative, or guardian of such owner, to employ counsel to defend a slave, when tried in the circuit court. If no counsel be employed, the court shall assign counsel to defend him. The master or owner, or his personal representative, or the guardian, shall pay said counsel the sum awarded him by order of the court, for such defense, not exceeding fifty nor less than twenty dollars, and may be attached and compelled to pay the same.

Benefit of clergy not allowed.
A. 1847.

§ 21. No free negro or slave shall be exempt from the punishment prescribed by law, by reason of any benefit of clergy.

Condemned—when to be executed.

§ 22. When judgment of death shall be passed upon a free negro or slave, there shall be thirty days, at least, between the time of passing such judgment and the day of execution, except in cases of conspiracy, insurrection, or rebellion.

Confessions, evidence.

M. & B. 1473.

§ 23. Upon the trial of a free negro or slave, the court may receive, as evidence, his confessions, if freely and voluntarily made, the weight of which shall be judged of by the jury.

Slaves executed to be valued and paid for.

M. & B. 261.

§ 24. When the court shall sentence to death a slave, the value of such slave shall be fixed by the court, and entered on record. If the slave be executed, or die in jail, after conviction, before the day of execution, the value, so fixed, shall be paid out of the public treasury to the master or owner, upon a presentation of a copy of the record, and certificate of the sheriff of the fact of the death or execution of such slave. If a slave, imported into this state

Certain slaves not to be paid for.

contrary to law, or passing through this state, by land or water, to any other state, territory, or country, be executed for crime, or die before execution, he shall not be paid for as above.

Punishment may be commuted by governor.

§ 25. In all cases of a conviction of a negro for any offense, except that of murder, insurrection, rebellion, or rape, or the attempt to commit the offense of rape upon a white person, if the punishment imposed be death, the governor of the commonwealth shall have power to commute such punishment to a confinement in the penitentiary for life; and, if such convict be a slave, the owner shall be paid for him as though he were executed, or take the proceeds of his labor in the penitentiary, at his election, to be made in open court at the term succeeding the mandate of commutation of punishment.

ARTICLE VIII.

Of misdemeanors by Free Negroes.

Disorderly house and idleness.

M. & B. 1221.

§ 1. If any free negro shall keep a disorderly house, or shall be found loitering about, engaged in no honest calling to obtain a support, he shall be guilty of a misdemeanor.

Mode of procedure.

L. 464.

§ 2. The police judge of any city or town, where the offense is committed in a city or town, judge of a county court, or justice of the peace, shall issue a summons against the offender, described in the preceding section, stating therein, substantially, the nature of the offense; which summons may be executed and returned by a constable or other officer, before the police judge, or the judge of a county court; and when executed, the constable, or other officer, shall give a copy of the same, and state also in said copy the time and place of trial, giving said defendant at least two days between the service and the day of trial, to prepare his defense.

A jury to try facts.

M. & B. 1222.

§ 3. The police judge of a city or town, or a judge of a county court, shall have jurisdiction to hear and try offenders, denounced in the first section of this article, within their respective jurisdictions. A jury shall be impanneled to try the facts.

If guilty, to be hired out.

§ 4. If the defendant be found guilty, he shall be taken immediately into custody, and hired out as a servant, at public auction, to the highest bidder, for a term not exceeding six months; bond and good surety shall be given by the person hiring, for the payment of the amount to the commonwealth, and also that he will provide good wholesome

diet, lodging, and clothing for said person of color, during said time, and that he will not remove the said free negro out of the state, or permit it to be done.

Proceeds, how disposed of.

§ 5. The amount, when collected, after the payment of all costs, shall be applied, under the order of the officer who tried the offender, first to the payment of his debts, next to the support of his family, if free; if no such family, then to be paid into the city treasury, or to the use of the county, as the case may be.

Giving or selling a slave liquor. M. & B 1223. A. 1846, 54.

§ 6. If a free negro sell or give ardent spirits to a slave, without the consent of the owner, he shall be deemed guilty of a misdemeanor.

Not to manufacture liquor.

A. 1846, 54.

§ 7. If a free negro shall engage in the manufacture of whisky, brandy, or other spirituous liquors, except as the hired servant of a free white person; or if he shall sell to any person, in any quantity, whisky, brandy, or other spirituous liquor, he shall, upon indictment and conviction, be fined in a sum not less than fifty nor more than three hundred dollars, and stand committed until the fine and costs be paid; one-half of the fine, when collected, to the use of the commonwealth's attorney.

Duty of justices of the peace.

A. 1846, 54.

§ 8. It shall be the duty of the justice of the peace, when they have reason to believe, upon complaint made to them, that any free negro has violated the provisions of the two preceding sections, to issue a warrant for his apprehension, returnable before a justice of the peace. The officer to whom such warrant is directed shall arrest the defendant, and immediately bring him to trial. If, upon trial, the justice shall believe defendant guilty, the negro shall give bail for his appearance at the next term of the circuit court of the county, in a reasonable amount; if such bail be not given, the accused shall stand committed for trial.

ARTICLE IX.

Emancipation of Slaves.

Terms and conditions on which slaves may be emancipated.

§ 1. Slaves may be emancipated by the owners in fee thereof, in the following manner, and upon the following conditions, and not otherwise:

M. & B. 608.

1. By deed, acknowledged or proved by two subscribing witnesses, in the county court.

2. By last will and testament.

3. Subject to the debts and liabilities of the owner.

Con. of Kentucky.

4. Upon condition of their being removed from, and continued residence out of, the state of Kentucky.

5. The deed of emancipation, and so much of any will as emancipates a slave, shall not vest the absolute right of freedom in the slave, until after he shall have removed out of the state.

What kind of slaves may be emancipated.

§ 2. No slave shall be emancipated who is over sixty-five years of age, or who is, by disease or infirmity, incapable of labor for a support, unless the owner provides the means for his transportation out of this state, and one year's support.

When emancipator fails to provide means, duty of county court.

§ 3. When the person emancipating a slave, by deed or will, shall fail to provide for his removal out of the state, the county court shall, by order, direct the slave to be hired out from year to year, until a sufficient fund shall be created thereby to defray the expenses of moving said slave to some place out of this state, and to maintain him for twelve months.

Trustees to be appointed.

§ 4. The county court shall appoint trustees, who shall not be members of said court, from time to time, in their respective counties, for such slaves as may be emancipated under the provisions of this article. They shall take

Bond, and report to court.

from the trustees bond, with good surety, for the faithful discharge of their duties, and shall cause them to report and settle their accounts once in each year, and pay over the funds in their hands, which shall be preserved by the county court, or placed at interest, from time to time, until the same shall be required for the purposes named in the third section of this article.

Trustees' power and rights.

§ 5. The trustees appointed under the provisions of the preceding section, shall have the right to control the slave placed under his care, and shall possess all the rights, powers, and privileges, and be subject to all the responsibilities, of the master of said slave, so long as he may be continued as trustee.

Slave to be removed out of the state.

§ 6. When the county court shall be of opinion that a sufficient fund has been created by the labor of the slave, or otherwise provided for him, to remove and support him, as required by the third section of this article, the court shall ascertain, by personal examination of the slave in open court, his willingness to be removed out of the state, and to accept his freedom upon the conditions prescribed by law and in the tenth article of the constitution of Kentucky; and if the consent of said slave be given, the fact shall be entered on record, with the age, and particular description of the said negro, a copy of which, with the deed or will of emancipation, under the seal of the court,

shall be delivered to said negro, and such other orders made by the county court as may be deemed necessary to effect the safe and certain removal of the slave out of this state, for permanent residence.

Where a family are emancipated, proceeds of their labor united.

§ 7. If a family of negroes shall be emancipated, the proceeds of the labor of all shall be united in one common fund, and applied for the removal of all at the same time, and to the same place.

Trustee may be removed.

§ 8. The county court shall have power, for good cause, to remove a trustee or agent, appointed by them under the provisions of this article, and to appoint another in his place.

Issue born after date of emancipation entitled to freedom.

§ 9. The issue of a slave emancipated by deed, born after the date of the deed, shall have the same right to his freedom that the mother has under said deed, and shall be treated accordingly.

Born after death of testator.

§ 10. The issue of a slave willed to be free, born after the death of the testator, shall have the same right to freedom as the mother, and be treated accordingly, unless it shall manifestly appear by the provisions of the will that such issue is not intended to be emancipated.

Compensation to trustee.

§ 11. The county court, out of the funds produced by the labor of the slave, shall allow to the trustee a reasonable compensation for his trouble, and shall pay the costs incurred in court from time to time.

If owner provides means of removal, but not the mode, the county court to take charge of slave.

§ 12. When the master or owner provides a fund for the removal of the slave, and fails to prescribe the time and manner of removal, the county court shall take charge of the fund and slaves, and proceed as directed in the sixth section of this article.

When slaves refuse to leave the state, to be hired out for the benefit of county until they assent.

§ 13. All slaves emancipated, who shall refuse to give their assent to be removed out of the state, as required, shall be hired out thereafter, under the provisions of this article, for the benefit of the county, in such mode as the county court may direct, until such time as they shall give their assent, and actually remove out of the state. (*a*)

(*a*) The act of the 24th March, 1851, on this subject, is superseded and repealed by this chapter and the act adopting the revised statutes. The commissioners, in recommending its repeal, were influenced by the opinion that the punishment of the slave for refusing to accept his freedom, and leave the state, was too great. Better to leave him to be dealt with as provided in this chapter.

The act concerning Free Negroes and Mulattoes, approved March 24, 1851, has shared the same fate. The commissioners

ARTICLE X.

Slaves emancipated subject to the payment of debts.

Equitable assets, and may be attached by creditor.

§ 1. Slaves emancipated shall be equitable assets in the hands of the personal representative of the testator, for the payment of debts. If emancipated by deed, a creditor or person who may be bound as surety for the owner, may, by proper procedure in chancery, prevent their removal out of the state, until his debt is paid or his liability removed.

L. 226.

Personal representative summoned—slaves hired out to pay debts, &c.

§ 2. Before the county court shall order an emancipated slave into the possession of a trustee, under the provisions of the ninth article of this chapter, the personal representative shall be summoned, and if it appear that there is not a sufficiency of other estate to pay the debts and liabilities of the decedent, no such order shall be made without the consent of the personal representative, unless the creditors assent to be paid their demands out of the fund to be created by the hire of the slaves. If such assent be given, the court shall make the order, and apply the fund ratably, as it may accrue.

Manner of satisfying debts.

§ 3. If no such consent be given, then the creditors, by proceedings in equity against the personal representative, heirs, devisees, and distributees, and the slave, shall have satisfaction of their debts in the following manner:

1. The slave shall be hired out pending the suit.

2. No sale of the slave shall be made until it shall appear that all other estate of the testator is insufficient for the payment of his debts and liabilities.

3. An absolute sale shall not be decreed by the chancellor, if a sale or hire for a term of years shall be sufficient to pay the debts.

4. After applying the whole of the estate of the decedent to the payment of his debts, then the fund created by the hire of the slave, if any remain, shall be paid over to the county court, for the benefit of the slave, to be used as provided for in the ninth article of this chapter; and the slave shall then be placed under the control of the county court, to be disposed of as therein provided.

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were of opinion that many of the provisions of that act were identical, or substantially the same with the provisions of this chapter on the same subject. Other provisions were regarded as oppressive to the free negroes, and not required by the public safety or interest.

Slave may compel a settlement of the estate.

§ 4. A slave emancipated by will, may, by bill in equity, compel the personal representative, heirs, devisees, distributees, and creditors to settle the estate, and establish his right to emancipation.

Slave required to give surety.

§ 5. Pending a suit contesting the validity of any deed or will of emancipation, the slave may be required to give surety not to leave the commonwealth, or otherwise restrained from so doing, until such contest be finally decided. And if hired out, the hire, pending the suit, shall, if the slave be entitled to his freedom, be disposed of as is directed in the ninth article of this chapter.

If hired out, disposition of hire.

ARTICLE XI.

Free Negroes immigrating to this State.

Penalty.

§ 1. Any free negro or mulatto who has, since the eleventh day of June, 1850, migrated, or who shall hereafter migrate to this state, with the intention of remaining therein, shall be guilty of felony, and, upon conviction, shall be confined in the penitentiary for any period of time not exceeding five years.

M. & B. 1219. Con. art. 10.

Penalty for refusing to leave after election to do so.

§ 2. If any slave, hereafter emancipated by the laws of this state, shall fail or refuse to leave the state, as required by law, after having elected to do so, as provided in the sixth section of the ninth article, or, having left the state, shall return and settle within the same, he shall be deemed guilty of felony, and, upon conviction, confined in the penitentiary for any period of time not exceeding five years.

How tried.

§ 3. Persons guilty of offenses denounced in either of the preceding sections, shall be apprehended and tried as is provided for in other cases of felony.

Second offense.

§ 4. Persons convicted of either of the offenses in the preceding sections, after they have served the time of confinement in the penitentiary, or after they may have been pardoned, who fail to leave, but remain in this state for a period of thirty days, shall be guilty of felony, and punished by confinement in the penitentiary for a period not less than five nor more than ten years, for each offense.

Duty of non-resident free negroes coming into this state upon lawful business.

§ 5. If any free negro or mulatto, not a resident of Kentucky, shall come into this state, he shall repair to the county court clerk of the county in which he shall first come, and there make his business known to the clerk; and the clerk may, if he is satisfied said free negro's business is laudable and lawful, issue a certificate to said free negro.

setting out the object of the visit, and authorize such free negro or mulatto to remain and transact said business, not exceeding thirty days, for which he may charge fifty cents, to be paid by the applicant. If any such free negro or mulatto shall fail or refuse to procure said certificate within twenty-four hours after he comes into this state, or shall continue longer in the state than allowed by said certificate, he or she shall be apprehended and taken before some justice of the peace, there to be tried; and if found guilty may be confined in the county jail where apprehended till he or she shall give good security to leave the state forthwith; and also pay all costs of the proceeding.

Penalty.

CHAPTER XCIV.

SMALL POX.

ART. 1. Concerning its importation.
ART. 2. Inoculation.
ART. 3. Concerning the spread of Small Pox.

ARTICLE I.

Concerning its importation.

§ 1. If any person shall willfully or designedly import or bring the small pox or any variolous or infectious matter of the said disease into this commonwealth from any other country or place whatsoever, or shall cause the same to be done, with the intent to inoculate any person, or by any means to propagate the disease, he shall forfeit and pay the sum of one thousand dollars.

Penalty for importing.

M. & B. 1485.

ARTICLE II.

Inoculation.

§ 1. When there is danger of the spread of the small pox in any county, the presiding judge of the county court thereof may employ one or more physicians to inoculate the poor of the county, and agree on a compensation therefor. The court of claims of the county shall levy and provide for paying the stipulated sum.

Poor to be inoculated at expense of county.

M. & B. 1487.

ARTICLE III.

Concerning the spread of Small Pox.

§ 1. Every person superintending a hospital or other place where a patient having the small pox is confined, shall prohibit all intercourse therewith of persons not having had the disease, and shall, before discharging a patient or suffering him to be removed, take due care that his person and clothes are cleansed, under the penalty of ten dollars.

Intercourse prohibited.

M. & B. 1486.

§ 2. If any person who has never had the small pox shall go into a house where the disease is, or associate with a person who is afflicted therewith, any justice of the peace, on due proof of the fact, may cause such person to be conveyed to some house or place in the county where the disease will not spread, there to remain until he shall have gone through the disease, or until a physician shall certify that he will not take the same. If such person be not able to pay the expense of his nursing, the county shall pay the same.

Separation of persons who have been exposed to the disease.

M. & B 1487.

§ 3. If any person shall willfully endeavor to spread or propagate the small pox, he shall be subject to be presented and fined the sum of five hundred dollars, or to be imprisoned for six months.

Penalty for willfully endeavoring to spread disease.

M. & B. 1488.

CHAPTER XCV.

STATE LIBRARY.

ART. 1. Library Rooms, Funds, &c.
ART. 2. Election of Librarian, and his duties.
ART. 3. What Books constitute the Library.
ART. 4. Who may use the Books.

ARTICLE I.

Library Rooms, Funds, &c.

§ 1. The rooms in the basement story in the capitol, at the left and right hand of the entrance, are hereby set apart for the use of the state library.

Library rooms.

M. & B. 1123.

§ 2. Five hundred dollars per annum is forever set apart for the gradual increase of the library, to be laid out and expended under the advice and direction of the judges of the court of appeals for the time being.

Annual appropriation to increase library.

M. & B. 1123.

1. When the librarian shall make and lay before a majority of the judges of the court of appeals, an affidavit

Judges court of appeals to draw order for.

that he has that year expended five hundred dollars in the purchase of books, charts, or maps for the state library, under the advice and direction aforesaid, and give a schedule thereof, such judges may draw an order on the auditor therefor.

Order to be drawn and warrant issued each year.

2. Such order may be drawn each year, on the production of the proper affidavit and schedule, and shall authorize the auditor to issue his warrant on the treasury for the amount.

ARTICLE II.

Election of Librarian, and his duties.

Election of librarian.

§ 1. A state librarian shall be elected biennially, by the general assembly, who, before he enters upon the duties of his office, shall enter into bond, payable to the commonwealth, in the penal sum of five thousand dollars, with two or more securities, to be approved by the secretary of state, conditioned for the faithful discharge of all the duties imposed, or which shall be imposed upon him by law, which bond shall be filed with and preserved by the secretary of state, and upon which suit may be prosecuted from time to time, in the name of the commonwealth of Kentucky, for violation thereof; and it shall be his duty—

His bond.

M. & B. 1123.

To keep library open.

1. To attend to and keep the library rooms open every day (Sunday excepted.) from ten o'clock, a. m., until three o'clock, p. m.

To preserve books, &c.

2. To keep the library rooms in order, and to preserve and arrange all the books, charts, maps, and furniture belonging to the state, and to see that no books or other things are taken from the library rooms improperly.

To receipt for books, &c.

3. To receipt for all books, maps, charts, and furniture placed in the library, which receipt shall be given to the secretary of state, and preserved in his office.

To keep account of books taken out, &c.

4. The librarian shall note in a book to be kept for that purpose, every book taken from the library, when, and by whom taken, and see that the same is returned.

To report catalogue, &c.

5. He shall report to each session of the general assembly a catalogue of the books in the library, particularly such books as have been purchased by or given to the library since his preceding report.

Who trustees.

§ 2. The secretary of state, attorney general, and auditor of public accounts shall be trustees of the state library.

Their duties.

1. They shall see that the librarian properly discharges the duties of his office; and

2. That he makes out and reports to the general assembly a correct catalogue of the books, maps, charts, and furniture on hand, and the condition thereof, at each session.

3. The report shall be signed by the librarian, and countersigned by the trustees.

Suits by librarian.

§ 3. The librarian may, in his own name, for the use of the state library, sue any person for a book or other thing drawn from the library, which he fails to return, or for any damage done to any book or other thing belonging to the library.

Selling and exchanging books.

§ 4. The librarian shall, from time to time, with the consent of the governor, sell or exchange such portion of the decisions of the court of appeals, acts of assembly, and other books belonging to the state as may be deemed expedient, and out of the proceeds thereof, and of the sums recovered under the next preceding section, he may, with such assent, purchase other books, maps, or charts.

Account of expenditure.

§ 5. The librarian shall keep a correct account of all expenditures for the library, and lay the same before the general assembly at each stated session thereof.

Books to be numbered.

1. He shall number each book by writing the number in figures on the back thereof, and on the inside of the front lid, beginning with number one, and going up.

How.

2. In numbering the volumes, the full sets of any work must be numbered in succession, and then the broken sets in like manner, except that the missing numbers may be skipped, and they must be numbered when restored.

ARTICLE III.

What Books constitute the Library.

Books constituting library.

§ 1. The following books shall constitute a part of the state library, to-wit: all the books now on hand, of which there are not exceeding four sets, except the following, of which there shall be the number of sets named: Morehead & Brown's edition of the statutes, fifty sets; the revised statutes, fifty sets; the code of practice, fifty sets; Pirtle's digest, ten sets; five sets of the journals of each of the two houses of congress; of the journals of each house of the general assembly of the state, twenty-five sets; of the acts of each session of congress, twelve sets; of the acts of each session of the general assembly of Kentucky, fifty sets; of the reports of the decisions of the court of appeals, ten sets; and such other books as may be purchased by or given to the library.

L. 404.

ARTICLE IV.

Who may use the Books.

Who may use the books.

L. 405-6.

§ 1. The following persons may use the books of the state library: members and officers of the general assembly; the state officers whose offices have, by law, to be kept at the seat of government; the judges of the court of appeals and circuit court of Franklin county, and of the federal court for Kentucky.

Responsibility.

§ 2. The use of the books shall be under the responsibilities stated in this chapter.

CHAPTER XCVI.

STRAYS.

By whom strays may be taken up.
The mode and manner of taking up.

By whom taken up, &c.

M. & B. 1488.

§ 1. Stray cattle may be taken up and posted by any freeholder by legal or equitable title, by a tenant of an unexpired lease for not less than three years, or a keeper of a toll-gate, when found on their respective places of residence.

When taken up.

§ 2. Stray horses, mules, jacks, or jennets may be posted at any time. Other stray cattle shall not be taken up or posted between the first day of April and the first day of November, unless taken within the inclosure of the taker up, having broken into the same.

When right of property to vest in taker up.

§ 3. The absolute property in a stray horse, mule, jack, or jennet, shall be vested in the taker up at the expiration of two years after the justice shall have received the evidence of the valuation and administered the oath to the taker up. The like right in other stray cattle shall be vested in the taker up after the expiration of twelve months from the day the same shall have been posted.

When valuation to be paid to owner.

§ 4. The taker up of any stray cattle shall be bound to pay to the owner the valuation of the same, if the stray be a horse, jack, jennet, or mule, upon due and legal proof of his right to the same, at any time within three years from the day the right of property in the stray shall have been vested in the taker up. The valuation of all other stray cattle to be paid in like manner, upon proof of ownership, at any time within one year after the right of pro-

perty is vested in the taker up. If the stray shall die or escape from the possession of the taker up before the owner shall have claimed the same, he shall not be bound to pay the valuation or account for the stray. The proof of such death or escape shall rest upon the taker up.

Fine for altering marks, &c.

§ 5. If the taker up of any cattle shall, either before or after the same be posted, alter the marks or brands of the same, or shall trade, sell, or remove the same out of the state, kill or destroy the same, if the stray be a horse, mule, jack, or jennet, within two years after the same has been posted, if of other cattle, within twelve months after the day the same was posted, he shall, upon conviction, be fined fifty dollars for each offense.

Duty of justice before whom stray horse, mule, &c., is taken.

§ 6. Strays shall be taken up and posted in the following manner:

1. If a horse, mule, jack, or jennet, over two years old, be taken up, the same shall be taken before a justice of the peace of the district, whose duty it shall be to administer to the taker up an oath, in substance, that said animal was taken up by him as a stray on his premises or place of residence within the ten days next preceding; that he has not changed, defaced, or altered the marks or brands of the animal. The justice shall then value the stray himself, shall take a correct description of the flesh marks, ages, and brands of the same, all of which, together with the name and residence of the taker up, he shall record in a book to be kept by him for that purpose, and give to the taker up a copy of the same, and also deliver to the clerk of the county court a certified copy of the same record within thirty days, for the whole of which service he shall be paid by the taker up fifty cents.

Clerk to record and post.

2. The clerk shall immediately record the stray note or certificate aforesaid of the justice, in a book to be kept by him for that purpose, and he shall cause a true copy of the same to be posted at the door of the court house at the next two succeeding court days of his county. His fee for the whole of which service shall be fifty cents, to be paid by the taker up.

Publication.

3. The taker up shall, within one month after he has posted the stray, cause to be published for one month, or by four weekly insertions, a copy of the justice's certificate in a newspaper, if one be published in the county.

When stray under two years old

4. If the stray be under two years old, the justice shall, in addition to the oath hereinbefore required, take, on the oath of said taker up, a description of the stray, and also

the oath of some honest housekeeper, of the value of the same, and proceed as hereinbefore directed when the stray is over two years old.

Other cattle.

5. If the stray be of other cattle, the like oath shall be administered by the justice to the taker up, and the stray shall be valued and described by a housekeeper upon his oath, and the justice and clerk shall proceed as required in the previous subsections in reference to stray horses.

Fees, &c., to be paid by owner.

6. The taker up shall be paid by the owner of the stray if and when he claims the same or its value, the fees paid the justice and clerk and the costs of advertising, and also a reasonable sum for keeping the stray, where the same has not been used, and likewise a fee of one dollar for each horse, mule, jack, or jennet, and one shilling for any other stray posted.

Penalty.

§ 7. If any person shall violate the provisions of this chapter, or fail or refuse to comply with its provisions, he shall forfeit and pay ten dollars for each offense.

CHAPTER XCVII.

SURETIES AND CO-OBLIGORS.

How sureties may be relieved or indemnified.
Liabilities and remedies of Co-Sureties.
Limitation of actions against Sureties.

Notice to be given.

M. & B. 1436.

§ 1. When a surety or his representative wishes, for good cause, to be relieved from further liability, as such, in the official bond of any officer, he may, by written notice to the officer, require him by a named day to appear and give a new bond, with other surety, before the court in which, or whose clerk's office the original was given or is kept; or, if not so given or kept in any court or clerk's office, then before the circuit court for the county of the officer's residence.

The officer shall have reasonable notice, of not less than ten days, of such proceeding, if he be within the state. If not within the state, thirty days' notice shall be given, by advertisement posted at the court house door of the county in which he resides or last resided, or by publication in some newspaper printed in the county, if there be any such printed therein, or written notice left at his residence.

Not bound if new bond be given.

§ 2. If a new bond be given, the surety shall not be bound for any act of the principal thereafter. If the officer fail to give a new bond on the day named, or such other reasonable day as the court may prescribe, he shall, by order of the court, be removed from his office.

Surety of fiduciary, &c.

§ 3. The surety of any fiduciary, or other person, other than a personal representative or guardian, giving bond, with surety, pursuant to law or order of court, before entering on the duties of his trust or employment, may in like manner be relieved, by requiring the execution of a new bond, with other surety; or, on the failure of the principal to give the same, the court shall revoke or suspend his powers, and make such other orders as may thereupon be needful, for the benefit of the estate or trust confided to him.

May sue out attachment, &c.

§ 4. The surety of any officer, or of any such fiduciary, or of such other person, or of any person for whom he may be bound by private agreement, may, by attachment, restraining order, *ne exeat*, or other order out of chancery, obtain indemnity, or coerce the principal to give indemnity, by adequate security against his liability as such surety.

Co-obligors may have attachment, &c.

§ 5. A co-obligor or co-contractor may, in like manner as in the last section named, obtain indemnity for his liability, for any or all of the other obligors or contractors, whether the debt be due or not, where the other obligor has removed, or is about to remove himself, or his property or the greater part thereof, out of the state, or is wasting his estate, or is about to sell the same, with intent to cheat his creditors.

Affidavit.

§ 6. No such order as indicated in the last two sections shall be issued, unless the complaint is verified by affidavit, and the complainant first gives bond, with good surety, to satisfy the defendant all costs and damages he may sustain by reason of the order, if it be improperly obtained.

Remedy by and against co-sureties &c.

§ 7. Where a surety pays the whole, or any part of a debt or liability for which he is bound as such, he may recover the amount, with interest from time of payment, from the principal, by action at law, or by motion after ten days' notice in writing. He may also sue a co-surety, separately, or as a joint defendant with the principal, in such proceeding, and in like manner recover judgment against him, separately or jointly, at the same time, for his proper part of the debt or liability so paid, as if the

sureties were the sole obligors; and if one or more of several co-sureties be insolvent, or reside out of the state, the recovery against the solvent and resident surety or sureties shall also be for a proper part of the share of liability pertaining to such insolvent or non-resident surety. If the surety afterwards make further payment on the debt or liability, he may again have like remedy therefor. But where the payment is made, except under judgment or decree, in a suit of which the principal or co-surety had notice, nothing herein shall preclude either of them from making such defense as he might have made against the original demand.

Judgment paid by surety to be assigned him.

§ 8. Where the surety pays the whole or part of a judgment or decree, he shall have a right to an assignment thereof, from the plaintiff or the plaintiff's attorney, in whole or in part, and such assignment shall give him the right to sue out or use any existing execution, or otherwise control the judgment or decree for his own benefit, against the other defendants, after satisfaction in full to the plaintiff therein, so far as to obtain satisfaction from the principal for the whole amount so paid by the surety, with interest, or from any co-surety, his proper part of such payment, according to the principles of the last section. Such assignment shall also transfer, to the surety so paying, the benefit of any lien existing under or by virtue of such judgment or decree; and the right to the assignment shall exist, though the money was made or secured by sale of the property of the surety, under execution.

Co-obligors to have assignment.

§ 8. Co-obligors or co-contractors shall, as between each other, have the full benefit of the last two sections, as if they were co-sureties.

After notice, and no suit, &c., surety discharged.

§ 10. A surety, co-obligor, or co-contractor, or one of several defendants to a judgment or decree, may, by notice in writing served in person within the state, on the creditor or plaintiff or his attorney, require him to sue or issue execution; and if the creditor shall not sue to the next term thereafter at which he can obtain judgment, and in good faith prosecute the suit with reasonable diligence, or if the plaintiff shall not, within ten days thereafter, sue out execution, and in good faith prosecute the collection thereof, such so-surety, co-obligor, co-contractor, or defendant shall be discharged from all liability as such, except for the proper share of such co-obligor, co-contractor, or defendant, according to the then existing condition of the several obligors, contractors, or defendants; and in any joint suit

against the whole, or separate suit against him, judgment shall be rendered against him separately, and only for such proper share.

Execution delayed for a year, surety discharged.

§ 11. If the plaintiff in any bond having the force of a judgment, shall, at any time for the space of a year, whilst he is entitled to have execution, fail to issue execution, and in good faith prosecute the collection thereof, the surety in such bond shall be released from all liability as such, and any execution thereafter issuing on the bond shall be so indorsed.

M & B. 645.

Discharged after seven years.

§ 12. A surety shall be discharged from all liability under any judgment or decree, after the lapse of seven years without any execution issued thereon, and prosecuted in good faith for the collection thereof; and a surety in any bond given in the course of any judicial proceeding, shall be discharged from all liability thereon, unless suit be brought thereon within seven years after the accruing of the cause of action.

L. 538.

Surety of administrator, &c., discharged after five years.

§ 13. A surety for an executor, administrator, guardian, or curator, or for a sheriff to whom a decedent's estate has been transferred, shall be discharged from all liability as such, to a distributee, devisee, or ward, when five years shall have elapsed without suit, after the accruing of the cause of action, and after the attaining of full age by the devisee, distributee, or ward; but the *laches* of one shall not affect the right of another.

Discharged after seven years in all cases.

§ 14. A surety in any obligation or contract, other than those provided for in the next two preceding sections, shall be discharged from all liability thereon, when seven years shall have elapsed without suit thereon, after the cause of action accrued.

Qualifications & limitations to the three sections above.

§ 15. The limitations given in the next three preceding sections shall not apply to so much of the time elapsed when there was no executor, administrator, or other person authorized to sue, nor to the six months during which suit cannot be brought against a personal representative; nor to any delay assented to by the surety, in writing. And if judgment or decree be rendered for the plaintiff, in any case provided for in those three sections, and the same be afterwards reversed or arrested, so that the plaintiff takes nothing thereby, he may commence another suit within one year thereafter. And if such surety shall abscond, conceal himself, or by removal from the state, or otherwise, obstruct or hinder his being sued, the time of such obstruction shall not be computed as part of the time of limitation

in said sections allowed. And if such judgment or decree be obstructed by appeal, supersedeas, or injunction, the time of such obstruction shall also be disallowed.

Sheriffs to have assignment of judgments paid by them.

§ 16. If a sheriff or other officer is compelled to pay the whole, or any part of an execution, by reason of some default of his concerning the same, he shall be entitled to an assignment of the judgment or decree, and a substitution in the place of the plaintiff, in the same manner as is herein provided in favor of a surety paying a judgment or decree.

CHAPTER XCVIII.

SURVEYORS.

ART. 1. Bond and oath of office.
ART. 2. Powers and duties of Surveyor.
ART. 3. Miscellaneous Provisions.

ARTICLE I.

Bond and oath of office.

Bond.

M. & B. 1406.

§ 1. The surveyor of each county, before he enters on the duties of his office, shall give an obligation and good surety, in the county court thereof, for the faithful and due execution of the duties of his station.

Clerk attest, &c.

1. The clerk of the court shall attest and preserve the obligation.

Suits thereon.

2. Any person aggrieved may institute suit on such obligation. It shall not be discharged by the first recovery, but may be put in suit until every person aggrieved is indemnified.

ARTICLE II.

Powers and duties of Surveyor.

Deputies.

V. R. 477.

§ 1. On the recommendation of the surveyor of a county, one or more deputies may be appointed by the county court thereof, the court being satisfied of the qualification and fitness of such persons.

Duties and responsibilities.

1. The principal shall be answerable for the conduct of his deputies.

2. A deputy surveyor may act in any case in which a principal could act.

3. He shall be subject to the same penalties as the principal, and may be removed at his discretion, which removal must be entered on the records of the county court.

§ 2. Every surveyor shall promptly and faithfully execute every order of survey, made by any court, of lands lying in his county, and make out and return a true plat and certificate thereof, accompanied by explanatory notes. If he fail to do so, he shall forfeit twenty dollars to the party injured, and with his sureties shall be, moreover, liable, jointly and severally, to an action for damages, on his official bond. Orders of survey. V. R. 478. Penalty for failure

§ 3. In surveying lands, which shall have been previously surveyed, he must execute the same by the magnetic meridian, but shall certify and show in his plat the degree of variation in the magnetic needle from the true meridian at the periods of the original survey and of the re-survey, if it can be done. Lands previously surveyed. V. R. 478.

1. Every survey shall be made by horizontal measurement. Horizontal measurement.

2. A surveyor failing to comply with any of the provisions of this section shall forfeit and pay to the party aggrieved fifteen dollars; and he, with his sureties, shall be liable to such party for any damage or costs sustained by such failure. Penalty for failure

ARTICLE III.

Miscellaneous Provisions.

§ 1. When the office of surveyor is vacant, the county court shall order the clerk to take charge of the books and papers of the said office, and the clerk during such vacancy shall give certified copies of the same, when demanded, which shall be evidence in any court as if certified by the surveyor. When another surveyor is qualified, the court shall order that he have charge of said books and papers. Vacancy.

§ 2. An order of survey may in any case be directed to any person, at the discretion of the court, or by the consent of the parties. By whom survey made.

CHAPTER XCIX.

TAVERNS, TIPPLING HOUSES, &c.

ART. 1. Taverns.
ART. 2. Licensed Merchant.
ART. 3. Private Entertainment.
ART. 4. Tippling Houses.
ART. 5. Miscellaneous Provisions.

ARTICLE I.

Taverns.

Who a tavern keeper.

M. & B. 1381.
Tax to be pre-paid.

§ 1. Any person who shall obtain a license therefor shall be deemed a tavern keeper. Before any such license shall be granted, the person applying for the same shall pay to the clerk of the court the tax thereon.

County court may license.

M. & B. 1497.

M. & B. 1381.

§ 2. The county courts shall have power to grant licenses to keep a tavern in their respective counties for one year from the date of the grant, and until the next succeeding county court. The order granting the license shall state to whom the same is granted, and the place where the tavern is to be kept, and the period for which the license is granted.

To whom not to be granted.

M. & B. 1497, 1504.

§ 3. No county court shall grant a license to any person to keep a tavern, who shall be of bad character, or who does not keep an orderly house, nor unless the court shall believe the applicant is prepared with houses, stabling, bedding and provender, to keep an orderly, law-abiding tavern. The court shall also be satisfied that the keeping of a tavern at the place proposed is necessary for the accommodation of the public.

Not to person of color.

M. & B. 1503-4.

Oath of applicant.

§ 4. No tavern license shall be granted to any person of color, nor shall any such license be granted to a white person, until he shall take an oath, in open court, that he in good faith intends to keep a tavern for the accommodation of the public, and that he will not, during the period his license remains in force, sell or give, or cause to be sold or given, to any slave of which he is not the owner and possessor, or which is not in his employ by contract with the person having the rightful authority to hire the slave, any wine, brandy, whisky, or any other spirituous liquor, or a mixture thereof, without an order from the owner or other person having authority over such slave.

Bond to be given.
M. & B. 1498.

§ 5. Every person who shall obtain a license to keep a tavern, shall, at the time the same is granted, enter into an

obligation in court, to the commonwealth, in substance as follows:

Whereas, A. B. has obtained a license to keep a tavern at ———, in the county of ———. Now we, A. B., principal, and C. D., his surety, do hereby covenant and agree that the said A. B. shall continually find and provide in said tavern good, wholesome, cleanly lodging and diet for travelers, and stabling and provender or pasturage for horses or mules, during the period the license remains in force, and that he will not suffer any gaming in his house or on his premises, and will not suffer any person to tipple or drink more than is necessary in his house or on his premises, or at any time suffer any scandalous or disorderly behavior in his house or on his premises. Given under our hands this ——— day of ———.

Duty of tavern-keeper.

§ 6. Every person licensed to keep a tavern shall constantly provide the same with good, wholesome, cleanly lodging and diet for travelers and their servants, and stabling and provender or pasturage for their horses and mules. V. R. 444.

Proceedings against, for failure.

§ 7. When a tavern keeper shall be presented for a breach of his obligation, or on the information of any person, the court may hear and determine the matter in a summary way by a jury; and if the jury find that the tavern keeper has been guilty of a breach of his obligation, the court shall give judgment against him and his surety for the sum of three hundred dollars; they having first had ten days notice of the procedure; and no license shall be granted to such tavern keeper thereafter. M. & B. 1500.

How tavern suppressed.

§ 8. Any judge of the county court, upon his own view or knowledge, or upon the information, on oath, of two or more credible witnesses, may suppress any tavern in his county until the next succeeding county court, when the offenses enumerated in this chapter, and contrary to his obligations, may be inquired into by the court; and if the court shall, on such inquiry, adjudge such tavern keeper guilty of any of said offenses, or a breach of his obligation, it shall enter up an order disabling him from keeping tavern thereafter. But if the court shall adjudge the tavern keeper not guilty, it shall enter an order restoring his right to keep tavern under his license. M. & B. 1500.

Trustees to give information.

§ 9. It shall be the duty of every trustee of a town, either upon his own knowledge, or on the information of a credible person, of any offense committed by a tavern keeper, under the provisions of this chapter, within the town of M. & B. 1503.

which he is a trustee, to make the same known to the judge of the county court, who shall cause the alleged offender to be summoned to appear before him, at a time and place designated, to show cause why his license shall not be suspended until the next county court.

Proceedings thereon.

1. At the time fixed, the judge of the county court may hear and decide the case, and enter an order of suspension or acquittal, as shall seem just and right.

2. If he shall suspend the license of the tavern keeper, he shall forthwith return his proceedings to the county court, which court shall, at its next term, hear and decide the case.

Appeal or writ of error.

§ 10. An appeal or writ of error may be prosecuted by the county attorney to the circuit court, or by the defendant, from any decision of the county court under this chapter, but the same, until reversed in the circuit court, shall not suspend the decision of the county court. In such cases the circuit court shall be judges of the law and fact, and no jury shall be necessary.

Selling after suppression.

M. & B. 1500.

§ 11. Any person who shall keep a tavern or sell wine or spirituous liquor, or the mixture thereof, after his license is suppressed or suspended, or after a disabling order is entered as provided in this article, until such order is reversed or set aside, shall be adjudged guilty of keeping a tippling house, and fined accordingly.

Second suspension.

M. & B. 1501.

§ 12. A tavern keeper whose license shall be suspended a second time shall not be reinstated in his license. Nor shall another license be granted to him for twelve months after the last suspension.

Rates of charges.

M. & B. 1498.

§ 13. The county court shall, once in every year, fix the rates and prices to be paid at taverns within the county for wine, liquors, lodging, diet, stabling, provender and pasturage; any county court failing herein shall be fined thirty dollars on the presentment of a grand jury.

Table of rates to be set up.

M. & B. 1499.

§ 14. Every tavern keeper shall, within one month after the rates are fixed by the court, obtain from the clerk thereof a fair table of such rates, and set up the same in the public room of his tavern house, and keep the same up, under the penalty of seventy-five dollars, to be recovered on the presentment of a grand jury.

Fine for exceeding rates.
M. & B. 1499.

§ 15. Any tavern keeper who shall demand and take any greater price for any one or all of the items in the rates fixed by the court, shall forfeit and pay five dollars.

List of tavern rates.

§ 16. The clerk of each county court shall make out a list of every licensed tavern keeper in his county, with the

date thereof, and deliver the same to the clerk of the circuit court of his county at least two days preceding each term of that court, which shall be kept in the office of the latter clerk, and laid before the grand jury for their information. The clerk of either court failing to discharge the duty herein prescribed shall be fined twenty dollars. M. & B. 388, 1382.

§ 17. Distillers are allowed to obtain license to sell spirituous liquors, in the same way, and under the same terms, restrictions, and penalties as merchants. Distillers.

ARTICLE II.

Licensed Merchant.

§ 1. A merchant may sell at his store house, to be taken off and drank elsewhere than on his premises or adjacent thereto, any wine, spirituous liquors, or the mixture thereof, in any quantity not less than a quart. But before he shall so sell he shall obtain from the county court a license therefor. Merchant. A. 1848-9, 45.

ARTICLE III.

Private Entertainment.

§ 1. Any person other than the keeper of a tavern or house of private entertainment, who shall entertain in his house another, or furnish him with diet or storage for his goods, not making an agreement for compensation therefor, shall not recover any thing against the person so entertained or furnished with diet or storage, or against his estate, but the person so furnishing another shall be considered as doing the same of courtesy. Who may recover against guest. M. & B. 614.

§ 2. Any person not a tavern keeper who shall furnish for compensation lodging or diet to travelers, or to one boarding in his house, or provender in his stable or on his land for horses or mules, shall be deemed the keeper of a house of private entertainment. Who keeper of private entertainment. V. R. 443.

§ 3. No license shall be required to keep a house of private entertainment. No license. M. & B. 1504.

ARTICLE IV.

Tippling Houses.

§ 1. Any person, unless he shall have a license therefor, who shall sell in any quantity wine or spirituous liquors, or the mixture of either, in any house, to be drunk therein, or on or adjacent to the premises where sold, or shall sell the same, and it shall be so drunk, shall be deemed Who guilty of keeping tippling house. M. & B. 1382.

guilty of keeping a tippling house, and fined the sum of sixty dollars.

Fine therefor.

M. & B. 1501.

§ 2. If any person shall keep a tippling house for three months at one time, he shall be liable to a fine of two hundred dollars, to be recovered by the presentment of a grand jury.

Second offense.

§ 3. Twice selling in or at the same house, under the circumstances named in the first section of this article, shall be evidence of the keeping of a tippling house. If on the trial of a presentment for keeping a tippling house, the jury find the defendant not guilty of keeping such house, they may, if the evidence will authorize the same, find him guilty of retailing, as provided in the next article of this chapter, and he shall be fined accordingly.

Defendant may be found guilty of retailing.

ARTICLE V.

Miscellaneous Provisions.

Retailing without license.

M. & B. 1502.

§ 1. Any person who shall, without lawful authority, directly or indirectly, sell by retail in any quantity whatever, to be drunk at the place of sale, or on the same premises, or adjacent thereto, or sell and the same shall be so drunk, any wine or spirituous liquors, or any mixture therewith, in any booth, arbor, boat, stall, float, public square, market house, or upon a race field, or any other open place whatsoever, shall be fined twenty dollars for each and every offense, on the presentment of a grand jury.

Near place of worship.

M. & B. 1502, 1284.

§ 2. No person shall vend or buy within one mile of any church, meeting house, or other place of public worship, during divine service, any wine or spirituous liquor, or a mixture therewith, to be drunk or which shall be drunk within that distance of such worship, except in houses authorized by law. Any person offending herein, and each person so drinking, shall be fined ten dollars for each and every such offense.

May be convicted on trial for tippling house.

§ 3. Any person presented for keeping a tippling house, or for selling by retail, and acquitted thereof, may, on the same trial, be found guilty and fined under the preceding sections, if the evidence given on the trial shows that the defendant is guilty of the offense therein described.

No prosecutor necessary.

M. & B. 1504.

Charge to be given to grand jury.

§ 4. No prosecutor shall be necessary under any of the provisions of this chapter. Presentments may be made under it on the information of any one of the grand jury. Each circuit court shall at every term give it in special charge to the grand jury.

An act to amend an act, entitled, an act to regulate the retailing of ardent spirits—approved December 13, 1851.

How tavern license may be obtained.

A. 1851-2, 8.

§ 1. That upon granting any tavern license by any court, or the trustees or authorities in any county, city, or town in this commonwealth, there shall be charged to the party obtaining said license a tax to the commonwealth of not less than five nor more than ten dollars, to be collected and accounted for as now required by law.

To sell spirituous liquors not implied by tavern license.

§ 2. That the privilege to sell spirituous liquors shall not be implied or embraced in any license to keep a tavern, as heretofore, nor in a license to keep any coffee house, boarding house, restaurant, or other place of entertainment licensed by any county court, or the trustees or other authority in any town or city, unless the said court, trustees, or other authority shall deem it expedient so to do, and shall specify said privilege in such license.

Additional tax to be charged for license to sell liquor

§ 3. It shall be the duty of any court, trustees, or other authority, who, in the exercise of their discretion, shall grant a license to retail spirituous liquors in connection with a license to keep a tavern, coffee house, restaurant, or other place of entertainment, to charge to and collect from the person so obtaining such license, a distinct and additional tax to the commonwealth, for the privilege aforesaid, of not less than ten nor more than twenty-five dollars, at their discretion, which sums shall be paid over and accounted for as taxes on tavern licenses are paid.

License not to be granted to druggist or merchant to sell less than a quart, by clerk.

§ 4. That no license shall hereafter be granted to any merchant, druggist, or other person, to sell spirituous liquor in quantities not less than a quart, by the clerk of any county; but all such persons as, by existing laws, may obtain such licenses from clerks, shall apply to the county courts, and the county courts may, in their discretion, grant such licenses, provided such applicants are merchants or druggists in good faith, and charge for such license a tax of not less than five nor more than fifteen dollars, and cause the same to be collected and accounted for as taxes on tavern licenses: *Provided*, that no druggist who may sell ardent spirits or wines for medical purposes only, shall be required to procure a license to sell the same. (*a*)

(*a*) This act was approved on the 13th December, 1851, and is unquestionably the law regulating the mode and manner of granting licenses, &c., and fixing the tax, from its passage until the 1st July, 1852. The revised statutes were adopted and ap-

CHAPTER C.

TOWNS.

ART. 1. How Towns may be established.
ART. 2. Concerning Trustees.
ART. 3. Powers of Trustees.
ART. 4. Duties of Trustees.
ART. 5. How additions to Towns may be made.
ART. 6. Streets and Alleys may be extended.
ART. 7. Miscellaneous Provisions.

ARTICLE I.

How Towns may be established.

County court may establish towns.

M. & B. 1505.

§ 1. The county court of each county, on the application of the proprietor, if it deem the same advantageous and necessary to the public at large, may establish a town, and thereby vest the title of a designated tract of land in trustees and their successors for that purpose.

Metes and bounds.

1. The court, in the order establishing a town, must give the metes and bounds, and the quantity of land embraced therein.

Name.

2. And fix the name of the town, and appoint trustees for the same.

Notice of application.

3. Three months notice of an intended application to establish a town must be given, immediately preceding the

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proved on the 7th January, 1852, to take effect on the 1st July, 1852.

A question arises, whether this revised chapter, fixing the tax on tavern licenses, and prescribing to whom such licenses shall be granted, and on what conditions, with the privilege of retailing, &c., is to be regarded as the law of the land, or whether this act of 13th December is in force after the 1st of July, 1852, so far as it is inconsistent with the provisions of this chapter.

The only discretion given to the county court by this chapter, to give or withhold a license to keep a tavern, is when the judge may be of opinion that a tavern is not needed for public accommodation.

The judge of the county court has no discretion upon the subject of granting licenses to merchants or distillers in this chapter. He is only to be satisfied that the applicant is a merchant or distiller, in good faith, and a man of good character. He is not by this chapter vested with the power to withhold the license, because of the evil of retailing and drinking ardent spirits.

The act of the 13th December vests him with this power. When the revised chapter takes effect, is not so much of this act as is inconsistent with its provisions repealed?

same, by an advertisement posted up at the court house door of the county, and by publication in some authorized newspaper.

Land divided into lots.

4. The land so vested in trustees shall be laid off into convenient lots, streets, and alleys, and each lot numbered and each street named; and a plat thereof must be recorded in the county court clerk's office.

Lots sold at auction.

5. The lots shall be disposed of by the trustees, at public auction, on such credit as the proprietor may direct, proper notice of the time and place of sale being given.

Surety for sale money.

6. Obligations with good surety for the sale money must be taken by the trustees, payable to the proprietor, and delivered to him for collection.

Conveyance of title.

7. The trustees shall, when the sale money is paid, convey the title of the lots to the respective purchasers or their transferees.

Bond of proprietor.

8. When a town is established, the court shall take from the proprietor bond and good surety, payable to the commonwealth, stipulating that if any person shall establish a better title to the land on which the town, or any part thereof, is erected, he will pay and account to such person for all sums of money, with interest thereon, for which the lots, or parts of lots, included within the better title, were sold by the trustees.

Suits thereon.

9. Suits may be instituted from time to time, on such bond, by any person interested.

ARTICLE II.

Concerning Trustees.

Election of trustees.

§ 1. Each town shall annually, the first Monday in June, elect five trustees; ten days previous notice, in writing, of the time and place of each election must be set up by the clerk of the board, at five of the most public places in the town. M. & B. 1509.

Tie.

1. If two or more persons receive an equal number of votes, the clerk shall decide who is elected.

Who eligible.

2. No person shall be eligible to the office of a trustee who is not a citizen of the town and a qualified elector of this commonwealth.

Who may vote.

3. No person shall vote at an election of trustees who has not resided in the town where the election is held sixty days next preceding the same, and who is not a citizen of the state.

By whom conducted.

4. Elections of trustees shall be held and conducted by the clerk of the board, who must return the result to the

old board of trustees, who shall cause the same to be recorded in their journal.

If no election, trustees appointed

5. If, from any cause, no election is held in any town at the time prescribed by law, the county court of the county shall appoint five trustees for such town, to act until the next stated election.

When enter on duties.

6. Trustees shall enter upon the duties of their office on the Monday next succeeding their election or appointment, and continue in office until their successors are qualified. A trustee appointed to fill a vacancy shall enter upon the duties of his office immediately after he qualifies as such.

Oath.

7. Every trustee and clerk of the board of trustees shall, before he enters on the duties of his station, take the oaths prescribed in the constitution.

ARTICLE III.

Powers of Trustees.

Trustees may make rules, &c.

M. & B. 1506.

§ 1. Trustees of towns may make such rules and regulations for the government thereof, not inconsistent with the laws and constitution, as they may deem necessary and proper.

Fill vacancies.

1. They may fill vacancies in their board until the next stated election.

Keep streets in order.

2. They must cause the streets of the town to be kept clean and in good order.

Levy tax.

M. & B. 1509.
M. & B. 1512.

3. They may levy an annual tax on the males over twenty-one years of age, residing in the town, of not exceeding one dollar upon the head, and may levy an *ad valorem* tax on the real estate and slaves in the town, of not exceeding twenty-five cents on the hundred dollars.

Appoint clerk, assessor, &c.

4. They may appoint a clerk, assessor, town warden, collector, and treasurer, and take from the two latter bond and good surety for the faithful performance of their duties.

Three a board.

5. Three trustees may constitute a board to do business.

M. R. 177.

§ 2. The trustees of each town shall be a body corporate, and by that name may sue and be sued, and may appoint all necessary agents and attorneys in that behalf. They may elect one of their body chairman of the board.

May hold forty acres for cemetery.
M. R. 178.

§ 3. They shall have the power to purchase, take, and hold the title to not exceeding forty acres of land, in or near the town, for a public cemetery.

1. They shall have the power to improve such ground, and appoint a keeper thereof. May improve.

2. To sell small parcels of the ground to individuals for the purpose of interment. Sell small parcels.

3. To receive and collect subscriptions to aid in purchasing, improving, taking care of, and repairing such ground. Receive subscriptions.

§ 4. They shall have the power to tax any show or exhibition, and bowling alleys, within the town, or within a quarter of a mile of the limits thereof, to the same amount as they are taxed by the state. Tax shows, &c. L. 569.

§ 5. No stallion or jackass shall stand within the bounds of any town, without first being authorized so to do by a license from the trustees thereof, designating the place at which he is to stand. License, stallions and jacks. L. 570.

For a violation of this section, the keeper and owner of such animal shall be jointly and severally liable to a fine of five dollars for each day, to be recovered by warrant, in behalf of the trustees of the town. Fine for standing without license.

ARTICLE IV.

Duties of Trustees.

§ 1. The trustees of each town shall keep a journal of their proceedings, and at the request of a member the ayes and noes on any question shall be recorded. Trustees to keep journal. V. R. 285.

1. At the next meeting the proceedings shall be read and signed by the member who presided at the last preceding meeting. If he is not present, by the person presiding when they are read. To be read.

2. No member shall have a vote on a subject in which he has a private interest. Member interested.

3. A meeting of the board may be called by the chairman, or by two members. Called meeting.

4. They shall keep an account of all moneys levied, collected, and disbursed, and state on their journal for what objects each sum is disbursed. Keep account, &c.

5. Their journal shall, at all times, be open to the inspection of the citizens of the town. Journal open to inspection.

§ 2. They shall, once in each year, give a full and fair statement in writing, signed by the chairman, of all sums collected, and of all sums disbursed the preceding year, and what for, and of all debts due them, or owing by them; which shall be posted up for inspection at three of the most public places in the town. Annual statement to be posted up. M. & B. 1512.

ARTICLE V.

How additions to Towns may be made.

Boundaries extended or established. M. & B. 1507.

§ 1. The boundaries of a town may be extended or established in the following manner:

Advertisement.

1. The proprietors of the land, or the trustees of the town, must advertise as is required to establish a town.

Application to county court.

2. Such advertisement having been made, the party making it may apply to the county court of the county, which court may, if they deem it necessary and proper, add a specified parcel of land to such town.

Order shall vest title.

3. The order of court shall vest the title of the land so added in the trustees of the town.

Powers and duties of court and trustees.

4. The powers and duties of the court and trustees shall be the same in every respect, where such an addition is applied for and made as when a town is originally established.

ARTICLE VI.

Streets and Alleys may be extended.

Streets and alleys extended. M. & B. 1513.

§ 1. The trustees of any town near a river, where there is land intervening between the town and the river, may, by petition to the county court, procure the streets and alleys of the town leading towards the river to be extended to the low water mark thereof.

Proprietors summoned.

1. The court, on the filing of such petition, shall cause the proprietors of the land through which the extension is proposed, to be summoned or notified to show cause, if any, against such extension.

Writ of ad quod damnum.

2. If the proprietor or his agent or attorney so desire, the court shall cause a writ of *ad quod damnum* to issue and a jury to be impanneled, none of whom shall be residents of the town or owners of property therein.

Jury.

3. The jury shall meet on the ground, and be sworn as in case of a road, and the parties notified of the time of such meeting. After viewing the ground, they shall say what damage the proposed extension will be to the respective proprietors of the land.

Inquest.

4. The inquest, in writing, must be signed by the foreman of the jury, and returned to the county court by the sheriff or other officer.

Order.

5. On the return of the inquest the court may, upon the payment by the town of all damages and costs, order the streets and alleys to be extended and opened.

ARTICLE VII.

Miscellaneous Provisions.

Shooting in town.

§ 1. No person, except a gunsmith on his own premises, shall shoot off a gun or pistol in a town. Any person offending herein shall be fined five dollars and costs, to be collected by the trustees, and applied to keeping the streets of the town in repair.

M. & B. 1508.

Showing, &c., of stallions & jacks.

§ 2. No person shall show a stallion or jackass on the streets, or the public square of a town; nor shall any person let such horse or jackass to a mare or jennet within the bounds of a town, except in an inclosed out-lot thereof. Any person offending herein shall be fined five dollars and costs, and imprisoned until the fine and costs be paid; the fine to be collected and applied as is directed in the next preceding section.

Repairing streets, &c.

§ 3. Trustees of towns shall be responsible for not keeping the streets and alleys thereof in proper repair and unobstructed, in the same manner and to the same extent that surveyors of roads are responsible, and shall be liable to a fine of ten dollars if they fail to enforce the two preceding sections.

A. 1846-7, 9.

Working public roads.

§ 4. The inhabitants of towns shall not be compelled to work on the public roads more than half a mile beyond the town limits.

M. & B. 1509.

CHAPTER CI.

TREASURER.

ART. 1. Qualifications, oath, bond, &c.
ART. 2. His duties in keeping accounts and making reports.

ARTICLE I.

Qualifications, oath, bond, &c.

Qualifications.

§ 1. No person shall be elected or appointed treasurer unless he be a citizen of the United States, at least twenty-four years of age, nor unless he has resided within the state of Kentucky two years next preceding his election or appointment.

M. & B. 1515.

When to enter on duties.

§ 2. The treasurer shall enter upon the duties of his office the first Monday in January next succeeding his election or appointment. He shall, on or before that day, take the oaths of office, and execute bond, with surety worth at

Oath and bond.

the time, jointly or severally, three hundred thousand dollars, to be approved by the governor, and filed in the office of the secretary of state, for the faithful discharge of the duties of his office; upon which, for any breach thereof, suit may be instituted from time to time, and recovery had to the extent of the damages sustained by the commonwealth or by others.

When appointed by governor.

If the treasurer is appointed by the governor under the twenty-sixth section of the eighth article of the constitution, he shall, upon taking the oaths of office and giving bond, forthwith enter upon the discharge of his official duties.

Copy of bond, &c., communicated to legislature.

§ 3. The governor shall, within ten days, communicate to the legislature a copy of the treasurer's bond, and the fact of his having approved the surety, and taken the oaths of office, if in session; otherwise, within ten days after the commencement of the session succeeding the date of said bond.

Office at seat of government.

§ 4. The treasurer shall reside and keep his office at the seat of government. Upon the expiration of his term, or resignation of his office, or death, the secretary of state

Examination of accounts, &c., at end of term.

and auditor of public accounts shall examine his accounts, state the same, count the money in the treasury, take an inventory of the books and stationery, and implements of the office; which shall all be passed to his successor, who shall receipt for the same, which receipt shall be filed in the office of secretary of state.

Appointment of person to act in treasurer's absence or sickness.

§ 5. If the treasurer is sick and unable to discharge the duties of his office, or if he absents himself from the seat of government, it shall be his duty to recommend, in writing, to the governor, some person to discharge the duties for him during such sickness or absence; and if the governor approves the recommendation, he shall cause the same to be entered upon the executive journal; after which, the person so recommended may perform the duties of the treasurer until he is restored to health, or returns to the seat of government. The treasurer and his sureties shall be responsible on their official bond for the acts of the person thus appointed by the treasurer.

Suspension of treasurer.

§ 6. When, in the opinion of the governor, auditor, and attorney general, or a majority of them, the public funds are in danger, by being under the control of the treasurer, they shall have power to suspend him from official duties until the meeting of the general assembly, to whom the facts shall be reported; and the governor shall, in that case,

designate some one to perform the duties of treasurer, who shall take the oaths of office, give bond, with surety worth $100,000, to the commonwealth for the faithful discharge of the duties of treasurer, and who shall continue in office until the treasurer is restored to his official duties, or a successor be elected or appointed and qualified.

Money received and paid only on warrant, &c.

§ 7. The treasurer shall not receive into nor pay out any money from the treasury, except upon the certificate or warrant of the auditor.

And directed by law.

M. & B. 1518.

§ 8. He shall pay out no money from the treasury, even though the auditor issues a warrant therefor, unless the law under which the same may be claimed expressly directs and orders that the money shall be paid out of the public treasury.

How money received and receipted for.

M. & B. 1515, 1517.

§ 9. The treasurer shall receive and safely keep in the treasury all money due or payable to the commonwealth from collectors of revenue, public officers, and others, when tendered, accompanied by the permit of the auditor of public accounts, stating the amount to be received, on what account, and from whom to be received. He shall immediately make out a receipt for the amount received, and for what, and of whom received, and deliver it to the auditor, who shall, in like manner, give a receipt to the officer or person paying the same. The receipt, besides stating the amount paid, shall also, if it be all that is due from the officer or other person, so state.

Penalty for misapplication, &c., of money.

M. & B. 1517.

§ 10. If the treasurer, or any person acting as treasurer, willfully misapplies any of the public money, or shall loan or use the same for his own purposes, or for the uses or purposes of another, he shall be guilty of felony; and upon indictment and conviction thereof, confined in the penitentiary for a period not exceeding ten years, at the discretion of the jury.

ARTICLE II.

His duties, in keeping accounts and making reports.

Accounts, how kept.

M. & B. 1516.

§ 1. The treasurer shall keep in appropriate well-bound books, to be provided by him, at the public expense, true accounts of all money paid into the treasury, by whom, when, and on what account paid. He shall keep the accounts of the sinking fund, internal improvement fund, and the common school fund, distinct from each other, and from the ordinary revenue of the government; and in like manner, he shall keep a true account of all sums paid out, when, to whom, and for what paid. The accounts

shall be so kept as to exhibit the amount received and disbursed on account of every department of the public service.

Report to general assembly.

M. & B. 1516.

§ 2. He shall make a clear, distinct, and intelligible report of all money received and disbursed during each fiscal year ending the tenth day of October, for the two years preceding the regular meeting of the general assembly, which shall exhibit the receipts and expenditures of each year on account of every department of the public service, which report he shall lay before the general assembly by the sixth day of the session.

Report weekly to auditor.

M. & B. 1517.

§ 3. The treasurer shall make reports, once per week, to the auditor, of all payments at the treasury, and the warrants upon which the same were made, which reports shall be filed by the auditor in his office. He shall, at all times, when called upon by the governor, exhibit his books and accounts, and his cash on hand or in deposit. He shall settle his accounts with the auditor once per month, as provided in chapter v, Auditor.

Exhibit books and money to governor.

Settle monthly.

Examining committee.

M. & B. 1516.

§ 4. A committee composed of members from both houses shall be appointed, within ten days after the organization of the general assembly, at every regular session thereof, whose duty it shall be personally to examine into the state of the treasury, to examine all papers or vouchers upon which money has been paid, for each of the preceding two years; ascertain the amount of money paid into and paid out of the treasury, and the amount of public money on hand. To notice the misapplication or perversion of any of the public funds, by the treasurer or others. The same committee shall examine the books, office, and accounts of the auditor; and in said examination they shall carefully note, without defacing, all the treasurer's receipts, which are the foundation of a charge against him, in such manner as will plainly show that said receipts have been examined by the committee. The committee shall report the facts fully and truly to each house of the general assembly, for publication, in a clear and intelligible manner.

To examine also auditor's books, &c.

Expiration of term.

M. & B. 1518.

§ 5. The treasurer, upon the expiration of his term of office, shall deliver to his successor, when ready to enter upon the duties of his office, all the public money, books, property, or effects under his control, belonging to the commonwealth. If a vacancy occurs in the office of treasurer, by death, resignation, or removal, the governor shall appoint two discreet, well-qualified, and disinterested persons to

Vacancy by death, &c.

state the accounts of the late treasurer with the commonwealth; to ascertain the amount of public funds on hand, after making a true and perfect inventory of the same, and taking the receipts of the newly appointed treasurer; they shall return said statement, with their report, to the office of secretary of state. The treasurer, or his personal representative, or surety, whose accounts are thus stated, may attend the meetings of the commissioners, while engaged in making said statement. The report of the commissioners shall be *prima facie* evidence for and against all concerned and interested.

No money to be paid public debtor

§ 6. No money shall be paid to any person in his own right, or as assignee of another, when such person or his assignor is owing the commonwealth; and such claims, when presented, shall be liquidated and settled by a credit for the amount thereof upon the accounts of the public debtor, so far as may be required to pay the amount; and for any balance due after settling the whole demand of the commonwealth, payment may be made.

CHAPTER CII.

TREASURY WARRANT CLAIMS.

County Courts may dispose of Vacant Lands.
Patents to issue therefor.

Counties authorized to dispose of vacant lands.

§ 1. Each county of this commonwealth is hereby vested with the right and power to dispose of all the vacant and unappropriated lands lying therein; and

1. To hold the proceeds in trust for county purposes, except where the same has been, by special law, appropriated to some other object.

2. The lands shall be disposed of by the county court of the county in the manner directed in this chapter.

Settlers' pre-emption right.

L. 385.

§ 2. An actual settler on any vacant and unappropriated lands shall have a pre-emption right to any number of acres not exceeding one hundred, to be laid off in a square, as near as possible, so as to include the improvement in the center.

Entitled to three months notice. M. & B. 1037.

1. Any person wishing to locate land in the possession of an actual settler thereon, shall give the settler three months notice of his intention to take up and appropriate

the same, describing in the notice the land intended to be appropriated.

2. If the settler shall not, within three months from the giving of such notice, cause the land to be entered and surveyed preparatory to obtaining a patent for the same, then the person giving the notice may enter and survey the land, and proceed to obtain a patent therefor.

County court may grant order to enter vacant land.

§ 3. Any person who wishes to appropriate any vacant and unappropriated lands, may, on application to the county court of the county in which the same lies, and paying at such price as the court may allow, not less than five dollars per hundred acres therefor, obtain an order of court authorizing him to enter and survey any number of acres of such land in the county, not less than twenty-five nor more than two hundred.

Entry to be made in surveyor's book

1. The party obtaining such order may, by an entry in the surveyor's book of the county, describing the same, appropriate the quantity of land it calls for in one or more parcels, as he may think proper.

Surveyor to make survey.

M. & B. 1021.

2. The surveyor shall survey the entries in the succession in which the same are made, bounding the same by plainly marked trees, stones, or stakes, noting where it binds on a water course, or the marked line of another survey, giving names. It shall be made in the presence of two disinterested housekeepers as chainmen, whose names must be placed at the bottom of the plat and certificate.

Within 2 months.

3. Such survey must be made within two months from and after the date of the entry.

Plat & certificate.

4. A plat and certificate of the survey must be made out by the surveyor and recorded in his books, and the original thereof, and a copy of the order of court under which it is made, must be deposited in the register's office within four months after the survey is made.

Patent to issue.

5. A patent may issue on the survey within three months after a plat and certificate thereof, and a copy of the order, are filed in the register's office.

Survey to be marked 'satisfied' M. & B. 1022.

6. When a survey has been carried into grant, the register shall write across the face of the order on which the survey was made, "satisfied," and sign his name thereto.

Legal title.

7. The legal title of the land shall bear date from the time of making the survey.

Vacant land only subject to appropriation.

8. None but vacant land shall be subject to appropriation under this chapter. Every entry, survey, or patent made or issued under this chapter, shall be void so far

as it embraces lands previously entered, surveyed, or patented.

Plat, &c., assignable.

9. A plat and certificate of survey shall be assignable, and the assignment thereof shall authorize a patent to issue thereon to the assignee.

Surveys returned after time.

M. & B. 1022.

10. The register may receive plats and certificates of survey after the expiration of the time herein allowed for returning the same; but in such case the legal title shall take effect only from the date of the patent.

Land escheated, &c., not subject to appropriation.

M. & B. 1022.

11. No land shall be subject to appropriation under this chapter that has reverted to the commonwealth by escheat, or has been forfeited for an omission to list the same for taxation, or for failing to pay the taxes thereon, or which has been once patented, and the title of the same has in any way become again vested in the commonwealth.

Further time allowed to return land office warrants.

12. The further time of three years, from and after the first of February, 1852, is hereby given to survey and return plats of certificates of Kentucky land office warrants to the register's office.

CHAPTER CIII.

TURNPIKE AND PLANK ROADS.

Companies may acquire one acre to each mile.

L. 575, 563, 22.

§ 1. The several companies incorporated, or which may hereafter be incorporated, for the purpose of making a turnpike, graded, or plank road, and also the commonwealth, when she has made or makes any such road, may acquire the title to one acre of land adjacent to each mile of the road, in one or more parcels, for the purpose of obtaining materials for the making or repairing of the road; and also, in addition, one-fourth of an acre of land for the purpose of using or erecting thereon a toll-house for the use of a gate-keeper, wherever a gate is or may be established.

Rock, gravel, &c., in exchange for use of road.

1. The necessary rock, gravel, wood, or other material, or the use of any rock or quarry for making or repairing the road, may be obtained by purchase; or as an equivalent therefor, in whole or in part, the use of the road free of toll may be granted to the owner of the materials, for one or more gates, in perpetuity, or for a term of years.

Ad quod damnum.

2. When the land or material cannot be obtained by private agreement, the company or the commonwealth

may have the same condemned under a writ of *ad quod damnum*.

Land heretofore acquired.

3. The company or commonwealth may retain any such land heretofore obtained, whether there was any law authorizing its acquisition or not, and may sell any such land heretofore or hereafter acquired, to the owner of the adjoining land, but none other; nor shall any building be erected thereon, or otherwise used as a residence for any person, except for the use of a gate-keeper. If any part of a parcel of such land is built on and otherwise so used, such parcel shall revert to and become the property of the person from whom it was purchased, or his heirs. But if any such land be sold, as herein allowed, the company or commonwealth may purchase as much more elsewhere, within the mile.

When land to revert.

4. If the commonwealth or company ceases to keep up the road, any land procured as herein authorized shall revert to the person from whom it was obtained, or his heirs, saving the rights of creditors.

Rule for vehicles passing, &c.

§ 2. The following rules shall be observed by all vehicles running on any turnpike or plank road:

1. Vehicles meeting shall give to each other one half of the stone or plank road, each bearing to its right; when a fast vehicle overtakes one of slower movement, the latter shall bear to the right, so as to permit the other to pass on its left or near side. But on plank roads not affording room for the passage of both on the planks, no loaded wagon or cart shall be required to get off the planks to afford a passage to any vehicle other than another loaded wagon or cart.

Penalty for non-compliance.

2. If any driver fail or refuse promptly to comply with either of these rules, he or his employer shall be fined for each offense not less than two nor more than five dollars.

Bells.

3. Bells of no kind, unless their clappers be so secured as to prevent their making a noise, shall be carried on the animal or animals drawing any vehicle. For any violation of this rule, the driver, or his employer, shall be fined from two to five dollars for every day during any part of which the offense is committed.

Penalty for obstructing road, &c

4. Whoever shall obstruct any portion of a turnpike or plank road, by depositing thereon any stone, wood, material, filth, or trash, or by feeding any stock on either the stone, or plank, or dirt part of the road, shall, for every such offense, be fined from two to five dollars.

Leaving vehicles in the road.

5. No vehicle shall be left standing by night or day, on the stone or plank part of the road; nor shall the animals attached thereto be fed on such part of the road. Every driver or his employer violating this rule shall be fined, for each offense, from two to five dollars. But no person shall be deemed to be within this prohibition whose vehicle is unavoidably detained by accident or misfortune, until a reasonable time has elapsed after such accident or misfortune sufficient to remove the vehicle.

Superintendent may remove obstructions at cost of persons making them.

6. Any unlawful obstruction to a road may be removed by the agent or superintendent thereof, at the cost of the person making the obstruction, and which may be recovered in the name of the company, or of the board of internal improvement, as the case may require.

Tolls.

§ 3. The following shall be the rates of toll on all the turnpikes in which the commonwealth is interested, except where the charter of a company provides differently, and unless the rates have been or may be reduced by the board of internal improvement.

For gates five miles apart.

1. These rates are for gates standing five miles apart, and in that proportion for a less distance; but when there is a fraction of a road, of a mile or more, less than five miles, toll may be charged at the gate next thereto for the fraction, in the proportion that its length bears to five miles.

Tolls to be paid at the time or in advance.

2. All tolls are to be paid at the several gates at the time they are passed, or in advance, unless, by agreement with the managers of the road, a special permit is obtained to pass for a month or other longer term not exceeding a year. If not so paid, the gate-keeper may stop any person and prevent him or his property from passing till payment is made.

General Traveling.

Rates for general traveling.

3. For every horse or mule, and rider, five cents.

For a horse, mule, or jack, led or driven, three cents.

For each head of cattle, two cents.

For each head of hogs, one-half cent.

For each head of sheep, one-quarter cent.

For each vehicle drawn by one horse or mule, ten cents.

For each vehicle drawn by two horses, mules, or oxen, twenty cents.

For each pleasure carriage or hackney coach drawn by two horses or mules, twenty-five cents.

For same when drawn by four horses or mules, thirty cents.

For each sleigh drawn by one or two horses or mules, fifteen cents.

For each wagon drawn by three horses, mules, or oxen, thirty cents.

For same drawn by four animals, fifty cents.

For same drawn by five animals, sixty cents.

For same drawn by six animals, seventy-five cents.

But empty wagons, or such as have no other loading than provender for the team, shall pay only half these rates.

For each stage coach having seats within for six passengers, thirty-five cents.

For same for nine passengers, fifty-five cents.

For same for twelve passengers, seventy-five cents.

And two cents in addition on any such for every passenger over four.

Broad tread or tire.

Broad tread or tire.

For each wagon with four animals, of four inch tread or over, thirty-five cents.

For same with five animals, fifty cents.

For same with six animals, sixty cents.

Neighborhood travel, or hauling with common tire or tread.

Neighborhood travel, or hauling with common tire.

For each wagon or cart drawn by two animals, and loaded with nothing but the produce of the farm, for a trip, going and returning, thirty-five cents.

For same drawn by three animals, forty-five cents.

For same drawn by four animals, fifty-five cents.

For same drawn by five animals, seventy-five cents.

For same drawn by six animals, one dollar.

Neighborhood hauling with broad tread.

With broad tread.

For each wagon loaded as above, drawn by four animals, for every trip, fifty cents.

For same drawn by five animals, sixty cents.

For same drawn by six animals, eighty-five cents.

Ministers may be exempted. A. 1848, 15.

§ 4. The managers of any road in which the state has an interest may permit ministers of the gospel to travel on the road without paying toll, when on ministerial duty.

How company may be formed for new roads.

A. 1850, 67.

§ 5. Any five or more persons may unite as a company for the purpose of making a stone or gravel turnpike or a plank road, of not less than five miles in length, within or through a county or part thereof, by agreement in writing, signed by the parties, and accompanied with a subscription, in good faith, by responsible persons, of not less than one nor more than seven thousand dollars for each mile of proposed road.

What agreement must show.

1. The agreement must show—*First*. The points between which the road will pass, with its general course. *Second*. The amount of stock proposed to be raised, the

time and manner of its payment, and the number of shares into which it is to be divided, not exceeding one hundred dollars each. *Third.* The name or style by which it is desired to designate the company.

Committee.

2. The parties to the agreement shall appoint a committee of three of their number to manage their affairs until the company is established.

Committee to give notice of application to county court.

3. The committee shall give notice of an intended application to the county court to establish the company, by written advertisement posted at the court house door on a county court day, at least one month before the day appointed, and, if there be a newspaper published in the county, by publication therein once a week for at least three weeks before the day.

Commissioners may be appointed by county court.

§ 6. Upon presentation of the agreement to the county court of the county in which the road is to be located, together with proof by affidavit that the requisite notice has been given, if it is satisfied that the requisite subscription has been made by responsible persons; that the proposed road can probably be made at the estimated cost; that it will materially promote the public convenience and advantage, and that it will not materially, injuriously, and unnecessarily affect the interest of another established road; the court shall retain the agreement as part of its records, appoint three discreet and disinterested persons as commissioners to view and report upon the route, one of whom shall have skill or experience in civil engineering; and also appoint one or more persons to receive subscriptions to the stock. None of the applicants shall be appointed a commissioner, nor shall any person who either resides or owns land within three miles of the line of the proposed road.

Commissioners to be sworn.

1. The commissioners, before entering on their duties, shall be sworn before a judge or justice of the peace fairly and impartially to discharge their duty.

To view and report.

2. They shall view, survey, and report what they deem the nearest practicable and most eligible route for the road, showing—*First.* The distance and probable cost. *Second.* The lands of individuals through which it will pass, and its probable damage to them. *Third.* The benefits to be derived by the public from the road. *Fourth.* Whether it will materially, injuriously, and unnecessarily affect the interest of an established turnpike or plank road. They shall also, at the request of the parties, in like manner, view, survey, and report one or two other routes, in whole

or in part, as may be designated, together with the reasons for their preference of the route recommended by them.

Receive surrenders of right of way, &c.

3. The commissioners or the committee may receive, in behalf of the proposed company, written proposals for the surrender of the right of way, the grant of materials, or other aid in the construction of the road, or conditional subscriptions of stock, any of which, when the company is established, it may adopt and enforce.

Commissioners' pay.

4. The commissioners shall each receive two dollars a day for every day necessarily employed in the discharge of their duty, and their reasonable expenses, for which the court may award them execution against the applicants, and for which the latter shall be reimbursed by the company.

Failure to act.

5. Upon the failure or refusal to act of any or all the commissioners, the court may, from time to time, appoint others.

On failure to agree, umpire to be appointed.

6. The report shall be prepared and returned to the court as soon as practicable by the commissioners, or any two of them; and if no two of them can agree upon a report, the court shall appoint a fourth commissioner as umpire between them.

Hearing.

§ 7. Upon hearing the report, the court may receive affidavits for or against it, and may give time for further proof. It may be confirmed and adopted in whole or in part, or a new view, survey, and report may be ordered, in whole or in part, by the same or other commissioners.

Court to designate route.

§ 8. If it be found that the road ought to be made, the court shall enter an order designating by which of the routes reported the road shall be made, or permitting the company to select either route.

Receiving subscriptions of stock

§ 9. Immediately thereafter, the person designated shall give two weeks notice, as before directed, of his readiness to receive subscriptions to the stock. Subscriptions shall be received until twelve o'clock of the Saturday next preceding the next term of the court. A detailed statement of the subscribers and of the amount of stock subscribed shall be reported by him to the court, together with his opinion as to the sufficiency of the subscribers for the amount of their several subscriptions. He shall receive for his services five dollars, to be paid and enforced in the manner directed as to the pay of the commissioners.

If sufficient, company to be established.

§ 10. If it appear that a sufficient amount of capital has been subscribed by responsible persons, the court shall

make an order establishing the company, with full power and authority to make and keep up the road.

Corporate powers

§ 11. Thereupon the subscribers to the stock, and their successors, shall, for that purpose, become a body corporate, by the name selected, who, by that name and style, shall have perpetual succession, and may sue and be sued.

§ 12. The committee, after two weeks notice of the time and place, given as before directed, shall convene a meeting of the subscribers to the stock.

Election of managers.

1. They shall, at that meeting, hold an election for five managers of the company.

Who may vote at first meeting.

2. Every subscriber who, on or before that day, pays to the committee five dollars in the hundred on the amount of his subscription, shall have as many votes as he has subscribed shares of stock.

Who at subsequent meetings.

3. At any subsequent meeting of stockholders, none shall be allowed to vote but those who have paid all that may be then due on their subscription.

How many votes each.

4. At any such meeting, or upon any question submitted to the vote of stockholders, each shall have as many votes as is equal to the number of his shares.

Rules and by-laws may be made

5. At any meeting of stockholders all needful rules and by-laws for the government of the company, its officers and servants, may be adopted by a majority of votes, and the same, from time to time, in like manner, may be repealed, altered, or amended.

Less than majority cannot act.

6. No meeting of stockholders shall have power to act otherwise than to appoint an adjourned meeting, unless a majority of the stockholders are present, or unless a majority of the stock is represented, in person or by written proxy.

When annual meeting to be held.

7. An annual meeting of stockholders shall be held at ten o'clock in the morning on the first Monday of the month in which the first election is held.

Called meetings.

The managers may call a meeting at any time, after ten days notice of the time and place by advertisement in a newspaper published in the county, or by written notice served in person or left at the residence of a majority of the stockholders. The place of meeting, if not otherwise appointed by the managers, shall be at the office of the company, or if none, at the toll gate nearest to the seat of justice.

Manager's term of office.

§ 13. The managers shall hold their offices for one year or until their successors are elected. Any vacancy from death, resignation, or refusal to accept, the managers shall supply.

Chairman; seal.

1. The managers shall select one of their number as chairman, whose private seal or scroll, when attached to his official signature, shall serve as the seal of the corporation until a corporate seal is adopted.

Managers' powers

2. The managers shall, subject to the by-laws, have the control of all the property and affairs of the company.

Treasurer—his duties.

3. They shall, from time to time, appoint the treasurer, who, before acting as such, shall give to the company a covenant, with adequate surety, for the faithful discharge of the duties of his office. He shall keep all the funds of the company, and a payment to him shall be the only legitimate mode of payment of money to the company. He shall disburse its funds upon the order of the managers only, and shall account to them whenever required.

Record of proceedings.

4. They shall keep a record of their own proceedings, and of those of every meeting of stockholders, which shall be subject to inspection at all times, upon the demand of any two stockholders.

Right of way, &c. obtained by contract or condemnation.

§ 14. Any incorporated road company, or any road company hereafter incorporated, either by the legislature or under this chapter, may obtain, by voluntary agreement with the owners, the right of way and the necessary land for toll houses and other purposes, as in this chapter allowed; also, the necessary materials for making and repairing the road. If they cannot be so procured, the company may have the same condemned, by filing its petition for that purpose with the clerk of the county court, and obtaining thereon the necessary writs of *ad quod damnum*, and procuring the regular condemnation thereunder, as required by law. But no such condemnation of the right of way shall be for a road of more than sixty feet in width.

Other corporations may sell to or subscribe stock in said company.

§ 15. Any incorporated turnpike company may, with the assent of a majority of its stockholders, sell or transfer the use of the whole or any part of its road to a company incorporated under this chapter; and any corporation, city, town, or county may subscribe for its stock, if the assent thereto of a majority of the voters of the city, town, or county be first obtained by the council, trustees, or county court of such city, town, or county.

How the road must be made.

§ 16. The road must be made—

1. Of the best and most durable material that can be conveniently procured in its neighborhood.

2. The stone or gravel must be at least ten inches deep, and that part of the road covered with it must be at least

ten feet broad. If the road is made of wood it must be at least eight feet broad, and covered with plank not less than two and a half inches thick, with suitable turnouts at convenient distances.

3. If a turnpike, it shall have a grade not exceeding three degrees, with all necessary dirt turnouts; and if a plank road, a grade not exceeding two degrees.

4. It shall be so made as to present, or to obtain with use, a smooth, hard, permanent surface.

5. It shall have good convenient embankments and necessary culverts to facilitate its being crossed by other roads.

6. It shall have all needful side drains, culverts, and bridges.

7. The plank, stone, or gravel part shall be made near to one side of the road, except in crossing fills or deep cuts.

When and how erection of gate authorized.

§ 17. When notified that five continuous miles of the road are completed and ready for travel, the county court shall appoint three justices of the peace no way interested in the road, who, with the aid of some person of competent skill as a civil engineer, shall view the road and report its quality and condition. Each justice and engineer shall be paid by the company two dollars for every five miles. Upon hearing the report and any exceptions or proof that may be made in relation thereto, if it appear that the five miles of road have been constructed according to law, the court shall make an order authorizing the erection of a gate and the receipt of toll, pursuant to the rates of toll established in this chapter.

Stock personal estate, and transferable.

§ 18. The shares of stock in the company shall be deemed personal estate, and transferable on the books of the company agreeable to such rule as may be established by the by-laws or by its managers.

Paid by installments.

1. The stock shall be paid in such installments and at such times as may be required by the managers; and for default in payment, the by-laws may authorize a forfeiture of the stock.

Effect of forfeiture.

2. No such forfeiture, assignment, or transfer shall exonerate any subscriber from the payment of his whole subscription, but he and his assignee shall both be liable therefor.

If too much subscribed.

3. If more stock is subscribed than amounts to seven thousand dollars per mile, the subscriptions shall be scaled until reduced to that amount, the largest subscriptions be-

ing first scaled, until all, if necessary, are reduced to an equality.

When stock inadequate.

4. If the stock provided for prove inadequate for the completion of the road, the managers may, with the assent of the county court, obtain new subscriptions, so that the whole stock shall not exceed the seven thousand dollars a mile.

Dividends.

§ 19. The managers shall make half yearly dividends of the net profits of the road among the stockholders, after retaining a sum adequate to cover the repairs for the ensuing six months.

If net profit exceeds ten per cent. tolls to be reduced

§ 20. If the road yield a net profit of more than ten per cent. per annum, the managers shall reduce the rates of toll so as to bring the profits within that amount. A failure to do this for one year, shall incur a forfeiture of the charter.

When road impassable, tolls cease.

§ 21. If the road in any part becomes impassable, the gate keeper for the five miles within which the defect exists, shall immediately, on notice thereof, cease to demand toll until the road is repaired. For failure herein the company shall be fined fifty dollars a day for every day in which toll is so improperly received or demanded.

Road unfit for travel four days, company fined.

§ 22. If the road becomes unfit for public travel, and so remains for four days, the company shall be fined fifty dollars a day for every day it is suffered so to remain, and during which any toll is received or demanded.

For thirty days charter forfeited.

§ 23. If the road is suffered to remain so out of repair for thirty days, upon conviction thereof in the circuit court, under a presentment of the grand jury, the charter of the company, with all its franchises, shall be adjudged to be forfeited. The right of way shall be ordered to revert to those from whom it was obtained, or their heirs or assigns, or the road shall be transferred to the county, to be kept up as a common county highway, as to the court may seem most just and expedient.

Toll gate keeper may administer oath.

§ 24. The toll gate keeper of any road or chartered bridge may require any person wishing to pass any gate or bridge to truly state, on oath, to be administered by him, the distance traveled or intended to be traveled on the road, and the number contained in any drove of stock, with whatever else may be necessary to ascertain the true amount of toll that should be paid. Any person refusing to give such information under oath when required, shall be fined ten dollars.

A. 1849, 33.

§ 25. Whoever shall defraud or attempt to defraud the commonwealth or a company, go around a toll gate, or otherwise evade or attempt to evade the payment of tolls, or to lessen the amount of tolls fairly payable by him, he shall, for every such offense, be fined ten dollars. Evading payment of toll, &c. L. 565.

§ 26. Whoever shall willfully break, deface, pull down, or remove any mile post or stone, or any direction post, or the board thereof, or any printed list of the rates of toll affixed at a toll gate put up on or near any turnpike or plank road, shall be fined from five to ten dollars for every such offense. Defacing mile post, &c.

§ 27. Whoever shall ride or drive across a wooden bridge of any such road faster than a walk, shall, for every such offense, be fined from one to five dollars. Driving across bridge faster than a walk.

§ 28. No lateral road shall be opened to and from the same places now connected by any turnpike or plank road, or which may be hereafter so connected, so as to run within one mile of such road; and any such lateral road now in use or which may hereafter be in use shall, by order of the county court, be shut up and closed. But such lateral roads shall not be precluded from so running as near as a mile for the distance of one mile from any town or city. Lateral roads not to run within a mile.

§ 29. A writ of *ad quod damnum* issued under authority of this chapter shall designate the land or property to be condemned, and may include that of several persons, and shall be directed to the sheriff of the county in which it is situated. Writ of ad quod damnum to designate land. L. 22.

1. It shall direct him to hold an inquest by a jury of twelve impartial and discreet freeholders of his county, at or near the land or property, to ascertain the amount of damage each owner will severally sustain if it be condemned for the use of the road. Inquest.

2. The owner, or his guardian or committee, must have five days written notice of the time and place of holding the inquest, if he reside in the county; if he reside in another county, twenty days notice; and if he does not reside in the state, or is not known, thirty days notice, by posting at the court house door on a county court day, and by advertisement twice published in a newspaper printed in the county, or in an adjoining county, if there be any such paper. Notice to owner.

3. Besides challenges for interest or kinship, each party may challenge three jurors without cause. Challenge.

4. The jurors shall be sworn truly and impartially to ascertain and determine by their inquest the amount of How jury sworn.

compensation each owner will be entitled to if his land or property, as named in the writ, is condemned.

How inquest signed.

5. The inquest shall be signed by each juror, handed to the sheriff, and returned by him, with the writ, within three days, to the clerk of the court.

When jury cannot agree, or cannot complete inquest, on day appointed.

6. If the jury cannot agree, the sheriff may discharge it and summon another jury or other juries; and if from that or any other cause, the inquest cannot be completed on the day appointed by him, he may adjourn it from time to time until it is completed, without further notice than his proclamation made at the time.

What jury shall allow.

7. The jury shall allow the fair cash value of the land or property proposed to be taken, and also fair compensation for any incidental or collateral damage which the taking of it will produce to the other land of the owner; but from such incidental or collateral damage shall be deducted the amount, in value, of the benefit which such other land will derive from the making of the road.

Traverse; when tried; costs.

§ 30. Either party may, within ten days after the finding of the inquest, file a traverse thereof with the clerk of the court; whereupon, the case shall be docketed for the first day of the next term, and shall be tried on that day, if it is ten days after the inquest; otherwise, on the first day of the next term. It shall be tried by a jury of freeholders impanneled for that purpose. The party failing on the traverse shall pay the cost thereof, and the party traversing fails when the verdict traversed is not increased or diminished, as his interest may require. The costs of the inquest, up to the traverse, shall, in all cases, be paid by the party asking the condemnation.

Appeal or writ of error allowed.

§ 31. Either party may have the decision revised in the court of appeals, by appeal or writ of error; but no appeal or supersedeas on behalf of the owner of the property shall stay the judgment further than in the collection of costs against him.

Inquest confirmed upon payment of damages.

§ 32. Upon proof of payment of the damages found by the inquest, or under the traverse, or payment thereof into court for the use of the owner, or where none or merely nominal damages are found, the court shall confirm the inquest or verdict on the traverse, which confirmation shall vest the right to the property in the commonwealth or the corporation asking its condemnation, for the use of the road, and a writ of possession may at any time issue therefor.

§ 33. If the damages assessed are not paid before the end of the third term next ensuing the verdict under the inquest, when not traversed, or that under the traverse, the applicant shall be considered as having abandoned all right to the condemnation, and shall never thereafter have another proceeding for the condemnation of the same property.

When damages not paid before the end of third term, right considered abandoned.

§ 34. When a right of way is necessary for hauling any material condemned for the use of the road, the inquest shall state that the same is allowed and the same estimated in the damage given, if the land over which the right of way passes belongs to the owner of the material; and if to another, then there shall be a separate assessment therefor, in favor of such other. The inquest must designate briefly, by general description, the route or routes by which the right of way shall be used.

Right of way for hauling material.

§ 35. Any person who shall hinder or attempt to prevent the use of any right derived from the condemnation shall pay the company or commonwealth double damages and costs; and any person who threatens so to hinder by violence, may be brought before a justice, and required to give bail in the penalty of one thousand dollars, with good surety, to keep the peace and be of good behavior for the next six months.

Hindering, &c., any right.

§ 36. Clerks and sheriffs shall have the same fees for like services performed under this chapter as they are allowed in cases for opening county roads.

Fees.

§ 37. No quarry shall be condemned within two hundred yards of any dwelling house, or so near to any garden, orchard, or spring as materially to impair the value of the same.

No quarry condemned within 200 yards of dwelling house, &c.

[The following act of the session of 1851–2, more appropriately belongs to the chapter on Internal Improvement. It was overlooked until that chapter was printed.]

An act to amend an act, entitled, an act further to provide for the collection of Tolls on Kentucky, Green, and Big Barren Rivers—approved January 1, 1852.

A. 1851-2, 12.

That the rates of tolls, as established by the board of internal improvement on the first day of January, 1851, from and after the passage of this act, shall no longer be collected or chargeable on any flatboat descending Kentucky, Green, and Big Barren rivers, and their tributaries, from any point or place above the influence of slackwater navigation; but that all such boats shall be allowed to pass

the locks and dams on said rivers by paying toll according to the rates established previous to the first day of January, 1851.

CHAPTER CIV.

VAGRANTS. (a)

Who adjudged vagrants.

M. & B. 1521.

§ 1. If any able bodied person be found loitering or rambling about, not having the means to maintain himself, by some visible property, or who does not betake himself to labor, or some honest calling to obtain a livelihood, or who, not possessing such means, has quit his habitation, leaving a wife or child without suitable means of subsistence, or who is idle or dissolute in habits, without visible means of support, he shall be taken and adjudged to be a vagrant, and guilty of a high misdemeanor.

To be arrested and admitted to bail.

§ 2. A person guilty of the offense described in the above section, shall be indicted by the grand jury in any county where he may be found, and if not in custody or on bail, process for his apprehension, as in criminal cases, shall be awarded, with an indorsement that he be admitted to bail, upon his executing bond in the penalty of one hundred dollars, with good surety, conditioned for his appearance at the time and place specified in the writ.

Proceedings of the justice before whom brought.

M. & B. 1522. L. 581.

§ 3. Such persons may be apprehended by the warrant of a justice of the peace issued upon his own knowledge, or upon information upon oath, and directed to any constable, sheriff, or other officer, who shall return the same forthwith, together with the prisoner, to the officer issuing the same, or some other justice of the peace, police judge, or the judge of the county court, and summon such witnesses as either party may require. The officer to whom the return shall be made, shall hear and decide upon the question of the probable guilt of the prisoner. If he shall be of opinion that there is strong probability that the pris-

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(a) The commissioners in their report retained the provisions of the present law, which makes it the duty of the county court, if no one will take the vagrant as a servant or apprentice under the provisions of the fifth section, to direct the sheriff to sell him to the highest bidder for the term fixed by the verdict of the jury. The legislature disagreed to the provision, and the consequence is, that the vagrant is to be kept in jail, at public expense, until some one will take him as a bonded servant, &c.

oner is guilty, he shall commit him for further trial before the circuit court of his county, unless the accused shall enter into bond in the penalty of one hundred dollars, with good surety, for his appearance on the first day of the next succeeding term of the circuit court aforesaid, and that he will not depart therefrom without the leave of court. The justice shall state in his record the substance of the evidence given upon the trial, recognize the witnesses to appear at the circuit court as in criminal cases, and return the papers to said court in due time.

To be tried by jury

§ 4. Persons indicted for vagrancy shall be tried by a jury, and if found guilty, the jury shall fix the time for which he shall be bound out to labor, or sold into servitude, not exceeding twelve months, if the convict be over twenty-one years of age; if he be a minor, the jury shall return his age also in their verdict.

Convict to be bound out to labor by the court.

§ 5. The court shall bind out the convict to labor, if over twenty-one years, for the term fixed by the jury; if under twenty-one years of age, he shall be bound out as an apprentice to a master until the age of twenty-one, to learn some trade, upon the terms which may be agreed upon. The clerk shall prepare and keep the indentures, which, when signed, shall have the same effect as the indentures of apprenticeship in other cases.

Disposition of money received.

M. & B. 1523.

§ 6. The sheriff, out of the money received, shall, under the order of the court, first pay the fees and expenses of the prosecution, not exceeding the fees allowed in criminal cases; the remainder he shall apply *pro rata* to the payment of the debts, if any, of the vagrant, so far as may be necessary, and whatever sum may remain shall be paid over to the wife and children of defendant, if any; if none, he shall pay it over to the convict at the expiration of his time, and he shall account for the amount to persons interested, as though he had collected the money under execution. If the convicted vagrant have a wife and family within the state of Kentucky, he shall have the right to enter into bond in the penalty of one hundred dollars, with good surety, conditioned that he will forthwith return to his family, and immediately betake himself to some honest calling for their support, whereupon he shall be immediately discharged.

When convict has wife & family.

Bonds to be filed.

M. & B. 1523.

§ 7. Bonds given by vagrants under the provisions of this chapter shall be returned and filed with the clerk of the circuit court, and if forfeited, they may be proceeded on and the penalty collected as in other cases.

Rights, &c., of persons buying vagrants.

§ 8. The persons taking or buying a vagrant shall have the same rights and powers, and be under the same responsibilities as masters of servants, and of apprentices, during the time for which they have been sold, hired, or bound to them.

Duty of enforcing the law.

§ 9. All justices of the peace, police judges, judges of the county court, sheriffs, constables, and grand jurors are required to see that all persons in their respective counties shall be prosecuted for a violation of the provisions of this chapter.

Powers of city court not repealed

§ 10. The provisions of this chapter shall not be construed to change the laws now in force authorizing vagrants to be tried and punished by the judgment of the city court of Louisville, or of any other city or town within this state.

CHAPTER CV.

WEIGHTS AND MEASURES.

Standard.

M & B 1532. L. 267, 583.

§ 1. The weights, measures, and balances received from the government of the United States, now in the custody of the secretary of state, shall continue in the custody of that officer, and shall be the standard of weights and measures in this state.

Duplicates to be made.

§ 2. The governor shall cause duplicates of those weights, measures, and balances to be made for such counties as have not been furnished therewith; and upon his written certificate of the cost, the auditor shall give a warrant on the treasury therefor.

County court to procure duplicates

§ 3. The county court of every county not furnished with such duplicates within one year from the time this chapter takes effect, or from the time it becomes a county, shall, at the expense of the county, procure the same from the governor, after paying the cost thereof into the state treasury, and cause the same to be kept by some person in the county appointed, from time to time, for that purpose.

Penalty for failure

If any county court fails to comply with this section, the members thereof shall be fined not less than twenty nor more than fifty dollars each; and they shall incur a like penalty for every annual repetition of the offense.

Testing weights and measures.

§ 4. Any person desirous of having his weights and measures tested, may have the same done by the person

appointed to keep such duplicates, who, if he find them correct, shall seal them with a seal to be provided by the county court for that purpose.

Fees.

For testing any steel-yard, balance, or beam, he shall receive from the applicant a fee of twenty-five cents, and for testing every weight or measure, five cents.

Penalty for using different weights or measures.

§ 5. Any person who shall buy or sell by any weight, balance, or measure that does not correspond to and agree with such duplicates, or shall keep the same for the purpose of buying or selling therewith, shall be fined four dollars for every offense, or a like sum for every month he may continue to keep the same.

Cwt., 100 lbs; ton 2,000.

§ 6. The hundred weight shall consist of one hundred pounds avoirdupois, and two thousand such pounds shall constitute a ton; and all contracts hereafter made shall be construed accordingly, unless the contrary be expressly stipulated.

1 N. Y. R. 779.

Weight of bushel.

§ 7. Sixty pounds of wheat, fifty-six pounds of rye, fifty-six pounds of Indian corn, forty-eight pounds of barley, thirty-three and a third pounds of oats, sixty pounds of potatoes, sixty pounds of beans, twenty pounds of bran, sixty pounds of clover seed, forty-five pounds of timothy seed, fifty-six pounds of flax seed, forty-four pounds of hemp seed, fifty-two pounds of buckwheat, fourteen pounds of blue grass seed, fifty pounds of corn meal, fifty-seven pounds of onions, and fifty pounds of salt, shall constitute a bushel of such articles, respectively.

A. 1845, 43.

CHAPTER CVI.

WILLS.

Written Wills.
Nuncupative Wills.

Meaning of the word "will."

§ 1. Except where it would be contrary to the manifest intention, the word "will" as used in this chapter shall signify a last will or testament, codicil, appointment by will or writing in the nature of a will in exercise of a power, and also any other testamentary disposition.

M. & B. 1537.
V. R. 515.
M. R. 416.
2 N. Y. R. 124.

Who may make a will.

§ 2. Every person of sound mind, not being under twenty-one years of age, nor a married woman, may by will dispose of any estate, right, or interest in real or personal estate that he may be entitled to at his death, which would otherwise descend to his heirs or pass to his personal rep-

resentative; and though he may become so entitled after the execution of his will.

§ 3. No person under twenty-one years of age can make any will, except in pursuance of a power specially given to that effect, and except, also, that a father may appoint by will a guardian to his child.

A married woman may will separate estate.

§ 4. A married woman may by will dispose of any estate secured to her separate use by deed or devise, or in the exercise of a special power to that effect.

What wills shall be valid.

§ 5. No will shall be valid unless it is in writing with the name of the testator subscribed thereto by himself, or by some other person in his presence and by his direction; and moreover, if not wholly written by the testator, the subscription shall be made or the will acknowledged by him in the presence of at least two credible witnesses, who shall subscribe the will with their names in the presence of the testator.

Appointment by will, when valid.

V. R. 516.

§ 6. No appointment made by will in exercise of any power shall be valid, unless the same is so executed that it would be valid for the disposition of the property to which the power applies if it belonged to the testator, and every will so executed, except the will of a married woman, shall be a valid execution of a power of appointment by will, notwithstanding the instrument creating the power expressly requires that a will made in execution of such power shall be executed with some additional or other form of execution or solemnity.

A soldier or mariner may make a nuncupative will.

§ 7. A soldier in actual service, or a mariner at sea, may dispose of his personal estate by an unwritten will made within ten days of his death and in the presence of two competent witnesses present at the same time, and called upon by him to witness his intention, if the testamentary words or their substance be reduced to writing and subscribed by one of the witnesses within sixty days next after they were spoken.

The will of a person domiciled out of the state.

§ 8. The will of a person domiciled out of this state at the time of his death, shall be valid as to his personal property in this state, if it is executed according to the law of the place where he was domiciled.

Revocation of wills.

V. R. 517.

§ 9. Every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment when the estate thereby appointed would not, in default of such appointment, pass to his or her heir, personal representative, or next of kin.

§ 10. No will or codicil, or any part thereof, shall be revoked, unless under the preceding section, or by a subsequent will or codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is required to be executed, or by the testator, or some person in his presence and by his direction, cutting, tearing, burning, obliterating, cancelling, or destroying the same, or the signature thereto, with the intent to revoke. V. R. 517.

Revival of wills.

§ 11. No will or codicil, or any part thereof, which shall be in any manner revoked, shall, after being revoked, be revived, otherwise than by re-execution thereof, or by a codicil executed in the manner hereinbefore required; and then only to the extent to which an intention to revive the same is shown. V. R. 517.

A conveyance does not defeat operation of will upon such interest as testator has at his death.

§ 12. No conveyance or other act subsequent to the execution of a will shall, unless it be an act by which the will is revoked as aforesaid, prevent its operation with respect to such interest in the estate comprised in the will as the testator may have power to dispose of by will at the time of his death. V. R. 517.

Witnesses, when competent.

§ 13. If any person who attests the execution of a will, shall, after its execution, become incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid. 1 Vic.

And if a will is attested by a person to whom, or to whose wife or husband, any beneficial interest in any estate is thereby devised or bequeathed, if the will may not be otherwise proved, such person shall be deemed a competent witness; but such devise or bequest shall be void: except that, if such witness would be entitled to any share of the estate of the testator in case the will were not established, so much of his share shall be saved to him as shall not exceed the value of what is so devised or bequeathed. V. R. 519.

§ 14. If a will charging any estate with debts is attested by a creditor, or the wife or husband of a creditor, whose debt is so charged, such creditor shall, notwithstanding, be admitted a witness for or against the will. V. R. 519.

§ 15. No person shall, on account of his being an executor of a will, be incompetent as a witness for or against the will. V. R. 519.

On what estate will shall operate.

§ 16. A will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the V. R. 517.

death of the testator, unless a contrary intention shall appear by the will.

When an advancement deemed a satisfaction of a previous devise.

§ 17. A provision for or advancement to any person shall be deemed a satisfaction in whole or in part of a devise or bequest to such person contained in a previous will, if it would be so deemed in case the devisee or legatee were the child of the testator; and whether he is a child or not, it shall be so deemed in all cases in which it shall appear from parol or other evidence to have been so intended.

V. R. 517.

When devisee dies before testat'r

§ 18. If a devisee or legatee dies before the testator, or is dead at the making of the will, leaving issue who survive the testator, such issue shall take the estate devised or bequeathed, as the devisee or legatee would have done if he had survived the testator, unless a different disposition thereof is made or required by the will.

V. R. 517.

When child, believed to be dead, is living, takes by descent.

§ 19. If the testator has a child or grandchild living at the time of his death, whom, then and at the time of making the will, the testator believed to be dead, or if a child dies out of the state within the knowledge of the testator, leaving issue of which the testator has no knowledge at such time, and no provision for or exclusion of such child, grandchild, or issue, is made by the will, the child, grandchild, or issue, shall take of the testator's estate as if he had died intestate, and as is hereinafter provided in favor of a pretermitted child. But the presumption that such pretermission was the result of mistake on the part of the testator, may be rebutted by parol or other proof.

When a devise is void, estate to descend.

§ 20. Unless a contrary intention shall appear by the will, such real or personal estate, or interest therein, as shall be comprised in any devise in such will which shall fail or be void, or otherwise incapable of taking effect, shall not be included in the residuary devise contained in such will, but shall pass as in case of intestacy.

V. R. 518.

Leasehold and freehold estates.

§ 21. A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them to which such description shall extend, as well as freehold estates, unless a contrary intention shall appear by the will.

V. R. 518.

§ 22. A devise or bequest shall extend to any real or personal estate over which the testator has a discretionary power of appointment, and to which it would apply if the estate was his own property; and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

Discretionary power of appointment.

V. R. 518.

§ 23. Where lands are devised to be sold on special or general trust, or are conveyed or devised to trustees or executors in trust to be sold generally or for any specific purpose, the purchaser shall not be bound to look to the application of the purchase money, unless so expressly required by the conveyance or devise.

Lands devised to be sold, purchaser protected.

§ 24. If any person dies leaving a child, or his wife *enciente* of a child which shall be born alive, and leaving a will, made when such person had no child living, wherein any child he might have is not provided for or mentioned, such will, except so far as it provides for the payment of the debts of the testator, shall be construed as if the devises and bequests therein had been limited to take effect in the event that the child shall die under the age of twenty-one years, unmarried and without issue.

Pretermitted children.

V. R. 518.

§ 25. If a will is made when a testator has a child living, and a child is born afterwards, such after-born child or any descendant of his, if not provided for by any settlement, and neither provided for nor expressly excluded by the will, but only pretermitted, shall succeed to such portion of the testator's estate as he would have been entitled to if the testator had died intestate; towards raising which portion, the devisees and legatees shall, out of what is devised and bequeathed to them, contribute ratably either in kind or in money, as a court of equity in the particular case may deem most proper. But if any such after-born child or descendant dies under the age of twenty-one years, unmarried and without issue, his portion of the estate, or so much thereof as may remain unexpended in his support and education, shall revert to the person to whom it was given by the will.

V. R. 518.

§ 26. The preceding sections of this chapter shall not extend to any will made before this chapter is in force; but the validity and effect of such will shall be determined by the laws in force on the day before this chapter takes effect, in like manner as if those laws, so far as they relate to the subject, were herein enacted in place of such sections. Every will re-executed, republished, or revived by any codicil, shall, for the purposes of this chapter, be deemed to

Wills made before this chapter takes effect.

V. R. 519.

have been made at the time at which the same shall be so re-executed, republished, or revived.

Where wills to be proved and recorded.

§ 27. Wills shall be proved before, and admitted to record by, the county court of the county of the testator's residence; if he had no known place of residence in this state, and land is devised, then in the county where the land, or the greater part thereof, lies; if no land is devised, then in the county where he died or that wherein his estate, or the greater part thereof, shall lie, or where there may be any debt or demand owing to him.

Writ of error to circuit court.

L. 585.

§ 28. A writ of error, or an appeal, shall lie from the county court to the circuit court of the same county, and thence to the court of appeals, upon every order admitting a will to record, or rejecting it. The circuit court and court of appeals shall try both law and fact, but the court of appeals shall not hear or adjudge any matter of fact pertaining thereto other than such as may be certified from the circuit court. The writ of error from the circuit court shall be sued out within five years after rendering the order of probate or rejection in the county court, and from the court of appeals within one year after the final decision in the circuit court.

Not evidence until probate.

M. R. 421.

§ 29. No will shall be received in evidence, until it has been allowed and admitted to record by a county court; and its probate before such court shall be conclusive, until the same is superseded, reversed, or annulled.

Summons to produce will.
V. R. 520.

§ 30. Any such court, on being informed that a person has in his custody the will of a testator, may summon him and, by proper process, compel him to produce the same.

Foreign wills admitted to record

V. R. 520.

§ 31. When a will of a non-resident of this state relative to estate within this state has been proved without the same, an authenticated copy thereof and the certificate of probate thereof may be offered for probate in this state. When such copy is so offered, the court to which it is offered shall presume, in the absence of evidence to the contrary, that the will was duly executed and admitted to probate as a will of personalty in the state or country of the testator's domicil, and shall admit such copy to probate as a will of personalty in this state. And if it appears from such copy that the will was proved in the foreign court of probate to have been so executed as to be a valid will of lands in this state by the law thereof, such copy may be admitted to probate as a will of real estate.

When the deposition of a sub-

§ 32. When any will or any such authenticated copy is offered for probate, and a witness attesting the same re-

sides out of this state, or though in the state is in confinement in another county or corporation under legal process, or is unable from sickness, age, or other infirmity, to attend the court before which the same is offered, or resides at a distance of more than fifty miles, such court may cause a commission to be issued, annexed to the said will or copy, and directed to any person authorized by law to take depositions in other cases, to take his deposition. The deposition of such witness shall be taken and certified as depositions are taken in other cases; except that no notice need be given of the time and place of taking the same, unless it is in a case in which the probate is opposed by some person who has made himself a party. And the proof so given shall have the same effect as if it had been given in the court from which the commission issued.

scribing witness may be taken.

V. R. 520.

§ 33. A person offering or intending to offer to a county court a will for probate may obtain from the clerk of such court process directed to the proper officer of any county, requiring him to summon any person interested in such probate to appear at the next term of such court, and show cause why the said will should not be admitted to record.

Process to be issued.

V. R. 520.

§ 34. The court to which a will is offered for probate, may cause all persons interested in the probate to be summoned to appear on a certain day.

All interested to be summoned.

V. R. 521.

§ 35. Any person interested in such probate may be summoned, or proceeded against by order of appearance; and to any person so interested who is an infant or of unsound mind, a guardian *ad litem* may be assigned as in other cases.

Warning order.

Infants.

V. R. 521.

§ 36. When the proceeding is taken to the circuit court, all necessary parties shall be brought before the court; and upon the demand of any one of them, a jury shall be impanneled to try which or how much of any testamentary paper produced is, or is not, the last will of the testator. If no jury be demanded, the court shall determine that question, and the final decision given shall be a bar to any other proceeding to call the probate or rejection of the will in question—subject to the right of appeal or writ of error to the court of appeals as hereinbefore named; but nothing in this section shall preclude a court of chancery from its jurisdiction to impeach such final decision, for such reason as would give it jurisdiction over any other judgment at law.

All parties to be brought before circuit court.

A jury, if demanded.

A will may be admitted to record or rejected, ex parte.
V. R. 521.

§ 37. A county court may, however, without summoning any party, proceed to probate and admit the will to record or reject the same.

Saving in favor of non-residents and persons not parties.

V. R. 521.

§ 38. Any person interested, who, at the time of the final decision in the circuit court, resided out of this state, and was proceeded against by order of appearance only without actual appearance or being personally served with process, and any other person interested who was not a party to the proceeding by actual appearance or being personally served with process, may, within three years after such final decision in the circuit court, by bill in chancery impeach the decision and have a re-trial of the question of probate; and either party shall be entitled to a jury for the trial thereof. An infant, not a party, shall not be barred of such proceeding in chancery until twelve months after attaining full age.

Effect of proceeding in chancery.

§ 39. But no such proceeding in chancery for establishing or avoiding a will shall operate further than is necessary to the rights of such infant, non-resident, or other party, or otherwise affect the rights of any other person interested in the probate.

The record of probate evidence before the jury.

V. R. 521.

§ 40. The record of what is proved or deposed in court by witnesses on the motion to admit a will to record, and any depositions lawfully taken out of court on such motion, of witnesses who cannot be produced at a trial afterwards before a jury, may, on such trial, be admitted as evidence, to have such weight as the jury shall think they deserve.

Will to remain in the clerk's office after recorded.

V. R. 522.

§ 41. Every will or authenticated copy so admitted to record by any court shall be recorded by the clerk thereof and remain in his office, except during such time as the same may be carried to another court under a *subpœna duces tecum*.

Wills may be deposited with the clerk by testator.

Clerk's fee.

M. R. 417.

§ 42. A will may be deposited by the person making it, or any one for him, with the clerk of the county court of the county of his residence, for safe keeping, upon payment of a fee of one dollar to the clerk, who shall receive, keep, and deliver the same according to the directions on a sealed envelope.

If there are no such directions, or the party entitled does not apply, the will shall be handed to and opened by the next or some succeeding county court, after the death of the testator, and there retained for probate.

CHAPTER CVII.

WITNESSES.

Who shall be witnesses.
Privileged from arrest, &c.

§ 1. A slave, negro, or Indian shall be a competent witness in a case of the commonwealth for or against a slave, negro, or Indian, or in a civil case to which only negroes or Indians are parties, but in no other case. This shall not be construed to exclude an Indian, in other cases, who speaks the English language, and understands the nature and obligation of an oath.

Negroes and Indians, when competent.

V. R. 663.
M. & B. 1459.

§ 2. No person assessed, or liable to be assessed, with levies for any county, town, or corporation, or religious society, shall, by reason of such assessment or liability, be disabled from giving evidence.

Persons liable to be assessed competent.
V. R. 663.
3 & 4 Vic. c. 26.

§ 3. No such person, or any officer of a county, or corporation, or town, or religious society, shall be incompetent to give evidence in any case, by reason of his being liable for costs, when he is only a nominal party thereto, and liable to contribute to such costs only in common with other persons assessed with the levies of such county, town, religious society, or corporation.

A party to a suit may be a witness in certain cases.

V. R. 663.
3 & 4 Vic. c. 26.

§ 4. No fiduciary shall be incompetent as a witness, in any case where he has no personal interest, by reason of his being a party thereto, or of his being liable for costs; but if liable for costs, he shall not be competent, unless some person, of proper responsibility, shall undertake, on the record, to pay the same, without recourse upon him. In suits at law, either party, at the instance of his adversary, may be compelled to give evidence upon the trial.

A fiduciary may be a witness.

V. R. 663.
3 & 4 Vic. c. 26.

§ 5. Except where it is otherwise expressly provided, no person who has been or shall be convicted of felony, any where within the United States, shall be competent as a witness in any case, unless he has been pardoned; nor shall a person convicted of perjury, or subornation of perjury, be a competent witness, although pardoned.

Persons convicted of felony incompetent.

M. & B. 1594.
V. R. 751

§ 6. If any person shall be disqualified to testify in any suit or action, by reason of being next friend, or of having become bail or surety for costs, or surety in an appeal, or injunction, or other bond, or other instrument or recognizance required to be taken, at the institution of or during the progress of such suit or action, he may be discharged from liability by an order of the court, so as to be sworn

Next friend, bail, or surety, may be a witness under certain conditions.

M. R. 577.

and examined as a witness. But before this shall be done, another sufficient bail, or surety, or next friend, shall be substituted in his stead, to be liable, in like manner, and to the same extent, as he would have been.

Witness interested in the property, &c., competent for commonwealth
M. & B. 538, 1543.

§ 7. It shall be no objection to the competency of a witness on behalf of the commonwealth, that he has an interest in the property, or is the person on whom the forgery was committed, about which the prosecution is pending.

Fined if he fails to attend.

V. R. 752.

§ 8. If any person who accepts a summons, or who shall be legally summoned as a witness, to attend any court in this commonwealth, or to appear before commissioners or referees, or other persons appointed by or under the authority of such court, or to give his deposition, or to attend upon an order of survey, or to attend on the execution of a writ of *ad quod damnum*, or on any other legal proceeding, shall fail to attend accordingly, not having a legal excuse for such failure, such person shall be fined ten dollars by the court from which the summons issued.

Liable to the party for damages, &c.

V. R. 752.

§ 9. A witness so failing without such excuse, shall further be liable to the action of the party at whose instance he was summoned, for all damage sustained by the non-attendance of such witness.

Refusing to give testimony, may be imprisoned.

M. & B. 1549.

§ 10. If any person, so summoned, shall attend, and shall refuse to give evidence to the best of his knowledge, such witness shall be committed to the jail of the county, by the court or judicial officer under whose authority the proceeding is had, there to remain without bail until he shall give such evidence.

Privileged from arrest.

M. & B. 1543.

§ 11. A witness shall be privileged from arrest in all cases, except treason, felony, and breach of the peace, during his *bona fide* attendance at court, or other place where his attendance shall be required by a subpœna duly accepted or executed by an officer or a private person, and in going to such place and returning, allowing one day for every twenty miles, from his place of abode.

Summons to issue.

M. & B. 1549.

§ 12. In all cases in which witnesses are required to attend at any court or other place of procedure, a summons may be issued, at the request of either party, by the clerk of the court, or by the person whose duty it is to superintend the procedure, expressing the day and place where they are to appear, the names of the parties to the controversy, and in whose behalf summoned, directed to the county where the witnesses, or any of them, may be.

§ 13. A witness shall not be compelled to attend, as such, in a civil suit out of the county of his residence, unless his

traveling expenses, going and returning, are first paid or tendered to him; nor, except in a criminal prosecution, shall he be compelled to attend as a witness at a place distant more than thirty miles from his residence, but his deposition may, for that cause, be taken in any civil suit.

When his deposition may be taken.

CHAPTER CVIII.

WOLVES AND WILD CATS.

§ 1. Every person who shall kill a wolf or wild cat within this state, shall be paid out of the public treasury, for each wolf four dollars, and each wild cat one dollar.

Reward for killing wolves and wild cats. A. 1850, 20.

§ 2. Before the amount allowed for killing a wolf or wild cat shall be paid, the person killing the same shall produce the head thereof before a justice of the peace of the county in which the same was killed, who shall administer to him the following oath or affirmation:

Head to be produced to justice of the peace.

M. & B. 1551. L. 133.

Oath.

You do solemnly swear that the head now produced by you is the head of a wolf (or wild cat, as the case may be,) which you have killed in this state; that you did not take said wolf (or wild cat) in any other state, and bring the same into this state; that you did not breed and raise the same, nor was it done by another, to your knowledge or belief, and kill the same for the purpose of obtaining the reward for killing wolves and wild cats; that you will truly state the time and county in which said animal was killed.

§ 3. The justice shall issue to such person, by name, a certificate, stating the facts, and that he has taken the oath required by law. The justice shall, forthwith, destroy the head.

Certificate of the justice.

§ 4. Upon the production of such certificate to the circuit court of the same county, if it shall, in the opinion of the court, be in due form, the amount which such person is entitled to receive from the treasury shall be certified by the said court.

Certificate of court

§ 5. Upon the presentation of such certificate, certified and approved by the court, to the sheriff of the county, he shall pay the same out of any public money in his hands; and on the production of the certificate, with the receipt of the proprietor on the same, attested by one witness, the auditor shall allow the sheriff a credit for the amount thereof; or if presented by the proprietor to the auditor, he shall issue his warrant on the treasury for the amount.

To be paid by sheriff and allowed by auditor.

L. 134.

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