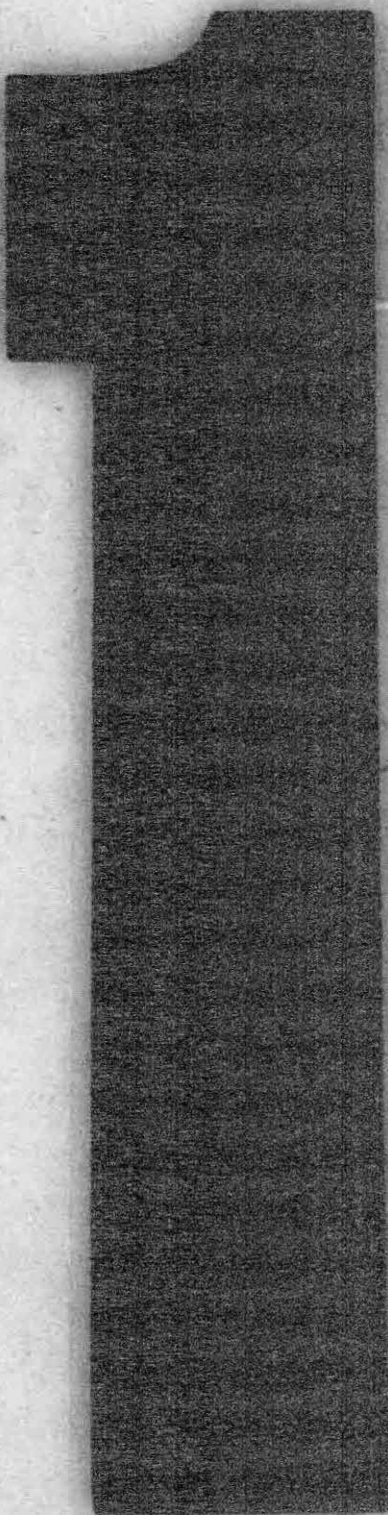


UNIT



PUBLIC ACTS

PASSED AT

THE FIRST SESSION

OF THE

WENTY-FIRST GENERAL ASSEMBLY

OF THE

STATE OF TENNESSEE.

1835-6.

PUBLISHED BY AUTHORITY.

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CONTENTS.

	<i>Page.</i>
CONSTITUTION OF THE STATE OF TENNESSEE.	1
An act to provide for the laying off the several counties in this State into districts of convenient size, within which justices of the peace and constables shall be elected, and for other purposes.	19
An act to provide for the election of a Governor, Representatives in Congress, Members of the General Assembly, Sheriffs, Trustees, Registers, Clerks of the Circuit and County Courts, and for other purposes.	23
An act to establish a Supreme Court in pursuance of the 2d sec. art. 6, of the Constitution of the State of Tennessee.	26
An act to establish Chancery Courts.	32
An act to establish Circuit Courts.	38
An act to re-organize the County Courts in this State.	45
An act to fix the salaries of the Chancellors and Circuit Court Judges in this State.	50
An act to regulate the practice in the Circuit Courts of the State of Tennessee.	50
An act vesting the County Courts of each county with discretionary power to have the minutes and other records of the Court transcribed into a well bound book, where the same has not heretofore been done.	51
An act, supplemental to an act passed at the present session of the General Assembly, entitled "an act to establish Circuit Courts.	52
An act to provide for the appointment of Notaries Public.	52
An act to provide for electing a Comptroller of the Treasury, and to prescribe his duties.	54
An act setting forth the property, real and personal, and the privileges and occupations liable to taxation in this State.	58
An act to provide for the appointment of Commissioners to take in a list of taxable property and polls, and to define their duties.	67
An act to provide for the appointment of a Collector of the Revenue, and to define his duties.	72
An act to amend the laws of this State regulating the bringing of suits upon Sheriffs' bonds.	79
An act to prescribe the duties and define the jurisdiction of justices of the peace	79
An act supplemental to an act entitled "an act to re-organize the County Courts in this State," passed December 3, 1835.	86

An act supplemental to an act entitled "an act to establish Circuit Courts," passed at the present session of the General Assembly.	89
An act to amend an act entitled "an act to establish Chancery Courts," passed at the present session of the General Assembly.	93
An act to divide the Militia of this State into companies, battalions, regiments, brigades and divisions, and to prescribe the times and modes of electing officers.	97
An act to encourage Internal Improvement in this State.	103
An act to appoint a board of Common School Commissioners, and to secure the common school fund.	110
An act to punish overseers of public roads, or other persons who shall set or cause to be set up, any false sign or label to mislead travellers.	114
An act to amend an act passed the 15th of December 1831, entitled "an act to tax the retailers of spiritous liquors, and to appropriate the moneys arising therefrom to the use of common schools.	115
An act concerning divorces, and to regulate the proceedings in suits which may hereafter be brought in this State in such cases.	117
An act to provide for electing a Treasurer of the State, and to define his duties.	123
An act to lay off the State into solicitorial districts, and for other purposes.	127
An act to authorize the several County Courts which are now or may hereafter be established in this State, to grant the privilege of building bridges, erecting fish dams, and such other private or local improvements, as in their discretion shall be right and proper, and as shall be conformable to the 7th and 8th sections of the 11th article of the Constitution of the State of Tennessee.	128
An act concerning the rents and profits of school lands.	131
An act to amend an act passed the 5th day of November 1833, entitled "an act to regulate ferriages and tolls at ferries kept on the Tennessee river, North of the North boundary line of the State of Alabama.	132
An act giving further time to the purchasers and enterers of land in the Hiwassee District to obtain their grants.	132
An act to authorize the registration of grants for land emanating from the State of Kentucky between Walker's line and Matthews' line, as provided for in the compact of 1820, between this State and the State of Kentucky.	133
An act to authorize the county courts in certain cases to order the sale of sites and materials of jails and public prisons, and to purchase others.	133
An act to amend an act appropriating the school land in the Hiwassee district, and for other purposes.	135
An act to authorize sheriffs to convey persons arrested on a criminal charge in one county to the prison of another county for safe keeping.	135
An act giving the further time of two years for making surveys and obtaining grants on entries made under the act of 1819, chapter 1, and the acts subsequent thereto.	136

An act to amend the existing laws on the subject of new counties.	137
An act prescribing the mode of choosing electors to vote for President and Vice President of the United States.	137
An act to amend and extend the act of 1825, chapter 37.	140
An act to equalize the stay of executions rendered by justices of the peace on all sums.	141
An act to increase the jurisdiction of justices of the peace.	142
An Act more effectually to subject property in this State, belonging to non-resident debtors, to the payment of their debts due citizens of this and other States.	143
An act to prevent the publication or circulation in this State of seditious pamphlets and papers.	145
An act for the relief of occupants South and West of the Congressional reservation line, and North of Winchester's line, and for other purposes.	146
An act to authorize the issuance of grants in certain cases.	151
An act to prohibit the drawing of lotteries and vending lottery tickets.	152
An act to abolish the present Surveyors' offices South and West of the Congressional reservation line, and to establish county offices in lieu thereof.	153
An act to provide for holding elections in the different incorporated towns in this State.	157
An act to fix the rate of interest in this State.	157
An act to appoint an Attorney General for the State, and for other purposes.	159
An act supplemental to an act passed the 30th of January 1836, entitled an act to authorize the several County Courts in this State to grant the privilege of building bridges, mill dams, and such other local and private improvements as are contemplated by the 7th and 8th sections of the 11th article of the Constitution of Tennessee.	160
An act to authorize the clerks of the courts of record in this State, to take the probate or acknowledgment of assignment of plats and certificates of survey and locations.	161
An act to punish the grantees and owners of turnpike roads for demanding toll improperly and contrary to law.	163
An act to prescribe certain duties to be performed by the clerks of the several Courts in this State, and for other purposes.	165
An act to authorize femes covert to act as femes sole under certain circumstances.	166
An act to regulate Free Negroes, and for other purposes.	167
An act to amend the penal laws of the State.	168
An act to authorize the taxation of costs in cases wherein persons have been bound to keep the peace.	168
An act to provide for the recovery of debts due upon judgments destroyed by fire.	169
An act for the relief of tax collectors in certain cases.	169
An act to amend an act passed the 13th day of September, 1806,	

entitled "an act to prevent citizens of other States from stock on the lands of the citizens of this State.	170
An act to amend an act entitled "an act prescribing the mode of conveying criminals to the public jail and penitentiary house established in this State, and for their government therein," passed the 28th December 1829, and for other purposes.	171
An act to provide for electing Registers for the issuing of grants in this State.	172
An act to amend the penal laws of this State.	174
An act to regulate turnpike roads, toll bridges, and to make the proprietors or keepers hereof subject to indictment as overseers of public roads.	175
An act to authorize persons in certain cases to hold more than one occupant claim.	175
An act to prescribe the degree of relationship that shall render a judicial officer incompetent to try a cause, and to provide for the special appointment of Judges in certain cases, under the 11th section of the 6th article of the Constitution.	176
An act to provide for the publication of the laws and journals, and for other purposes.	177
An act to provide for refunding money in certain cases.	179
An act to direct the Attorney for the State to bring suit against the Union Bank of the State of Tennessee.	180
An act to ascertain the compensation to be allowed to the Speakers and Members of the General Assembly, and the Governor and Secretary of State.	180
An act to repeal so much of the 6th section of an act passed at the present session, entitled an act to provide for the election of Governor, Representatives in Congress, Members of the General Assembly, Sheriffs, Trustees, Registers, Clerks of the Circuit and County Courts, as relates to the election of Surveyor and Entry Taker, and for other purposes.	181
An act making an appropriation for the payment of the debt due from the State to the Union Bank, contracted in pursuance of a resolution of the late Convention to revise and amend the Constitution of the State of Tennessee.	181
An act supplemental to an act entitled "an act to prohibit the drawing of lotteries and vending lottery tickets," passed 13th February 1836.	182
An act to prescribe the mode of publishing the decisions of the Supreme Court.	182
An act to prevent the abatement of civil actions.	184
An act to amend the several acts prescribing the duties of Entry Takers.	184
An act to amend an act entitled "an act requiring the acts of a public and general nature of the General Assembly of the State to be bound," passed December 21, 1831.	185
An act to amend an act, entitled an act to allow wharfage to certain persons therein named," passed July 21, 1820.	185
An act to repeal the second, third and fourth sections of an act	

entitled "an act to amend the judiciary system of the State of Tennessee," passed 15th December, 1831.	186
An act to provide for correcting mistakes in entries or locations of warrants.	186
An act giving further time for surveying and obtaining grants on land North and East of the Congressional reservation line, and North of Tennessee river.	187
An act to regulate the practice in taking bond and security for the prosecution of certiorari in cases of forcible entry and detainer.	188
An act supplemental to an act entitled "an act to extend the benefits of the first section of an act, chapter 40, passed at Nashville on the 30th December, 1829."	188
An act to provide for the transfer of law suits in certain cases.	189
An act to authorize a nolle prosequi to be entered in certain cases	190
An act concerning navigable rivers.	190
An act to repeal all laws authorizing the County Courts to make allowances to Attorney Generals.	191
An act to provide for the payment of costs in certain cases.	191
An act making an appropriation of money to defray the expenses of the present General Assembly.	192
Resolution directory to the Public Printer.	195
Resolution directory to William M. Berryhill, bank agent of the Bank of the State of Tennessee.	195
Resolution appointing Commissioners to lay off the several counties into districts of convenient size within which justices of the peace and constables shall be elected.	196
Resolution apportioning the acts and journals among the several counties in this State.	199
Resolution appointing Commissioners for the county of Hardin.	201
Resolution appointing Commissioners to lay off the county of Bradley into civil districts.	201
Resolution requiring Thomas Crutcher, Treasurer of the State, to make demand of the President of the Union Bank of the bonus and profits arising upon the State stock in said Bank, according to the provisions of its charter.	201
A resolution relating to the appointment of Commissioners to lay off the county seat of Coffee county.	202
A resolution concerning the North boundary line of the State of Tennessee.	202
Resolution giving instructions to the Sheriff of Davidson county.	203
Resolution directory to the Executive of the State.	204
Resolution rescinding a resolution adopted at the present session, directory to the Executive of this State.	204
Resolution directory to the Secretary of State.	205
A resolution authorizing the Governor to raise, by permission of the General Government, a regiment of volunteer mounted men, to engage in the service of the United States against the Seminole Indians.	205
Preamble and resolutions upon the subject of our relations with France.	206

Resolution authorizing the Governor to loan arms.	208
Resolution appointing John Staples a Commissioner for Franklin in the room of John R. Patrick.	207
Resolution continuing Dr. Troost Geologist for the State.	209
Resolution authorizing the notes on hand of the Bank of the State of Tennessee to be burned.	209
Resolution to appoint a joint select Committee to investigate the accounts of Miller Francis, late Treasurer of East Tennessee.	209
Resolution appointing Thomas Jarnagin and James Pullin Commissioners for Dickson county.	210
Resolution appointing Commissioners to lay off the county of Benton into justices and constables districts.	210
Resolution appointing Commissioners for the county of Coffee and the county of Cannon.	211
Resolution providing for laying off a portion of Henry county attached to the county of Benton into one civil district.	211
Resolution appointing a Commissioner for the county of Lawrence, and for the county of Wayne.	211
A resolution calling on the Reporter to the State for certain information.	212
Resolution appointing James Blackmore one of the Commissioners to lay off Sumner county into civil districts.	212
Resolution appointing James A. Coffin and Samuel M. Johnson Commissioners for the Court house in Madisonville.	213
A resolution recommending Hon. Hugh L. White for the Presidency.	213
A resolution supplemental to a resolution appointing Commissioners to lay off the several counties of this State into districts of convenient size, within which justices of the peace and constables shall be elected, adopted December 11th 1835.	214
Resolution appointing William S. Mooney Commissioner for Franklin county.	215
The memorial of the General Assembly of the State of Tennessee, to the Senate and House of Representatives of the United States in Congress assembled, concerning the Memphis Hospital.	215
Reports of the Committee of Finance, Nos. 1 & 2,	217, 219

CONSTITUTION OF THE STATE OF TENNESSEE.

Whereas, the People of the territory of the United States, south of the river Ohio, having the right of admission into the General Government as a Member State thereof, consistent with the Constitution of the United States, and the act of cession of the State of North Carolina, recognizing the ordinance for the government of the territory of the United States north-west of the river Ohio, by their delegates and representatives in Convention assembled, did, on the sixth day of February, in the year of our Lord one thousand seven hundred and ninety-six, ordain and establish a Constitution or form of government, and mutually agreed with each other to form themselves into a free and independent State, by the name of "The State of Tennessee;" and whereas, the General Assembly of said State of Tennessee, (pursuant to the third section of the tenth article of the Constitution) by an act passed on the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and thirty-three, entitled "An act to provide for the calling of a Convention," did authorize and provide for the election, by the people, of Delegates, and Representatives, to meet at Nashville, in Davidson county, on the third Monday in May, in the year of our Lord one thousand eight hundred and thirty-four, "for the purpose of revising and amending (or changing) the Constitution:"

We, therefore, the Delegates and Representatives of the People of the State of Tennessee, elected and in Convention assembled, in pursuance of the said Act of Assembly, have ordained and established the following amended Constitution and form of Government for this State, which we recommend to the people of Tennessee for their ratification; that is to say:

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness; for the advancement of those ends, they have, at all times, an unalienable and indefeasible right to alter, reform or abolish the government in such manner as they may think proper.

2
SEC. 2. That government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

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

SEC. 4. That no religious test shall ever be required as a qualification to any office or public trust under this State.

SEC. 5. That Elections shall be free and equal.

SEC. 6. That the right of trial by jury shall remain inviolate.

SEC. 7. That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.

SEC. 8. That no free man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land.

SEC. 9. That in all criminal prosecutions, the accused hath a right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county or district in which the crime shall have been committed; and shall not be compelled to give evidence against himself.

SEC. 10. That no person shall, for the same offence, be twice put in jeopardy of life or limb.

SEC. 11. That laws made for the punishment of facts committed previous to the existence of such laws, and by them only declared criminal, are contrary to the principles of a free government; wherefore no *ex post facto* law shall be made.

SEC. 12. That no conviction shall work corruption of blood or forfeiture of estate. The estate of such persons as shall destroy their own lives, shall descend or vest as in case of natural death. If any person be killed by casualty, there shall be no forfeiture in consequence thereof.

SEC. 13. That no person arrested or confined in jail, shall be treated with unnecessary rigor.

SEC. 14. That no free man shall be put to answer any criminal charge but by presentment, indictment or impeachment.

SEC. 15. That all prisoners shall be bailable by sufficient sureties unless for capital offences when the proof is evident or the presumption

3
great. And the privilege of the writ of *habeas corpus* shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.

SEC. 16. That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

SEC. 17. That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the State in such manner and in such courts, as the Legislature may by law direct.

SEC. 18. 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 creditor or creditors, in such manner as shall be prescribed by law.

SEC. 19. That the printing presses shall be free to every person who undertakes to examine the proceedings of the Legislature, or of any branch or Officer 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. But in prosecutions for the publication of papers investigating the official conduct of officers or men, in public capacity, 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 criminal cases.

SEC. 20. That no retrospective law, or law impairing the obligation of contracts, shall be made.

SEC. 21. That no man's particular services shall be demanded, or property taken or applied to public use, without the consent of his representatives, or without just compensation being made therefor.

SEC. 22. That perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed.

SEC. 23. That the citizens have a right, in a peaceable manner, to assemble together, for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances or other proper purposes, by address or remonstrance.

SEC. 24. That the sure and certain defence of a free people, is a well regulated militia: and, as standing armies in time of peace are dangerous to freedom, they ought to be avoided, as far as the circumstances and safety of the community will admit; and that in all cases the military shall be kept in strict subordination to the civil authority.

SEC. 25. That no citizen of this State, except such as are employed in the army of the United States, or militia in actual service, shall be subjected to corporeal punishment under the martial law.

SEC. 26. That the free white men of this State have a right to keep and to bear arms for their common defence.

SEC. 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 prescribed by law.

SEC. 28. That no citizen of this State shall be compelled to bear arms, provided he will pay an equivalent, to be ascertained by law.

SEC. 29. That an equal participation of the free navigation of the Mississippi, is one of the inherent rights of the citizens of this State: it cannot, therefore, be conceded to any prince, potentate, power, person or persons whatever.

SEC. 30. That no hereditary emoluments, privileges, or honors, shall ever be granted or conferred in this State.

SEC. 31. That the limits and boundaries of this State be ascertained, it is declared they are as hereafter mentioned, that is to say: Beginning on the extreme height of the Stone mountain, at the place where the line of Virginia intersects it, in latitude thirty-six degrees and thirty minutes north; running thence along the extreme height of the said mountain to the place where Watauga river breaks through it; thence a direct course to the top of the Yellow mountain, where Bright's road crosses the same; thence along the ridge of said mountain between the waters of Doe river and the waters of Rock creek, to the place where the road crosses the Iron mountain; from thence along the extreme height of said mountain; to the place where Nolichucky river runs through the same; thence to the top of the Bald mountain; thence along the extreme height of said mountain to the Painted Rock, on French Broad river; thence along the highest ridge of said mountain to the place where it is called the Great Iron or Smoky mountain; thence along the extreme height of said mountain to the place where it is called Unicoi or Unaka mountain, between the Indian towns of Cowee and Old Chota; thence along the main ridge of the said mountain to the southern boundary of this State, as described in the act of cession of North Carolina to the United States of America; and that all the territory, lands and waters, lying west of the said line, as before mentioned, and contained within the chartered limits of the State of North Carolina, are within the boundaries and limits of this State; over which the people have the right of exercising sovereignty and the right of soil, so far as is consistent with the constitution of the United States, recognizing the articles of confederation, the bill of rights, and constitution of North Carolina, the cession act of the said State, and the ordinance of Congress for the government of the territory northwest of the Ohio: *Provided*, nothing herein contained shall extend to affect the claim or claims of individuals, to any part of the soil which is recognized to them by the aforesaid cession act: *And provided, also*, that the limits and jurisdiction of this State shall extend to any other land and territory now acquired, or that may hereafter be acquired by compact or agreement with other States or otherwise, although such land and territory are not included within the boundaries herein before designated.

SEC. 32. The people residing south of French Broad and Holston, between the rivers Tennessee and Big Pigeon, are entitled to the right of pre-emption and occupancy in that tract.

ARTICLE II.

SEC. 1. The powers of the Government shall be divided into three distinct departments; the Legislative, Executive and Judicial.

SEC. 2. No person or persons belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.

SEC. 3. The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both dependent on the people.

SEC. 4. An enumeration of the qualified voters and an apportionment of the Representatives in the General Assembly, shall be made in the year one thousand eight hundred and forty one, and within every subsequent term of ten years.

SEC. 5. The number of Representatives shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified voters in each; and shall not exceed seventy-five, until the population of the State shall be one million and a half; and shall never thereafter exceed ninety-nine; *provided*, that any county having two-thirds of the ratio, shall be entitled to one member.

SEC. 6. The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified electors in each, and shall not exceed one-third the number of Representatives. In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of members to the House of Representatives, shall be made up to such county or counties in the Senate as near as may be practicable. When a district is composed of two or more counties, they shall be adjoining; and no county shall be divided in forming a district.

SEC. 7. The first election for Senators and Representatives shall be held on the first Thursday in August, one thousand eight hundred and thirty-five; and forever thereafter, elections for members of the General Assembly shall be held once in two years, on the first Thursday in August; said elections shall terminate the same day.

SEC. 8. The first session of the General Assembly shall commence on the first Monday in October, one thousand eight hundred and thirty-five; and forever thereafter, the General Assembly shall meet on the first Monday in October next ensuing the election.

SEC. 9. No person shall be a Representative, unless he shall be a citizen of the United States, of the age of twenty-one years, and shall have been a citizen of this State for three years; and a resident in the county he represents one year immediately preceding the election.

SEC. 10. No person shall be a Senator unless he shall be a citizen of the United States, of the age of thirty years, and shall have resided three years in this State, and one year in the county or district, immediately preceding the election. No Senator or Representative shall, during the time for which he was elected, be eligible to any office or place of trust, the appointment to which is vested in the Executive or the General Assembly, except to the office of Trustee of a literary institution.

SEC. 11. The Senate and House of Representatives, when assembled, shall each choose a Speaker and its other officers, be judges of the qualifications and election of its members, and sit upon its own adjournments

from day to day. Two-thirds of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised by law to compel the attendance of absent members.

SEC. 12. Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offence; and shall have all other powers necessary for a branch of the Legislature of a free State.

SEC. 13. Senators and Representatives shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during the session of the General Assembly, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

SEC. 14. Each House may punish by imprisonment, during its session, any person not a member, who shall be guilty of disrespect to the House, by any disorderly or contemptuous behaviour in its presence.

SEC. 15. When vacancies happen in either House, the Governor for the time being, shall issue writs of election to fill such vacancies.

SEC. 16. Neither House shall, during its session, adjourn without consent of the other for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SEC. 17. Bills may originate in either House, but may be amended, altered or rejected by the other.

SEC. 18. Every bill shall be read once on three different days, and be passed each time in the House where it originated, before transmission to the other. No bill shall become a law, until it shall be read and passed on three different days in each House, and be signed by the respective Speakers.

SEC. 19. After a bill has been rejected, no bill containing the same substance shall be passed into a law during the same session.

SEC. 20. The style of the laws of this State shall be, "*Be it enacted by the General Assembly of the State of Tennessee.*"

SEC. 21. Each House shall keep a journal of its proceedings, and publish it, except such parts as the welfare of the State may require to be kept secret; the ayes and noes shall be taken in each House upon the final passage of every bill of a general character, and bills making appropriations of public moneys; and the ayes and noes of the members on any question shall, at the request of any two of them, be entered on the journal.

SEC. 22. The doors of each House and of Committees of the Whole, shall be kept open, unless when the business shall be such as ought to be kept secret.

SEC. 23. The sum of four dollars per day, and four dollars for every twenty-five miles travelling to and from the Seat of Government, shall be allowed to the members of the first General Assembly, as a compensation for their services. The compensation of the members of the succeeding Legislature, shall be ascertained by law; but no law increasing the compensation of the members shall take effect until the commencement of the next regular session after such law shall have been enacted.

SEC. 24. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and an accurate statement of the receipts and expenditures of the public money, shall be attached to and published with the laws at the rise of each stated session of the General Assembly.

SEC. 25. No person who heretofore hath been, or may hereafter be, a collector or holder of public moneys, shall have a seat in either House of the General Assembly, until such person shall have accounted for and paid into the treasury all sums for which he may be accountable or liable.

SEC. 26. No Judge of any court of law or equity, Secretary of State, Attorney General, Register, Clerk of any court of record, or person holding any office under the authority of the United States, shall have a seat in the General Assembly; nor shall any person in this State hold more than one lucrative office at the same time: *Provided*, that no appointment in the militia, or to the office of Justice of the Peace shall be considered a lucrative office, or operate as a disqualification to a seat in either House of the General Assembly.

SEC. 27. Any member of either House of the General Assembly shall have liberty to dissent from, and protest against, any act or resolve which he may think injurious to the public or to any individual, and to have the reasons for his dissent entered on the journals.

SEC. 28. All lands liable to taxation, held by deed, grant, or entry, town lots, bank stock, slaves between the ages of twelve and fifty years, and such other property as the Legislature may from time to time deem expedient, shall be taxable. All property shall be taxed according to its value; that value to be ascertained in such manner as the Legislature shall direct, so that the same shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value. But the Legislature shall have power to tax merchants, pedlars, and privileges, in such manner as they may, from time to time, direct. A tax on white polls shall be laid in such manner and of such an amount as may be prescribed by law.

SEC. 29. The General Assembly shall have power to authorise the several Counties and Incorporated Towns in this State, to impose taxes for county and corporation purposes respectively, in such manner as shall be prescribed by law; and all property shall be taxed according to its value, upon the principles established in regard to State taxation.

SEC. 30. No article manufactured of the produce of this State, shall be taxed otherwise than to pay inspection fees.

SEC. 31. The General Assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owner or owners.

ARTICLE III.

SECTION 1. The Supreme Executive power of this State, shall be vested in a Governor.

SEC. 2. The Governor shall be chosen by the electors of the mem-

bers of the General Assembly, at the times and places where they shall respectively vote for the members thereof. The returns of every election for Governor shall be sealed up, and transmitted to the seat of government, by the returning officers, directed to the Speaker of the Senate, who shall open and publish them in the presence of a majority of the members of each House of the General Assembly. The person having the highest number of votes, shall be Governor; but if two or more shall be equal, and highest in votes, one of them shall be chosen Governor by joint vote of both Houses of the General Assembly. Contested elections for Governor, shall be determined by both Houses of the General Assembly, in such manner as shall be prescribed by law.

SEC. 3. He shall be at least thirty years of age, shall be a citizen of the United States, and shall have been a citizen of this State seven years next before his election.

SEC. 4. The Governor shall hold his office for two years, and until his successor shall be elected and qualified. He shall not be eligible more than six years in any term of eight.

SEC. 5. He shall be commander-in-chief of the army and navy of this State, and of the militia, except when they shall be called into the service of the United States.

SEC. 6. He shall have power to grant reprieves and pardons, after conviction, except in cases of impeachment.

SEC. 7. He shall, at stated times, receive a compensation for his services, which shall not be increased or diminished during the period for which he shall have been elected.

SEC. 8. He may require information in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

SEC. 9. He may, on extraordinary occasions, convene the General Assembly, by proclamation; and shall state to them, when assembled, the purposes for which they shall have been convened; but they shall enter on no legislative business, except that for which they were specially called together.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. He shall, from time to time, give to the General Assembly, information of the state of the government, and recommend to their consideration such measures as he shall judge expedient.

SEC. 12. In case of the removal of the Governor from office, or of his death, or resignation, the powers and duties of the office shall devolve on the Speaker of the Senate; and in case of the death, removal from office, or resignation of the Speaker of the Senate, the powers and duties of the office shall devolve on the Speaker of the House of Representatives.

SEC. 13. No member of Congress, or person holding any office under the United States, or this State, shall execute the office of Governor.

SEC. 14. When any officer, the right of whose appointment is by this Constitution vested in the General Assembly, shall, during the recess, die, or the office, by the expiration of the term, or by other means, become vacant, the Governor shall have the power to fill such vacancy, by

granting a temporary commission, which shall expire at the end of the next session of the Legislature.

SEC. 15. There shall be a Seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called the *Great Seal of the State of Tennessee*.

SEC. 16. All grants and commissions shall be in the name and by the authority of the State of Tennessee, be sealed with the State Seal, and signed by the Governor.

SEC. 17. A Secretary of State shall be appointed by joint vote of the General Assembly, and commissioned during the term of four years: he shall keep a fair register of 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 the General Assembly: and shall perform such other duties as shall be enjoined by law.

ARTICLE IV.

SECTION 1. Every free white man of the age of twenty-one years, being a citizen of the United States, and a citizen of the County wherein he may offer his vote, six months next preceding the day of election, shall be entitled to vote for members of the General Assembly, and other civil officers, for the county or district in which he resides: *Provided*, that no person shall be disqualified from voting in any election on account of color, who is now by the laws of this State, a competent witness in a court of justice against a white man. All free men of color, shall be exempt from military duty in time of peace, and also from paying a free poll tax.

SEC. 2. Laws may be passed excluding from the right of suffrage, persons who may be convicted of infamous crimes.

SEC. 3. Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest or summons, during their attendance at elections, and in going to and returning from them.

SEC. 4. In all elections to be made by the General Assembly, the members thereof shall vote *viva voce*; and their votes shall be entered on the journal. All other elections shall be by ballot.

ARTICLE V.

SECTION 1. The House of Representatives shall have the sole power of impeachment.

SEC. 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 Senators sworn to try the officer impeached.

SEC. 3. The House of Representatives shall elect, from their own body, three members, whose duty it shall be to prosecute impeachments. No impeachment shall be tried until the Legislature shall have adjourned *sine die*, when the Senate shall proceed to try such impeachment.

SEC. 4. The Governor, Judges of the Supreme Court, Judges of Inferior Courts, Chancellors, Attorneys for the State, and Secretary of

State, shall be liable to impeachment, whenever they may, in the opinion of the House of Representatives, commit any crime in their official capacity, which may require disqualification; but judgment shall only extend to removal from office, and disqualification to fill any office thereafter. The party shall, nevertheless, be liable to indictment, trial, judgment and punishment according to law.

SEC. 5. Justices of the Peace, and other civil officers, not herein before mentioned, for crimes or misdemeanors in office, shall be liable to indictment in such courts as the Legislature may direct; and upon conviction, shall be removed from office by said court, as if found guilty on impeachment; and shall be subject to such other punishment as may be prescribed by law.

ARTICLE VI.

SECTION 1. The Judicial power of this State, shall be vested in one Supreme Court; in such Inferior Courts as the Legislature shall from time to time ordain and establish, and the Judges thereof; and in Justices of the Peace. The Legislature may also vest such jurisdiction as may be deemed necessary in Corporation Courts.

SEC. 2. The Supreme Court shall be composed of three Judges, one of whom shall reside in each of the grand divisions of the State; the concurrence of two of said Judges, shall in every case be necessary to a decision. The jurisdiction of this court shall be appellate only, under such restrictions and regulations as may from time to time be prescribed by law; but it may possess such other jurisdiction as is now conferred by law on the present Supreme Court. Said Courts shall be held at one place, and at one place only, in each of the three grand divisions in the State.

SEC. 3. The General Assembly shall, by joint vote of both Houses, appoint Judges of the several Courts of law and equity; but courts may be established to be holden by Justices of the Peace. Judges of the Supreme Court shall be thirty-five years of age, and shall be elected for the term of twelve years.

SEC. 4. The Judges of such Inferior Courts as the Legislature may establish, shall be thirty years of age, and shall be elected for the term of eight years.

SEC. 5. The Legislature shall elect Attorneys for the State, by joint vote of both Houses of the General Assembly, who shall hold their offices for the term of six years. In all cases where an Attorney for any district fails or refuses to attend and prosecute according to law, the court shall have power to appoint an attorney *pro tempore*.

SEC. 6. Judges and Attorneys for the State may be removed from office by a concurrent vote of both Houses of the General Assembly, each House voting separately; but two-thirds of all the members elected to each House must concur in such vote: the vote shall be determined by ayes and noes, and the names of the members voting for or against the Judge or Attorney for the State, together with the cause or causes of removal, shall be entered on the journals of each House respectively. The Judge or Attorney for the State, against whom the Legislature may

be about to proceed, shall receive notice thereof, accompanied with a copy of the causes alleged for his removal, at least ten days before the day on which either House of the General Assembly shall act thereupon.

SEC. 7. The Judges of the Supreme and Inferior Courts, shall at stated times, receive a compensation for their services, to be ascertained by law, which shall not be increased or diminished, during the time for which they are elected. They shall not be allowed any fees or perquisites of office, nor hold any other office of trust or profit under this State or the United States.

SEC. 8. The jurisdiction of such Inferior Courts, as the Legislature may from time to time establish, shall be regulated by law.

SEC. 9. Judges shall not charge Juries with respect to matters of fact, but may state the testimony and declare the law.

SEC. 10. The Judges or Justices of such Inferior Courts of law as the Legislature may establish, shall have power, in all civil cases, to issue writs of *certiorari* to remove any cause or transcript thereof, from any inferior jurisdiction, into said Court, on sufficient cause supported by oath or affirmation.

SEC. 11. No Judge of the Supreme or Inferior Courts, shall preside on the trial of any cause, in the event of which he may be interested or where either of the parties shall be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or in which he may have been of counsel, or in which he may have presided in any Inferior Court, except by consent of all the parties. In case all or any of the Judges of the Supreme Court, shall be thus disqualified from presiding on the trial of any cause or causes, the Court, or the Judges thereof, shall certify the same to the Governor of the State, and he shall forthwith specially commission the requisite number of men of law knowledge, for the trial and determination thereof. In case of sickness of any of the Judges of the Supreme or Inferior Courts, so that they or any of them are unable to attend, the Legislature shall be authorized to make provision by general laws, that special Judges may be appointed to attend said Courts.

SEC. 12. All writs and other process shall run in the name of the State of Tennessee; and bear test and be signed by the respective clerks. Indictments shall conclude, "*against the peace and dignity of the State.*"

SEC. 13. Judges of the Supreme Court shall appoint their clerks, who shall hold their offices for the period of six years. Chancellors (if Courts of Chancery shall be established) shall appoint their Clerks and Masters, who shall hold their offices for the period of six years. Clerks of such Inferior Courts as may be hereafter established, which shall be required to be holden in the respective Counties of this State, shall be elected by the qualified voters thereof, for the term of four years; they shall be removed from office for malfeasance, incompetency or neglect of duty, in such manner as may be prescribed by law.

SEC. 14. No fine shall be laid on any citizen of this State, that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers, who shall assess the fine at the time they find the fact, if they think the fine should be more than fifty dollars.

SEC. 15. The different counties in this State shall be laid off as the General Assembly may direct, into districts of convenient size, so that the whole number in each County shall not be more than twenty-five, or four for every one hundred square miles: There shall be two Justices of the Peace and one Constable elected in each district, by the qualified voters therein, except districts including county towns, which shall elect three Justices and two Constables. The jurisdiction of said officers shall be co-extensive with the County. Justices of the Peace shall be elected for the term of six, and Constables for the term of two years. Upon the removal of either of said officers from the district in which he was elected, his office shall become vacant from the time of such removal. Justices of the Peace shall be commissioned by the Governor. The Legislature shall have power to provide for the appointment of an additional number of Justices of the Peace in incorporated towns.

ARTICLE VII.

SECTION 1. There shall be elected in each County, by the qualified voters therein, one Sheriff, one Trustee, and one Register; the Sheriff and Trustee for two years, and the Register for four years: *Provided*, that no person shall be eligible to the office of Sheriff more than six years in any term of eight years. There shall be elected for each County, by the Justices of the Peace, one Coroner and one Ranger, who shall hold their offices for two years. Said officers shall be removed for malfeasance, or neglect of duty, in such manner as may be prescribed by law.

SEC. 2. Should a vacancy occur, subsequent to an election, in the office of Sheriff, Trustee, or Register, it shall be filled by the Justices; if in that of the Clerks to be elected by the people, it shall be filled by the Courts, and the person so appointed, shall continue in office until his successor shall be elected and qualified; and such office shall be filled by the qualified voters at the first election for any of the county officers.

SEC. 3. There shall be a Treasurer or Treasurers appointed for the State by the joint vote of both Houses of the General Assembly, who shall hold his or their offices for two years.

SEC. 4. The election of all officers, and the filling of all vacancies that may happen, by death, resignation or removal, not otherwise directed or provided for by this Constitution, shall be made in such manner as the Legislature shall direct.

SEC. 5. The Legislature shall provide, that the election of the county and other officers by the people, shall not take place at the same time that the general elections are held for members of Congress, members of the Legislature, and Governor. The elections shall commence and terminate on the same day.

ARTICLE VIII.

SECTION 1. All militia officers shall be elected by persons subject to military duty, within the bounds of their several companies, battal-

ions, regiments, brigades and divisions, under such rules and regulations as the Legislature may, from time to time, direct and establish.

SEC. 2. The Governor shall appoint the Adjutant General and his other Staff Officers; The Majors General, Brigadiers General and commanding officers of regiments, shall respectively appoint their Staff Officers.

SEC. 3. The Legislature shall pass laws, exempting citizens belonging to any sect or denomination of religion, the tenets of which are known to be opposed to the bearing of arms, from attending private and general musters.

ARTICLE IX.

SECTION 1. Whereas, Ministers of the Gospel are, by their profession dedicated to God and the care of souls, and ought not to be diverted from the great duties of their functions; therefore, no Minister of the Gospel or Priest of any denomination whatever, shall be eligible to a seat in either House of the Legislature.

SEC. 2. No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this State.

SEC. 3. Any person who shall, after the adoption of this Constitution, fight a duel, or knowingly be the bearer of a challenge to fight a duel, or send or accept a challenge for that purpose, or be an aider or abetter in fighting a duel, shall be deprived of the right to hold any office of honor or profit in this State, and shall be punished otherwise in such manner as the Legislature may prescribe.

ARTICLE X.

SECTION 1. Every person who shall be chosen or appointed to any office of trust or profit, under this Constitution, or any law made in pursuance thereof, shall, before entering on the duties thereof, take an oath to support the Constitution of this State and of the United States, and an oath of office,

SEC. 2. Each member of the Senate and House of Representatives, shall, before they proceed to business, take an oath or affirmation to support the Constitution of this State, and of the United States, and also the following oath: "I, ———, do solemnly swear (or affirm,) that, as a member of this General Assembly, I will, in all appointments, vote without favor, affection, partiality, or prejudice; and that I will not propose or assent to any bill, vote or resolution, which shall appear to me injurious to the people, or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared by the Constitution of this State."

SEC. 3. Any elector who shall receive any gift or reward for his vote, in meat, drink, money, or otherwise, shall suffer such punishment as the laws shall direct. And any person who shall directly or indirectly give, promise, or bestow, any such reward to be elected, shall thereby be rendered incapable for six years, to serve in the office for which he was

elected, and be subject to such further punishment as the Legislature shall direct.

SEC. 4. New Counties may be established by the Legislature, to consist of not less than three hundred and fifty square miles, and which shall contain a population of four hundred and fifty qualified voters. No line of such county shall approach the court house of any old county from which it may be taken, nearer than twelve miles. No part of a county shall be taken off to form a new county or a part thereof, without the consent of a majority of the qualified voters in such part taken off. And in all cases where an old county may be reduced for the purpose of forming a new one, the seat of justice in said old county shall not be removed without the concurrence of two thirds of both branches of the Legislature, nor shall said old county be reduced to less than six hundred and twenty-five square miles: *Provided*, however, that the county of Bedford may be reduced to four hundred and seventy-five square miles; and there shall not be laid off more than one new county on the west, and one on the east, adjoining the county of Bedford, and no new county line shall run nearer than eleven and a half miles of the seat of justice of said county. The line of a new county may run within eleven miles of the seat of justice of Franklin county: *Provided*, it does not reduce said county to less contents than six hundred and twenty-five square miles. The counties of Carter, Rhea, Tipton, Dyer and Sullivan, are excepted out of the provisions of this section: the county of Humphreys may be divided, at such time as may be prescribed by the Legislature, making the Tennessee river the dividing line; a majority of the qualified voters of said county voting in favor of said division: the counties of Carter, Rhea and Humphreys, shall not be divided into more than two counties each; nor shall more than one new county be taken out of the Territory now composing the counties of Tipton and Dyer; nor shall the seats of justice in the counties of Rhea, Carter, Tipton and Dyer be removed, without the concurrence of two thirds of both branches of the Legislature. The county of Sullivan may be reduced below the contents of six hundred and twenty-five square miles, but the line of any new county which may hereafter be laid off, shall not approach the county seat of said county nearer than ten miles. The counties of Marion and Bledsoe shall not be reduced below one thousand qualified voters each, in forming a new county or counties.

SEC. 5. The citizens who may be included in any new county, shall vote with the county or counties from which they may have been stricken off, for members of Congress, for Governor, and for members of the General Assembly, until the next apportionment of members to the General Assembly, after the establishment of such new county.

ARTICLE XI.

SECTION. 1. All laws and ordinances now in force and use in this State, not inconsistent with this Constitution, shall continue in force and use, until they shall expire, be altered or repealed by the Legislature.

SEC. 2. Nothing contained in this Constitution, shall impair the

validity of any debts or contracts, or affect any rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

SEC. 3. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of all the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays thereon, and referred to the General Assembly then next to be chosen; and shall be published six months previous to the time of making such choice. And if in the General Assembly next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two thirds of all the members elected to each House, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner, and at such time, as the General Assembly shall prescribe. And if the people shall approve and ratify such amendment or amendments, by a majority of all the citizens of the State, voting for Representatives, voting in their favor, such amendment or amendments shall become part of this Constitution. When any amendment or amendments to the Constitution shall be proposed in pursuance of the foregoing provisions, the same shall at each of the said sessions be read three times on three several days in each House. The Legislature shall not propose amendments to the Constitution, oftener than once in six years.

SEC. 4. The Legislature shall have no power to grant divorces, but may authorize the courts of justice to grant them for such causes as may be specified by law: *Provided*, that such laws be general and uniform in their operation throughout the State.

SEC. 5. The Legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this State.

SEC. 6. The Legislature shall fix the rate of interest—and the rate so established shall be equal and uniform throughout the State.

SEC. 7. The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities, or exemptions, other than such as may be, by the same law, extended to any member of the community, who may be able to bring himself within the provisions of such law: *Provided always*, the Legislature shall have power to grant such charters of incorporation as they may deem expedient for the public good.

SEC. 8. The Legislature shall have the right to vest such powers in the courts of justice, with regard to private and local affairs, as may be deemed expedient.

SEC. 9. A well regulated system of internal improvement is calculated to develop the resources of the State, and promote the happiness and prosperity of her citizens; therefore, it ought to be encouraged by the General Assembly.

SEC. 10. Knowledge, learning, and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportu-

nities and advantages of education throughout the different portions of the State, being highly conducive to the promotion of this end; it shall be the duty of the General Assembly in all future periods of this government, to cherish literature and science. And the fund called the *Common School Fund*, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law appropriated by the General Assembly of this State for the use of common schools, and all such as shall hereafter be appropriated, shall remain a *perpetual fund*, the principal of which shall never be diminished by legislative appropriation, and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the State, and for the equal benefit of all the people thereof; and no law shall be made authorising said fund, or any part thereof, to be diverted to any other use than the support and encouragement of common schools; and it shall be the duty of the General Assembly, to appoint a Board of Commissioners for such term of time as they may think proper, who shall have the general superintendence of said fund, and who shall make a report of the condition of the same, from time to time, under such rules, regulations and restrictions as may be required by law: *Provided*, that if at any time hereafter a division of the public lands of the United States, or of the money arising from the sales of such lands, shall be made among the individual States, the part of such lands, or money, coming to this State, shall be devoted to the purposes of education and internal improvement, and shall never be applied to any other purpose.

SEC. 11. The above provisions shall not be construed to prevent the Legislature from carrying into effect any laws that have been passed in favor of the colleges, universities or academies, or from authorising heirs or distributees to receive and enjoy escheated property, under such rules and regulations as from time to time may be prescribed by law.

SEC. 12. The Declaration of Rights hereto prefixed, is declared to be a part of the Constitution of this State, and shall never be violated on any pretence whatever. And to guard against transgression of the high powers we have delegated, we declare that every thing in the Bill of Rights contained, is excepted out of the general powers of government, and shall forever remain inviolate.

SCHEDULE.

SECTION 1. That no inconvenience may arise from a change of the Constitution, it is declared, that all officers, civil and military, shall continue to hold their offices; and all the functions appertaining to the same shall be exercised and performed according to the existing laws and Constitution, until the end of the first session of the General Assembly, which shall sit under this Constitution, and until the Government can be reorganized and put into operation under this Constitution, in such manner as the first General Assembly aforesaid shall prescribe, and no longer.

SEC. 2. The General Assembly which shall sit after the first appor-

tionment of representation under the New Constitution, to wit: in the year one thousand eight hundred and forty-three, shall, within the first week after the commencement of the session, designate and fix the seat of Government; and when so fixed, it shall not be removed, except by the consent of two thirds of the Members of both Houses of the General Assembly. The first and second sessions of the General Assembly under this Constitution shall be held in Nashville.

SEC. 3. Until a land office shall be opened, so as to enable the citizens south and west of the congressional reservation line, to obtain titles upon their claims of occupancy, those who hold lands by virtue of such claims, shall be eligible to serve in all capacities where a freehold is, by the laws of the State, made a requisite qualification.

Done in Convention at Nashville, on the thirtieth day of August, in the year of our Lord one thousand eight hundred and thirty-four, and of the Independence of the United States the fifty-ninth.

In testimony whereof we have hereunto subscribed our names:

WILLIAM B. CARTER, *President.*

Robert Allen,	Isaac Hill,	Thomas C. Porter,
H. C. Armstrong,	Adam Huntsman,	John Purdy,
Adam R. Alexander,	W. H. Humphreys,	William C. Roadman,
Richard Bradshaw,	Nelson I. Hess,	George W. Richardson,
Robert M. Burton,	John Kelly,	Henry Ridley,
Willie Blount,	Andrew A. Kincannon,	Julius O. N. Robertson,
Maclin Cross,	Joseph Kincaid,	Matthew Stephenson,
James Gray,	Peter Kendall,	William T. Senter,
Newton Cannon,	Bradley Kimbrough,	James W. Smith,
W. G. Childress,	William Ledbetter,	W. C. Smartt,
Terry H. Cahal,	William H. Loving,	Henry Sharp,
R. L. Cobbs,	Abraham McClellan,	James Scott,
Richard Cheatham,	Robert J. McKinney,	Ennis Ury,
Burchett Douglass,	J. A. Mabry,	John Whitson,
Francis B. Fogg,	John McGaughey,	Isaac Walton,
James Gillespy,	John Montgomery,	John J. White,
B. Gordon,	G. W. L. Marr,	Jonathan Webster,
Callaway Hodges,	John Neil,	R. Weakley,
Gray Garrett,	Richard Nelson,	

Attest,
WILLIAM K. HILL, Secretary.

NEWTON CANNON, *Governor,*

LUKE LEA, *Secretary of State.*

JONATHAN WEBSTER, *Speaker of the Senate,*

EPHRAIM H. FOSTER, *Speaker of the House of Representatives.*

PUBLIC ACTS

OF THE

STATE OF TENNESSEE,

PASSED AT THE FIRST SESSION OF THE TWENTY-FIRST GENERAL ASSEMBLY, WHICH WAS BEGUN AND HELD AT NASHVILLE, ON MONDAY THE FIFTH DAY OF OCTOBER, IN THE YEAR ONE THOUSAND EIGHT HUNDRED AND THIRTY-FIVE.

CHAPTER I.

An Act to provide for the laying off the several counties in this State into districts of convenient size, within which justices of the peace and constables shall be elected, and for other purposes.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That there shall be appointed by joint resolution of both branches of the General Assembly, five suitable persons as Commissioners in each county in this State, a majority of whom shall be competent to act, to lay off the respective counties into districts of convenient size, regard being had both to territory and population, for the purpose of electing Justices of the Peace and Constables therein; and that said Commissioners shall receive for their services such compensation as the County Court, in their discretion may allow, to be paid out of any moneys in the county treasury not otherwise appropriated.

SEC. 2. *Be it enacted,* That the commissioners aforesaid, or a majority of them, in each county in this State, shall have full power and authority to lay off their counties into districts for the purposes aforesaid; and in laying off the same shall be governed by the following ratio of population, to wit: Each county which contains three thousand qualified voters or upwards, according to the enumeration of 1833, shall be laid off into twenty-five districts; that each county which contains twenty-five hundred qualified voters and un-

Comms. to be appointed

Compensation

Their duty

Districts according to ratio of population

der three thousand, shall be laid off into twenty districts; that each county which contains two thousand qualified voters and under twenty-five hundred, shall be laid off into seventeen districts; that each county which contains fifteen hundred qualified voters and under two thousand, shall be laid off into fifteen districts; that each county which contains one thousand qualified voters and under fifteen hundred, shall be laid off into twelve districts; that each county which contains seven hundred qualified voters and under one thousand, shall be laid off into ten districts, that each county which contains less than seven hundred qualified voters, shall be laid off into eight districts: which districts, when laid off as aforesaid, shall remain fixed and permanent until the General Assembly shall otherwise direct.

Two justices
and one constable
in each district

SEC. 3. *Be it enacted*, That there shall be two justices of the peace and one constable elected in each district by the qualified voters therein, except districts including county towns, which shall elect three justices and two constables: *Provided, always*, that the corporation of the town of Nashville shall compose one district, and that six justices of the peace and two constables shall be elected for the county of Davidson, to reside within said district, and the other districts in said county shall be laid off and justices elected as required by this act.

District elections

SEC. 4. *Be it enacted*, That the commissioners aforesaid shall, at the time of laying off said districts, designate a suitable place, as near the centre of each district as practicable, for the purpose of holding elections for the election of the officers aforesaid, and other county officers, and which shall continue to be the place for holding elections in said districts until altered or removed by a majority of the qualified voters residing therein.

District bounds

SEC. 5. *Be it enacted*, That in laying off said districts, the commissioners shall bound the same by county lines, rivers, creeks, branches, mountains, ridges, roads, (public and private) section or range lines, or such other marks, natural or artificial, as to said commissioners shall seem necessary and proper to make said boundaries notorious: *Provided*, that said commissioners shall not be authorized to employ surveyors in designating said boundaries.

To be numbered

SEC. 6. *Be it enacted*, That it shall be the duty of said commissioners in each and every county in this State, to number each and every district, and to make out a complete record of the boundaries of each when laid off under their hands, and also a copy of the same, one of which shall be filed in the office of the county court clerk in which it is situated, and the other shall be forthwith transmitted to the office of the Secretary of State, directed to that officer, and it shall be his duty carefully to preserve the same in his office.

SEC. 7. *Be it enacted*, That said commissioners shall make out two fair ideal plats of their respective counties, and of the respective districts in each as laid off by them; one of which shall be returned to the office of the Secretary of State, and the other shall be returned to the office of the county court clerk, and to be by him recorded for the use of the public, or any individual who may wish to examine the same. Plats to be made

SEC. 8. *Be it enacted*, That said commissioners, before they enter upon the duties hereby prescribed, shall take an oath before some justice of the peace faithfully and impartially to perform the services required by this act. Oath required

SEC. 9. *Be it enacted*, That it shall be the duty of said commissioners to proceed forthwith so soon as they receive notice of their appointment, to perform the duties herein assigned them and lay off the districts provided for in this act. And as soon as the commissioners shall have divided and laid off their respective counties and reported the same as provided for in this act, it shall be the duty of the clerks of the County Courts to make out a fair copy, clearly setting forth the boundaries of each district in their respective counties, signed and certified as such, and deliver said certificates to the officers of the districts respectively, who may be authorized to hold the elections for constables and justices of the peace as provided for in this act, who shall deliver said certificates to the judges of the elections to be held in their respective districts; and it shall be the duty of said judges to have said certificates filed in the office of one of the justices of the peace in their respective districts. Further duties.

SEC. 10. *Be it enacted*, That the sheriffs or coroners of the respective counties in this State, shall, on the first Saturday of March 1836, open and hold an election for justices of the peace and constable or constables, as the case may be, at the place designated by said commissioners for holding elections in said districts, after having given ten days notice thereof by advertisement at three of the most public places in the respective districts. Of elections.

SEC. 11. *Be it enacted*, That the sheriff or coroner, as the case may be, shall, by and with the advice of a justice of the peace of said county, appoint three judges and two clerks of said elections previous to opening the polls, who shall be duly qualified by a justice of the peace or officer holding such election. The polls to be opened at 10 o'clock A. M., and closed at 4 P. M. Upon comparing the whole of the votes polled in each district, those persons having the highest number of votes for justice of the peace shall be declared duly elected justices; and those persons having the highest number of votes for constable, shall be declared duly elected constable or constables for their respective districts. In all cases where there is no election Judges.

by reason of two or more candidates having the same number of votes, in such case the sheriff shall immediately proceed by advertisement and hold again an election in said district for justice or justices of the peace, or constable or constables, as the case may be, until the said office or offices shall be filled.

Sheriff's duty. SEC. 12. *Be it enacted,* That the sheriffs of the respective counties aforesaid, shall immediately after the election, make out a certificate of said election, showing who are elected justices of the peace in the respective districts of his county, and shall forward the same to the Governor who shall issue a commission to the justice or justices of the peace, which commission shall be filed in the County Court of the county in which such justice or justices of the peace shall be elected, which court shall qualify said justice or justices as now prescribed by law, after which he shall enter upon the duties of his office; and the said sheriff shall certify to the County Court as aforesaid, the person or persons elected constable or constables, as the case may be, of the respective districts of his county; and thereupon said court shall take bond and security from said constable or constables and qualify him as now prescribed by law, after which said constable or constables shall enter upon the duties of the office of constable.

Time of elections. SEC. 13. *Be it enacted,* That the first election for justices of the peace and constables, shall be held on the first Saturday of March 1836, and ever afterwards the sheriffs or coroners shall every six years, on the first Saturday of March hold an election according to the provisions of this act, in said districts for justices of the peace; and every two years after said first election on the first Saturday of March for the appointment of constables, who shall make the necessary returns; and after said justices of the peace and constables shall be qualified in the manner prescribed in this act, they shall enter upon the duties of their respective offices.

Justices may be removed. SEC. 14. *Be it enacted,* That any of the justices of the peace or constables, who shall be guilty of any crime or misdemeanor in office, shall be liable to be indicted in the circuit courts of this State, and upon conviction, shall be removed from office by said court.

Of vacancies. SEC. 15. *Be it enacted,* That if a vacancy occur in the office of Justice of the peace or constable, by death, resignation or removal from office, or by the removal of any of said officers from the district in which he was elected, the sheriff or coroner shall immediately thereafter, by giving ten days notice by advertisement as aforesaid, open and hold an election in said district to fill such vacancy agreeably to the provisions of this act, and the person elected shall be qualified as aforesaid, and shall hold their office for and during the term for which his predecessor was elected, and no longer.

SEC. 16. *Be it enacted,* That the justices of the peace ^{Tenue of office.} and constables of this State shall hold their offices until the elections provided for by this act shall take place, and until the officers so elected shall be duly qualified, and no longer.

SEC. 17. *Be it enacted,* That no justice of the peace in this State shall be authorised or permitted to act as deputy sheriff.

SEC. 18. *Be it enacted,* That this act shall be in force from and after the passing thereof.

EPHRIAM H. FOSTER,
Speaker of the House of Representatives
JONATHAN WEBSTER,
Speaker of the Senate.

Passed December 3d, 1835.

CHAPTER II.

An Act to provide for the Election of a Governor, Representatives in Congress, Members of the General Assembly, Sheriffs, Trustees, Registers, Clerks of the Circuit and County Courts, and for other purposes.

SECTION 1. *Be it enacted by the General Assembly of* ^{Duty of Sheriff} *the State of Tennessee,* That it shall be the duty of the several sheriffs of the different counties in this State, to open and hold all popular elections at the places designated by the commissioners under the provisions of the fourth section of an act, entitled "An Act to provide for the laying off the several counties in this State into districts of convenient size, within which, justices of the peace and constables shall be elected, and for other purposes," passed December 3d, 1835, and the said elections shall be held under the provisions of the laws now in force and use in this State: *Provided,* that when it shall so happen that there is no sheriff, or that any sheriff shall be a candidate, said election shall be holden by the coroner of said county. And should it so happen that there should be no coroner, then it shall be ^{Appointment of deputies} the duty of the chairman of the county court to appoint some suitable person to hold said election, and that said sheriff, coroner, or such person so appointed to hold such elections, is hereby authorised and required to appoint a sufficient number of deputies to conduct or hold said elections.

SEC. 2. *Be it enacted,* That it shall be the duty of the ^{Time of holding elections of Governor, &c.} sheriff or coroner, or such person as may be appointed under the provisions of this act, to open and hold an election on the first Thursday in August, 1837, and forever thereafter once in two years, on the same day, and at the same places, to elect a Governor for the State, Representatives in

the Congress of the United States, and Members of the General Assembly. The polls shall be opened at nine o'clock in the morning, and shall close at four o'clock in the evening of the same day.

SEC. 3. *Be it enacted,* That the sheriff or person holding such election of each county, shall meet at the place or places prescribed by the Ordinance of the Convention, or by an act or acts of the General Assembly for comparing the votes given for Representatives to Congress, and Senators and Representatives in the State Legislature.

SEC. 4. *Be it enacted,* That on the first Saturday in March, eighteen hundred and thirty-six, an election shall be held at the places and in the manner directed by this act as herein before stated, to elect one Sheriff, one Trustee, one Register, one Circuit Court Clerk, and one County Court Clerk, for each county in this State; and forever thereafter, elections shall be held in like manner on the first Saturday in March, every two years, to elect one Sheriff and one Trustee for each county; and every four years thereafter, on the said first Saturday in March, to elect one Register, one Circuit Court Clerk, and one County Court Clerk, for each county in this State; and there shall be elected by the justices of the County Court, at the May term of the County Court, or any subsequent term of the court, in each county north and east of the congressional reservation line and north of Tennessee river, one Entry Taker and one County Surveyor, who shall hold their offices for the term of four years, and until their successors are elected and qualified. They shall, before entering upon the duties of their office, take the oath and give bond and security in the manner prescribed for county Entry Takers and Surveyors heretofore appointed, and they shall, in the discharge of their duties, and in every thing pertaining to their offices, respectively, be governed by the existing laws: *Provided,* that those counties through which the reservation line may run, shall have the power to elect a County Surveyor and Entry Taker for each county, in the same manner as pointed out for those counties lying north and east of the congressional reservation line: *Provided,* that the present Surveyors in each county shall have the further time of six months to survey, to record the plats and certificates, and to make returns of the unfinished business in their offices.

SEC. 5. *Be it enacted,* That the sheriff, coroner, or person holding such election, shall compare the polls at the court house on the first Monday after said elections, and shall deliver to the person duly elected to either of the offices mentioned in the fourth section of this act, a certificate of his election, which certificate of election of said Clerk of the County Court, Register and Trustee, or either of them, being produced to the County Court of his county

at the next court after the date and delivery of such certificate, shall entitle him to enter upon the discharge of the duties of the office to which he may have been elected, upon his entering into bond with security in open court, to be approved of by such court, and take the oath now prescribed by law in such cases, which bond shall be spread upon the records of such court. The certificate of election of the Clerk of the Circuit Court shall be produced by such person to the circuit court at the first term thereof, to be held in the county after the date of such certificate of election, which shall entitle him to enter upon the discharge of the duties of the office to which he may have been elected, upon his entering into bond with security, to be approved of by said court, and take the oath prescribed by law in such cases, which bond shall be spread upon the records of such court. The courts, in taking any of said bonds, shall be governed by the existing laws so far as the same are not inconsistent with the Constitution.

SEC. 6. *Be it enacted,* That in all cases where it shall so happen in the election of Sheriff, Trustee, Register, Circuit Court Clerk, County Court Clerk, Surveyor, or Entry Taker, that two or more persons voted for in any of said elections, have received the highest number of votes, and are equal in number, the officer holding the election shall give the casting vote.

SEC. 7. *Be it enacted,* That the sheriff or coroner of Warren county, by themselves, or deputies, shall hold the first election for the county of _____ for Justices of the Peace, Constables, and all officers whose elections are prescribed by this act, except the election of Governor, Members of Congress, and Members of the General Assembly; and the sheriff, or coroner, or deputies, of the county of Coffee co. Bedford, shall hold the like elections for the county of Coffee; and the sheriff, or coroner, or their deputies, of the county of Tipton, shall hold the like elections for the county of Lauderdale; and the sheriffs, or coroners, or their deputies, of the county of Humphreys, shall hold the like elections for the county of Benton; and the sheriff, or coroner, or their deputies, of the county of Carter, shall hold the like elections for the county of Johnson; and the said officers so elected shall be qualified, give bond, and enter into the duties of his office of the county for which he is elected, as prescribed by law; and ever afterwards the sheriff, or coroner, or deputies, or such other person as may be appointed under the provisions of this act, of the county of Coffee, Johnson, Lauderdale and Benton, shall hold the elections of said officers, as well as for Governor, Members of Congress, and Members of the General Assembly of their respective counties; and the person or persons so elected,

shall be qualified, give bond, and enter into the duties of his office as prescribed by law.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

PASSED, 16th January, 1836.

CHAPTER III.

An Act to establish a Supreme Court in pursuance of the 2nd sec., art. 6, of the Constitution of the State of Tennessee.

Court established.
SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That a Supreme Court of the State of Tennessee be, and the same is hereby established, to be composed of three Judges, one of whom shall reside in each of the grand divisions of the State, and the concurrence of two of said Judges shall be necessary to a decision in every case.

Its jurisdiction.
SEC. 2. *Be it enacted,* That the said Supreme Court shall possess such appellate and other jurisdiction as is now conferred by law on the present Supreme Court, under such restrictions and regulations as may from time to time be prescribed by law.

Of judges.
SEC. 3. *Be it enacted,* That in appointing the Judges of the said Supreme Court, the General Assembly shall designate the division of the State in which each Judge shall reside, and the said Judges shall be commissioned accordingly.

Their oath.
SEC. 4. *Be it enacted,* That before entering upon the duties of their office, the said Judges, in presence of the Governor of the State, or any Judge of the Supreme Court, shall take an oath or affirmation to support the Constitution of this State, the Constitution of the United States, and an oath faithfully and impartially to discharge all the duties of their office, and the oath against duelling now required to be taken by the Judges of the Supreme Court; and two of said Judges shall constitute a court to do any business that can by the Constitution and laws, be done by said court.

Time and place of session.
SEC. 5. *Be it enacted,* That the said Supreme Court shall hold one session in each year at the following places, to wit: at Nashville in the Middle Division, at Knoxville in the Eastern Division, and at Jackson in the Western Division. The said court shall be held at Nashville, in the Middle Division, on the first Monday in March next, and ever after on the first Monday in December; at Knoxville,

in the Eastern Division, on the first Monday in June, at Jackson, in the Western Division, on the first Monday in April in each year.

Duty and power of judges.
SEC. 6. *Be it enacted,* That it shall be the duty of the Judges of the said court, to hold the same at the different places of holding said courts until they determine or otherwise dispose of all the causes in said Court, or it becomes necessary to adjourn to hold some other court; *Provided,* that said court may sit upon its own adjournments, and hold said court at any time it may see proper, for the purpose of hearing and deciding the unfinished business remaining upon the docket at any term thereof.

Jurisdiction.
SEC. 7. *Be it enacted,* That the said court at Nashville, shall hear and determine all causes now pending in the Supreme Court at Nashville, Sparta and Centreville, and all appeals, appeals in the nature of writs of error, writs of error or other legal procedure, by which any cause or proceeding may be brought before said Supreme Court from any of the inferior courts of the counties composing the Middle Division of the State; and said Supreme Court held at Nashville shall, in all respects, be the Supreme and Revising Court over all the inferior courts which may be held within said Middle Division of the State: And the said court held at Knoxville, shall hear and determine all causes now pending in the Supreme Court at Knoxville and at Jonesborough; and all appeals, appeals in the nature of writs of error, writs of error or other legal procedure, by which a cause may be brought before said Supreme Court from any of the inferior courts which may be held in any of the counties in the Eastern Division of the State, shall be returnable to and heard and determined in the said Supreme Court at Knoxville, and said Supreme Court at Knoxville shall be in all respects the Supreme and Revising Court over all inferior courts which may be held in the said Eastern Division of the State: And said Supreme Court at Jackson shall hear and determine all causes now pending in the Supreme Court at Jackson; and all appeals, appeals in the nature of writs of error, writs of error or other legal procedure, by which any cause may be brought before said Supreme Court from any of the inferior courts which may be held in the Western Division of the State, shall be made returnable to and heard and determined in said Supreme Court at Jackson; and said Court held at Jackson, shall, in all respects, be the Supreme Revising Court over all inferior courts which may be held in said Western Division of the State.

Counties in Middle Division.
SEC. 8. *Be it enacted,* That the Middle Division of the State shall compose the following counties, viz: Fentress, Overton, White, Warren, Franklin, Jackson, Smith, Wilson, Rutherford, Bedford, Lincoln, Sumner, Robertson, Davidson, Williamson, Maury, Giles, Lawrence, Wayne,

Hickman, Dickson, Montgomery, Stewart, and Humphreys.

Eastern.

The Eastern Division of the State shall comprise the following counties, viz: Carter, Sullivan, Washington, Hawkins, Greene, Claiborne, Grainger, Jefferson, Cocke, Sevier, Blount, Monroe, McMinn, Roane, Knox, Campbell, Anderson, Hamilton, Rhea, Bledsoe, Morgan, and Marion.

Western.

The Western Division shall comprise the following counties, viz: McNairy, Hardeman, Fayette, Shelby, Tipton, Haywood, Madison, Henderson, Carroll, Gibson, Dyer, Obion, Weakley, Henry, Lauderdale, Perry, and Hardin.

Of process and returns.

SEC. 9. *Be it enacted*, That all reports heretofore required to be made to the Supreme Court at Sparta, Nashville or Centreville, and all process issued and not returned before the first session of the said court to be held at Nashville under this act, shall be made returnable to the first session of said Supreme Court at Nashville, and the said Supreme Court at Nashville shall have the same power and jurisdiction in relation thereto which the present Supreme Court had; and in like manner, the reports and process to be made or returned to the Supreme Court at Knoxville and Jonesborough, if the same shall not be returned before the first session of the said Supreme Court, which shall be held under this act, at Knoxville, shall be made returnable to the first session of the said Supreme Court at Knoxville to be held under this act, and the said Supreme Court so to be held at Knoxville, shall have as full power and jurisdiction in relation thereto as the present Supreme Court had; and in like manner, all reports, orders and process to be made or issued under the authority of the Supreme Court at Jackson, if the same shall not be made or returned before the first session of the said Supreme Court, to be held at Jackson, under this act, shall be made returnable to the first session of said Supreme Court, to be held as aforesaid, at Jackson; and the said Supreme Court at Jackson shall have the same power and Jurisdiction in relation thereto that the present Supreme Court had.

Of appeals &c.

SEC. 10. *Be it enacted*, That all appeals, appeals in the nature of writs of error, writs of error or other proceeding which may be now taken, or may be hereafter taken to any of the Supreme Courts held at Sparta, Nashville and Centreville, before the first Monday in March next, shall be returned to the Supreme Court to be held at Nashville under this act; and in like manner all appeals, appeals in the nature of writs of error, writs of error and other proceeding which may now be taken, or hereafter may be taken to either of the Supreme Courts at Knoxville or Jonesborough before the first Monday in June, shall be returned to the Supreme Court at Knoxville to be held under this act; and in like manner, all appeals, appeals in the nature of writs of error, writs of error and other proceedings which may now

be taken, or which may hereafter be taken to the Supreme Court at Jackson, before the first Monday in April next, shall be returned to the Supreme Court, to be held at Jackson, under this act; and the Supreme Court to be held at Nashville, Knoxville and Jackson, shall proceed to hear and determine all said causes.

SEC. 11. *Be it enacted*, That in cases of appeals, appeals in the nature of writs of error and other proceedings, wherein defendants in State cases have entered into recognizance, or otherwise become bound to appear at either of the Supreme Courts at Nashville, Sparta or Centreville, shall be bound to make their personal appearance at Nashville on the first Monday in March next, in the same manner as if the said defendants had been bound in the first instance to appear at Nashville; and in like manner as to all recognizances or other proceedings by which defendants in State cases are bound to appear at Knoxville or Jonesborough, the said defendants shall be bound to appear at Knoxville on the first Monday in June next; and in like manner as to all recognizances or other proceedings by which defendants in State cases are bound, or hereafter may be bound, to appear at Jackson, the said defendants shall be bound to appear at Jackson on the first Monday in April next.

SEC. 12. *Be it enacted*, That the Judges of the Supreme Court at the first term by them held at the several places of holding courts, shall appoint one clerk for each of the courts to be held at Nashville, Knoxville, and at Jackson, at which time, on the first Monday of said terms, the clerks of the Supreme Court at Sparta, Nashville and Centreville, shall convey or cause to be conveyed, all the records, books and papers of their respective offices, to the town of Nashville, and then and there deliver the same to the clerk appointed as aforesaid. In like manner, the clerks at the town of Jackson shall deliver or cause to be delivered all the records, books and papers of his office, to his successor, appointed as aforesaid, for the court to be held at Jackson; and in like manner, the clerks of the Supreme Courts at Knoxville and Jonesborough, shall, on the first Monday of said first term, deliver all the records, books and papers of their respective offices, to the clerk appointed as aforesaid, for the court to be held at Knoxville; and until the clerks under this act shall be appointed and the former clerks notified thereof, such clerks at the different places where the Supreme Court is now located, shall continue to discharge the duties of their respective offices.

SEC. 13. *Be it enacted*, That the clerks appointed as aforesaid, shall take the same oaths and give the like bonds, with security, for the due discharge of their duties respectively, as are required by the laws now in force, to be taken and given by the clerks of the Supreme Court, and they shall

be bound to perform the like duties respectively, and be entitled to the same fees, and be subject to the same penalties and recoveries for neglect or malseasance in office, to which the clerks of the Supreme Court, by the laws now in force, are or would be bound, entitled or subject to; and the bonds executed by the clerks respectively, together with the order appointing them, shall be recorded upon the minutes of their respective courts, at the first terms which shall be held after the passage of this act, at which time the bonds shall be taken and approved of by the court; and should any of the present clerks die, or resign, or their office otherwise become vacant, before the time shall have arrived for the appointment of their successors, as herein provided, the Judges of the Supreme Court in office, at the time the vacancy is to be filled, or any one of them, shall have the power to make a temporary appointment to fill such vacancy, until the time shall have arrived for the appointment of clerks under this act, as herein before provided.

Of vacancies.
Power of cl'ks
SEC. 14. *Be it enacted*, That the clerks that shall be appointed for the Supreme Court to be held at Nashville, Jackson and Knoxville, shall be authorised respectively, to issue process upon all judgments, decrees or orders of the former Supreme Courts held at Nashville, Sparta, Knoxville, Jonesborough, Centreville and Jackson, and to give copies of records and papers, and do all the duties in relation to causes heretofore determined or now pending in said Courts respectively, in the same manner as the clerks respectively, of those Courts, are now authorised to perform those duties; and it is hereby declared that the powers hereby conferred and the duties required shall extend to all suits in equity decided by the Supreme Court or any Judge thereof (where said Court or Judge had original chancery jurisdiction) prior to the act of 1824 entitled "An act to amend the Judiciary system of this State."

Supersedeas.
SEC. 15. *Be it enacted*, That the Judges of the Supreme Court or any one of them, on a proper case being made out, shall have the authority to grant the process of supersedeas to an execution returnable to their own Court, in the same manner as the Supreme Court whilst in session, can grant the said process.

Demurrer.
SEC. 16. *Be it enacted*, That in all cases where a bill in chancery is demurred to, and in the Court below the demurrer is sustained, and the Supreme Court shall reverse the decision below and overrule the demurrer, the Supreme Court shall have power to remand all such causes to the Court below for further proceedings.

Decrees.
SEC. 17. *Be it enacted*, That whenever a decree shall be made in any inferior court having chancery jurisdiction, determining the principles involved in the cause and an ac-

count shall be ordered to be taken, it shall be in the discretion of the court below to allow an appeal to be taken before the account is made to the Supreme Court; and in such cases, if the Supreme Court order an account to be taken, the said court may, in its discretion, remand the cause to the court below to be proceeded in.

SEC. 18. *Be it enacted*, That all laws now in force in relation to the Supreme Court, or for the government thereof, shall remain in force, except so far as the same may be inconsistent with this act.

SEC. 19. *Be it enacted*, That the Supreme Court here-^{Rules.}by established may adopt rules for their government and to regulate the practice therein, not inconsistent with the laws now in force; and until such rules shall be adopted, the present rules heretofore adopted by the Supreme Court, shall remain in force. An appeal, appeal in the nature of a writ of error, or writ of error may be prosecuted from any final judgment or decree rendered in an inferior court during the term of the Supreme Court; *Provided*, the record in said cause is filed in the Supreme Court and the opposite party or his counsel be notified five days before said cause is taken up for hearing in the Supreme Court, and the return of a sheriff upon a copy of said notice shall be sufficient evidence of the service; and all appeals, and appeals in the nature of a writ of error taken from the final judgment or decree of an inferior court at any time before the setting of the Supreme Court, shall stand for hearing at the first term, and notice to the opposite party shall not be required.

SEC. 20. *Be it enacted*, That the Judges of the said^{Salary.} Supreme Court shall each receive the sum of eighteen hundred dollars per annum, to be paid quarterly by either of the Treasurers of the State, out of any moneys in the Treasury not otherwise appropriated.

SEC. 21. *Be it enacted*, That it shall be the duty of^{Circuits to be} said Supreme Court so to class the circuits of the different^{classified.} divisions as to set the causes from the different circuits for trial on certain weeks of the term of said Supreme Court.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed December 1st, 1835.

CHAPTER IV.

An Act to establish Chancery Courts.

Three Chancellors to be appointed.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That there shall be three Chancellors appointed by the General Assembly who shall hold the Chancery Courts at the times and places hereinafter designated, who shall have the same powers, privileges and jurisdiction in all respects that the Chancellors now have by the existing laws, and that are properly and rightfully incident to a court of Chancery agreeably to the laws now in force in this State, not inconsistent with the constitution.

Chancery divisions.

SEC. 2. *Be it enacted,* That this State shall be laid off into three Chancery divisions, and one Chancellor shall be appointed for each division, whose duty it shall be to reside therein, who shall have the qualifications required by the constitution, be commissioned by the Governor, and take an oath to support the constitution of the United States and of the State of Tennessee, and the other oaths now required by law to be taken by the Judges and Chancellors of this State, and shall hold their offices for eight years from the date of their respective commissions.

May interchange.

SEC. 3. *Be it enacted,* That the Chancellors shall be Chancellors for the State, and may interchange with each other one or more courts in their respective divisions when causes may exist from disabilities created by the constitution, which make such interchange necessary, or to promote their own convenience; and in the absence of the Chancellor of the division in which any court is held, or his inability to attend and hold such Chancery Court, either of the other Chancellors shall be authorised to hold such court without a formal interchange, and shall have the same power and jurisdiction that the Chancellor of the division might exercise, and said Chancellors may make all necessary arrangements on the subject for the speedy trial of such causes for which an interchange is necessary; and the Chancellor holding the courts of the other shall have general power and authority to try any cause in said court, unless there exists in him any disability as aforesaid, and generally to exercise the same jurisdiction as he would exercise in his proper division.

Districts in Eastern division.

SEC. 4. *Be it enacted,* That this State shall be laid off into the following Chancery districts, to wit: In the Eastern division, the counties of Carter, Sullivan and Washington shall compose the first district, and the court shall be held for the same at Jonesborough on the first Mondays in February and September;

2d District. The county of Greene shall compose the second district,

and the court for the same shall be held at Greenville on the second Mondays in February and September.

The county of Hawkins shall compose the third district, 3d District. and the court for the same shall be held at Rogersville on the third Mondays of February and September.

The counties of Grainger, Claiborne and Campbell shall 4th District. compose the fourth district, and the court for the same shall be held at Tazewell on the fourth Mondays of February and September.

The counties of Jefferson, Cocke and Sevier shall com- 5th District. pose the fifth district, and the court for the same shall be held at Dandridge on the first Mondays in April and October.

The counties of Anderson, Knox and Blount shall com- 6th District. pose the sixth district, and the court for the same shall be held at Knoxville on the second Mondays in April and October.

The counties of Morgan and Roane shall compose the 7th District. seventh district, and the court for the same shall be held at Kingston on the third Mondays in April and October.

The counties of Bledsoe, Hamilton, Marion and Rhea 8th District. shall compose the eighth district, and the court for the same shall be held at Pikeville on the second Mondays of June and December.

The counties of McMinn and Monroe shall compose the 9th District. ninth district, and the court for the same shall be held at Madisonville on the third Mondays of June and December.

In the Middle division, the counties of Fentress, Overton 10th District. and Jackson shall compose the first district, and the court for the same shall be held at Livingston on the first Mondays of January and July.

The counties of White and Warren shall compose the 2d District. second district, and the court for the same shall be held at McMinnville on the second Mondays of January and July; *Provided,* that suits originating in the county of White may be brought either to the court at Livingston or McMinnville at the election of the complainant.

The county of Smith shall compose the third district, and 3d District. the court for the same shall be held at Carthage on the third Mondays of January and July.

The county of Wilson shall compose the fourth district, 4th District. and the court for the same shall be held at Lebanon on the fourth Mondays of January and July.

The county of Rutherford shall compose the fifth district, 5th District. and the court for the same shall be held at Murfreesborough on the first Mondays of February and August.

The county of Bedford shall compose the sixth district, 6th District. and the court for the same shall be held at Shelbyville on the second Mondays of February and August.

The county of Franklin shall compose the seventh dis- 7th District.

trict, and the court for the same shall be held at Winchester on the third Mondays of February and August.

8th District. The county of Lincoln shall compose the eighth district, and the court for the same shall be held at Fayetteville on the fourth Mondays of February and August.

9th District. The counties of Giles and Lawrence shall compose the ninth district, and the court for the same shall be held at Pulaski on the first Mondays of March and September.

10th District. The counties of Wayne and Hardin shall compose the tenth district, and the court for the same shall be held at Savannah on the second Mondays of March and September.

11th District. The county of Maury shall compose the eleventh district, and the court for the same shall be held at Columbia on the third Mondays of March and September.

12th District. The counties of Dickson, Humphreys and Hickman shall compose the twelfth district, and the court for the same shall be held at Charlotte on the fourth Mondays of March and September.

13th District. The counties of Stewart and Montgomery shall compose the thirteenth district, and the court for the same shall be held at Clarksville on the first Mondays of April and October.

14th District. The counties of Robertson and Sumner shall compose the fourteenth district, and the court for the same shall be held at Gallatin on the second Mondays in April and October; *Provided*, that suits originating in Robertson county may be brought either at Clarksville or Gallatin at the election of the complainant.

15th District. The counties of Davidson and Williamson shall compose the fifteenth district, and the court for the same shall be held at Franklin on the third Mondays of April and October.

Western division. In the Western division, the counties of Weakley and Obion shall compose the first district, and the court for the same shall be held at Dresden on the fourth Mondays of March and September.

2d District. The counties of Dyer and Gibson shall compose the second district, and the court for the same shall be held at Trenton on the second Mondays of May and November.

3d District. The counties of Carroll and Benton shall compose the third district, and the court for the same shall be held at Huntingdon on the first Mondays of May and November.

4th District. The counties of Perry and Henderson shall compose the fourth district, and the court for the same shall be held at Lexington on the fourth Mondays of April and October.

5th District. The county of Madison shall compose the fifth district, and the court for the same shall be held at Jackson on the second Mondays of March and September.

6th District. The counties of Haywood, Tipton and Lauderdale shall compose the sixth district, and the court shall be held for

the same at Brownsville on the third Mondays of May and November.

The counties of Fayette and Shelby shall compose the 7th District, seventh district, and the court for the same shall be held at Sommerville on the fourth Mondays of May and November.

The county of Henry shall compose the eighth district, 8th District, and the court for the same shall be held at Paris on the third Mondays of March and September.

The counties of Hardeman and McNairy shall compose 9th District, the ninth district, and the court for the same shall be held at Bolivar on the first Mondays of June and December. And each of said courts shall sit until the business thereof, shall be despatched, unless the Judge holding the same shall sooner be compelled to leave the court in order to arrive in time at the next succeeding court of the district, and may adjourn from time to time if necessary.

SEC. 5. *Be it enacted*, That the rules of conducting Rules, suits which have heretofore been adopted by the Chancellors in pursuance of the act of 1829, chapter 103, are hereby directed to be in force in the courts of Chancery established by this act, until the same are altered, revised or corrected by the Chancellors hereafter chosen; and the Chancellors shall, within three months after they are appointed and qualified, meet together at some place to be agreed upon by a majority of them, and make rules for regulating the practice and conducting the business in the courts of Chancery in all cases not provided for by law; and at the expiration of every four years thereafter, and oftener if requisite, they shall revise the rules of the said court, with a view to the attainment, so far as may be practicable, of the following improvements in the practice; first, the abbreviating of bills and answers, and other proceedings; secondly, the expediting the decision of causes; thirdly, the diminishing of costs; fourthly, the remedying such abuses and imperfections as may be found to exist in the practice of any class of suits cognizable in the courts of Chancery, and the rules which may be adopted shall be sanctioned by a majority of the Chancellors.

SEC. 6. *Be it enacted*, That the Chancellors in each division shall appoint their clerks and masters in their respective divisions, or the Chancellor holding the court at the time any appointment is to be made, shall have power to make such appointment, who shall hold their offices for the period of six years. Such clerks shall take the oaths required by the constitution, and the other oaths now required by law to be taken by clerks and masters in Chancery, and shall give the like bond with surety as is now required to be given by the clerks of the Chancery Court, to be approved of by the Chancellor; and at the first term

Chancellors to appoint clerks.

of the court succeeding his appointment, the same shall be recorded on the minutes of the court, and shall be deposited as the bonds of the former clerks and masters were directed to be by law.

Records to be transferred

SEC. 7. *Be it enacted*, That all causes depending in the courts of Chancery now held at Rogersville, Greenville, Knoxville, Kingston, Madisonville, Carthage, Franklin, Pulaski, Charlotte, Jackson, Bolivar, and Paris, shall remain to be determined by the courts hereby established at said places respectively; and all books and papers belonging to said offices shall be transferred to the clerks and masters of the courts hereby established at said places respectively; and all causes now depending in the court of Chancery at Monroe, and all books and papers belonging to said office, shall be transferred to the clerk of the Chancery Court at Livingston; and said courts, and the officers thereof respectively, shall have the same authority, power and jurisdiction, that the present Chancery Courts and officers thereof now have or could exercise; and the courts hereby established, and the officers thereof, shall have the power to direct executions and other process to be issued out of the courts where the papers and records are directed to be deposited, to give transcripts, and generally to exercise all powers in relation to any causes pending or determined that the present Chancery Courts and officers might or could exercise; and all causes pending in the Chancery Courts at Livingston, Carthage, Franklin, Columbia, Pulaski, and Charlotte, shall remain to be determined in said courts respectively; and the clerks now in office at M'Minnville and other places aforesaid shall, so soon as the clerks of the different courts are appointed as herein directed, deliver over to their successors in office, all the books and papers of their respective offices, and the courts herein established, and the officers thereof, shall have the power to carry into effect all orders, judgments and decrees of the former Chancery Courts, to issue process and give transcripts out of the courts and offices where the papers and records are directed to be deposited, and generally to exercise all powers in relation to any causes pending or determined that the present Chancery Courts might or could exercise.

Chancery suits transferred

SEC. 8. *Be it enacted*, That all suits in Chancery pending and undetermined by the circuit courts of this State, shall be proceeded in and determined by the circuit courts, who shall have the same jurisdiction in those causes as was possessed by the circuit courts of this State before the passage of this act; and the clerks of the circuit courts shall have power to carry into effect all orders, judgments and decrees of the former circuit courts, give transcripts of records, and generally to exercise all authority, power and jurisdiction that the former circuit courts might or could

exercise in relation to such causes: *Provided*, the clerks of the circuit courts in the counties wherein, by this act, Chancery Courts are to be held, shall, on or before the first term thereof, file all the papers in any equity suit in which no final decree has been made, and a transcript of his rule-docket and minutes in relation to the same, in the office of the clerk and master of such Chancery Court.

SEC. 9. *Be it enacted*, That the judges of the circuit courts shall have power in relation to the suits that may hereafter be brought in the Chancery Courts, to direct the issuance of writs of attachment, *ne exeat*, injunction, and all other extraordinary process, and to appoint receivers, and to exercise all the powers and jurisdiction in relation to such process and orders upon bills to be filed in the Chancery Court, that the present circuit judges can exercise; and whenever such process and orders are granted by a Chancellor or circuit judge, and security is ordered to be taken in any other county than that in which the court of Chancery is held, the clerk and master shall have authority when he issues process to empower a commissioner in the county where security is to be taken, to judge of the sufficiency of the bond and security, and to take the same with the same power as the clerk and master himself had, which bond and security is to be returned by the sheriff with the process to the court whence it issued.

SEC. 10. *Be it enacted*, That any cause now pending in any of the Chancery Courts, or which may hereafter be brought, may be transferred by consent of parties to the Chancery Court of another district.

SEC. 11. *Be it enacted*, That it shall be the duty of the Chancellors of the different divisions to equalise their respective labours as near as may be, and to effect that object, the Chancellor of the Eastern division, on being notified to do so, and when not otherwise employed, shall hold twice a year two of the courts in the Middle division, and the Chancellor of the Western division shall in like manner hold three of the courts in the Middle division, or said Chancellors may otherwise equalise their labours as they may think proper.

SEC. 12. *Be it enacted*, That the courts of Chancery shall have power to appoint commissioners to take accounts where the clerk and master is interested, or is unable to attend, or in other cases where it may be deemed expedient by the Chancellors; and shall also have power to appoint persons to serve original, mesne or final process in particular cases where special application is made therefor. The Chancellors shall have power, as well in vacation as in term time, to hear and determine all such motions, and to make all such interlocutory orders and decrees in any suit as may be necessary or proper to prepare the case for a

final hearing and determination; and when any decree or order shall have been made in any suit in equity pending in said court, the Chancellor shall have power, as well in vacation as in term time, to make such further orders, and to issue such writs and process as may be necessary to carry into effect such principal decree or order: *Provided*, no motion shall be heard, and no decree or order shall be made in vacation until reasonable notice shall have been given to the adverse party or his counsel to appear and object thereto.

Laws still in force

SEC. 13. *Be it enacted* That all laws conferring jurisdiction upon courts of Chancery and regulating the practice and proceedings therein, and establishing the fees and designating the duties of the officers of said court, which are not inconsistent with this act, shall be of full force and effect, and be applicable to the courts hereby established.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed December 22, 1835.

CHAPTER V.

An Act to establish Circuit Courts.

Court established

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That a Circuit Court shall be established and held three times in every year in and for each of the counties of this State, at the respective court houses thereof, except where the laws now in force in this State otherwise direct, at the time and in the manner directed by law, and hereinafter provided for.

Circuits

SEC. 2. *Be it enacted*, That the said Circuit Courts shall compose eleven Judicial Circuits:

The first whereof shall be composed of the counties of Greene, Washington, Carter, Johnson, Sullivan, Hawkins, Grainger and Claiborne;

The second, of the counties of Cocke, Jefferson, Sevier, Blount, Knox, Campbell, Anderson and Morgan;

The third, of the counties of Roane, Rhea, Meigs, Bledsoe, Marion, Hamilton, M'Minn and Monroe.

The fourth, of the counties of Smith, Overton, White, Jackson, Fentress and Warren;

The fifth, of the counties of Wilson, Rutherford, Bedford, Coffee and Franklin;

The sixth, of the counties of Williamson, Davidson and Sumner;

The seventh, of the counties of Dickson, Hickman, Humphreys, Stewart, Montgomery and Robertson;

The eighth, of the counties of Lincoln, Giles, Maury and Lawrence;

The ninth, of the counties of Henry, Weakley, Obion, Dyer, Gibson, Carroll and Benton;

The tenth, of the counties of Perry, Henderson, Madison, Haywood, Tipton and Lauderdale;

The eleventh, of the counties of Shelby, Fayette, Hardeman, M'Nairy, Hardin and Wayne.

And for each judicial circuit there shall be appointed one Circuit Judge, who shall reside within said circuit and hold the courts therein; and in case of the removal of any such judge out of the circuit for which he is elected, his office shall be vacated thereby; but the Circuit Judges thereof shall be judges of the State, and may interchange with each other one or more courts in their respective circuits, when causes may exist from disability created by the constitution to make such interchange necessary, or to promote their own convenience; and in the absence of the judge of the circuit, his death or inability to attend and hold any Circuit Court within his circuit, any Circuit Judge of the State shall be authorized to hold said court, and the Circuit Judge that may hold the court shall have the same power and jurisdiction that the judge of the circuit might have had.

Of judges

SEC. 3. *Be it enacted*, That the Circuit Courts of the first circuit shall be held as follows in each and every year: for the county of Greene, on the first Monday of March, July and November; for the county of Washington, on the second Monday in March, July and November; for the county of Carter, on the third Monday of March, July and November; for the county of Johnson, on the fourth Monday of March, July and November; for the county of Sullivan, on the first Monday of April, August and December; for the county of Hawkins, on the second Monday of April, August and December; for the county of Grainger, on the third Monday of April, August and December; for the county of Claiborne, on the fourth Monday of April, August and December.

Time of court in 1st Circuit

The Circuit Courts for the second circuit shall be held in each and every year as follows: for the county of Cocke, on the second Monday of January, May and September; for the county of Jefferson, on the third Monday of January, May and September; for the county of Sevier, on the fourth Monday of January, May and September; for the county of Blount, on the first Monday after the fourth Monday in January, May and September; for the county of

2nd circuit

Knox, on the second Monday of February, June and October; for the county of Campbell, on the fourth Monday of February, June and October; for the county of Anderson, on the second Monday of March, July and November; for the county of Morgan, on the third Monday of March, July and November.

3rd circuit

The Circuit Courts for the third circuit shall be held in each and every year as follows: for the county of Roane, on the fourth Monday of February, June and October; for the county of Rhea, on the first Monday of March, July and November; for the county of Bledsoe, on the second Monday of March, July and November; for the county of Marion, on the third Monday of March, July and November; for the county of Hamilton, on the fourth Monday of March, July and November; for the county of M'Minn, on the first Monday after the fourth Monday of March, July and November; for the county of Meigs, on the third Monday of April, August and December; for the county of Monroe, on the fourth Monday of April, August and December.

4th circuit

The Circuit Courts for the fourth circuit shall be held as follows: for the county of Warren, on the third Monday of January, May and September; for the county of White, on the first Monday of February, June and October; for the county of Fentress, on the third Monday of February, June and October; for the county of Jackson, on the second Monday of March, July and November; for the county of Smith, on the third Monday of April, August and December; for the county of Overton, on the fourth Monday of February, June and October.

5th circuit

The Circuit Courts for the fifth circuit shall be held as follows: for the county of Bedford, on the first Monday of April, August and December; for the county of Wilson, on the first Monday of March, July and November; for the county of Rutherford, on the second Monday of April next, and ever afterwards on the third Monday of February, June and October; for the county of Franklin, on the fourth Monday of April next, and ever after on the fourth Monday of March, July and November; for the county of Coffee, on the fourth Monday of January, May and September.

6th circuit

The Circuit Courts for the sixth circuit shall be held as follows: for the county of Williamson, on the second Monday of March, July and November; for the county of Davidson, on the first Monday of April, August and December; for the county of Sumner, on the first Monday of February, June and October.

7th circuit

The Circuit Courts for the seventh circuit shall be held as follows: for the county of Robertson, on the first Monday of January, May and September; for the county of Montgomery, on the second Monday of January, May and Sep-

tember: for the county of Dickson, on the second Monday of February, June and October; for the county of Hickman, on the third Monday of February, June and October; for the county of Humphreys, on the fourth Monday of February, June and October: for the county of Stewart, on the second Monday of March, July and November.

The Circuit Courts for the eighth circuit shall be held as follows: for the county of Maury, on the first Monday of January and May, and the fourth Monday of August; for the county of Lincoln, on the third Monday of March next, and ever after on the first Monday of February, June and October; for the county of Giles, on the third Monday of February, and the fourth Monday of June and October; for the county of Lawrence, on the second Monday of March, July and November.

The Circuit Court for the ninth circuit shall be held as follows: for the county of Henry, on the fourth Monday of January, May and September; for the county of Weakley, on the second Monday of February, June and October; for the county of Obion, on the third Monday of February, June and October; for the county of Dyer, on the fourth Monday of February, June and October; for the county of Gibson, on the first Monday of March, July and November; for the county of Carroll, on the second Monday or March, July and November; for the county of Benton, on the second Monday of April, August and December.

The Circuit Courts for the tenth circuit shall be held as follows: for the county of Perry, on the first Monday of April, August and December; for the county of Lauderdale, on the third Monday of February, June and October; for the county of Tipton, on the second Monday of February, June and October; for the county of Henderson, on the fourth Monday of March, July and November; for the county of Madison, on the second Monday of March, July and November; for the county of Haywood, on the fourth Monday of February, June and October.

The Circuit Courts for the eleventh circuit shall be held as follows: for the county of Shelby, on the first Monday of January, May and September; for the county of Fayette, on the third Monday of January, May and September; for the county of Hardeman, on the first Monday of February, June and October; for the county of M'Nairy, on the third Monday of February, June and October; for the county of Hardin, on the fourth Monday of February, June and October; for the county of Wayne, on the first Monday of March, July, and November.

SEC. 4. *Be it enacted*, That each of the said courts shall sit until the business thereof shall be despatched, unless the judge holding the same shall sooner be compelled

to leave the court, in order to arrive in time at the next succeeding court of the circuit; and in no case after the trial of a cause is commenced, shall the judge adjourn the court till the court in course, until the cause is tried, except in cases where the jury cannot agree, or from other causes a mis-trial may be ordered.

SEC. 5. Be it enacted, That if a judge shall fail to attend to hold a court on the day designated as aforesaid, it shall be the duty of the clerk to open and adjourn the court, as heretofore, for the three first days of the term, and if no judge shall attend by four o'clock on the fourth day of such term, the court shall be adjourned by the clerk until the court in course; and all recognizances, process and other proceedings, returned or returnable to said term, and not acted upon by the court or clerk, by having the parties called out and forfeitures entered agreeably to the laws now in force, shall be considered as being returnable to the next succeeding court, and if from any cause the court shall not sit on any day in a term after it shall have been opened, there shall be no discontinuance, but so soon as the cause is removed the court shall proceed to business until the end of the term.

SEC. 6. Be it enacted, That the Circuit Judges appointed in pursuance of this act, shall before entering on their respective duties, each take an oath to support the constitution of the United States and the constitution of the State of Tennessee, and other oaths now required to be taken by the Judges of the former Circuit Courts.

SEC. 7. Be it enacted, That the Circuit Courts hereby established shall be courts of general jurisdiction, and the Judges thereof shall have general jurisdiction in their respective counties, in all suits of law, and to administer right and justice according to law in all cases where the jurisdiction is not conferred upon another tribunal. They shall also have exclusive jurisdiction of all causes triable by jury, both criminal and civil, of which the county courts had jurisdiction, in the same manner as the county courts had such jurisdiction previous to the passage of this act. The said Circuit Courts shall not have original jurisdiction in any action of debt upon a note under one hundred dollars.

SEC. 8. Be it enacted, That all *caveats* shall be filed in the Circuit Courts in the same manner as they were formerly filed in the county courts, and the Circuit Courts shall have such jurisdiction over them as the county courts formerly had.

SEC. 9. Be it enacted, That in case any will shall be offered for probate and the same shall be contested, it shall be the duty of the county court to certify the fact and send up the original will to the Circuit Court of the same county, and an issue shall be made up in the Circuit court and the

validity of the will tried therein in the same manner as the same is now done in the county court; and the verdict of the jury and the judgment of the court upon the validity of said will shall be certified to the county court, and the original will, if established, shall be sent back to the county court to be recorded, and upon the proceedings so certified by the county court, they shall proceed to grant letters testamentary or letters of administration, and to do all other things necessary to be done to have the will carried into effect or the estate properly administered as heretofore.

SEC. 10. Be it enacted, That all judgments by motion now cognizable in the county courts, shall be cognizable only in the Circuit Courts, and that where a judgment is obtained in any county court in this State by confession, that execution shall be issued and the officer shall proceed to make the collection and pay over said money agreeable to the laws now in force.

SEC. 11. Be it enacted, That where any bill or proceeding is now pending in chancery in the Circuit court, such court shall on motion of either party, transfer such cause to the chancery court of the district in which the county is situated, to be proceeded in as other suits in chancery commenced in said chancery court, and the original papers in the cause together with a transcript of the proceedings had in the court shall be thereupon filed with the clerk of such chancery court; *Provided,* that if any injunction shall have been obtained, it shall be lawful for the Circuit Court to dissolve the injunction and render judgment before such transfer is made, and the clerk of the chancery court, or the papers and proceedings had in the Circuit Court being filed in his office as aforesaid, and upon the condition upon which the dissolution is had, being complied with, shall issue execution upon the judgment rendered by the Circuit Court, or the Circuit Court may order such execution to be issued returnable to the chancery court.

SEC. 12. Be it enacted, That any cause now pending in chancery in the Circuit Courts may be removed by *certiorari* obtained by order of the Chancellor in or out of term time, upon petition of either party, into the chancery court of the district, and the clerk of the Circuit Court shall perform the like duties after the cause is so ordered to be removed by *certiorari*, as he is bound to perform where the cause is removed upon motion in the Circuit Court as provided in the preceding section.

SEC. 13. Be it enacted, That when the clerks of the Circuit Courts are elected, as provided for in the Constitution and the laws of this State, it shall be the duty of each of them before entering upon the duties of their respective offices, to give such bond with surety as are now required by law to be given by the clerks of the Circuit Courts, which

bonds shall be taken and approved of by the Judge of the Circuit in which the county for which such clerk is elected is situate; and said clerks shall moreover, take an oath to support the constitution of the United States and of this State, and the other oaths now required by law to be taken by the clerks of the Circuit Courts; and if any clerk shall presume to enter upon the duties of his office before giving such bond and qualifying as aforesaid, he shall not be entitled to any fees for his services, and shall be liable to indictment for a misdemeanor, and on conviction thereof shall be removed from office.

Of present clerks. SEC. 14. *Be it enacted,* That until the clerks shall be elected and qualified, the present clerks of the Circuit Courts shall continue to discharge the duties thereof, and should the office become vacant before such election, the Judge of the Circuit shall be authorized to fill the vacancy until a clerk shall be elected and qualified as required by this act and the constitution of the State.

Clerks may be removed. SEC. 15. *Be it enacted,* That the Judges of the Circuit Courts shall have the power to remove from office any clerk who shall be guilty of malfeasance in office or neglect of duty, and upon an indictment being preferred against a clerk for either of the foregoing offences, and the same being returned by the grand jury a true bill, it shall be lawful for the Judge presiding in court to appoint a clerk *pro tem.* to discharge the duties of the office pending such indictment in said court.

Vacancies SEC. 16. *Be it enacted,* That should a vacancy occur in the office of clerk after he shall have been elected, from any cause, it shall be the duty of the Judge of the Circuit, if the vacancy happens in vacation, or the Judge presiding in the court if the vacancy happens in term time, to appoint a clerk to fill such vacancy until a new election takes place and the clerk is qualified agreeable to the constitution and laws of this State; and the clerks so appointed for the time being, shall give the same bond, take the same oaths, and be liable to the same penalties that the clerks elected are liable and subject to; and if the clerk shall be at any time absent or unable to attend to the duties of his office, or have the same attended to, the Judge may appoint a clerk *pro tem.* to perform the duties thereof.

Judges' com'n. SEC. 17. *Be it enacted,* That the commissions of the present Judges of the Chancery and Circuit Courts shall expire from and after the first day of March next, at which time the Judges elected under this act shall enter upon the discharge of their respective duties, except such duties as are necessary to be performed by the Judges elect before that time, and which may be performed in vacation.

SEC. 18. *Be it enacted,* That when a clerk is elected or appointed as prescribed by the constitution and the laws in

pursuance thereof, and shall have given bond and qualified accordingly, his predecessors in office shall deliver to him all the books and papers thereof, and upon his failing to do so it shall be held and deemed a contempt and may be punished as other cases of contempt. *Of books &c of office.*

SEC. 19. *Be it enacted,* That all laws in force relating to the former Circuit Courts, or the powers, jurisdiction and duties thereof, or any officer thereof, not incompatible with this act and the constitution of the State, shall remain in force for the regulation and government of the newly established Circuit Courts. *Present laws to remain.*

SEC. 20. *Be it enacted,* That all Circuit Courts held before the first of March next, shall be held by the present Judges thereof as formerly; in relation to all suits or causes pending or determined on the first day of March next, or any of the business of the former Circuit Courts, the Circuit Courts hereby established and the officers thereof shall have the same power, jurisdiction and authority, and shall in every respect be bound to perform the like duties that the former Circuit Court or the officers thereof could perform before the passage of this act; and all process, recognizances, reports and proceedings of every description of the former Circuit Courts not returned or concluded before the first day of March next, shall be returned to the first Circuit Court of the county which shall be held at or after that time, and may be proceeded in and the business concluded as the former Circuit Court could have done. *Of judges and their duties.*

SEC. 21. *Be it enacted,* That the county of Coffee shall be attached to the Franklin county chancery district as heretofore established by law. *Coffee county.*

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed January 25, 1836.

CHAPTER VI.

An Act to re-organize the County Courts in this State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That hereafter there shall be established a court in each and every county in this State, to be held by the justices of the peace thereof, in the court houses of the respective counties, on the first Monday in every month, for the transaction of such public business as is *Court established*

herein prescribed, to be called the County Court; and said court shall have power to continue its session from day to day until the public business before them shall be disposed of.

SEC. 2. *Be it enacted,* That it shall be the duty of the justices of the peace to attend at the court houses of the respective counties on the first Monday in every month; and one third, or twelve of the acting justices in each county, shall be a competent quorum to do and transact all kinds of public or county business prescribed by this act, except to assess a tax, or to appropriate public money, which shall require a majority of all the magistrates of the county to vote in the affirmative: *Provided,* that twelve justices, or one third, shall have power to make appropriations for county purposes, not exceeding fifty dollars: *Provided,* that three of said justices, at their sessions, shall have power to take probate of wills, all instruments of writing, which by the existing laws, are required to be proved and registered, grant letters of administration, appoint guardians, appoint overseers of roads, and to do all other county business, which, by the laws heretofore in force, three were a sufficient number to transact.

SEC. 3. *Be it enacted,* That said court shall have and entertain jurisdiction of all matters of which they have jurisdiction by the laws now in force, except that they shall not have jurisdiction of any pleas, real, personal, or mixed, nor of any cause, civil or criminal, wherein, by the constitution and existing laws of this State, the parties are now entitled to a trial by jury, nor shall said court have power to empanel a jury in any case whatever: *Provided,* that nothing herein contained, shall be so construed as to prevent the sheriffs from summoning a jury of view, and a jury under an order of court, to assess damages sustained by laying off a public road or roads over the lands of individuals, as heretofore prescribed by law, and for the purpose of determining inquisitions of lunacy and idiotcy.

SEC. 4. *Be it enacted,* That it shall be the duty of the justices of the peace of said court, a majority of the justices of said court being present, at their first term in every year to elect a chairman, who shall hold his office for one year, and until his successor is appointed, whose duty it shall be to preside over the deliberations of said court, and perform such other duties as now are or may be assigned him by law.

SEC. 5. *Be it enacted,* That all pleas or suits, civil or criminal, on the civil, equity, State, or reference dockets, pending in any of the County Courts of Pleas and Quarter Sessions in this State, involving issues of law, or issues of fact, shall be, and the same are hereby transferred to the

Duty and power of justices

Jurisdiction

Chairman of court

Suits transferred to circuit courts

circuit courts of each county respectively; and it is hereby made the duty of the several clerks of the County Courts of Pleas and Quarter Sessions in this State, on or before the first Monday in May next, to file the original papers in all the aforesaid causes, together with a certified transcript of any judicial orders of record in their respective courts respecting any of said causes, with the clerks of their respective circuit courts, there to be finally disposed of as other causes pending in said circuit courts.

SEC. 6. *Be it enacted,* That when any last will and testament shall be offered for probate in any of the County Courts of this State, which shall be contested, an issue of *devisavit vel non* shall be made up under the direction of said court, the party contesting giving security as now provided by law, and a transcript of the record of the same, together with the original will offered for probate, shall within five days thereafter be filed by the clerk of the said County Court, with the clerk of the circuit court of the same county; which shall be placed on the trial docket of said circuit court, and be tried at the first term next succeeding the filing said transcript, unless satisfactory reasons be shown by affidavit for a continuance; and said County Court may appoint an administrator during the pendency of such suit.

SEC. 7. *Be it enacted,* That when it shall so happen that the sessions of the County and Circuit Court, or any other courts, to be hereafter established in this State, shall conflict in the time of their respective sessions, then, and in that event, the County Courts are hereby empowered to hold the session of said court in some convenient and suitable house within the corporate limits of the county town other than the court house of said county.

SEC. 8. *Be it enacted,* That the said County Courts shall, at their first session after each term of the circuit court, designate and cause to be summoned by the sheriff or his deputy, twenty-five good and lawful men, citizens of the county, or thirty-seven, and two constables, if, in the opinion of the justices; the interest of the county requires it, being free-holders, owners of occupancies, or house-holders, and twenty-one years of age, to serve as jurymen at the next succeeding circuit court, one of whom shall reside in each of the civil districts into which the counties may be divided where there are twenty-five districts; and where there may be a less number of districts, the said jurymen shall be selected from them with as much equality as practicable, but no mistake or omission as to the residence of jurors shall amount to a disqualification. The justices from each district shall designate the jurymen which their district shall send, if present; and if a district is not represented on the bench by the failure of both their magis-

Of wills for probate

May alter place of its session

Appoint jurors for circ'l court

trates to attend, or any other cause, then the other members of the court may appoint the jurymen for the same: *Provided*, that if said court should fail to appoint a jury at the session above designated, they shall do so at their next session: *Provided, also*, that the jury for the first term of the circuit court, which shall sit after an act passed at this session on that subject, shall be appointed by the County Court at any session before the said term: *Provided*, they shall each receive the sum of one dollar for each day they may be in attendance on the several courts, to be paid out of the county treasury, and that their certificate of attendance shall be received by the sheriff in payment of their county tax. Talisman jurors that are kept more than one day, shall receive the same pay as other jurors for the whole time they may serve.

Clerks to issue
fi. fa. and other
writs

SEC. 9. *Be it enacted*, That the clerks of the County Courts in each county in this State, shall have the same power to issue writs of *feri facias*, *capias ad satisfaciendum*, and *scire facias*, which they have heretofore possessed, for the purpose of procuring satisfaction of the whole or a balance of any judgment heretofore rendered in said County Courts and remaining unsatisfied.

Return of fi. fa.

SEC. 10. *Be it enacted*, That all writs of *feri facias*, *capias ad satisfaciendum*, and *scire facias*, issued by the clerks of the County Courts on judgments heretofore rendered by said courts, shall be returnable to said courts at the expiration of three months from the test. Any sheriff, coroner, or other officer, to whose hands such writs shall come, shall be subject to the laws heretofore in force in this State for failing to make return of the same, or for failing to pay over the money when collected on the same; and all proceedings against such officer for failing to make return of such writ, or for failing to pay over the money when collected on such writ, shall be had in the circuit court of the county in which said writ was issued; and said circuit court shall have authority to render judgment, on motion, against such delinquent officer, in the same manner, and under the same rules that the County Courts are now authorized to render such judgments.

Of returns of
capias

SEC. 11. *Be it enacted*, That all writs of *capias ad satisfaciendum* issued by the clerks of the County Courts under the provisions of the tenth section of this act, shall be returnable in the same manner as writs of *feri facias* which have been issued by the clerks of said County Courts: *Provided*, that in all cases where the defendant in any writ of *capias ad satisfaciendum* shall give bond and security for his appearance at court, according to the provisions of the laws now in force for the benefit of insolvent debtors, such bond shall be given for his appearance at the next circuit court of the county in which said writ may have been is-

sued, and the bond, together with the writ, shall then be returned to said circuit court to be proceeded on according to law.

SEC. 12. *Be it enacted*, That in all cases in which it may become necessary to issue a writ or writs of *scire facias* according to the existing laws, to enforce the collection of any judgment which may have heretofore been rendered in any of the County Courts of this State, a transcript of the record shall be certified to the circuit court, and the clerk of that court shall have full power and authority to issue such writ or writs, and the same proceedings shall be then had thereon in said court as if the judgment had been originally rendered there.

Of garnishee

SEC. 13. *Be it enacted*, That when any person shall be summoned as a garnishee on an execution issued by the clerk of any of the County Courts established by this act, on a judgment or judgments rendered under the organization of the County Courts before the passage of this act, the person so summoned shall be required to appear at the next term of the circuit court of the county to answer upon the garnishment, and the officer summoning such garnishee shall return the execution and summons to the term of the circuit court at which the garnishee is required to appear, and the said court shall proceed to examine said garnishee and render judgment accordingly.

County tax

SEC. 14. *Be it enacted*, That the County Courts established by this act be, and they are hereby authorized, at the second term in every year, to levy and cause to be collected, a tax for county purposes, as contemplated by the twenty-ninth section of the second article of the constitution, upon such principles as may be established with regard to State taxation: *Provided*, that if said court should fail to levy a tax at the session above designated, they shall do so at their next session.

SEC. 15. *Be it enacted*, That this act shall go into effect on the first Monday in March next, and all laws within the purview and meaning of the same are hereby repealed.

EPHRAIM H. FOSTER,

Speaker of the House of Representatives.

JONATHAN WEBSTER,

Speaker of the Senate.

Passed December 3, 1835.

CHAPTER VII.

An Act to fix the salaries of the Chancellors and Circuit Court Judges in this State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the Chancellors for the State shall each receive a salary of fifteen hundred dollars per annum, to be paid quarterly by the Treasurer of the State out of any money in the treasury not otherwise appropriated.

SEC. 2. *Be it enacted,* That each of the Judges of the Circuit Courts in this State, shall receive a salary of fifteen hundred dollars per annum, to be paid quarterly by the Treasurer of the State out of any money in the treasury not otherwise appropriated.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed January 22, 1836.

CHAPTER VIII.

An Act to regulate the practice in the Circuit Courts of the State of Tennessee.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That whenever a cause is taken up for trial in any of the Circuit Courts of this State, if it shall be desired by either of the parties that the presiding Judge shall deliver to the jury a written charge, it shall be the duty of the attorneys employed, on the opening of the cause, to deliver to the said Judge a brief statement in writing, of the different points on which they expect to rely, in all which cases it shall be the duty of the said Judge to deliver a written charge on the several points of law contained in said statements, which said charge and statements shall be filed with the papers in the cause and constitute a part of the record: *Provided,* that should any other points arise in the progress of the cause other than those contained in said statements, it shall be the duty of said Judge, upon being requested in writing so to do, to deliver a written charge thereon; *and provided further,* that said Judge shall not hereby be prevented or restricted from embracing in his written charge, any other points upon which he may

deem it essential to charge the jury and which have not been embraced in the statements of the attorneys.

SEC. 2. *Be it enacted,* That the provisions of this act shall extend to criminal causes, upon the statement of the Attorney General or attorney for the defendant, in the same manner as is pointed out in the preceding section.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed, December 18, 1835.

CHAPTER IX.

An Act vesting the County Courts of each county with discretionary power to have the minutes and other records of the Court transcribed into a well bound book, where the same has not heretofore been done.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That it shall be the duty of the Clerks of the several County Courts of the several counties of this State, at the first or any subsequent term of said Court (after the election of Justices of the Peace by the people) to lay before the Court of their respective counties, all the minutes and records of said Courts that have not been kept in a well bound book, and if said Court, upon examination of said minutes and records, find that they are in a condition not likely to be kept safe, (two-thirds of the acting justices being present) immediately proceed to appoint some qualified person for the purpose of transcribing the same, in a fair, legible hand writing, into a well bound book, who shall, previous to his commencing said transcript, take the following oath before some Justice of the Peace in the county; "I, A B, do swear that I will well and truly transcribe all the minutes and records that shall be delivered to me for that purpose by the Court of the County of _____ without any alteration or deviation from the original records, to the best of my skill and ability, *So help me God.*"

SEC. 2. *Be it enacted,* That where said transcriber shall have finished transcribing said minutes and records, and the same shall have been approved of by the Court of the county, said Court shall, a majority of the acting justices of the Court being present, make to said transcriber a reasonable compensation for the same, to be paid out of the county funds.

SEC. 3. *Be it enacted,* That such transcribed records

Transcribed re-
copies admitted
as evidence

or certified copies of the same, shall, in all cases, be admitted as evidence under the same rules, regulations and restrictions, and shall have such faith and credit given to them as the originals or properly authenticated copies thereof are by law entitled to.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed November 28, 1835.

CHAPTER X.

An Act, supplemental to an act passed at the present session of the General Assembly, entitled "an Act to establish Circuit Courts."

Circuit court
for Madison co

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the Circuit Courts to be holden in the county of Madison, shall be held on the third Monday in April, August and December, instead of the second Monday in March, July and November, as provided for in said act.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed February 2d, 1836.

CHAPTER XI.

An Act to provide for the appointment of Notaries Public.

Notaries Public

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That there shall be appointed by the justices of the county court, if they deem it necessary, two Notaries Public in each county of this State, except in the county of Davidson, in which there shall be three, each of whom shall hold his office for the term of four years, to whose attestation, protestation and other instruments of publication, due credence shall be given.

Bond and security

SEC. 2. *Be it enacted,* That each Notary Public shall before entering upon the duties of his appointment, give bond and security in the sum of five thousand dollars, conditioned for the faithful discharge of the duties of his office;

and moreover shall take and subscribe before some justice of the peace within his county, an oath to support the constitution of this State, an oath to support the constitution of the United States, and an oath that he will, without favor or partiality, honestly, faithfully and diligently discharge the duties of Notary Public.

SEC. 3. *Be it enacted,* That each Notary Public shall keep his office at the town of the county in which he shall be appointed, and shall, at his own expense, procure a seal of office. Keep office at
county town

SEC. 4. *Be it enacted,* That all Notaries appointed under this act shall be commissioned by the Governor. Commissioned
by the Gov'n'r.

SEC. 5. *Be it enacted,* That the attestation, protestation and other instruments of publication of the several Notaries Public of this State, shall and may be received in evidence in any court of record, or before any justice of the peace in this State.

SEC. 6. *Be it enacted,* That when any Notary Public shall resign, he shall surrender his seal to the county court, and if such Notary shall die, his executors, administrators, or other person into whose hands said seal shall come, shall surrender the same to the county court to be cancelled, and on failure, shall be indicted in the circuit court, and punished as in other cases of misdemeanor.

SEC. 7. *Be it enacted,* That where any person or persons is or are interested in having the testimony of any Notary Public in this State, it shall be lawful for such person or persons to take the deposition of such Notary whether suit be depending or not, before two justices of the peace, giving to the opposite party ten days notice if resident within this State, and if resident beyond the limits of this State, forty days notice of the time and place of taking the same; and such deposition when thus taken, shall be evidence between the same parties in any suit in law or equity then or thereafter depending, should said Notary die or remove out of this State before the time of trial. Deposition of
Notary may be
taken

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed February 3d, 1836.

CHAPTER XII.

An Act to provide for electing a Comptroller of the Treasury, and to prescribe his duties.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That there shall be elected by joint vote of both Houses of the General Assembly, a Comptroller of the Treasury, who shall, previous to entering on the duties of his office, enter into bond with two or more securities, in the sum of twenty thousand dollars, payable to the Governor for the time being and his successors in office, conditioned for the faithful discharge of his official duties, the execution of which bond shall be acknowledged before some Judge of the Supreme Court, who shall certify the acknowledgment of the bond and the sufficiency of the security, and shall deposit said bond in the office of the Secretary of State, and he shall take an oath before said Judge to support the Constitution of the United States and the State of Tennessee, and an oath of office.

SEC. 2. *Be it enacted,* That the Comptroller shall keep his office at the seat of government and do and perform all the duties appertaining thereto, which may be required of him by law, or resolution of the General Assembly.

SEC. 3. *Be it enacted,* That the Comptroller shall keep a seal with the device of "the seal of the Comptroller of Tennessee," and all official copies taken from the records or other documents in his office shall be under said seal and shall be certified and signed by the Comptroller.

SEC. 4. *Be it enacted,* That all accounts and claims against the State which shall be by law directed to be paid out of the Treasury of the State, shall be presented to the Comptroller, who shall examine and adjust the same, and shall draw warrants upon the Treasurer for the sums which may be found due from the State, specifying in each warrant the date of its issue and the name of the person to whom payable, as well as the nature of the claim for the payment of which said warrant shall issue.

SEC. 5. *Be it enacted,* That the warrants which the Comptroller is by this act authorised to issue, shall be received at their nominal amount by the collectors of the revenue, in payment of taxes and of all other dues to the State, and if any sheriff, clerk or other officer in this State entrusted with the collection of any portion of the State revenue, shall receive any of such warrants at a less amount than that specified on their face, or shall in any manner speculate in such warrants by purchasing or procuring them to be purchased at a discount, such sheriff, clerk, or other

officer, shall be deemed guilty of a misdemeanor in office, for which he may be indicted in the Circuit Court of the county in which such offence may be committed, and on conviction thereof shall be fined, and at the discretion of the Court, removed from office.

SEC. 6. *Be it enacted,* That the Comptroller shall enter in progressive order in a book or books to be by him provided for that purpose, the number of each warrant by him issued, the amount thereof, the date of its issue and the name of the person to whom issued, as well as the nature of the claim for the payment of which the said warrant shall issue.

SEC. 7. *Be it enacted,* That the Comptroller shall make and preserve in his office, in suitable books, fair and accurate records of all such public accounts and other documents as may be by law made returnable to his office, and shall keep on file in progressive order, all receipts and other vouchers relative to the business of his office.

SEC. 8. *Be it enacted,* That the Comptroller shall keep a regular account with the Treasurer of this State in suitable books, in which he shall charge the Treasurer with all moneys by him received, and credit him with all warrants by him redeemed and deposited in the office of the Comptroller. But if any person who may be authorised to collect and receive money due to the State, shall be directed by the Treasurer to deposit the money in his hands in any of the banks of the State, then and in that case, it shall be the duty of the person making such deposit, to take duplicate receipts from the cashier of the bank, one of which he shall envelope in a sheet of paper and address the same to the Comptroller, and shall put the same in the post office.

SEC. 9. *Be it enacted,* That the Comptroller shall keep a regular account with each and every person in every county of this State, who may be by law authorised to collect and receive any part of the revenue of this State, in suitable books, in which he shall charge each person so authorised to collect and receive, with all sums of money by them severally received, and credit each person with all sums of money by him paid to the Treasurer, and having received duplicate receipts, one of which receipts shall be filed with the Comptroller.

SEC. 10. *Be it enacted,* That the Comptroller shall annually make out an accurate statement of the receipts and disbursements of the Treasury for the preceding year, ending on the first Monday of October in each and every year, also of the unexpended balances (if any there be) of the several appropriations, the amount remaining in the Treasury, the amount of warrants issued and not redeemed, (if any there be) and publish the same in some newspaper of general circulation every year when there is not a regular

Election provided for.

To keep his office at seat of government

To keep a seal

To examine accounts

Warrants &c.

To enter No of warrant in a book

To keep records

To keep act. with treasurer

To keep act. with collectors

Annual statement

session of the Legislature, and shall report the same to each branch of the General Assembly on the third day of each and every session, together with such remarks on the finance of the State as he shall deem proper for the consideration of the Legislature.

SEC. 11. *Be it enacted,* That whenever required, the Comptroller shall submit his books, accounts and vouchers to the inspection of the General Assembly, or any committee thereof appointed for that purpose.

SEC. 12. *Be it enacted,* That when the receipt of a cashier of any bank shall come to the hands of the Comptroller, he shall forthwith present such receipt to the Treasurer, whose duty it shall be to countersign the same, and the Comptroller shall charge the Treasurer with the sum mentioned in said receipt.

SEC. 13. *Be it enacted,* That the Comptroller shall deliver to any person applying therefor, a certified copy of any document in his possession, and all such copies certified by the Comptroller under his official seal, shall be received as legal evidence in all courts and pleas within this State.

SEC. 14. *Be it enacted,* That the person applying for such copy, shall pay to the Comptroller twelve and a half cents for each hundred words contained therein, and that all money so received by the Comptroller for certified copies, shall be paid by him into the Treasury for the use of the State.

SEC. 15. *Be it enacted,* That the Comptroller shall annually procure and transmit to the clerk of the county court of each county in this State on or before the first Monday of May in 1836 and forever after on or before the first Monday of April in every year, a durable and well bound blank book, so constructed as to receive a record of the duplicate of taxes levied in such county for that year, and shall cause the name of the county and year to be lettered or labelled thereon.

SEC. 16. *Be it enacted,* That the Comptroller shall, from time to time, prepare and transmit to the clerk of the county court of each county a sufficient number of general forms and instructions in conformity with the laws in force, as in his opinion may be necessary to secure uniformity in assessing, charging, collecting, and accounting for the public revenue; and the clerk of each county court, and those who may be appointed to receive lists of property to be taxed, and those who may be by law authorised to collect any part of the public revenue, shall pursue and observe such forms and instructions as may be given to them or either of them.

SEC. 17. *Be it enacted,* That when any clerk of any county court shall receive forms and instructions from the

Comptroller which are intended for the use of other persons, as contemplated by this act, he shall distribute said forms and instructions according to the directions of the Comptroller.

SEC. 18. *Be it enacted,* That when the Comptroller shall receive from any clerk a list of taxable property, polls and privileges, in the duplicate record book as mentioned in this act, he shall immediately examine the same, and ascertain from the best information he may be enabled to procure, whether the said list contains a full and true return of all the taxable property, privileges and polls in such county; and if upon such examination the Comptroller shall entertain a well grounded belief that said return or list is imperfect, and does not contain a full and true account of all the property, privileges or polls subject by law to be taxed in said county, then, and in that case, the Comptroller shall communicate to the clerk of the county court his objection to such return, and set forth in his communication how and in what such return is deficient, and order that a counter list be taken and forwarded to the Comptroller's office.

SEC. 19. *Be it enacted,* That the Comptroller is hereby authorised to correct all errors in calculation which he shall discover in the duplicate tax lists returned into his office, and also all errors made by clerks and other returning officers.

SEC. 20. *Be it enacted,* That if any person in any county concerned in the collection of the State revenue, shall fail to collect, fail to make returns, fail to make settlement, or fail to pay over all monies by him received and belonging to the State at the time and in the manner required by law, the Comptroller shall, at the expiration of thirty days next after the expiration of the time within which such duties are by law required to be performed, transmit to the Attorney General in whose district such delinquent officer may reside, a statement of the sum claimed by the State from such delinquent officer, with directions to such Attorney General to proceed against such delinquent officer and his securities, by motion, before the circuit court of the county in which such failure shall happen, at the first or any subsequent term of the court after said payment should have been made, and said court is hereby authorised and required to enter up judgment, on motion, in all such cases for such sum or sums of money as shall appear to be due.

SEC. 21. *Be it enacted,* That the Comptroller shall receive for his annual salary the sum of twelve hundred and fifty dollars, to be paid to him quarterly by the treasurer, and shall moreover be allowed in the settlement of his accounts for his necessary expenditures for such books, as by

this act he is required to furnish, and paying postage upon letters and other communications in relation to the discharge of his duties.

SEC. 22. *Be it enacted,* That if the Comptroller shall die, resign, or from any other cause be disabled to do and perform the duties of his office, the Governor shall appoint some person well qualified to do and perform the duties of the Comptroller, who shall receive the same salary, take the same oath, shall be liable to the same penalties, and shall receive the same allowances as are by this act contemplated to be received, allowed and performed by the Comptroller.

SEC. 23. *Be it enacted,* That the Comptroller shall hold and perform the duties of his office for the term of two years, and until his successor shall be qualified to undertake the duties of said office.

SEC. 24. *Be it enacted,* That it shall be the duty of the Comptroller to attend at Knoxville, in the eastern division, on the first day of February, and remain there until the fifteenth day of February; and at Jackson, in the western division, on the first day of April, and remain there for the space of twenty days, for the purpose of settling with clerks, collectors and other officers, who may be required by law to pay money into the treasury, and also to audit any claims that may be presented for adjudication in either of the divisions of the State during his continuance at such place, and shall also provide by arrangements with the banks in the different divisions of the State so as to have such claims paid in the division where the claimants may reside.

SEC. 25. *Be it enacted,* That the Comptroller, as a compensation for his attendance at Jackson and Knoxville, shall receive two hundred and fifty dollars in addition to his salary herein prescribed, to be paid out of the public treasury.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed January 23d, 1836.

CHAPTER XIII.

An Act setting forth the property, real and personal, and the privileges and occupations liable to taxation in this State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That all lands in this State held by deed, grant, entry or dower, and town lots other than such

as are exempted from taxation as hereinafter provided, all slaves between the ages of twelve and fifty years, all pleasure carriages and bank stock other than such as may be exempted from taxation as hereinafter provided, shall be subject to the payment of an annual tax of five cents on every hundred dollars of the value thereof, as hereinafter ascertained; and in ascertaining the value of said lands and town lots, all improvements thereon, which are attached to and constitute a part of the freehold, shall be included.

SEC. 2. *Be it enacted,* That all lands within this State, now held, or which may hereafter be held, by any person or persons for the use of any religious society for the purpose of having thereon any church, meeting house, or other buildings for public worship; all lands which have heretofore been or may hereafter be appropriated for the use of schools, or which may be held by any person or persons in trust for the use of any college, academy, or other seminary of education in this State; all court houses, jails, poor houses, alms houses, together with the real and personal property belonging thereto; all public streets, alleys, promenades, and public walks in the different towns of the State; all grave yards, public roads of all classes; all stocks owned by the State or by literary, religious or charitable institutions; all capital stock or property of all such incorporated companies as have heretofore been, or may hereafter be exempted from taxation in their respective charters of incorporation, and carryalls, shall be, and the same are hereby exempted from the payment of any State, county, or other tax.

SEC. 3. *Be it enacted,* That each and every white male person, between the ages of twenty-one and fifty years, shall pay annually a poll tax of twelve and a half-cents.

SEC. 4. *Be it enacted,* That all persons who shall exercise the following privileges and occupations, shall pay a tax as hereinafter provided, viz: each and every person, or firm of co-partners, who shall keep any stallion or jack for mares, shall pay annually the season price for one mare: *Provided,* that no person shall keep a stallion or jack for mares without first obtaining from the clerk of the county court a license for that purpose, for which he shall pay at the time, the season price of one mare, and fifty cents for such license; and if any person shall stand a stallion or jack for mares, without obtaining a license as aforesaid, he shall forfeit and pay the sum of two hundred and fifty dollars, to be recovered by an action of debt in the circuit court in the name and for the use of the State, and it shall be the duty of the commissioner of the revenue in the district wherein such stallion or jack may stand, to institute a suit in the name of the State for such penalty, and the same shall be a lien on the said stallion or jack; each and every keeper of

a tavern or house of public entertainment, shall pay annually a tax of five dollars: *Provided*, that such license shall not authorize the retailing of spiritous liquors, unless such privilege is mentioned in the license, in which case twenty-five dollars shall, in addition to the said sum of five dollars, be paid for such license; each and every auctioneer, except book auctioneers, shall pay annually a tax of two hundred dollars; each and every keeper of a turnpike gate, not exempt from taxation by law or by the act of incorporation, except gates on M'Adamised turnpike roads, shall pay annually a tax of twenty-five dollars; and in all cases where the owner or keeper of a turnpike road shall fail to pay the tax imposed by this act, it shall, and may be lawful for the collector of the revenue to expose the same to public sale to the highest bidder for the tax, costs, and charges arising thereon, and by deed, to convey the interest of the owner therein to the purchaser: *Provided*, thirty days notice of such sale shall be given by the collector of the revenue in three public places in the county where the sale shall take place, one of which shall be on the court house door; each and every keeper of a toll bridge shall pay annually a tax of ten dollars: *Provided, however*, such bridges as charge toll during the times of high water only, shall pay an annual tax of two dollars and fifty cents; each and every keeper of a confectionary, shall pay annually a tax of twenty dollars; each and every broker shall pay annually a tax of seventy-five dollars; each and every person exhibiting any show, feats of activity, sleight of hand, or any other exhibition for which money is taken, shall pay annually a tax of fifty dollars in each and every county in which the same may be exhibited; each and every person or firm of co-partners who shall bring into the State, or manufacture for sale, any playing cards, shall pay a tax of fifty cents on each and every deck of playing cards so brought into the State; each and every pedlar and hawker, not exempted by law, whether in clocks or merchandize, shall pay annually a tax of twenty-five dollars on every wagon or vehicle employed in the transportation or conveyance of goods, wares and merchandize, or clocks, or by him employed in peddling and hawking in each and every county; each and every person who shall retail goods, wares, or merchandize, or clocks, at his boat or other water craft, shall pay annually fifty dollars; each and every person being the owner or keeper of any race track kept up by a jockey club for the purpose of turf racing, shall pay annually a tax of twenty-five dollars: *Provided*, that no person shall keep a race track as aforesaid without first procuring a license therefor from the clerk of the county court, for which he shall pay as aforesaid, and if any one shall offend against the provisions of the law, he shall be liable to indictment or presentment,

and on conviction, shall be fined not less than fifty dollars; each and every person having any grant or deed for land registered, shall pay a tax therefor of ten cents for each hundred acres embraced therein on the registration of the same; each and every person having any deed for a town lot or part thereof registered, shall pay a tax of twenty cents on each lot or part thereof conveyed in the deed on registration thereof; each and every person who shall be unsuccessful in any suit in equity, shall pay a tax of two dollars and fifty cents; on each suit in the circuit court, two dollars and twenty-five cents; on each appeal, writ of error, or certiorari from the circuit or chancery court to the supreme court, two dollars; on each appeal or writ of certiorari from before a justice of the peace, one dollar and sixty-two cents and a half; and each indictment or presentment, one dollar; each and every person or firm of co-partners, or agent or agents of any insurance company of another State, who shall open an office in this State for the insurance of life or property, or both, or shall hold himself or themselves out as the agent of any insurance company in another State, and propose to grant policies of insurance in this State, he or they shall pay annually a tax of two hundred dollars to the clerk of the county court where he or they may wish to open an office, or may wish to act as agent as aforesaid, who shall thereupon issue a license to such applicant for one year; each and every wholesale merchant, or firm of co-partners in that branch of business, shall pay annually a tax of two hundred dollars.

SEC. 5. *Be it enacted*, That each commission merchant or firm of co-partners in that branch of business, shall pay annually a tax of one hundred and fifty dollars; each retail merchant, grocer, jeweler, or druggist, and each and every firm of co-partners in trade in either of these branches of business shall by him, her or themselves, or by his, her or their agent, vend or sell in this State, any goods, wares, merchandise, groceries, jewelry or drugs, other than the growth or manufacture thereof, shall be subject to pay an annual tax of one hundred and fifty dollars for every such establishment, without regard to the amount of capital by him, her, or them employed in trade; *Provided*, that each retail merchant, grocer, jeweler or druggist, or firm of co-partners as aforesaid, may at his, her or their election make an affidavit before the clerk of the county court of the county wherein he, she or they may wish to sell or vend goods, wares, merchandise, groceries, jewelry or drugs, that the amount of his, her or their stock on hand, estimated at the invoice cost where purchased, does not exceed three thousand dollars, on which affidavit he, she or they shall pay a tax of twenty dollars to said clerk, who shall thereupon issue a license for one year; and when the amount, estimated

Of commission
and other mer-
chants.

as aforesaid, is above three thousand and not exceeding five thousand dollars, the said clerk shall on affidavit as aforesaid, issue to such applicant a license for one year on the payment of thirty dollars; and where the amount, estimated as aforesaid, is above five thousand and does not exceed seven thousand five hundred dollars, the said clerk upon affidavit as aforesaid, shall issue a license for one year upon the payment of forty-five dollars; and where the amount, estimated as aforesaid, is above seven thousand five hundred dollars, and does not exceed ten thousand dollars, the said clerk on affidavit as aforesaid, shall issue a license for one year on the payment of sixty dollars; and where the amount, estimated as aforesaid, is above ten thousand dollars and does not exceed fifteen thousand dollars, the said clerk, on affidavit as aforesaid, shall issue a license for one year on the payment of eighty-five dollars; and where the amount, estimated as aforesaid, is over fifteen thousand dollars, and does not exceed twenty thousand dollars, the said clerk, on affidavit as aforesaid, shall issue a license on the payment of one hundred dollars; and where the amount, estimated as aforesaid, is above twenty thousand dollars, and does not exceed twenty-five thousand dollars, the said clerk, on affidavit as aforesaid, shall issue a license on the payment of one hundred and fifteen dollars; and where the amount, estimated as aforesaid, is over twenty-five thousand dollars, and does not exceed thirty thousand dollars, the said clerk, on affidavit as aforesaid, shall issue a license on the payment of one hundred and thirty dollars; and in all cases where the amount, estimated as aforesaid, is over thirty thousand dollars, the said clerk, on affidavit as aforesaid, shall issue license on the payment of one hundred and fifty dollars.

SEC. 6. *Be it enacted,* That before any commission merchant or firm of co-partners in that branch of business, To apply to cl'k. for license or any wholesale merchant or firm of co-partners in that trade, or any auctioneer or firm of co-partners in that business, he, she or they shall apply to the clerk of the county court of the county wherein he, she or they may propose to carry on business, and obtain a license therefor for one year, by paying to said clerk the amount prescribed by this act.

SEC. 7. *Be it enacted,* That each and every retail merchant, Retailers grocer, jeweler and druggist, or firm of such dealers about to commence business, or who have been doing business in this State, shall before commencing business or as soon as their present license expires, render on oath, as required by the fifth section of this act, a correct statement of the amount of goods, wares and merchandise, jewelry, groceries or drugs with which he, she or they are about to commence busi-

ness, or which are on hand at his, her or their establishment, at the invoice cost where purchased, and shall furthermore enter into bond with approved security before said clerk in the sum of five hundred dollars, payable to the Governor for the time being and his successors for the use of the State, with condition that such applicant will, twelve months after the date of such bond, render on oath to said clerk, a just and true statement of the amount of goods, wares and merchandise, jewelry, groceries and drugs, he, she or they have received and opened for sale since the date of the last license, and shall pay to the clerk the amount of taxes that may arise and be due thereon according to the rule prescribed by this act, whether an application is or is not made for a renewal of license, and at the expiration of every twelve months after obtaining the first license under the provisions of this act, every such retail merchant, jeweler, grocer and druggist, or firm of partners of such dealers, by him, her or themselves or their agent, as the case may be, shall render a just and true account of all the goods, wares, merchandise, jewelry, drugs or groceries, agreeably to the invoice cost where purchased, or which have been purchased and received at his, her or their establishment on oath, as is required by the fifth section of this act: and in all cases the clerk of the county court is required to issue a license agreeably to the provisions of the fifth section of this act.

SEC. 8. *Be it enacted,* That it shall and may be lawful for any person or persons obtaining license under the provisions of this act, and before such license expire, if such person or persons shall remove to any county in this State other than the one in which he, she or they may have obtained license, he, she or they may enjoy the same benefits and provisions under said license in the county to which he, she or they may remove, until the expiration of said license, as though no change of residence had taken place; and should any person or persons engage in any of the foregoing branches of trade, having obtained a license under the provisions of this act, and before such license expire, sell or in any manner dispose of his, her or their stock of goods, groceries, jewelry or drugs, it shall and may be lawful for such person or persons to sell and transfer his, her or their license, and such license so transferred, shall be a good and sufficient authority to such person or persons so purchasing said license to sell such articles as are authorized by said license to be sold, until the expiration thereof, as if such license had originally issued to such person or persons.

SEC. 9. *Be it enacted,* That all license issued to any auctioneer, wholesale merchant, commission merchant, retail merchant, grocer, jeweler or druggist, or any insurance company, or to any firm of co-partners in any of said branches of business, shall be null and void after the expiration

Removals to other counties

License to be void after 12 months

of one year from the issuance thereof, and said licenses shall in no case authorise the selling or vending of any goods, wares, merchandise, groceries, jewelry or drugs which may have been embraced in the license for the year just expired, but the applicant or applicants shall obtain new license in proportion to the amount of stock received since the date of the license just expired, according to the condition of the bond required by the seventh section of this act, which new license shall be good authority for one year for the selling of all goods, wares, merchandise, groceries, jewelry or drugs then on hand, as well those embraced in the original license as those received since its date, but then remaining unsold: *Provided*, that such new license shall not be issued by any clerk, unless the applicant or applicants shall have paid to said clerk all dues or demands which may be due and owing to the State from said applicant or applicants on any former license or bond required by this act.

Of playing cards
 SEC. 10. *Be it enacted*, That whenever any retail merchant, grocer, jeweler or druggist, or any firm of co-partners in either branch of said trades, shall apply for a license under the provisions of this act, it shall be the duty of said applicant or applicants, to return on oath to the clerk to whom application is thus made, the number of decks of playing cards which he, she or they may have brought into the country for sale, and said applicant or applicants, shall pay therefor the tax prescribed in this act in addition to the sum required to be paid for the license, and each and every person who shall sell any playing cards in this State without first having obtained a license therefor, as provided for by this act, shall be liable to indictment in the circuit court, and upon conviction shall be fined in a sum not less than five nor more than twenty-five dollars for each deck so sold: *Provided*, that nothing in this act contained, shall be construed to repeal any of the laws of this State in relation to billiard tables, or to prohibit the recovery of any penalty allowed for a violation of the same, but the said laws as heretofore passed shall be and remain in full force and effect, and stand unrepealed by the passage of this act.

Circuit Court clerk to sign license
 SEC. 11. *Be it enacted*, That it shall not be lawful for any person to be entitled to the privilege given him or them until he or they shall have obtained the countersignature of the clerk of the circuit court upon said license, and it shall be moreover the duty of said circuit court clerk to record and report the same to the Comptroller at the close of each and every fiscal year, giving the amount for which the clerk of the county court may be liable.

Of purchasers of bills, bonds, &c.
 SEC. 12. *Be it enacted*, That every person or persons, body politic or corporate, who shall in this State, directly or indirectly, by himself, herself, or themselves, or by an

agent or agents, use any money in purchasing bills, bonds, notes or obligations for money, whether under seal or not under seal, judgments or accounts, at a greater discount than six per centum, or the amount due or to fall due on any bill, bond, note, obligation for money or account so purchased, shall pay an annual tax for the use of the State of five cents on each hundred dollars of money he, she, or they may use.

SEC. 13. *Be it enacted*, That any person or persons, or body politic or corporate, using money in this State, as pointed out in the foregoing section, shall, at the termination of every year, or within ten days from the first day of January in every year, render to the clerk of the county court of their respective counties, a written statement, in which shall be truly set forth on oath, according to the best of his, her, or their knowledge, recollection, or belief, the amount of money which he, she, or they have directly or indirectly so used during the preceding year: *Provided*, that in no case shall it be necessary for any person or persons to render any such statement as required by this section unless the amount of money used by him, her, or them, shall exceed the sum of five hundred dollars. The clerks shall respectively file the statements so made in their offices, and shall likewise keep a record of the name of every person or persons who may render such statement on oath before them, showing the amount rendered and the amount of taxes due thereon; and the said clerks shall, immediately after the expiration of the ten days aforesaid, furnish the sheriff of their respective counties with a copy of the said record, who shall forthwith proceed to collect and account for the amount of taxes therein specified, as for other portions of the revenue of the State by them collected; and each and every person rendering such statement shall at the doing thereof, pay to the clerk to whom it is rendered, fifty cents, which shall be a full compensation for his services therein.

SEC. 14. *Be it enacted*, That if any person shall swear falsely to any statement he, she, or they, may render as aforesaid, such person shall be deemed guilty of perjury, and shall be liable to indictment or presentment, and on conviction thereof, shall be subjected to all the pains and penalties imposed by law in other cases of perjury.

SEC. 15. *Be it enacted*, That if any person or persons, who may directly or indirectly use money as aforesaid, shall fail or refuse within the time aforesaid, to render a statement as aforesaid of the amount of money by him, her, or them so used during the preceding year, such person or persons shall forfeit to the use of the State the sum of five hundred dollars, to be recovered by action of debt in the name of the Governor of the State for the time being, in

any circuit court of the State; and it shall be the duty of the clerks and prosecuting attorneys for the State, in their respective counties or districts, if they shall personally know or be informed of any person or persons who have been using money as aforesaid, and have failed or refused to render a statement thereof as aforesaid, forthwith to institute, or cause to be instituted, a suit or suits for the forfeiture hereby declared; and the said prosecuting attorneys shall in every instance in which a recovery of the forfeiture is had, be entitled to a fee of twenty-five dollars, to be taxed against the defendant or defendants in the bill of costs, and collected from him or them as the other costs of the suit.

Fees

Fines

SEC. 16. *Be it enacted*, That if any auctioneer, agent, or branch of any insurance company, commission merchant, wholesale merchant, retail merchant, grocer, jeweler or druggist, hawker or pedlar, or any firm of co-partners in any of said branches of business, or any agent thereof, shall carry on any of the aforesaid branches of business without having first obtained license in accordance with the provisions of this act, he, she, or they, shall forfeit and pay to the State the sum of five hundred dollars, to be recovered by action of debt in the circuit court; and it shall be the duty of the Attorney General for the district, on information, to institute a suit in the name of the State, and prosecute the same for all such violations of this act; and whenever the condition of the bond required to be taken by the clerk, by the seventh section of this act, shall not be complied with by the obligor or obligors, it shall be the duty of said clerk to hand over said bond to the Attorney General for the district, who shall institute and prosecute a suit thereon for the penalty of the bond.

Of traders in salt, iron, &c.

SEC. 17. *Be it enacted*, That this act shall not be construed to extend to the articles of salt and iron, or any articles manufactured in this State, but the same shall be sold free of taxation; nor shall it extend to prevent any farmer from receiving in return for any of the produce or manufacture of this State, any goods or groceries: *Provided*, the said farmer does not establish himself as a merchant or pedlar, and the amount of such goods and groceries not exceed five hundred dollars in value in any one year.

Fee for license

SEC. 18. *Be it enacted*, That for the issuance of every license under the provisions of this act, except where otherwise herein before provided for, the clerk issuing the same shall be entitled to demand and receive from the applicant one dollar.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed February 5, 1836.

CHAPTER XIV.

An Act to provide for the appointment of Commissioners to take in a list of taxable property and polls, and to define their duties.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the several county courts in this State shall, at the May term 1836 of said court, and forever thereafter at the last term of said court, in each and every year, appoint one of the justices residing in each and every magistrate's district, or some other person qualified to perform the duties required of them by this act, to be known by the name of Revenue Commissioners, whose duty it shall be to take in a list of taxable property and polls within the magistrate's district, and for the year for which they were severally appointed; which Commissioners, at the time of returning the lists of taxable property by them taken, shall take and subscribe the following oath before the clerk of the county court of their county, to wit: I, A B, do solemnly swear, (or affirm, as the case may be) that I have well and truly taken in a list of all taxable property and polls that has come to my knowledge in district No. , agreeable to law and the instructions of the comptroller of the treasury, and that I have used all lawful ways and means within my power to find out and list such property and polls liable to taxation within said district No. , as was not returned to me for taxation, and that all valuations of property by me made, have been done faithfully, justly, and truly, according to the best of my skill and judgment, and that I have done equal and impartial justice to the public and to individuals—so help me God;—which oath shall be subscribed and recorded by the clerk of the county court.

Court to appoint Revenue Commissioners

SEC. 2. *Be it enacted*, That if any Commissioner appointed as aforesaid to take in a list of taxable property and polls as by law directed, shall, on due notice, fail or neglect to take in such list and make return thereof to the county court within the time prescribed by this act, or shall fail or refuse to perform the duties required of them by law, such Commissioner so failing, refusing or neglecting, if one of the justices of the peace, it shall be considered a misdemeanor in office, and he shall be dismissed from office and shall be further liable to be fined at the discretion of the court, not exceeding fifty dollars; and if said Commissioner so failing, refusing or neglecting, should be any other person than a justice of the peace, after accepting of the appointment, he shall be liable to be fined as aforesaid, unless sufficient cause be shown for such failure, to be adjudged of by said court.

Of failures to perform duty

Provision in
case of death or
inability

SEC. 3. *Be it enacted*, That when any Commissioner or Commissioners appointed by the county court as aforesaid, shall die, remove, refuse to act, or from any other cause be unable to take in a list of taxable property and polls within the time prescribed by this act, then, and in that case, any three justices of the peace within the county are hereby authorised to appoint some other suitable person or persons to fill the vacancy of such Commissioner or Commissioners thus dying, removing, or refusing to act; such persons thus appointed, shall take the same oath, be liable to the same penalties, shall perform the same duties as are required of Commissioners appointed by the county court, and receive the same compensation.

Time and place
for listing prop-
erty

SEC. 4. *Be it enacted*, That each and every Commissioner appointed to take in a list of taxable property and polls as aforesaid, shall attend on the first Friday and succeeding day in June, 1836, and forever thereafter, on the third Friday and succeeding day in January in each and every year, at the place designated in each magistrate's district for holding the election for county officers, said Commissioners giving ten days previous notice, by advertisement in four of the most public places within said district, of the time and place that he will attend to take in such list of taxable property and polls.

Mode of listing
and valuing
property

SEC. 5. *Be it enacted*, That it shall be the duty of all persons owning property in the district, to attend at the time and place thus designated, by himself or agent, and to return to the Commissioners the amount of his, her, or their property and polls liable to taxation, which he, she or they owned or possessed on the tenth day of January last past, which return shall be made to the Commissioner in writing, and shall plainly specify the number of tracts of land and town lots, the number of acres in each tract, the situation of each, the cash valuation of each tract with the improvements thereon, having due regard to the local situation of each tract, so as to give the neighbourhood valuation as near as may be; they shall also return the number of slaves liable to taxation, with the valuation thereof, whether they be hired out or otherwise; also the number of town lots and parts of lots, with the number of each lot or part of lot, agreeable to the plan of the town where situated, with the cash valuation of each town lot or part of lot with the improvements thereon; and all lands and town lots, or parts of town lots, shall be listed for taxation in the district where situated, or in which the beginning corner is situated; that the revenue arising on bank stock shall be collected from the bank on the amount of stock paid into the vaults of the bank, by the several stockholders in said bank or banks over and above the amount owned by the State, and that it shall be the duty of the cashiers to list the amount of stock

owned in his or their bank by the several individual stockholders; they shall also return the true amount and valuation of all other property which is now or may hereafter be liable to taxation by valuation, they shall also return the number of privileges, polls, and occupations for which he, she or they may be liable to pay a tax at the time aforesaid, and which may be made the duty of the Commissioners to take an account of.

SEC. 6. *Be it enacted*, That the several Commissioners appointed as aforesaid, shall plainly designate all the lands in his district, the revenue arising from which is by law appropriated to common schools, from other lands, and it shall be the duty of such Commissioners to place the same in a separate column from other lands, with the valuation of each tract, with the improvements thereon; and it shall be the duty of such Commissioners to enquire of persons giving in their property for taxation, whether the same is school lands, the revenue arising from which is appropriated to common schools, and if they are, to note the same in his list accordingly.

SEC. 7. *Be it enacted*, That it shall be the duty of the Commissioners appointed as aforesaid, to enter on their lists all such property and polls liable to taxation within the bounds of their several districts, which may not have been returned to them for taxation on or before the first Monday of July, 1836, and forever after, on the tenth day of February in each and every year, whether the same be lands, town lots, slaves, polls, or any other species of property or privilege, which by law he is bound to take in, which shall in all cases be liable to a double tax; and it shall further be the duty of such Commissioners to value all such property as may not have been given in as aforesaid, which is now or may hereafter be taxable, agreeable to valuation, which valuation they shall make in the same way, and by the same rules, as are mentioned in the fifth section of this act.

SEC. 8. *Be it enacted*, That if any person or persons, their agent or agents shall give in a list of his, her or their taxable property and fail or refuse to value such property, or shall fail to give in and value such property as is by law required to be valued, it shall be the duty of the Commissioner to proceed to value the same, for which service he may demand and receive from such person or persons so failing or refusing to value, or failing to give in and value their property, the sum of fifty cents to be recovered by warrant, and in all valuations of property to be made by the Commissioners aforesaid, when the owner or claimants thereof have no goods or chattels within their county, said Commissioners shall be entitled to fifty cents, which the clerk of the county court shall add to the aggregate amount of taxes

due from such person, which shall be collected by the collector as other taxes, and paid over to the Commissioner to whom the same is due: *Provided*, that if any person should refuse to give to the Commissioner a list of his taxable property when applied to by such Commissioner according to the provisions of this act, such person so refusing shall pay said Commissioner five dollars for ascertaining and valuing the property of such persons, to be recovered by warrant before a justice of the peace.

SEC. 9. Be it enacted, That it shall be the duty of the several clerks of the county courts in this State to make out a rough plat of the several towns in their counties, giving the number of each lot and the size thereof, where plats have been filed in their office, which they shall deliver to the revenue Commissioners who may be appointed to take in a list of taxable property and polls within said towns.

SEC. 10. Be it enacted, That when said Commissioners shall have taken in a full and complete list of all the taxable property and polls within the district for which they were severally appointed, they shall return the same to the clerk of the county court on or before the August term 1836, and forever after before the March term of the county court, showing the name of each person in alphabetical order, in a plain and legible hand writing. They shall also make out a certified copy of the return so made to the county court which shall be in alphabetical order, and in a plain and legible hand writing, which they shall put up in some safe and public place at or near the place of holding the elections for county officers, which copy thus posted up shall be for the inspection of such person or persons as may wish to examine the same.

SEC. 11. Be it enacted, That when any of the Commissioners appointed as aforesaid, shall, after they have returned their list of taxable property and polls to the county court, find out either from their own knowledge or from the information of others, any property or polls liable to taxation which has not been entered on the list so returned, it shall be the duty of such Commissioner thus finding out such property or polls, not listed as aforesaid, immediately to take a list of such property and polls and the value thereof in the same manner as is prescribed in this act, and to return the amount thereof to the clerk of the county court, whose duty it shall be to make out and deliver to the sheriff or collector of their respective counties, a copy of such additional return within thirty days after the reception of such return from the Commissioner, and forward a copy of the same to the Comptroller of the Treasury within sixty days from the reception thereof, which return shall be recorded by said Comptroller under the head of the district in which the property may be situated in the several coun-

ties of the State, and to post up a certified copy in the same way as is prescribed in this act.

SEC. 12. Be it enacted, That it shall be duty of the revenue Commissioner at any time before or after the days appointed to take in a list of taxable property and polls, to receive the list of any person or persons who may wish to return the same.

SEC. 13. Be it enacted, That the several county courts in this State shall make such an allowance to the revenue Commissioners in their several counties as they may deem right, to be paid out of the county treasury.

SEC. 14. Be it enacted, That it shall be the duty of the clerks of the several county courts in this State, within thirty days after the court to which the revenue Commissioners are required to make their returns, to record in alphabetical order the returns thus made by the Commissioners, which record shall be made in well bound books, leaving a space between each district on the record book, and numbering on the record book with the same number as numbered by the Commissioner, and if any additional return should be made by the Commissioner, it shall be recorded in the space left for the district to which it may belong. It shall also be the duty of the clerks aforesaid, to make out on his record book, the amount of each persons taxes, and he shall deliver to the sheriff or collector within said thirty days, a true transcript from his record book, each district being in alphabetical order, and as full a description of the property as is returned by the Commissioner shall be returned to the collector.

SEC. 15. Be it enacted, That it shall be the duty of the said clerks to make out in alphabetical order, each district separately, a full and complete transcript of each and every return made by the Commissioners from his record book, which transcript shall be made in a book, to be furnished by the Comptroller of the Treasury or otherwise as he may be directed, which transcript book shall be transmitted to the Comptroller on or before the first day of October 1836, and forever after on the first of July in each and every year. It shall further be the duty of the several clerks aforesaid, to make out an aggregate amount of the valuation of all property and the number of polls and privileges on which a tax for county purposes has been assessed, and return the same to the county trustee, on or before the first day of October 1836, and forever after on or before the first of July in each and every year.

SEC. 16. Be it enacted, That the several sheriffs or collectors, clerks of the county courts and the Commissioners of revenue in this State, shall abide by and perform and be governed in all things by the instructions and forms made by the Comptroller of the Treasury, which are not

inconsistent with the constitution and laws of this State or of the United States.

SEC. 17. *Be it enacted,* That it shall be the duty of the clerks of the several county courts in this State after the present year, to furnish each commissioner who may be appointed to take in a list of taxable property and polls, a fair copy of the list of the taxable property and polls alphabetically arranged for the preceding year in their respective districts.

SEC. 18. *Be it enacted,* That the clerks of the several county courts shall be entitled as a compensation for making out the duplicate tax list which he is by law bound to furnish the Comptroller of the Treasury, the sum of one dollar for each Commissioner's return thus made out, to be paid out of the treasury of the State on said clerks producing the Comptroller's receipt for such duplicate tax list.

SEC. 19. *Be it enacted,* That it shall not be lawful for any person subject to double tax, to be exonerated from the payment of the same, unless he, she or they shall make application therefor to the first term of the county court succeeding that to which he, she or they have been returned and subjected to double tax.

SEC. 20. *Be it enacted,* That so much of the statutes of this State which were in force at the meeting of this General Assembly, as required the county courts at their last term of each year to appoint a justice of the peace for each captain's company, to receive taxable property and polls, and so much of said Statutes as prescribes a penalty and makes it an indictable offence in the said justices so appointed, in failing and refusing to take such lists and make return thereof to the clerk of the county court, be and the same are hereby repealed.

EPHRAIM H. FOSTER,

Speaker of the House of Representatives.

JONATHAN WEBSTER,

Speaker of the Senate.

Passed February 5, 1836.

CHAPTER XV.

An Act to provide for the appointment of a Collector of the Revenue, and to define his duties,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the sheriffs of the several counties in this State shall be the collectors of the State and county taxes, who, before entering upon the collection of

the taxes, shall give bond with two or more securities, which shall be acknowledged before and approved of by the county court of his county, in the sum of double the amount of the taxes to be collected, payable to the Governor for the time being and his successors in office for the use of the State, conditioned for the collection and payment to the treasurer of all taxes by him collected or which ought to have been collected on or before the first day of January 1837, and forever after on the first Monday of October in each and every year in which he shall collect the taxes.

SEC. 2. *Be it enacted,* That said sheriff or collector shall also give bond with two or more securities, which the county court shall approve of in the sum of double the amount of the county taxes to be collected, payable to the chairman of the county court for the time being and his successors in office, conditioned for the collection and payment to the trustee of the county in which said sheriff or collector may be appointed to collect, of all taxes by him collected or which should have been collected, on or before the first day of January 1837, and ever after on the first Monday in October in each and every year in which he shall collect the taxes, and shall also in open court take and subscribe the following oath: "I, A, B, do solemnly swear or affirm as the case may be, that I will faithfully collect and account for all taxes for my county, or cause the same to be done according to law and the best of my judgment, and that I will use all lawful means in my power to find out such property as may not have been listed for taxation in my county, and that I will return a list of such property to the clerk of the county court, so help me God."

SEC. 3. *Be it enacted,* That when said sheriff or collector shall have received the list and polls of taxable property in his county, he shall thereupon appoint a day and place in each justice's district when and where he will attend to receive taxes, and it shall be the duty of said sheriff or collector to give at least twenty days previous notice by advertisement at four of the most public places in said district, and if any person or persons within said district shall fail to attend or otherwise pay their taxes on or before the day appointed, it shall be the duty of said collector to levy the same by distress of the goods and chattels, and make sale thereof, of any person or persons so failing or neglecting, such sheriff or collector giving at least ten days previous notice of such sale by advertisement as in other cases.

SEC. 4. *Be it enacted,* That in case there shall not be any goods and chattels on which the sheriff or collector can make distress for public taxes, it shall be the duty of the sheriff or collector to make report thereof to the circuit court of his county at the first term in each year for the preceding year or years, which report shall be in form following as

near as may be, to wit: "I, A B, sheriff or collector of the public taxes for the county of do hereby report to court the following tracts of land, town lots and parts of town lots, as having been given in for the taxes for the year that the taxes thereon remain due and unpaid, and the respective owners or claimants thereof have no goods or chattels within my county on which I can distrain for said taxes, to wit: A B, one tract of land acres lying in civil district No. valued at \$ taxes C D, one town lot No. in town valued at \$ taxes civil district No.

Duty of court on reported lands

SEC. 5. *Be it enacted*, That on such report being made to the court, it shall be the duty of said court to direct the clerk to receive and record the same, and the court shall give judgment against said tracts of land in the name of the reputed owners thereof, and thereupon the clerk shall make out and issue an order thereon for the sale of said land and town lots and parts of town lots which shall be in form following, to wit:

STATE OF TENNESSEE, } Term 18
COUNTY }

Whereas, A B, sheriff or collector of the public taxes for the county of reported to court the following tracts of land, town lots or parts of town lots as having been returned for the taxes for the year and that the taxes thereon remain due and unpaid, and that the respective owners or claimants thereof have no goods and chattels within his county on which he can distrain for said taxes, to wit: A B, one tract of land lying in civil district No. containing acres, clerks fees cents, sheriff's fees cents, printer's fees cents. C D, one town lot or part of town lot No. in Town, valued at taxes

Whereupon it is considered by the court that judgment be and it is hereby entered against the aforesaid tract or tracts of land or town lot or lots, as the case may be, in the name of the State for the sum annexed to each, being the amount of taxes, costs and charges due severally thereon for the year and it is ordered by the court that said several tracts of land, town lots or parts of town lots, or so much thereof as shall be sufficient of each of them to satisfy the taxes, costs and charges annexed to them severally, be sold as the law directs.

SEC. 6. *Be it enacted*, That the form as herein before set forth shall be pursued as near as the nature of the case will permit.

Form adhered to

SEC. 7. *Be it enacted*, That it shall be the duty of the clerk within ten days after the adjournment of said court, to make out a copy of the sheriff or collector's report, together

Clerks duty on reported lands

er with the order of the court therein, which shall hereafter constitute the process on which all lands and lots of land shall be sold for the public taxes, which, when received by the sheriff or collector, shall be obeyed and returned under the same rules and subject to the same penalties as are now or may be provided by law for executing and returning writs of *feri facias*.

SEC. 8. *Be it enacted*, That it shall be the duty of each Sheriff to advertise and every sheriff or collector of public taxes within this State, to make the report as specified in the fourth section of this act, at the first court in each and every year, for the preceding year or years, and when an order of sale shall issue to said sheriff or collector, it shall be his duty to advertise in some newspaper printed in the county where the land lies, or if no paper be printed in said county, it shall be the duty of the sheriff or collector to advertise sales of lands lying in East Tennessee in some newspaper printed in Knoxville, for lands lying in Middle Tennessee at Nashville, and for lands lying in the Western District at Jackson, which publication shall be made at least forty days before the sale, the said sheriff or collector setting forth in said advertisement, that the said tracts of land will be sold for taxes, costs and charges, and setting forth specially the quantity and situation of each tract, and if the taxes, costs and charges upon any tract shall not be paid before the day appointed in said advertisement for sale, the same shall be sold, or so much thereof as shall be sufficient to satisfy said judgment and all costs and charges due thereon, which sale shall be made at the court house of the county wherein the land shall be situated, on the first Monday of July and succeeding day or days if necessary next ensuing in each and every year.

SEC. 9. *Be it enacted*, That no land or lots of land on which the tax may remain due and unpaid, shall be sold for less than the amount thereof, and he who shall pay the same for the smallest number of acres to be run off at the beginning corner and running at least one line of said tract so as to include the quantity sold as near a square or oblong (at the election of the purchaser) as the situation of the other line or lines or interruption of lines by former sales will admit, shall be the purchaser: *Provided*, that the beginning corner shall be in the county where the sale is made, and if not to commence on the county line nearest the beginning corner.

Land sold for taxes

SEC. 10. *Be it enacted*, That said sheriff or collector or his successor is hereby authorised and required to make a deed or deeds of conveyance for the lands so sold to the purchaser or purchasers, having regard to the beginning corner of the tract so sold, that is to say, beginning at the same and running at least one line of said tract so as to in-

Of deeds to be made

clude the quantity sold as near a square or oblong (at the election of the purchaser) as the situation of the other lines or interruption of lines by former sales will admit, having regard to the beginning corner.

SEC. 11. *Be it enacted*, That the laws now in force in this State, conferring the right of redemption upon the owner or owners of real estate sold for taxes, and not inconsistent with the provisions of this act shall be and continue in full force and effect.

Of right of redemption

Of deeds

SEC. 12. *Be it enacted*, That in all cases where lands or town lots shall be sold for taxes as herein provided for, and where the same has not been redeemed within twelve months after the day of sale, the sheriff or tax collector in executing a deed or deeds of conveyance to a purchaser or purchasers, shall only be required to recite the consideration paid, such description of the land to be conveyed as will identify the same, the judgment upon which said sale was made and the date thereof, in what court rendered, the fact of legal notice having been given, and the sale and date of sale of the property; and in all cases where these requisitions shall have been complied with, and shall have been recited in said deed or deeds of conveyance, the same shall be good and effectual between the parties.

SEC. 13. *Be it enacted*, That the sheriff or Collector appointed to collect public taxes by virtue of this act shall, each and every one of them, pay the public taxes collected in his county into the hands of the treasurer authorised to receive the same, or to such other person as he may direct, on or before the first day of April, 1837, and forever thereafter, on or before the first day of October in each and every year, and shall receive as a compensation for collecting and paying the same the sum of six dollars for each hundred dollars, and so in proportion for a greater or less sum, which commission shall be deducted out of the money by them collected.

Duty of sheriff and his compensation

Of his failure to settle with comptroller

SEC. 14. *Be it enacted*, That if any sheriff or Collector of any county in this State shall neglect or refuse to settle his or their account on or within the time limited by this act as in manner hereby directed, it shall be the duty of the comptroller of the treasury, by himself or his attorney, to appear in the circuit court of the county in which such sheriff or Collector resides, at the first term of said court after the second Monday in April, 1837, and forever after, on the first Monday in October of every year, or at any subsequent term of said court, and in the name of the Governor of the State, to move for judgment against such delinquent sheriff or collector and his securities, with damages of twelve and a half per cent on the amount due from such sheriff or Collector, and the court shall enter judgment and issue execution accordingly: *Provided*, that

in all cases, at the request of the defendant, a jury shall be impaneled by the court, who shall find the facts before the judgment shall be rendered.

SEC. 15. *Be it enacted*, That if any sheriff or Collector of any county in this State shall neglect or refuse to settle and pay over to the county trustee within the time limited by this act as in manner hereby directed, it shall be the duty of the county trustee for the county in which such sheriff or Collector shall reside, by himself or the Attorney General of the district, to move for judgment in the name of the chairman of the county court on the bond, with twelve and a half per centum damages, of the said sheriff or Collector, for the amount of taxes due from such sheriff or Collector and his securities, in the circuit court of the county in which such sheriff or Collector resides, and execution may issue thereon, directed to the sheriff or coroner of the county wherein the delinquent sheriff or Collector resides.

Failure to settle with county trustee

SEC. 16. *Be it enacted*, That in case any suit is instituted under the provisions of this act against any sheriff or Collector and his securities, the same shall not be abated, quashed, or delayed by any want of form, or by reason of any informality in prosecuting the same.

Of suits against sheriff

SEC. 17. *Be it enacted*, That it shall be the duty of the sheriff or Collector when he shall have received the amount of tax from any person or persons for which such person or persons stand chargeable, to give a receipt to the person or persons so paying, expressing in said receipt the amount so received; and if any sheriff or Collector shall presume under color or pretence of his office to collect more money in name of taxes than is directed by law, such offending sheriff or Collector, on due proof thereof, shall be guilty of a misdemeanor in office, and shall be fined not exceeding one hundred dollars for each and every offence.

Of collecting

SEC. 18. *Be it enacted*, That no sheriff or Collector of public taxes shall obtain and receive a credit with the comptroller of the treasury or county trustee of his county, for any insolvencies or deficiencies of payments in the collection of the public taxes in his county, without first making oath in open court that the list of insolvents by him exhibited is just and true to the best of his knowledge, and that said list fully sets forth the name of each delinquent in his county, the amount of tax he owes, and the nature and kind of taxable subjects from which derived, and the year for which it accrued, and that he had used all legal ways and means in his power to collect the taxes contained in the said list from the time he received the tax list of his county from the clerk thereof, and that he could not find any property to enable him to collect the said taxes, and on such oath being made and subscribed upon the same paper containing said list as filed, the county court of the county in

Of credits for insolvencies

which such sheriff or Collector resides, shall order their clerk to certify to the comptroller of the treasury and county trustee, that they have allowed the Collector of the public taxes in their county a credit for the amount of the list so exhibited and sworn to, or such part thereof as the court shall deem reasonable and just, plainly distinguishing the year for which the credit is to be allowed.

Limit of time

SEC. 19. *Be it enacted*, That the sheriff or Collector of the public taxes shall not be allowed any credit for insolvencies from and after the time limited by this act for them to settle their accounts of public taxes by them collected.

SEC. 20. *Be it enacted*, That the sheriff or Collector shall be entitled to a credit with the comptroller of the treasury and county trustee, for the taxes on all lands and town lots or parts of town lots which he may have reported for the non-payment of the taxes due thereon; and when an order of sale shall be awarded by the circuit court, it shall be the duty of the clerk of said court to deliver the same to the sheriff or Collector, and when said sheriff or Collector shall have returned the same agreeable to law, it shall be the duty of the clerk of the said court to certify to the comptroller of the treasury and the county trustee, the amount of the tax on all such lands, town lots, or parts of town lots, which may have been sold, or have been paid, and shall certify the names of the owners or claimants of all such lands and town lots, or parts of town lots, with such description, value, and amount of the taxes due thereon of all such lands, or town lots, or parts of town lots thus reported, which have been returned as unsold and unpaid, and it shall be the duty of the comptroller to direct the manner in which such lands, or town lots, or parts of town lots, which have been returned by the sheriff or Collector as unsold and unpaid, shall thereafter be assessed for taxes so as best to secure the tax on the same for any former year or years for which the tax may remain due and unpaid.

Duty of Attorneys General

SEC. 21. *Be it enacted*, That it shall be the duty of the Attorneys General in their respective districts, to prosecute all motions against delinquent Collectors of public taxes when made or ordered to be made by the comptroller or county trustee as directed by this act, without any charge to the State therefor, but that he shall have a tax fee of twelve dollars and fifty cents for each motion successfully prosecuted.

Repeal

SEC. 22. *Be it enacted*, That all laws coming within the provisions of this act are hereby repealed.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed February 9, 1836.

CHAPTER XVI.

An Act to amend the laws of this State regulating the bringing of suits upon Sheriffs' bonds.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That in all suits hereafter brought upon sheriffs' bonds, in this State, it shall and may be lawful for the party or parties injured by reason of the breach of the conditions of said bonds, to institute suit thereon, in the name of the Governor of the State, for his or their use, and to make profert of a copy of said bond in the declaration. Suit in name of Governor

SEC. 2. *Be it enacted*, That the party or parties for whose use said suit may be brought, shall be liable for the costs of the same in the event of a failure to recover, and it shall be the duty of the court in which said suit may terminate, in the event the plaintiff fails to recover, to give judgment against the person or persons for whose use the same was prosecuted for the costs of said suit. Of costs

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed November 9, 1835.

CHAPTER XVII.

To prescribe the duties, and define the jurisdiction of Justices of the Peace.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That each of the justices of the peace elected in the different counties in this State, in pursuance of the fifteenth section of the sixth article of the Constitution, shall have and exercise jurisdiction over all debts and demands due on any specialty, note, or agreement, signed by the party to be charged therewith, on which the judgment will not sound in damages, and over all settled accounts signed by the parties, when the amount claimed to be due on such specialty, note, agreement or account, does not exceed one hundred dollars; and shall hear proof and give judgment thereon without the intervention of a jury, and award execution accordingly: subject, nevertheless, to the appeal of either party to the circuit court of the county wherein the trial has taken place, to be tried by a jury as other cases in said court. Jurisdiction

SEC. 2. *Be it enacted,* That said justices of the peace shall have and exercise jurisdiction in manner aforesaid over all sums not exceeding fifty dollars, which may be due by open account, whether for goods, wares and merchandise sold and delivered, for work and labor done, or for specific articles, or by contract in writing signed by the party to be charged therewith, on which the judgment would sound in damages, whether due by obligation, note or assumpsit, and shall hear proof, give judgment, and award execution thereon accordingly: subject, nevertheless, to the appeal of either party to the circuit court of the county wherein the trial has taken place, to be tried by a jury as other cases in said court.

SEC. 3. *Be it enacted,* That it shall be the duty of every justice of the peace to designate some one certain day in every month when he shall attend at his usual place of residence, or at some other convenient place in his district, to hear and determine all matters cognizable before him: *Provided always,* that nothing herein contained shall prevent any justice of the peace from trying any cause that may be brought before him at any time or at any place within his county.

SEC. 4. *Be it enacted,* That all executions issued by justices of the peace, shall be returned before the justice who issued them, or before the justice who may have possession of the original judgment, as the case may be, within thirty days after their issuance, and if any officer into whose hands an execution may come, which has been issued by a justice of the peace, shall fail to make return thereof as herein before directed, the plaintiff may, on motion before said justice, take a judgment against him and his securities for the amount due in said execution, with damages of twelve and a half per centum for such failure: *Provided,* the plaintiff, his agent or attorney give to the constable or other returning officer, five days notice at least of the time and place of such motion: *and Provided also,* that inability to attend and make such return of an execution as directed by this act on account of sickness, high water, or engagement in executing any precept in behalf of the State, shall be a sufficient reason to authorise the justice of the peace to discharge said officer for his failure to return as aforesaid: *and Provided further,* that where there shall have been a levy made to satisfy an execution, and there shall not be sufficient time to sell between the levy and the return day of the execution, or a sale shall in other respects be defeated, in such case the lien given by the levy shall continue, and the justice of the peace shall issue an order of sale upon said execution so levied and returned.

SEC. 5. *Be it enacted,* That should the justice of the peace who issued the execution, die, resign, or remove

Not exceeding fifty dollars on open account

To appoint a regular day for trial of causes

Of returns of executions

Of death &c. of justice before return day

from his district, or his office should otherwise become vacant before the return day of any execution, then, and in that case, the constable or other returning officer shall return said execution to the justice who may have possession of the original judgment, who shall have all the powers conferred by law on the justice who issued the execution: *Provided, however,* that no justice of the peace shall render a judgment, on motion, against the securities of any constable for a failure of duty until the plaintiff, his agent or attorney, produce to the justice a certified copy of his bond.

SEC. 6. *Be it enacted,* That in all cases where the laws now in force require the signature of two justices of the peace to the issuance of any warrant, or for the trial of any matter, which, by the existing laws, require the presence of two justices, the same may be done by one justice: and any warrant issued, or judgment rendered as aforesaid, shall be as good and effectual in law as though the same had been issued or judgment rendered by two justices as now required by law.

SEC. 7. *Be it enacted,* That every justice of the peace shall keep in a well bound book, a docket of all judgments rendered by him, which shall show in whose favor and against whom each judgment was rendered, and also the date of its rendition and the amount thereof, and after any suit or action shall be decided or disposed of by such justice, he shall read over, if required, to the parties the entries made by him on his docket, and shall furnish a transcript of his proceedings in any cause to any person applying therefor and paying to the justice a fee of twenty-five cents for the transcript; he shall also keep an execution docket, showing the amount of each execution, in whose favor and against whom it has been issued, the date of its issuance, and to whom delivered; and when an execution shall be returned, he shall note on his execution docket whether the same is satisfied in whole or in part, or remains unsatisfied, and also the date on which it was returned, and the name of the officer by whom it was returned. When an execution has been issued on a justice's judgment, the said justice shall not in any instance issue another on the same judgment until the former execution has been returned, or an affidavit made that it has been lost, mislaid, or destroyed, and that it is unsatisfied.

SEC. 8. *Be it enacted,* That each justice of the peace shall be entitled to twenty-five cents for every judgment he may render, and to twelve and one half cents for every execution he may issue, which fees shall be paid by the unsuccessful party in the suit before him, and against whom he may render a judgment for all costs of the cause, and issue execution for the same.

One only required for issuance of certain warrants

To keep judgment and execution dockets

Fees

Returns made
in defendant's
district

SEC. 9. *Be it enacted*, That all warrants issued by justices of the peace, shall be, by the officer who serves them, returned before some justice of the peace within the district in which the defendant resides, or before some justice in an adjoining district, who is legally competent to try such case: *Provided*, such justice in an adjoining district resides nearer to the defendant than any justice in the district of such defendant: *and Provided also*, that a mistake in distance shall not vitiate a judgment, except warrants for misdemeanors and offences against the penal and criminal laws of the State, which may be returned at any place within the county in which they were issued, and except in cases in which a civil warrant may have been issued against more than one defendant when they reside in different districts, in which case the warrant may be returned in any district in which one of the defendants may reside, except where one or more of the defendants are endorsers, and in that case it shall be returned to the district in which the original obligor may reside, if the original obligor is included in the suit with one or more endorsers, and except also, in cases in which persons residing in one county may be served with a warrant in any other county, in which case the warrant shall be returned in the district in which it was served, and except also, where the defendant may have no fixed place of residence, or may be about to remove or abscond, in which cases it shall be lawful for the officer to return such process in the district in which it may be served, or before the most convenient magistrate: *Provided*, that in case both of the justices of any district in which, by the provisions of this act, any warrant is required to be returned, shall be related to either of the parties by affinity or consanguinity, or otherwise incompetent to try the same, or where there shall be any vacancy in the magistracy of the district, or the magistrates thereof shall be absent, then, and in that event, it shall be lawful for such warrant to be returned in any adjoining district free from like exception: *Provided also*, that nothing herein contained, shall be so construed as to preclude any officer from returning any process in any district by consent of the defendant.

Of appeals and
stays

SEC. 10. *Be it enacted*, That in all judgments rendered by a justice of the peace, either party shall be allowed two entire days, Sundays excepted, after the one on which the judgment was rendered to take an appeal to the circuit court and giving bond and security therefor, or to stay execution: *Provided*, when the plaintiff in the judgment shall make oath that he believes it is the intention of the defendant or defendants to abscond, remove or defraud him of his debt by removing his property out of the county, in such case execution shall issue or a *ca. sa.* at the option of the party praying the same at the time of rendering the judgment.

SEC. 11. *Be it enacted*, That in all cases wherein by the laws now in force in this State, any papers or proceedings in a cause before a justice of the peace are by law directed to be filed in the county court for further proceedings thereon, the same shall be filed in the circuit court there to be proceeded on as if they had been filed in the county court, and where an execution issued by a justice of the peace has been levied upon land and the papers returned to the circuit court according to the existing law, for the purpose of having judgment of condemnation against said land, and an order of sale to sell the same, it shall be the duty of the clerk to record said papers at full length in his minute book, for which he shall receive a fee of fifty cents.

Of proceedings
to be taken to
circuit court

SEC. 12. *Be it enacted*, That every person who shall be elected a justice of the peace before entering upon and executing said office shall publicly take the oath to support the constitution of the United States, an oath to support the constitution of this State, and the following oath of office, "I, A B, do solemnly swear or affirm, that as a justice of the peace in the county of _____ I will administer justice without respect to persons, doing equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as a justice of the peace according to the best of my skill and ability, *So help me God.*"

Oath required

SEC. 13. *Be it enacted*, That it shall not be lawful for any justice of the peace in this State to sign any warrant until the same is written out at full length, so as to make said warrant complete in law.

Not to sign
blank warrants

SEC. 14. *Be it enacted*, That as soon as practicable after the election and qualification of justices of the peace under the amended constitution, the justices of the peace now in commission in this State shall deliver over to one of the justices of the peace in their respective districts all their official books and papers. for which said official books they shall take and file a receipt with the clerk of the county court, and it shall be the duty of the justices of the peace to whom said books and papers are delivered whenever lawfully required to issue any legal process to enforce the collection of any judgment thereon remaining unsatisfied subject to the same rules and regulations as other process issued by said justices for the collection of judgments rendered by themselves.

Papers trans-
ferred to new
justices

SEC. 15. *Be it enacted*, That whenever the office of any justice of the peace shall become vacant, all the dockets, papers, books and public laws or statutes pertaining to his office, shall, if a successor be chosen and qualified at the time, be delivered over to him, but if no successor be chosen and qualified, then to the nearest justice in the district if any there be, but if there be none then to the nearest in

Papers to be
delivered to
successors

the county, to be kept by him until a successor be chosen and qualified and then delivered over to him on request, and if any justice shall absent himself from his district for three months together, he shall deposit the books and papers of his office previous to such absence with the nearest justice as aforesaid, to be kept and acted on by him in the cases and manner herein after provided until such absent justice shall return or a successor be chosen and qualified, and then delivered to such justice or successor, and in case of a vacancy or absence it shall be the duty of any person into whose possession any such books and papers may come, to deliver them on demand to the proper justice, and any justice so receiving by succession or on deposit any such books or papers, shall if required, give a receipt therefor to the person from whom he receives the same, and if any person shall neglect or refuse to comply with either of the above provisions of this section, he shall on conviction thereof by presentment or indictment in the circuit court, be fined not exceeding fifty dollars, and moreover be responsible to the party injured in damages for such refusal or neglect: *Provided*, that nothing in this section shall be so construed as to require a justice of the peace who makes a temporary deposit of his docket to accompany the same with any other papers than those which relate to unsettled business thereon: *and provided also*, that any justice of the peace for said county may issue an execution upon any judgment rendered by any other justice of the same county whenever the justice rendering the judgment is temporarily absent, under the same rules and regulations that govern the justice who rendered the judgment.

SEC. 16. *Be it enacted*, That the justice with whom the books and papers of another may be deposited during a vacancy or absence as aforesaid, is hereby authorised whilst having such books and papers in his possession as aforesaid, and shall at the request of the judgment creditor or any one interested or his or their agent, issue an execution upon any judgment on the docket left with him that may be due before it is delivered up, in the same manner as if the judgment was originally rendered before him, and in like manner shall give transcripts of judgments and proceedings, and the successor of any other justice, on obtaining his docket and papers, shall be authorised to issue executions upon his judgments, and to give and certify transcripts of his proceedings as if the same were originally had before himself.

SEC. 17. *Be it enacted*, That the judgment and execution dockets which the justices of the peace are required by the seventh section hereof to keep shall be according to the form hereto annexed, which is hereby made a part of this act.

Of proceedings
during a vacan-
cy

Form required

Form of judgment and execution docket for Justice of the Peace.

No.	Date of trial.	Parties' Names.	Amount of judgment.	By whom stayed.	Returning Officer.	Execution, when issued.	Bill of cost.	Officer's Return.
1	1836, January 15.	Jno. Doe, <i>vs.</i> R. Roe.	\$98 37½	J. Denison	T. Gripe.	1836, June 16.	Justice J P, for Fi. Fa. judgment and f. satisfied. fa. 37½ cents.	July 15, 1836. Constable Gripe, serving warrant 50 cents. T. Gripe Const. Witness A B, 25 cents.

Former laws
 SEC. 18. *Be it enacted*, That all laws now in force and use in this State, prescribing the duty and defining the jurisdiction of justices of the peace out of court and which are not inconsistent with the provisions herein contained and with the Constitution of the State, shall remain in full force and effect until otherwise directed by law.

When new justices enter upon duties
 SEC. 19. *Be it enacted*, That the justices of the peace and constables in this State, shall continue in the exercise of all the functions conferred upon them by the laws existing under the old constitution until the first Monday in May next, when the constables and magistrates to be elected on the first Saturday in March next shall be qualified and enter upon the duties of their offices, and this act and an act passed on the 3d December 1835, entitled an act to reorganise the county courts in this State, shall not take effect until the said first Monday in May next, any previous enactments of the present General Assembly to the contrary notwithstanding.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
 JONATHAN WEBSTER,
Speaker of the Senate.

Passed February 13, 1836.

CHAPTER XVIII.

An Act supplemental to an act entitled "An act to reorganise the County Courts in this State," passed December 3, 1835.

Chairman to be elected
 SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That it shall be the duty of the justices of the peace in the several counties in this State, a majority of the justices of said county being present at their May term 1836, to elect a Chairman, who shall hold his office until the first Monday in January next, and until his successor is appointed, whose duty it shall be to preside over the deliberations of said Court, and perform such other duties as now are or may be assigned him by law.

6th Sec. of former act repealed
 SEC. 2. *Be it enacted*, That so much of the sixth section of the act to which this is a supplement, as requires an issue of *devisavit vel non* to be made up under the direction of the County Court, be and the same is hereby repealed; and where any will shall be presented for probate, and the same shall be contested as mentioned in said sixth section, it shall be the duty of the Court to require of the person or persons so contesting the validity of such will so offered for probate, to enter into bond and security payable to the ex-

ecutor or executors mentioned in said will, in the penal sum of five hundred dollars, conditioned for the faithful prosecution of the suit, and in case of failure therein to pay all costs that may accrue thereon.

SEC. 3. *Be it enacted*, That so much of the eighth section of said act as requires the sheriffs or collectors to receive the certificates of jurors in payment of county taxes shall not be so construed as to require said certificates to be received in payment of taxes, unless there has been a sufficient tax laid to pay all the jurors certificates, and in case there should not be a sufficient tax laid for that purpose, said certificates shall be filed with the county trustee and shall be paid in the order in which they are filed.

SEC. 4. *Be it enacted*, That so much of the ninth and tenth sections of said act as authorizes the clerks of the County Courts to issue writs of *scire facias* shall not be construed so as to authorize said clerks to issue said writs of *scire facias* after the first Monday in March next, and all writs of *feri facias* and *capias ad satisfaciendum* which may be issued by any clerk of the County Court after the first Monday in May next, shall bear test from the first day of the County Court preceding the issuance, and shall be returnable at the third Court after the test of said writ.

SEC. 5. *Be it enacted*, That when any writ of *capias ad satisfaciendum* or writ of *feri facias* shall be issued by the clerk of the County Court, and shall be returned to the Circuit Court under the provisions of the eleventh and thirteenth sections of said act, it shall be the duty of said Circuit Court to order the proceedings had thereon in said Circuit Court, to be certified to the County Court from which said writ may have issued, and the clerk of the County Court shall proceed thereon, as if said proceedings were had in the County Court from which said writ may have issued.

SEC. 6. *Be it enacted*, That the several County Courts in this State, a majority of all the justices in the county voting in the affirmative, shall at their May or June term next, levy and cause to be collected, a tax for county purposes for the present year in manner as contemplated by said act to which this is a supplement.

SEC. 7. *Be it enacted*, That so much of said act as authorizes said act to go into effect on the first Monday in March next, be and the same is hereby repealed, and that said act shall take effect on the first Monday in May next.

SEC. 8. *Be it enacted*, That from and after the first Monday in March next, the County Court now established shall not have and entertain jurisdiction of any plea, real, personal or mixed, nor of any cause, civil or criminal, wherein by the constitution and existing laws of this State the parties are now entitled to a trial by jury, nor shall said

Court have power to empanel a jury in any case whatever, except in cases specified in the fifth section of the act to which this is a supplement; but said Court shall have such other jurisdiction as they now possess by law, until the first Monday in May next.

Of clerks

SEC. 9. *Be it enacted*, That the clerks of the several County Courts in this State shall perform the duties enjoined on them by the fifth section of the act to which this is a supplement, on or before the first Monday in March next, instead of the first Monday in May as mentioned in said act.

Of return of writs &c

SEC. 10. *Be it enacted*, That all original writs, sub-pœnas or other leading process, issued or to be issued before the first Monday of March next by any of the clerks of said Courts, according to the existing law, and not returnable before that time, shall be held and deemed returnable to the next circuit court of the county thereafter, there to be proceeded in as other cases in said Court, and all bonds and recognizances of every description which may be returnable to the County Court, taken by sheriffs, constables, justices of the peace or other officer, or which may be taken before the said first Monday in March next, and not returned or returnable before that time, shall be held and deemed returnable to the first Circuit Court thereafter held in the county, and all bonds and recognizances taken in any of the County Courts or which may be taken before the first Monday in March next, for the appearance of any person or persons, shall in like manner be held and deemed returnable to the next Circuit Court of the county thereafter.

Suits shall not abate

SEC. 11. *Be it enacted*, That no suit shall abate or be discontinued by reason of any thing in this act, but the said Circuit Courts are hereby vested with full power and authority to hear and determine said causes as the County Court might or could have done, and all bonds and recognizances mentioned in this act shall be as binding as if the same had been returned or remained in said County Court, and the same shall be proceeded (on) in said Circuit Court in like manner.

Construction of 7th sec. of former act

SEC. 12. *Be it enacted*, That the 7th section of an act to which this is a supplement, shall not be so construed as to make it the duty of the justices of the County Court to give up the room of the court house in which they usually hold their sessions to any other court on the first day thereof, but whenever such conflict occurs between the County and Circuit Courts, the latter shall sit on the first Monday in some other room in the Court house or in the limits of the town, to be selected and prepared by the sheriffs, unless the County Court shall give up the court room by consent, and in all such cases the Circuit Judge or the chairman of the County Court, shall so arrange their sittings and

business as to produce the least inconvenience and the greatest accommodation to the people; but if the County Court should continue more than one day, it shall hold its session on every subsequent day in some other place, unless it should be otherwise agreed upon by the two courts. In case of such conflict, the Circuit Court shall try no jury cause on the said first Monday except by consent of parties, and in case of such conflict between the County and Chancery or Circuit and Chancery Court, the Chancery Court shall be held in some other room during the session of either of the other courts with which it may conflict.

SEC. 13. *Be it enacted*, That the proceedings of any of the courts of this State, which, whether in cases of conflict or for other causes, may be, under the order of said Court, held in any other place within the limits of the town than the court house, shall be as good and valid as if such Court were held in the court house.

Of failure to appoint venire

SEC. 14. *Be it enacted*, That if any of the County Courts in this State shall have failed to appoint a venire to any of the ensuing terms during the sitting of this General Assembly, then and in all such cases it shall be lawful for the said County Court or the justices holding the same, to require the sheriff to make said venire from among the bystanders: *Provided*, said sheriff shall not be authorized to summon any one as a juror unless he be a freeholder or householder.

Of qualifying justices

SEC. 15. *Be it enacted*, That any Judge of the Circuit or Chancery Court or any of the present (justices) of the peace, shall be and are hereby authorized to qualify the justices of the peace, clerks and other officers elected under the amended constitution.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed February 20, 1836.

CHAPTER XIX.

An Act supplemental to an act entitled, "An act to establish Circuit Courts," passed at the present session of the General Assembly.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That all causes in chancery may be removed from the Circuit to the Chancery Courts by motion or by *certiorari*, in the same manner as causes now

Removal of chancery suits to chancery courts

pending in the Circuit Courts may be removed by virtue of an act passed at the present session of the General Assembly entitled, an act to establish Circuit Courts, and the provisions of said act, as to the removal of causes and more especially the eleventh and twelfth sections thereof, shall apply to all suits and proceedings in Chancery hereafter brought, as well as to causes now pending or which were pending at the passage of the above recited act.

Time of court
in Cocks and
Jefferson

SEC. 2. *Be it enacted*, That the next term of the Circuit Court of Cocks county, shall be held on the first Monday of May next, and that the second term of said court for said county, shall be held on the second Monday of September next; and that the next term of the Circuit Court for the county of Jefferson, shall be held on the first Monday of April next, and the second term on the third Monday of September next; and forever thereafter said courts shall be held at the times specified in the act to establish Circuit Courts, passed at the present session of the General Assembly.

Jurisdiction

SEC. 3. *Be it enacted*, That the Circuit Courts established by the act to which this is a supplement, shall have and exercise exclusive original jurisdiction of all pleas of the State for crimes and misdemeanors, either at common law or by Statute, of whatsoever nature, degree or denomination, and whether founded on presentment or indictment, and they shall also have and exercise an appellate jurisdiction of all suits and actions of whatsoever nature or description, which may have been instituted before any inferior jurisdiction in this State, whether the same be brought before them by appeal, certiorari or in any other manner prescribed by law.

Further jurisdiction

SEC. 4. *Be it enacted*, That said Circuit Courts shall have original and concurrent jurisdiction with the Chancery Courts, of all petitions relative to dower, and also of all petitions and suits for divorces.

Of clerks

SEC. 5. *Be it enacted*, That the respective clerks of the Circuit Courts, established by the act to which this is a supplement, shall, in all suits transferred to said court from the former Circuit Courts or from the former county courts, collect the fees allowed by law for services rendered in such suits by the clerks of said courts, and by all other persons, in the same manner that they collect the fees allowed by law for services which they have themselves rendered in such suits, and shall account for and pay over the fees so collected to each individual entitled to receive them; and whenever a new clerk of said court shall be elected or appointed in any county, he shall in like manner collect, account for and pay over to his predecessor, and to all other persons, all fees for services rendered by him in any suit or proceeding in said Court. If any clerk shall fail to pay

over money collected by him in accordance with the provisions hereof to the person entitled to receive it, he may be proceeded against and subjected to the payment thereof, in the manner prescribed by the laws heretofore in force for subjecting clerks in other cases wherein they have collected money by virtue of their offices and failure to pay it over.

Of failure of
sheriff

SEC. 6. *Be it enacted*, That if any sheriff, coroner or other officer has failed or shall hereafter fail to make due and proper return of any execution issued from any court of record in this State and to him directed and received by him, or has failed or shall hereafter fail to pay over the money on any execution after the same is or shall be returned satisfied, in whole or in part, or making a false or insufficient return, such sheriff, coroner or other officer and his securities, shall be liable to a motion in the Circuit Court of the county from which the execution issued, and judgment shall be rendered against them for the amount due upon said execution, or for the amount collected by such sheriff, coroner or other officer with interest thereon, together with twelve and a half per cent damages: *Provided*, that if the sheriff or other officer resides in any other county than that from which the execution issued, he shall have ten days notice of such motion, or if the motion be made at a different term than the one to which such execution shall be returnable, such sheriff, coroner or other officer shall have ten days written notice of the motion about to be made against him and his securities: and *provided further*, that in each of the foregoing cases, the sheriff, coroner or other officer failing to make due return of any execution to him directed and received by him, or failing to pay over the money due on the execution after the same has been returned satisfied, in whole or in part, or making a false or insufficient return thereof, may be proceeded against in the court to which the same is returnable or has been returned, for a contempt for such failure or breach of duty: and *provided further*, that in all cases the said sheriff, coroner or other officer, by proof of having placed the said process in the regular mail at the court house of the county to which the execution is directed with the proper return thereon, sealed up in the presence of the post master in due time, directed to the clerk of the court of the county from which the same issued, shall be exonerated from all such liability as is imposed by this act for failing to make due return thereof.

Fees to be paid
over to inferior
courts

SEC. 7. *Be it enacted*, That from and after the passage of this act, where any suit either in law or equity shall be removed from an inferior to a superior tribunal, it shall be the duty of the clerk of said superior court to pay over to the clerk or clerks of the inferior courts, the full amount of the costs incurred in such inferior courts, including the fees of said clerk, as well as those of justices of the peace,

constables, sheriff or coroner and witnesses, when collected upon application.

Clerks to execute former process

SEC. 8. *Be it enacted*, That the clerks of the several courts as organized at the present session of the General Assembly shall have power to issue all and every manner of process necessary to carry into execution any judgment or decree heretofore rendered in any of said courts.

Of offences by slaves

SEC. 9. *Be it enacted*, That the Circuit Court in addition to the jurisdiction conferred by the act to which this is a supplement, shall hereafter have exclusive original jurisdiction of all offences committed by slaves which are by law punishable with death, and so much of the acts of Assembly as requires a special court consisting of justices to try such cases in the first instance, be repealed. In all such cases the trial of slaves shall be in all respects conducted and disposed of in the same manner and under the same laws and rules that now govern such cases after they are taken into the Circuit Courts by appeal: *Provided*, that such slave or slaves shall not be tried before a jury until an indictment or presentment is first found by the grand jury: *and provided*, that if the master of the slave so tried does not employ counsel in his defence, the court shall assign counsel, and shall fix the amount of his fee, and such fee shall be recoverable by such counsel against the owner or owners of such slave by action of debt: *and provided also*, that the owner of said slave shall not be liable to pay the costs of said prosecution.

Punishment of slaves

SEC. 10. *Be it enacted*, That any slave or slaves who shall commit an assault or battery upon any free white person with intent to commit murder in the first degree, or a rape upon a free white woman, shall, on conviction, be punished with death by hanging.

Jurors

SEC. 11. *Be it enacted*, That all persons who would be competent jurors to serve on the trial of a free person, shall be competent jurors on the trial of any slave or slaves.

Dower

SEC. 12. *Be it enacted*, That in cases of application for dower, the petitioner may give notice either by personal service of process or publication in some newspaper, as in cases of application of heirs or tenants in common for partition of real estate.

Test

SEC. 13. *Be it enacted*, That all process issued and returnable to any of the Circuit Courts established by the act to which this is a supplement shall have test as of the term of the Circuit Court preceding their issuance.

Appeals from Benton county

SEC. 14. *Be it enacted*, That all appeals, writs of error and appeals in the nature of writs of error, to be taken and prosecuted from the courts for the county of Benton

shall be returned and tried before the Supreme Court at Jackson.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed February 20, 1836.

CHAPTER XX.

An Act to amend an act entitled "An Act to establish Chancery Courts," passed at the present session of the General Assembly.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the first section of the act ^{Construction of former act} which this is intended to amend, shall be so construed as to give the Chancery Courts exclusive original jurisdiction of all cases in equity, to be commenced after the first day of March next, by bill, petition or otherwise, except petitions or bills for the partition or sale of real estate, by administrators, executors, guardians, heirs or tenants in common, petitions for the sale of slaves by administrators, executors, or guardians, petitions for dower, or for divorces, of which the Circuit and Chancery Courts shall have concurrent jurisdiction.

SEC. 2. *Be it enacted*, That whenever the chancellor ^{Of disabilities of chancellors} of either of the divisions shall be unable to preside on the trial of any suit or suits, pending in any of said courts, by the disabilities referred to in the third section of said act, or shall be unable to hold any of said courts from other causes, it shall be the duty of such chancellor to notify the chancellor of one of the other divisions of said fact and request him to hold said courts; and when the chancellor so notified shall hold any of said courts, the chancellor giving such notification, shall, in consideration, hold the like number of courts for him: *Provided, however*, that the chancellor laboring under such disabilities, may, instead of giving the notification aforesaid, the parties or their solicitors assenting thereto, order the said suit or suits to be transferred to some court held in one of the other divisions; and upon such transfer, it shall be the duty of the clerk and master to transmit and file in the court to which such transfer shall be made, all the original papers, and said suit or suits, together with a transcript or transcripts of the rule docket and minutes in relation to such suits; and the court or courts to which such suit or suits may be transferred, shall proceed to try the same as if originally commenced

therein; and all process, bonds, and any other papers in the hands of sheriffs and other officers issued in such suit or suits, shall be returned to the court to which such transfer is made.

Of present clerks

SEC. 3. *Be it enacted*, That the clerks of the Circuit Courts, and the clerks and masters of the present chancery courts, shall continue to receive bills, petitions, answers and replications, and issue all process, and make all necessary orders in such suits as are now pending or may be hereafter instituted, to prepare causes for trial until the clerks and masters of the chancery courts are appointed and qualified under this act, in as full and ample a manner as they could heretofore do; and all process so issued, shall be made returnable to the first term of the chancery court to be held under the act which this is intended to amend, in the district in which it is issued.

Of 12th section of former act

SEC. 4. *Be it enacted*, That the twelfth section of said act shall be so construed as to authorize the chancellors, in vacation, to make rules and orders for the more speedy preparation of suits, and not so as to confer upon said chancellors powers to make decrees ordering accounts, or other decrees of like nature, fixing and settling the rights of parties in vacation.

Of process and returns

SEC. 5. *Be it enacted*, That all process issued and returnable to the Chancery Court held at Monroe, shall be held and deemed returnable to the Chancery Court established by said act at Livingston; and all process issued and returnable to the circuit courts of counties in which Chancery Courts are established by said acts, and in all cases where causes are transferred from the circuit to the Chancery Courts, shall be deemed and held returnable to said Chancery Courts; and it shall be the duty of sheriffs and other officers holding such process, to make return thereof accordingly, unless the same shall have been returned to said circuit courts previous to the transfer of equity suits, from said circuit courts to the Chancery Courts; and upon failure of sheriffs and other officers to make such return, they shall be liable to the same pains and penalties as if said process had originally issued from said Chancery Courts.

Clerks and masters

SEC. 6. *Be it enacted*, That the clerks and masters of the Chancery Courts heretofore established, shall continue to hold their offices until clerks and masters are appointed and qualified in the Chancery Courts by said act established.

Chancellors to appoint new clerks

SEC. 7. *Be it enacted*, That at the first term of the Chancery Court to be held under the act to which this is an amendment, the chancellors of the several divisions shall proceed to appoint clerks and masters, who shall hold said offices for the term mentioned in the constitution.

Chancellor of first, Western,

SEC. 8. *Be it enacted*, That it shall be the duty of the chancellor of the first division, to hold the courts at Living-

ston and Carthage; and the chancellor of the western division shall hold the Chancery Courts at Savannah, Charlotte and Clarksville, unless a different arrangement be made under the provisions of the act which this is intended to amend; and the chancellor of the eastern division shall appoint the clerks and masters at Livingston and Carthage, and the chancellor of the western division shall appoint the clerks and masters of the Chancery Courts established at Savannah, Charlotte and Clarksville.

and Eastern divisions

SEC. 9. *Be it enacted*, That all process in suits now pending in any of the Chancery Courts of this State, in the hands of sheriffs and other officers, and all reports of clerks and masters, receivers or commissioners, in suits now pending in said courts, shall be returned to the Chancery Courts in which the papers of said suits severally shall remain agreeable to the provisions of said act, and equity suits now pending in said courts which shall by the provisions of said act be transferred to any other Chancery Court by said act established, the process in the hands of sheriffs and other officers, and reports of clerks and masters, receivers or commissioners, shall be returned to the next ensuing term of the Chancery Court to which such suits may be transferred as aforesaid; and the present clerks and masters of the Chancery Courts, and the clerks of the circuit courts, shall be required to perform all such duties in taking accounts, making sales, or other duties which may have heretofore or which may hereafter be assigned to them by the decree of the courts of which they are clerks, until after the first term of the Chancery Court, for the district in which they are clerks, shall be held under the act which this is intended to amend.

Of process and returns in present suits

SEC. 10. The county of Johnson shall be, and the same is hereby attached to the first Chancery district, and the county of Meigs shall be attached to the district composed of Roane and Morgan.

Johnson and Meigs counties

SEC. 11. The citizens of the county of Blount shall have the right to file their bills and have them tried in the Chancery Court in Madisonville or at Knoxville.

Blount county

SEC. 12. The Chancery Court shall be held at Jackson, in the county of Madison, on the fourth Mondays of January, and the third Mondays of July; and at Trenton, in the county of Gibson, on the first Mondays of January and July; and at Huntingdon, in the county of Carroll, on the second Mondays in January and July in each and every year, instead of the times specified in the act which this is intended to amend.

Time of holding courts

SEC. 13. The Chancery Court at Franklin for the fifteenth district shall be held on the fourth Mondays of April and October.

Of court at Franklin

SEC. 14. No original subpoena or other original pro-

Service of sub-
pœna, &c.

cess in Chancery shall be served by the sheriff unless he has a copy of the bill ready to deliver to the defendant, or unless the substance of the bill is inserted in the subpœna or other original process; and where the service is made less than ten days before the term at which the defendant is required to appear, the defendant shall not be compelled to appear at the first term, but may have until the succeeding term to file his answer, plea, or demurrer: and the 3d section of the act of 1792, ch. 11, is hereby repealed.

Reviews

SEC. 15. In all cases of bills of review filed to review the decision of a case in Chancery, the depositions and exhibits that were read on the hearing of the cause shall be considered a part of the record as if the same were transcribed and incorporated with the decree.

Of removals to
supreme court

SEC. 16. In all cases in Chancery that may be removed to the supreme court, by writ of error or appeal in the nature of writ of error, the depositions and exhibits which were read on the hearing of the cause, shall be considered as a part of the record, and that said causes shall be reviewed and examined in the supreme court as if they were brought up by appeal from the decision of the chancellor: *Provided*, that if the decree of the chancellor has been executed by a sale of property, either real or personal, before the writ of error is obtained and supersedeas granted, that the right, title and interest of the purchaser or purchasers under said decree, shall not be disturbed or affected by a reversal of said decree: *and Provided, also*, that no writ of error shall be allowed from a decree of the chancellor after twelve months from the rendition of the final decree.

Chancery ju-
risdiction

SEC. 17. A court of Chancery shall have jurisdiction in all cases of bonds for the performance of covenants and collateral conditions against the securities in said bond as well as the principal obligor, where the said court now has jurisdiction against the principal obligor in said bonds.

EPHRAIM H. FOSTER,

Speaker of the House of Representatives.

JONATHAN WEBSTER,

Speaker of the Senate.

Passed February 19, 1836.

CHAPTER XXI.

An Act to divide the Militia of this State into companies, battalions, regiments, brigades and divisions, and to prescribe the times and modes of electing officers.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the white male inhabitants of this State between the age of eighteen and forty-five, shall compose the militia thereof: *Provided*, that the Judges of the Supreme, Chancery and Circuit Courts, the Clerks of any court of record, Secretary of State, Comptroller, State and County Treasurers, acting Justices of the Peace, Sheriffs, ordained Ministers of the Gospel, Post Masters and carriers of the mail, public ferry keepers, jailors, keepers of grist mills and toll gates, shall be exempt from military duty, except in cases of insurrection and invasion: *Provided*, that persons belonging to any religious denomination whose tenets are opposed to the bearing of arms, shall be excused from attending any muster; but in times of war shall be liable to be drafted as other citizens, and in case of failure shall be liable to the same penalties.

Subjects of mil-
itary duty

SEC. 2. The militia residing in each of the companies to be laid off in the several counties of this State, shall be commanded by one captain, one first and one second lieutenant and one ensign, three sergeants and three corporals, to be elected by those in each company liable to duty, and to hold their offices five years and until successors are elected, unless upon good reasons shown to the commandant of the regiment in writing, they are by him permitted sooner to resign. And the field officers of each regiment in fifteen days after their first election under this act, shall meet together and make any division of their regiments and battalions into companies by establishing the districts as companies or dividing districts, establishing the old boundaries of companies, or in any other manner best calculated to suit the convenience of the people: *Provided*, that the number of each company shall not be less than forty-five privates, and they shall also at the same time designate the places for company musters.

Companies es-
tablished, and
their officers

SEC. 3. The first election of company officers under this act, shall be held by the constable of each district, and if there should be two companies in a district, he shall depute some other person to hold one of them at the place designated to hold company musters, after giving at least ten days public notice, on the fourth Saturday of May 1836. Whenever any vacancy occurs in any of said company officers by expiration of time, removal out of the company or absence from the same one year at any one time, death or

Election of
company offi-
cers

resignation, or any other cause, the commandant of the regiment shall issue his writ of election to the constable of the district, who shall immediately advertise at four of the most public places in the company, one of which shall be at the company muster ground, that he will hold an election at the company muster ground to fill said vacancy; the election shall be advertised at least ten days before the day on which it is held: *Provided*, that sergeants and corporals may be elected on any muster day under the direction of the captain without previous notice, by the militia who are present.

Elections

SEC. 4. The constable holding an election for company officers shall appoint three persons of good character to act as judges, one of whom may perform the duties of clerk, or they may select any other person to act as clerk; the polls shall be opened at eleven o'clock and closed at three on the same day; the judges and constable shall certify to the commandant of the regiment the number of votes given for each candidate, and if two or more shall (receive) the same and the highest number of votes, the commandant shall decide the contest; but if any one shall have a higher number of votes than his competitors, he shall be declared to be elected; but in the first election the return shall be made to the sheriff of the county, who shall certify the result of the election to the Governor; in case of a tie at the first return, the constable shall give the casting vote; in all subsequent elections the commandant of the regiment shall certify to the Governor the result of elections for captains, by whom they shall be commissioned; other company officers entitled to commissions, to wit, lieutenants and ensigns, shall not be commissioned by the Governor but by the commandant of the regiment, who shall make out and deliver the same as soon as practicable after the return of their election to him; the said elections shall not be certified to the Governor till after the expiration of five days from the time the return is received by the sheriff or commandant, during which time any opposing candidate shall have the privilege of contesting the election by filing his reasons on oath, in which case the parties shall bring before the officer to whom the return is made, their proof by affidavit of witness, and after hearing the same the said officers shall determine who is entitled to the office and make out his certificate accordingly; the said companies shall muster twice in every year on the Saturday preceding the battalion and regimental musters; the musters shall be held at the places designated by the field officers until altered by the vote of a majority of the company to some other place in the district.

Regiments and
battalions

SEC. 5. The State shall be laid off into the following regiments, and each regiment into two battalions by the field

officers who may be in command at that time, on the second Saturday of March 1836: *Provided*, that the sheriff of any new county which has been established at the present session, together with the field officer or officers that may reside within the bounds of the same, if any, shall divide the same into the battalions and regiments prescribed by this act, and designate the place of battalion and regimental musters, for which purpose they shall meet at their respective court houses on the day aforesaid, and a majority may act, but if a majority of all the field officers in the county should not attend, those who do meet may designate another day and give notice to those who are absent; in performing this duty the districts which shall be allotted to each regiment and battalion shall be designated by their numbers, and the regiments and battalions shall be made as near equal and in as convenient form as practicable; the boundary lines of regiments shall not divide a district; one copy of the said arrangement shall be deposited in the office of the clerk of the County Court and another furnished to the sheriff of the county; but if the duty herein required is performed on any other day, it shall be as good and binding as if performed on the day herein prescribed. The militia of the county of Johnson shall compose the First regiment; the county of Carter the 2d; the county of Sullivan 3 and 4; the county of Washington 5 and 6; the county of Greene 7 and 8; the county of Hawkins 9, 10 and 11; the county of Cocke 12; the county of Jefferson 13 and 14; the county of Grainger 15 and 16; the county of Claiborne 17 and 18; the county of Sevier the 19; the county of Blount 20 and 21; the county of Knox 22 and 23; the county of Anderson 24; the county of Campbell 25; the county of Monroe the 26 and 27; the county of Roane 28 and 29; the county of Morgan 30; the county of McMinn 31, 32 and 33; the county of Meigs 34; the county of Rhea 35; the county of Bledsoe 36; the county of Hamilton the 37; the county of Marian 38; the county of Franklin 39, 40 and 41; the county of Warren 42 and 43; the county of White 44 and 45; the county of Fentress 46; the county of Overton 47 and 48; the county of Jackson 49 and 50; the county of Smith 51, 52 and 53; the county of Sumner 54, 55 and 56; the county of Wilson 57, 58, 59, 60 and 138; the county of Rutherford 61, 62, 63 and 64; the county of Bedford 65, 66, 67, 139 and 140; the county of Coffee 68; the county of Cannon 69 and 141; the county of Lincoln the 70, 71, 72, 73 and 143; the county of Giles 74, 75 and 76; the county of Maury 77, 78, 79, 80 and 142; the county of Williamson 81, 82, 83 and 84; the county of Davidson 85, 86, 87 and 88; the county of Robertson 89 and 90; the county of Montgomery 91 and 92; the county of Stewart 93 and 94; the county of Humphreys the 95; the county of Dickson

the 96; the county of Hickman the 97 and 98; the county of Perry the 99 and 100; the county of Wayne the 101 and 102; the county of Lawrence the 103 and 104; the county of Hardin the 105 and 106; the county of McNairy the 107 and 108; the county of Henderson the 109 and 110; the county of Carroll the 111 and 112; the county of Benton the 113; the county of Henry the 114 and 115; the county of Weakley the 117 and 118; the county of Gibson the 119 and 120; the county of Madison the 121, 122 and 123; the county of Hardeman the 124 and 125; the county of Fayette the 126 and 127; the county of Shelby the 128 and 129; the county of Tipton the 130 and 131, the county of Haywood the 116, 132 and 133; the county of Lauderdale the 134; the county of Dyer the 135; and the county of Obion the 136.

Election of re-
gimental offi-
cers

SEC. 6. Each of said regiments shall be commanded by one Colonel Commandant, one Lieutenant Colonel, one first and one second Major, who shall be commissioned by the Governor and hold their offices six years from their election, and shall not sooner resign without good cause shown in writing to the brigadier general and by him approved and filed. In the election of field officers, all persons liable to military duty in the bounds of the regiment shall be entitled to vote; but the majors shall be elected by the militia of each battalion and shall reside in and command the same; the first election for said officers shall be held by the sheriffs of the different counties on the fourth Friday of April 1836, at the places designated for the election of district and county officers in each district; the constable of each district or such other person as the sheriff may designate shall hold the election therein; the first election shall be advertised at every place designated herein for holding the same, and at other public places by the sheriffs at least ten days before it takes place; the constables or other persons holding the elections in the different districts, shall conduct the same in all respects as they are herein directed to conduct and hold elections for company officers; the number of votes given for each candidate shall be certified by the judges and the person holding the election to the sheriff of the county, unless he should be a candidate, and in that case to the coroner, who shall make out a general statement of the polls to the Governor, who shall commission the persons having the highest number of votes, and where two or more have the highest and an equal number of votes, the Governor shall decide who shall have the office; but the commissions shall not be made out for twenty days after the returns are received, during which time any person wishing to contest any election may do so by filing a petition on oath, stating his reasons of which the Governor shall judge, and if he considers them good

he shall detail a court martial to decide the dispute and report to him the result.

SEC. 7. Whenever any of the field offices become va-^{Of vacancies} cant by the expiration of the term of service, removal out of the regiment, resignation, death or absence from the regiment one whole year at any one time, or from other cause, on application of any person in the said regiment, and he being satisfied of the fact, the brigadier general of the brigade to which such regiment is attached shall issue his writ to the sheriff of the county, commanding him, after giving at least twenty days notice at the court house door and at all the muster grounds in the regiment and other public places, to open and hold an election at the different places of holding county elections in the regiment to fill such vacancy; the constable of each district or such other person as the sheriff may appoint shall hold said elections under the same rules and regulations that are pointed out in the sixth section for holding the election for said officers; the person holding the election in the different districts, shall on the same or the next day, deliver to the sheriff, or if he should be a candidate, to the coroner, the certificate of the judges countersigned by himself, setting forth the number of votes received for each candidate, who shall on the same day make out a general certificate of the number of votes given for each candidate in the whole regiment, and deposite one copy thereof in the office of the clerk of the county court and forward another to the brigadier general, and if he should be absent or his place vacant, then to the Governor of the State; where two or more candidates shall have the same and the highest number of votes, the officer to whom the return is made shall, within ten days after he shall have received the return, decide who shall have the place; any opposing candidate desiring to contest an election, shall file his reasons with the officer to whom the return is made within ten days from the time the same is received, which reasons shall be on oath, and if determined to be sufficient, a court martial shall be detailed to determine the matter, and they shall report the result of their investigation to the officer by whom they are detailed; such court martial shall be governed by the same rules and principles that are now prescribed by law; in twelve days after the brigadier general receives the return of the sheriff, or in five days after he receive the report of a court martial, from which no appeal is taken in case of a contested election, he shall certify to the Governor the name of the person elected, who shall be immediately commissioned.

SEC. 8. The field officers when elected, at the time<sup>Place of regi-
mental and bat-
talion musters</sup> they meet to arrange the companies, shall designate the place of battalion and regimental musters, but the same may be changed by a majority of the regimental court martial,

which may first meet under the existing laws after the new elections; but after that time they shall not be removed but by a vote of two-thirds of said regimental court martial.

Field officers of
Fentress co.

SEC. 9. *Be it enacted*, That it shall be the duty of the field officers in the county of Fentress to attend at the first battalion muster ground on the Saturday before the regimental muster and muster that battalion, and they shall be excused from attending the regimental muster.

Battalion mus-
ters

SEC. 10. There shall be a battalion muster in each battalion of this State in the month of April in each year; the first battalion in the regiment first in number in each county, shall hold a muster on the first Friday in April, and the second battalion on the the next day; and the first battalion in the regiment next in number, if there should be two regiments in the county, on the second Friday in April, and the second battalion on the next day; and the first battalion in the regiment next in number in the county, if there should be three regiments therein, on the third Friday in April, and the second battalion on the next day; and the first battalion of the regiment next in number in the county, if there should be four regiments therein, on the fourth Friday in April, and the second battalion on the next day; and the first battalion in the regiment next in number in the county, if there should be five regiments therein, on the next Friday; and the second battalion on the next day: *Provided*, the regimental court martial in each regiment shall have power to exempt any company from attending regimental and battalion musters, two-thirds of all the officers voting in the affirmative.

Regimental
musters

SEC. 11. There shall be a regimental muster in each regiment in the month of September in each year; the regiment first in number in each brigade shall hold a muster on the first Saturday in September; the one next in number on the next Thursday; the next on the Saturday following; and so on in the order of their numbers on every Thursday and Saturday till all are through; at all musters and courts martial the officers shall attend in full uniform; if by the existing laws any regiments were required to hold two battalion musters in each battailion instead of one regimental muster, the same privilege shall continue; and where any persons have heretofore been excused on account of their situation or other cause from attending regimental or battalion musters by law, they shall still enjoy the benefits of such law.

Officers drill

SEC. 12. *Be it enacted*, That all the commissioned officers and the adjutant of each regiment in this State, shall meet at their regimental muster ground on the Saturday preceeding the first company muster in the first battalion of each regiment, where they shall be drilled by the colonel commandant, or the highest officer in command, who may attend with the assistance of the adjutant of such regiment, for at least three hours in the day, that no other drill shall

be required than the one herein provided for; any commissioned officer failing to attend such drill or to perform his duty when in attendance, shall be subject to the penalties now prescribed by law; it shall be the duty of the field officers, if the convenience of the militia requires it, to divide their regiment into three battalions, in which case the third battalion shall be commanded by the lieutenant colonel, the first by the first major and the second by the second major; in such case the third battalion shall hold a battalion muster on the same day fixed in this act for the first battalion in the same regiment.

SEC. 13. *Be it enacted*, That the persons who are liable to do military duty, living between Reel Foot lake and the Mississippi river, in Obion county, shall not be compelled to attend battalion or regimental musters.

Exempts in O-
bion county

SEC. 14. Each brigade hereinafter designated, shall be commanded by one brigadier general, who shall be elected by the same persons who are authorized to vote for company and regimental officers; the first election shall be held at the same time and places, and under the same rules and regulations that are in this act prescribed for the election of field officers; the result of the first election shall, by the sheriffs of the counties constituting the brigade, be certified to the Governor, that is, they shall immediately after the election make out a general certificate, showing the number of votes received in their county by each candidate; if two or more have an equal and the highest number of votes, the Governor shall decide between them, and issue his commission accordingly. The Governor shall not issue a commission till after the expiration of fifteen days from the time he receives the return, which time shall be allowed to any candidate who has been defeated, to contest the election; which case shall be conducted in the same manner prescribed in this act for the field officers at their first election in similar cases; if the said election is not contested, or immediately after the report of a court martial on a contested election, the Governor shall commission the successful candidate. Brigadier generals shall hold their offices eight years from the time of their election, and shall not resign under five years, unless good and sufficient reasons be shown in writing to the major general, and he shall in view of the same accept such resignation.

Of Brigades

SEC. 15. Whenever a vacancy shall occur in the office of brigadier general, by expiration of his term, removal out of the brigade, or absence from the same twelve months at any one time, death, resignation, or any other means, on application to the major general, or if he be absent from the State, or his office vacant, to the Governor, he shall issue a writ to the sheriffs of the counties constituting the brigade, commanding, that after giving thirty days notice at all the

Vacancy of bri-
gadier general

company, battalion and regimental muster grounds in his county, that he open and hold an election at all the places of holding elections for county officers to fill such vacancy; the sheriffs shall command the constables of each district, or some other person, to hold the election therein; the said election shall in all respects be conducted as elections for field and company officers. The persons holding the election shall, on the same or next day, return under the hands of the judges, a full statement of the polls to the sheriff, who shall immediately make out a general certificate of the vote of his county, shewing the number of votes received for each candidate, and forward the same without delay to the major general of his division, or if there should be a vacancy in that office, or he should be absent from the State, to the Governor; if two or more candidates shall have an equal and the highest number of votes, the officer to whom the return is made, shall decide who shall have the office. Fifteen days shall be allowed to contest the election by any opposing candidate, and the case shall be conducted and decided in all respects like a contested election for regimental officers; immediately after fifteen days shall have closed from the time the return is received, or the report of a court martial detailed for the decision of a contested election, is filed with the officer ordering the same, a commission shall be made out if it should be made to the Governor, and if to the major general, he shall certify to the Governor the result of the election, whereupon a commission shall immediately issue. In addition to the duties heretofore required of the brigadier general, he shall hereafter be required to attend all the regimental musters in his brigade in full uniform, for the purpose of reviewing the militia; if he should fail to perform this duty, he shall pay a fine of not less than ten nor more than twenty-five dollars for each regiment he shall fail to attend, to be determined by the next regimental court martial: *Provided*, he shall have five days notice to attend and show his reasons for neglect of duty, which shall be judged of by the said court.

Division of State into brigades

Sec. 16. The state shall be divided into the following brigades, to wit: the counties of Johnson, Carter, Washington and Sullivan, shall constitute the first brigade; the counties of Green, Jefferson and Cocke, the second; the counties of Hawkins, Grainger and Powell, the third; the counties of Claiborne, Campbell, Anderson and Morgan, the fourth; the counties of Knox, Sevier and Blount, the fifth; the counties of Roane, Monroe, M'Minn and Bradley, the sixth; the counties of Rhea, Meigs, Bledsoe, Marion and Hamilton, the seventh; the counties of Fentress, Overton, White and Jackson, the eighth; the counties of Smith and Wilson, the ninth; the counties of Warren, Cannon, Coffee and Franklin, the tenth; the counties of Lin-

coln and Giles, the eleventh; the counties of Bedford, Marshall, and Maury, the twelfth; the counties of Rutherford and Williamson, the thirteenth; the counties of Sumner and Robertson, the fourteenth; the counties of Montgomery, Stewart and Humphreys, the fifteenth; the counties of Davidson and Dickson, the sixteenth; the counties of Hickman, Hardin, Wayne and Lawrence, the seventeenth; the counties of Henry, Carroll and Benton, the eighteenth; the counties of Dyer, Gibson and Weakley, the nineteenth; the counties of Perry, Henderson and Madison, the twentieth; the counties of Haywood, Tipton and Lauderdale, the twenty-first; the counties of M'Nairy, Hardeman, Fayette and Shelby, the twenty-second.

State divided into divisions

SEC. 17. The 1st, 2nd, 3d, 4th, 5th, 6th, and 7th brigades, shall compose the first division; the 8th, 9th, 14th, 15th and 16th brigades, shall compose the second division; the 10th, 11th, 12th, 13th and 17th brigades, shall compose the third division; the 18th, 19th, 20th, 21st and 22d brigades, shall compose the fourth division.

Election of major general

SEC. 18. Each of said divisions shall be commanded by one major general, the first election for whom shall be at the same time and places, and conducted by the same persons, and under the same rules provided and designated for the election of the first brigadier generals in the several counties constituting each division; the major generals shall hold their office for eight years, and shall not resign under five years from the time of their election, except upon good and sufficient reasons, to be judged of and accepted by the Governor, to be filed in his office. In case of a vacancy happening by any of the causes prescribed in the case of brigadier generals by this act, the Governor, on being satisfied of the fact, shall issue his writs to the sheriffs of the various counties composing the division, commanding that an election be held at all the places of holding elections, after giving forty days notice at such places, and in some one or more newspapers, to fill such vacancy; which elections shall in all respects be conducted and managed as elections to fill vacancies in the office of brigadier generals. The sheriffs shall make their returns to the Governor immediately after such elections, but the Governor shall not issue a commission till fifteen days after he receives such returns, during which time any opposing candidate may contest the election, in which case the same shall be decided as prescribed for the case of a contested election for brigadier generals; the candidate receiving the highest number of legal votes shall be declared to be elected, but if two or more candidates have an equal and the highest number of votes, the Governor shall decide the contest and issue his commission accordingly.

SEC. 19: All officers required by this act to be com-

Officers may
act on certifi-
cate of election

missioned, shall act upon the certificate of their election from the sheriff or other person holding the election, where the command is confined to one county or regiment; but where the command extends to the militia of more than one county, then such officer may act upon the certificate of the officer to whom the return is made until his commission is received.

Militia exempt
from tolls and
ferriages

SEC. 20. *Be it enacted*, That it shall not be lawful for keepers of public ferries or toll gates, to exact or receive any ferriage or toll from any person subject to militia duty, going to or returning from any drill or muster, or any military election.

Eligibility for
re election

SEC. 21. All militia officers shall be eligible for re-election; they shall severally have the same staff, powers, privileges, and titles, and be required to perform the same services and duties, and be subject to the same liabilities with officers of the same grade under the existing laws, except as the same are herein changed.

Of volunteer
companies

SEC. 22. There may be raised in the manner now pointed out by law, one or more volunteer companies of infantry in each regiment: *Provided*, the militia companies are not thereby reduced below forty-five privates; and as soon as the requisitions of the act of 1825, chap. 69, are complied with, the Governor shall furnish such companies with a sufficient number of the public arms for their equipment. The said companies, when formed, shall constitute a part of the regiment in which they are situated, and shall be under the command of the same field officers, and be liable to attend the regimental musters of their regiments; they shall have also, at least, four company musters in each year, at which they shall remain on duty at least three hours in the day; they may take such name, and make such rules for their government, as they may think proper, by the vote and consent of a majority of their company, not inconsistent with the laws and constitution of this State: *Provided*, that whenever any of said volunteer companies shall fail to do and perform all the duties herein and by the existing laws required of them, they shall be considered dissolved, and shall become liable to the performance of all the duties required of other citizens of the same age and condition, in the same bounds wherein they respectively reside; the commissioned officers of said companies shall be entitled to seats in the courts martial of the regiments to which they are attached, with the same powers of the other members.

Cavalry

SEC. 23. There may also be formed one or more troops of cavalry in each of the counties of this State: *Provided*, that no militia company shall be reduced below the number of forty privates thereby; such troop shall be attached to the regiment wherein a majority of them may reside, and attend the regimental musters therein, unless there shall be

at least four troops in one brigade well equipped, and fully organized, when they may form one regiment, to be called the regiment of cavalry attached to the brigade; in which case they may elect their field officers as now provided by law, and shall hold a regimental muster on the first Friday in each year, and shall also hold at least three company musters in every year, at such times and places as a majority of them may agree upon; said troops shall not consist of less than forty privates. If they shall fail to perform the duties herein and by the existing laws required of them, they shall be considered dissolved, and be liable to military duty as other citizens in the same bounds. The said troops may be formed on the authority, and in the manner now prescribed by law; but the election of all the officers shall be by the privates and officers constituting the said troops and regiments; and the officers shall hold their offices for the same terms prescribed for officers of equal grade in this act; the commissioned officers in said companies of cavalry, shall be entitled to seats in the regimental court martial of the regiment to which they are attached, with all the powers of the other members.

SEC. 24. The militia officers now in command, shall so continue and be bound to perform all the duties now required of them, until their successors are elected under this act, when the officers newly elected shall take command. Of present
officers

SEC. 25. If any sheriff, constable or other officer shall fail to perform any of the duties in this act required of him, he shall be liable to presentment or indictment, and on conviction, shall be fined not less than five nor more than fifty dollars.

SEC. 26. *Be it enacted*, That the acts and sections of acts herein referred to, except so far as they conflict with the provisions of this act, are hereby declared to be in force, and shall be printed, together with this act, in pamphlet form, and distributed with the Acts and Journals of this General Assembly, by the Public Printers, to wit: Act, 1825, chap. 69, sec. 17, 18; same year, chap. 86, sec. 1, 2, 3, 4; chap. 69, sec. 21 to 26, inclusive; sec. 28 to 61, inclusive; sec. 60 and 70, to the word "abilities," in the 11th line; sec. 71 to 73, inclusive; sec. 76 to 112, inclusive; sec. 114 and 117, together with the forms accompanying said act: Act, 1826, chap. 18, sec. 5, 24, and 34; 1827, chap. 68, sec. 3 and 4; chap. 90, sec. 1, 2, 3 and 4; 1829, chap. 17, sec. 2; 1831, chap. 73. In printing said acts and sections, they shall be inserted and the sections numbered from one to the end, in the order in which they are above referred to, under the following head, to wit: A compilation of the acts of this State on the subject of the Militia, in addition to an act passed the 20th day of February, 1836, entitled An Act to divide the Militia of Militia law to
to be printed

this State into Companies, Battalions, Regiments, Brigades and Divisions, and to prescribe the time and mode of electing officers, and in obedience to the 26th section of said act. A number of said acts and pamphlets sufficient to furnish the following officers with one each, shall be printed and deposited at each county town with the same person who receives the Acts and Journals, whose duty it shall be to preserve them with care, and only deliver them to the following officers, to wit: to all Generals, Colonels, Majors and Captains, and the Staff officers of Generals and Colonels, that is, to such officers as may be in command after the new elections; and it shall be the duty of any officer who may receive a copy of the same, to deliver it to his successor after he shall go out of office. All other acts or sections of acts not above referred to and ordered to be printed, are hereby repealed. It shall be the duty of the Secretary of State to arrange the acts above referred to for publication, and to superintend the same, and also make an estimate of the number to be printed and sent to each county town. In addition to the above number referred to, there shall be sent to each county four copies for each regiment, to be delivered to the captains, lieutenants and ensigns, of any volunteer companies that may be formed, and the same number for the officers of a troop of cavalry for each county; and there shall also be deposited in the office of the Secretary of State one hundred copies.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed February 20, 1836.

CHAPTER XXII.

An Act to encourage Internal Improvement in this State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That in all cases where any joint stock company has been or may hereafter be incorporated by the Legislature of this State, for the purpose of constructing any work or works of Internal Improvement, by means of rail roads or M'Adamized turnpike roads, within the limits of the same, and two thirds of the capital stock of such company or companies shall have been subscribed by individuals or other incorporated companies, and in the opinion of the Governor, Comptroller, Treasurer and

Secretary of State, shall be well secured, it shall be the duty of the Governor to subscribe, on behalf of the State, for the remaining third of such capital stock, and to execute bonds of the State, which shall be signed officially by the Governor and countersigned by the Secretary of State, with the seal of the State affixed, and payable twenty-five years after the execution thereof to the President and Directors of such companies, or their assignees, bearing an interest of five and one quarter per cent per annum, which shall be payable semi-annually at the office of the Treasurer of Tennessee; which said bonds shall be delivered to the President and Directors of such company or companies as the said stock shall be called for and required to be paid in by other stockholders, by said board of directors, and such bonds shall be in like manner executed and delivered on each successive call made as aforesaid, and the said bonds shall be received in full payment of the several instalments as they may be called for by said board: *Provided* the said company or companies shall agree and stipulate to pay the interest semi-annually as the same shall accrue and be payable: *And provided, also,* the interest so paid upon the said bonds of the State by said company, together with five per cent per annum interest on said amount so paid, shall be deducted from the dividends of the nett profits to which the State will be entitled on its stock as the same may be declared: *And provided, also,* the Governor shall execute the said bonds for any amount not less than one thousand dollars, as the said company may desire: *And provided, also,* that the amount so subscribed as aforesaid shall be expended within the limits of Tennessee.

SEC. 2. *Be it enacted,* That until the redemption of said bonds, the dividends declared on the stock of the State, except so much as shall have been applied to the payment of the interest as above set forth, shall be regularly paid over to the treasurer of the State, by him to be applied to the redemption of said bonds.

SEC. 3. *Be it enacted,* That the Governor shall be authorized to appoint, on the part of the State, such number of directors as the stock subscribed according to the provisions of this act shall entitle the State to have in any of said companies, who shall have the same power and authority as directors elected by the other stockholders.

SEC. 4. *Be it enacted,* That nothing in this act shall be so construed as to authorize the Governor to subscribe for more stock in any such company or companies, than so much as may be necessary to complete one third part of

such work of internal improvement, as shall be located within the limits of Tennessee.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed February 19, 1836.

CHAPTER XXIII.

An Act to appoint a Board of Common School Commissioners, and to secure the common school fund.

Board of common schools appointed

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the Treasurer of the State, the Comptroller of the treasury, and an executive officer, to be called the Superintendent of public instruction, who shall be appointed by joint vote of both branches of this General Assembly, shall be, and they are hereby created and constituted a body politic and corporate, by the name and style of the Board of Commissioners of Common Schools for the State of Tennessee, who shall have perpetual succession, and by the name and style aforesaid, may hold and possess property of every kind in trust for the use of common schools, may sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended in all courts of record or any other place whatsoever; and also to make, have and use a common seal, and the same to break, alter and renew at their pleasure, and generally to do and execute all acts, matters and things, which a corporation or body politic in law may and can lawfully do and execute. The Superintendent of public instruction shall be president of the Board of Commissioners; and all notes, bonds, obligations, transfers, or other instruments of writing made or executed by the Board, shall be signed by him, and where necessary, sealed with the corporate seal of the Board; which Board shall be subject, nevertheless, to legislative modification, alteration or repeal.

Tenure of office and qualification

SEC. 2. The Superintendent of public instruction shall hold his office for two years, and until his successor shall be elected and qualified, and shall be paid a salary from the public treasury of fifteen hundred dollars annually, to be paid quarterly; and shall, before entering on the discharge of his duties, enter into bond with good and sufficient security, to be approved of by, and made payable to the Governor of the State, in the sum of one hundred thousand dollars, conditioned for the faithful discharge of

the duties of his office; and shall take an oath to support the constitution of the United States, the constitution of the State, and an oath of office.

SEC. 3. That branch of his duties which relates to the common schools shall be, amongst other things, to prepare and submit an annual report to the legislature, containing a full and comprehensive statement of the amount and condition, together with plans for the improvement and management of the common school fund, and such a plan for the organization of a system of common schools as he may think advisable, and such other matters relating to his office and to common schools as he shall deem expedient to communicate.

Superintendent to make annual reports

SEC. 4. The monies, notes, bonds, stocks, securities, and other property belonging to the State or common school fund, in the possession or under the control of the agents appointed to close the concerns of the bank of the State, the county common school commissioners and county bank agents shall, on demand, be delivered by the person or persons having the possession of the same, to the Superintendent of public instruction, or to the authorized agent of the Board of Common School Commissioners; and all clerks, sheriffs, collectors or other persons, companies or corporations, who may now, or at any time hereafter, have possession of any funds or property appropriated to the use of common schools in this State, shall deliver the same in like manner unless otherwise directed by law: *Provided,* that in paying over to the Superintendent of public instruction, the monies, notes, bonds, obligations, or other securities which may be in the possession or under the control of the county common school commissioners, they shall not be required to pay, but may retain any internal improvement fund, or any individual donation which may have been made to the school funds of their counties respectively, and which shall be left under the control and management of the county school commissioners as directed by the existing laws.

To make settlement with former officers

SEC. 5. The late treasurer of East Tennessee is hereby directed to deliver to the Superintendent of public instruction or the authorized agent of the Board of Common School Commissioners, all the accounts, documents, books, and papers, in his office pertaining to the sale of the lands in the Hiwassee district, and the college and academy lands south of French Broad and Holston rivers; and the Superintendent of public instruction is hereby authorized and directed to make settlement with said treasurer as to his agency in conducting the affairs connected with the sale of the Hiwassee lands, and in receiving the money therefor, and also as to his agency in conducting the affairs connected with the college and academy lands and funds; and to receive from

Directory to treasurer of E. Tennessee

him any money or securities for money which may be in his possession, belonging or appropriated to the use of colleges, academies, or common schools.

Escheated property
 SEC. 6. All escheated money or property in the State, shall, on demand, be delivered by the person having the possession of the same, to the said Superintendent or the agent of the Board of Common School Commissioners, and the Board is hereby authorized to dispose of any such property in such manner as they may deem best for the interest of the common school fund.

Agents to be appointed
 SEC. 7. The Board of Common School Commissioners shall appoint an agent in each county in the State whenever they may deem it necessary, who shall give bond and security for the faithful performance of his duties, and shall take an oath faithfully to account for all school funds which may come to his hands, and for the faithful performance of his other duties as required by law or the instructions of the Board of Common School Commissioners, shall be paid for his services annually a sum to be agreed on with the Board of Commissioners not exceeding one hundred dollars, and whose duty it shall be to make a report to the Superintendent of public instruction, containing the name of each debtor in his county to the school fund, the amount of each debt with the security therefor, specifying the date of its execution and maturity, and an account of any bank stock, turnpike stock, or property, belonging by law to the school fund.

Register of property to be kept
 SEC. 8. When the Superintendent of public instruction shall have received said reports, he shall cause all debts due to the common school fund on bond or otherwise, and all bank stock, road stock, and other property belonging to said fund, to be registered in books to be kept in his office, in which shall be opened an account with each debtor, showing the place of his residence, the amount of his debt and the security therefor; the registry of property belonging to said fund shall show where it is situated, its kind, quantity, and an estimate of its value.

Schedule to be furnished to agents
 SEC. 9. Said Superintendent shall furnish to each county agent a schedule of all accounts against the debtors to the school fund in his county, alphabetically arranged, and shall cause said agents to have the securities therefor renewed every six months, calling in ten per centum on the amount of each debt at the time of the first renewal, and each subsequent renewal, calling in twenty-five per centum on the amount of the debt due after the payment of the first instalment, so that the whole debt will then be collected in four equal semi-annual instalments, besides the interest, which shall be paid in advance on each renewal, and which process shall be repeated every six months till the whole debt shall be collected.

SEC. 10. All debts due, or which may fall due at the bank of the State at Nashville, or at the branch bank at Knoxville, not contracted with the understanding or agreement that the obligation therefor should be renewed upon the payment of the interest, and a certain call upon the principal, shall, whenever the same may be due, be forthwith collected by the Superintendent of public instruction, and all other debts or monies due to the school fund, which were not originally loans made with the understanding that the securities therefor should be renewed according to the existing laws, shall be collected in like manner.

Collectioe to be made
 SEC. 11. As fast as the curtailments and interest shall be paid, or any of the school fund shall be otherwise collected, it shall be paid by the county agent or the persons collecting or having possession of the same, into the hands of the Superintendent of public instruction, who shall invest the same by subscribing for stock of the Planters Bank of Tennessee, in the name of the Board of Common School Commissioners; and who shall in like manner reinvest the profits as they arise on the capital stock, or deposit the same upon the best terms and for the highest rate of interest he may be able to obtain, or he may deem most advisable.

Funds to be vested in Planters bank stock
 SEC. 12. All persons paying any money, or delivering property, stock, notes, bonds, obligations or other securities to the Superintendent of public instruction, under the provisions of this act, shall take duplicate receipts therefor, one of which shall be kept by the person taking the same, and the other shall be by such person immediately forwarded to the comptroller of the treasury, who shall record the same in a book to be kept by him for that purpose, and file the original in his office.

Superintendent to give duplicate receipts
 SEC. 13. The real estate belonging to the bank of the State at Nashville, and the branch at Knoxville, shall be sold by the Superintendent of public instruction at public sale, after having given forty days notice in some public newspaper of the time, place and conditions of the sale, and shall be sold on such credits as the Board of School Commissioners may think advisable, not exceeding two years for the longest payment, and a lien shall be retained on the property until the payment of the purchase money.

Real estate of Bank of the State to be sold
 SEC. 14. The Superintendent of public instruction shall ascertain and report to the next regular session of the Legislature, the amount and condition of the college and academy funds in this State, with such plans for the better management of the same, and for the organization of a general system of education, as he may deem expedient.

Superintendent to make report
 SEC. 15. All monies reasonably expended by the Superintendent in the execution of his duties, shall, upon due

proof, be allowed to him by the comptroller, and be paid out of the treasury.

Notes &c. to be payable to Superintendent
 SEC. 16. All notes, bonds, or other obligations, which may be taken to secure the payment of any of the school funds other than such funds as may be left under the control of the county school commissioners, shall be made payable to the Superintendent of public instruction and his successors in office.

Office to be kept at Nashville
 SEC. 17. It shall be the duty of the Superintendent of public instruction to keep his office in the town of Nashville, at which he shall redeem all notes now in circulation on the Bank of the State of Tennessee, or the Branch Bank at Knoxville, whenever they may be presented for payment.

To take powers of attorney to confess judgments
 SEC. 18. The Superintendent of public instruction shall be authorized to take powers of attorney from the debtors to the school fund, authorizing him to confess judgment for the amount of such debts and interest, in the same manner that the president of the Bank of the State of Tennessee was authorized to confess judgment upon debts due to that institution.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
 JONATHAN WEBSTER,
Speaker of the Senate.

Passed February 19, 1836.

CHAPTER XXIV.

An Act to punish overseers of public roads, or other persons who shall set, or cause to be set up, any false sign or label to mislead travellers.

Offence defined and its punishment
 SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That any overseer of any public road in the State of Tennessee, or other person who shall set up, or cause to be set up, any false sign or label misrepresenting the character of said road, either as to excellence or distance, or shall make false representations about said road, calculated to induce strangers to travel said road, for every such offence shall forfeit and pay the sum of fifty dollars, one half to the use of the county in which said road lies, and the other half to any person who will sue for the same, to be recovered by action of debt before any tribunal having jurisdiction thereof; and shall moreover be liable to be indicted for such offence, and on conviction, shall be fined in any sum not exceeding twenty-five dollars: *Provided,* that an erroneous sign or representation as to dis-

tance, shall not subject any overseer to the penalties of this act unless the same shall be done or made knowing the same to be false.

Duty of overseers
 SEC. 2. *Be it enacted,* That any overseer who shall knowingly permit any such false label or sign board to remain up ten days without pulling down the same, shall forfeit and pay the sum of twenty-five dollars for every ten days, to be recovered in the same way as the penalty prescribed in the first section of this act.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
 JONATHAN WEBSTER,
Speaker of the Senate.

Passed, December 14, 1835.

CHAPTER XXV.

An Act to amend an act passed the 15th of December 1831, entitled "An Act to tax the retailers of spiritous liquors and to appropriate the monies arising therefrom to the use of common schools.

Gaming on retailers premises prohibited
 SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That it shall not be lawful for the clerks of the courts of this State to issue the license contemplated in said act of the 15th December 1831, unless the applicant therefor shall first pay into the hands of the clerk for the use of common schools, the sum of twenty-five dollars, and shall take and subscribe the oath prescribed by the second section of the act passed the 15th October 1832, to amend and explain the act of 1831, and an oath in these words: "I do further swear that I will not knowingly permit or allow any gaming or betting for whiskey, wine, money or any other thing to drink or eat, or other valuable thing in the house in which I may retail spirits or on my premises, but that if any one should game or bet to my knowledge, I will give information thereof to the grand jury at the next term of the Circuit Court for my county," and any license that may be issued by said clerks without said oath being taken and endorsed thereon, shall be void, and such several oaths shall be recorded by the said clerk and preserved in his office; and any person who may violate such oaths or any part of them, shall be guilty of perjury, and shall on conviction be punished as in other cases of perjury; and if any person who shall violate any provisions of this act, or that of 1831 and 1832 on this subject, shall sell spirits thereafter, he shall be liable in the same manner as if he had no license; and in case of parties engaging in

the business of retailing spiritous liquors, no license shall be valid unless all the partners shall take the oaths required in this act, and a violation of the provisions of this act by an agent with the knowledge of the principal shall have the same effect as a violation by the owners.

SEC. 2. *Be it further enacted,* That said clerks shall not issue a license to any person to keep a tavern or house of public entertainment with authority to retail spiritous liquors under the act passed at the present session of the General Assembly setting forth the property and privileges liable to taxation, unless the applicant shall take and subscribe the oath as provided for in the first section of this act.

SEC. 3. *Be it enacted,* That the bond directed to be taken in the first section of the act which this is intended to amend shall be made payable to the chairman of the County Court and his successors, for the use and benefit of common schools, in the sum of five hundred dollars; and it shall be the duty of the clerk of the County Court and the justices and constables of the district to notify the attorney general of the district of any violations of the condition of such bond or of this act or that which this is intended to amend, which may come to their knowledge, whose duty it shall be, upon such information, to enforce the criminal laws in case of their violation or the collection of the bond in the Circuit Court, for which the attorney general shall have a tax fee of twenty-five dollars if collected from the defendant; the penalty when recovered shall be accounted for by the clerk of the Circuit Court as other common school funds.

SEC. 4. It shall be the duty of the commissioners required to settle with the clerk of the County Court, to require the said clerk to set forth on oath the amount of money he may have received under the act which this is intended to amend, stating from whom received in every instance; the said commissioner shall forward such settlement to the person or persons who may be entitled to receive such funds for the use of common schools, and the same shall be *prima facie* evidence of the amount due from such clerk, and it shall be the duty of such person or persons who are entitled to receive the same, to recover the same by motion in the Circuit Court of the county where such clerk resides, unless the same is paid at the time required by law, which motion shall be made by the attorney general for the district, for which motion the attorney general shall have a tax fee of twenty-five dollars if collected from the defendant.

EPHRAIM H. FOSTER,
Speaker of the House of Representatives.
JONATHAN WEBSTER,
Speaker of the Senate.

Passed February 11, 1836.

CHAPTER XXVI.

An Act concerning divorces, and to regulate the proceedings in suits which may hereafter be brought in this State in such cases.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That where a marriage has heretofore been or may be hereafter contracted and celebrated between any two persons, and it shall be adjudged in the manner hereinafter mentioned, that either party at the time of the contract was and still is, naturally impotent and incapable of procreation, or that he or she has knowingly intered into a second marriage in violation of a previous vow made to a former wife or husband, whose marriage is still subsisting, or in cases of adultery already committed or hereafter to be committed by a husband or wife, they being inhabitants of this State at the time of committing such adultery, or when the marriage shall have been solemnized or taken place in this State and the party injured by such adultery shall be an actual resident in this State at the time of the adultery being committed, or in case of wilful and malicious desertion or absence by either husband or wife without a reasonable cause, for the space of two whole years, and when the parties at the time were inhabitants of this State, and the party injured by such wilful and malicious desertion or absence, shall be an actual resident in this State at the time of such wilful and malicious desertion or absence, in every such case it shall and may be lawful for the innocent and injured person to obtain a divorce from the bands of matrimony.

That when any person being husband or wife and an inhabitant of this State, has (been) or shall be guilty of any crime which by the law of this State renders the guilty person infamous, the same shall be considered good cause of divorce from the bands of matrimony: *Provided,* that the proof of guilt shall be the record of conviction.

SEC. 2. *Be it enacted,* That whenever any person shall have heretofore, bona fide, removed to this State and become a citizen thereof, and shall have resided here for the space of two years, and the wife of such person shall without reasonable cause refuse to remove, and wilfully absent herself from her husband for the space of two years, that such absence and desertion shall be a lawful cause of divorce from the bands of matrimony: *Provided always,* that the husband making application for a divorce, shall prove that he has used endeavors to induce his wife to live with him after separation: *and provided further,* that the husband shall also prove by his affidavit or otherwise, that he did not remove from the State where his wife resided for the purpose of obtaining a divorce.

Redress to be had in circuit court

SEC. 3. *Be it enacted*, That if any person has been or hereafter shall be injured in any of the ways mentioned in the first or second section of this act, the husband or wife in their own proper person and name may exhibit his or her bill in the Circuit Court or any Court having and exercising equity jurisdiction in this State, setting forth therein particularly and specially the causes of his or her complaint, and praying for a divorce from the defendant, and for such other and further relief as he or she may think himself or herself entitled to under and by virtue of this act, or praying for a divorce only as the complainant may think fit, and upon the exhibition of such bill, the complainant shall be entitled to the usual process to compel the defendant to appear to and answer the said bill, and such proceedings may be had upon the said bill as according to law and the course and practice of the said court in other cases will entitle the complainant to have his or her bill taken for confessed against the defendant, and the same may be taken for confessed accordingly.

Complainant to make affidavit

SEC. 4. *Be it enacted*, That the complainants shall together with the bill, also exhibit an affidavit taken on oath or affirmation before some justice of the peace within the county where he or she resides, or one of the judges of said court, or before the clerk of said court, that the facts contained in said bill are true to the best of his or her knowledge and belief, and that said complaint is not made out of levity, or by collusion with the defendant, but in sincerity and truth for the causes mentioned in said bill.

Defendant to answer

SEC. 5. *Be it enacted*, That the defendant in said bill shall appear according to the rules of the court and answer the same upon oath or affirmation, or plead or demur to the same; and if the defendant shall by answering deny the facts charged in the bill, the court may thereupon, at the request of either party direct a feigned issue or issues to be made up for trial by a jury, of the fact or facts charged by the complainant and denied by the defendant, and shall make the necessary orders for the trial of the said issue or issues, at some Circuit Court to be held by a Circuit Judge of this State, and a new or farther trial of said issue or issues may be awarded, if the court wherein said bill may be filed should deem the same necessary to do justice between the parties.

Duty of court

SEC. 6. *Be it enacted*, That if the defendant shall by answer admit the adultery or other facts charged against him or her in the bill, or if the bill shall be taken as confessed against the defendant, it shall in either case, be the duty of the court, before any decree dissolving the marriage shall be pronounced, to hear proof of the adultery or other facts charged in the bill and relied upon as the ground for divorce, and then either to dismiss the same or grant a di-

vorice agreeably to the prayer thereof, as the justice of the case may require.

SEC. 7. *Be it enacted*, That if it shall satisfactorily appear to the court either by the trial of such feigned issue or issues, or by the proofs heard by the court, that the defendant has been guilty of the adultery or of the other facts charged against him or her in the bill, and which shall be such as are mentioned and specified in the first or second sections of this act, it shall be lawful for the said court to decree that the marriage between the parties shall be dissolved and each party freed from the obligations thereof, or that the marriage is null and void agreeably to the prayer of said bill, and after such decree nullifying or dissolving the marriage, all and every the duties, rights and claims accruing to either of the said parties at any time theretofore in pursuance of said marriage, shall cease and determine, and the said parties shall severally be at liberty to marry again in the like manner as if they had never been married: *Provided*, always, it shall not be lawful for a defendant who has been guilty of adultery to marry the person with whom said crime was committed during the life of the former husband or wife: and *Provided also*, that such dissolution of the marriage shall not in any wise affect the legitimacy of the children thereof.

Of decree of divorce and its condition

SEC. 8. *Be it enacted*, That if any husband or wife, shall, upon a false rumor apparently well founded, of the death of the other, where such person has been absent for the space of two whole years, has married or shall marry again, he or she shall not be subject to the pains of adultery, but it shall be at the election of the party remaining single, at his or her return, to insist to have his or her former wife or husband restored, or to have his or her own marriage dissolved, and the other party to remain with the second husband or wife; and in any suit or action instituted for this purpose within one year after such return, the court shall sentence and decree accordingly.

Of absence of one party and marriage of the other

SEC. 9. *Be it enacted*, That in any action or suit commenced for a divorce for the cause of adultery, if the defendant shall allege and prove that the complainant has been guilty of a like crime, or has admitted the defendant into conjugal society and embraces after he or she knew of the criminal act, or that the complainant, if the husband, allowed of the wife's prostitutions and received hire for them, or exposed his wife to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defence and a perpetual bar to the same.

A bar to divorce

SEC. 10. *Be it enacted*, That if a wife is the complainant in such suit, wherein a decree dissolving the marriage as aforesaid shall be pronounced, it shall be lawful for the court to make a further decree or order against the de-

Maintenance for children and wife required

defendant, compelling him to provide for the maintenance of the children of the marriage, if any there shall be, and to provide a suitable allowance to the complainant for her support as to the said court shall seem reasonable and just, having regard to the circumstances of the parties respectively, and to order such defendant to give reasonable security for such maintenance and allowance, and upon his neglect or refusal to give such security as shall be required of him, or upon default of him and his surety to provide such maintenance and allowance, to sequester his personal estate, and the rents and profits of his real estate, and to appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate to be applied towards such maintenance and allowance, (or to such maintenance or allowance) as to the said court shall from time to time seem just and reasonable.

SEC. 11. *Be it enacted*, That if a wife is complainant in any suit wherein a decree dissolving the marriage as aforesaid, shall be pronounced, and she shall, at the time of pronouncing such decree, be owner of any lands, tenements or hereditaments, or have in her possession any goods or chattels, or choses in action, which were left with her by her husband, which she may have acquired by her own industry, or which may have been given to her by devise or otherwise, or may have come to her, or to which she may be entitled by the decease of any relation intestate, she shall be entitled to the absolute enjoyment of such real estate and to the entire dominion and control of such goods and chattels and choses in action against the defendant in the suit, and may sue for and recover the same in her own name: *Provided*, however, that nothing herein contained shall be so construed as to affect the rights of creditors, who are such before such decree (was) pronounced.

SEC. 12. *Be it enacted*, That if a husband is complainant in any such suit, wherein a decree dissolving the marriage as aforesaid shall be pronounced, and the defendant shall at the time of pronouncing such decree, be the owner of any lands, tenements or hereditaments in her own right, the complainant's right to and interest therein, and to the rents and profits thereof, shall not be taken away or impaired by such dissolution of the marriage, but the same shall remain to him as though the marriage had continued, and he shall also be entitled to such personal estate and choses in action as may belong to or be in the defendant's possession at the time such decree shall be pronounced, in like manner as though the marriage had continued, and may sue for and recover the same in his own name.

SEC. 13. *Be it enacted*, That a wife being a defendant and convicted of adultery or any of the facts mentioned in the first section of this act, and for which the marriage is

dissolved, shall not be entitled to dower in the complainant's real estate or any part thereof, nor to any distributive share in his personal estate, on his dying intestate, or to alimony.

SEC. 14. *Be it enacted*, That whenever a married woman shall exhibit a bill against her husband by virtue of this act, she shall not be deemed a resident or an inhabitant of any other State or county, merely because her husband shall reside or inhabit in such other State or county, but her being an inhabitant of this State shall be determined by the fact of her abiding in this State.

SEC. 15. *Be it enacted*, That when any woman shall be divorced as aforesaid, and shall afterwards openly cohabit at bed and board with the person named in the bill, or prove to be the partaker in her crime, she shall not, and she is hereby declared incapable to alienate, directly or indirectly, any of her lands, tenements or hereditaments, but all deeds, wills, appointments and conveyances thereof, shall be absolutely void and of no effect; and after her death the same shall descend and be subject to distribution in like manner, as if she had died seized thereof intestate.

SEC. 16. *Be it enacted*, That no person shall be entitled to a divorce from the bonds of matrimony by virtue of this act, who is not a citizen of this State, and who has not resided therein at least one whole year previous to filing his or her bill.

SEC. 17. *Be it enacted*, That the court shall award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs as shall appear reasonable and just.

SEC. 18. *Be it enacted*, That it shall and may be lawful for any married woman, she and her husband being inhabitants of this State, or where the marriage shall have been solemnized, or taken place within this State, and she being an actual resident therein at the time of exhibiting a bill as hereafter mentioned, to exhibit a bill in any court of this State having and exercising equity jurisdiction, against her husband, complaining of cruel and inhuman treatment of her by him; or such conduct on the part of the husband towards his wife as may render it unsafe and improper for her to cohabit with him, and be under his dominion and control, or of such indignities offered to her person as to render her condition intolerable, and thereby forcing her to withdraw, or that he has abandoned her, or turned her out of doors, and refuses or neglects to provide for her, specifying particularly the nature and circumstances on which she relies and seeks relief, with the time or times when, and the place or places where, with reasonable certainty, and praying for such relief as she may think herself entitled to; to which bill the husband may be compelled to appear and answer according to the course of the court of Chancery.

or the bill may be taken for confessed against him, as is usual in other cases in that court.

Court to decree

SEC. 19. *Be it enacted*, That in case it shall appear to the court by the answer or confession of the defendant, or by the bill being taken for confessed against him, or by proof that the defendant is guilty of such cruel and inhuman treatment towards the complainant, or such conduct towards her as renders it unsafe and improper for her to cohabit with him, and be under his dominion and control, or of such indignities offered to her person as to render her condition intolerable and thereby forcing her to withdraw, or that he has abandoned her, or turned her out of doors and refuses or neglects to provide for her, it shall and may be lawful for the court to decree a separation from bed and board forever thereafter, or for a limited time as shall seem just and reasonable, or to make such other decree in the premises as the nature and circumstances of the case require; and whether the court shall decree a separation from bed and board or not, to make such order and decree for the suitable support and maintenance of the complainant and her children, or any of them by the husband, or out of his property, as the nature of the case and circumstances of the parties render suitable and proper in the opinion of the court, and to enforce such orders and decrees by sequestering the rents and profits of the real estate of the husband, (if any he has) and his personal estate and choses in action, and by appointing a receiver thereof, and causing such rents and profits and personal estate and choses in action to be applied accordingly, or by such other lawful ways and means as is usual, and according to the course and practice of the said court, and as to the Chancellor shall seem meet and agreeable to equity and good conscience.

Defendant may show justifiable cause

SEC. 20. *Be it enacted*, That the defendant in any such suit as last aforesaid, may insist in his defence, and be permitted to prove the ill conduct of the complainant as a justifiable cause for the conduct on his part complained of, and on making out such ill conduct to the satisfaction of the court, he may be dismissed with or without costs in the discretion of the court.

Of costs

SEC. 21. *Be it enacted*, That in any suit brought under and by virtue of this act, the court may decree costs against either party and award execution for the same, or in case any estate shall be sequestered, or in the power of the court or in the hands of a receiver, it may order costs to be paid out of the property so sequestered, or in the power of the court, or in the hands of a receiver, at discretion, and according to right and justice.

Of testimony

SEC. 22. *Be it enacted*, That in all suits brought under and by virtue of this act, it shall and may be lawful

for either party to take proof by depositions, according to the rules and orders of the court, or to have the witnesses examined in open court, as the party wishing to use said testimony may think proper.

SEC. 23. *Be it enacted*, That this act shall be in force from and after the passage thereof, but nothing herein contained, shall be so construed as in any way or manner to affect any suit that may be already brought and undetermined in any of the courts of this State for a divorce, either total or partial, but said suits shall remain and be proceeded in, heard and determined by the said courts, according to the laws in force at the time of the bringing of said suits, and such decree shall be rendered therein accordingly, as though this act had not been passed.

EPHRAIM H. FOSTER,

Speaker of the House of Representatives.

JONATHAN WEBSTER,

Speaker of the Senate.

Passed February 19, 1836.

CHAPTER XXVII.

An Act to provide for electing a Treasurer of the State, and to define his duties

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That there shall be elected by joint vote of both Houses of the General Assembly, a Treasurer for the State, who shall, previous to entering on the duties of his office, enter into bond with ten or more securities in the sum of one hundred thousand dollars, payable to the Governor for the time being and his successors in office, in trust for the use of the State, conditioned for the faithful performance of all duties enjoined and required by law to be by him performed, for the faithful accounting for and paying over all moneys that may be received by him from time to time by virtue of his office, and for the safe delivery to his successor in office of all books, moneys, vouchers, accounts and effects, belonging to his said office; the execution of which bond being duly acknowledged before some judge of the supreme court, who shall certify the acknowledgment of the bond and the sufficiency of the security, which bond shall be deposited in the office of the Secretary of State, and shall there be recorded; and he shall take an oath before said judge to support the constitution of the United States and the State of Tennessee, and the following oath: I, A B, do solemnly swear, or affirm, (as the case

Election of provided for