

1865

A C T S

OF THE

LEGISLATURE

OF

WEST VIRGINIA,

AT ITS

THIRD SESSION

COMMENCING JANUARY 17, 1865.

W H E E L I N G .

1865.

A C T S .

CHAP. 1.—An ACT to extend the Time allowed the Civil Officers of of the counties of Jefferson, Berkeley, Morgan and Wayne, in which to Qualify and give Bond.

Passed January 17, 1865.

Be it enacted by the Legislature of West Virginia :

All the county officers who were elected on the twenty-seventh day of October, eighteen hundred and sixty-four, in and for the counties of Jefferson, Berkeley, Morgan and Wayne, shall be allowed until the twenty-fifth day of March, eighteen hundred and sixty-five, to qualify and execute their official bonds.

Allowed till
March 25, 1865.

CHAP. 2.—An ACT to change the County Seat of Jefferson county from Charlestown to Shepherdstown.

Passed January 26, 1865.

Be it enacted by the Legislature of West Virginia :

1. The county seat of Jefferson county shall cease to be at Charlestown, in said county, on the first day of March, eighteen hundred and sixty-five.

Time removal
takes place.

2. The county seat of Jefferson county shall be located at the town of Shepherdstown, in said county, until removed therefrom by a vote of the people of said county.

CHAP. 3.—An ACT to provide for the Payment of the Annual Salary of the State Superintendent of Free Schools.

Passed January 26, 1865.

Be it enacted by the Legislature of West Virginia :

The sum of one thousand five hundred dollars is hereby appropriated for the annual salary of the state superintendent of free schools, to be paid according to the thirty-fourth section of an "act providing for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three.

\$1,500 appro-
priated.

How paid.

CHAP. 4.—An ACT authorizing the Governor to surrender certain Prisoners for exchange.

Passed January 26, 1865.

Be it enacted by the Legislature of West Virginia :

What prisoners.

The governor of this state is authorized to deliver to the authorities of the United States government such state prisoners as they may wish to exchange for officers or privates of West Virginia regiments, who are prisoners in the hands of the rebels, if, in his opinion, such state prisoners have been in any way connected with the rebel army.

CHAP. 5.—An ACT to pay State Scouts.

Passed January 27, 1865.

Be it enacted by the Legislature of West Virginia :

\$86,000 appro-
priated.
How paid.

There is hereby appropriated out of the state treasury eighty-six thousand dollars, to be placed at the disposal of the governor, for the payment of state scouts.

CHAP. 6.—An ACT making an appropriation for the Payment of Money drawn by the Governor from certain Banks.

Passed January 30, 1865.

Be it enacted by the Legislature of West Virginia :

\$29,264 08 appro-
priated.

Banks from
which drawn.

For what pur-
pose.

Twenty-nine thousand two hundred and sixty-four dollars and eight cents are hereby appropriated for the payment of that amount drawn by the executive of this state from the North Western Bank of Virginia and the Merchants' and Mechanics' Bank of Wheeling, and expended by him for the payment of the military companies organized for the protection of the border counties of the state, for the hospital for the insane at Weston, and for other purposes.

CHAP. 7.—An ACT to change the times of holding the Courts in the Eighth Circuit.

Passed January 30, 1865.

Be it enacted by the Legislature of West Virginia :

1. The commencement of the terms of the circuit courts in the several counties of the eighth judicial circuit shall hereafter be as follows:

Raleigh.

For the county of Raleigh on the first day of March, May, September and November.

Wyoming.

For the county of Wyoming on the seventh day of March, May, September and November.

Logan.

For the county of Logan on the eleventh day of March, May, September and November.

For the county of Boone on the eighteenth day of March, May, September and November. Boone.

For the county of Cabell on the twenty-fourth day of March, May, September and November. Cabell.

And for the county of Wayne on the fifteenth day of April, June, October and December. Wayne.

2. Sub-division VIII, of section three, of the act passed July ninth, eight hundred and sixty-three, entitled "an act to fix the terms of the several courts," is hereby repealed. Law repealed.

CHAP. 8.—An ACT to legalize the acts of John B. Baumgardner, Collector of the Revenue of Cabell county, and his Deputies, in the collection of said revenue, and to authorize the same to be pleaded in bar of certain suits therein named.

Passed January 31, 1865.

Whereas, John B. Baumgardner, of the county of Cabell, was appointed by the auditor collector of the revenue of the said county for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two; and, whereas, the said Baumgardner executed a bond, with security, as such collector, which bond was approved by said auditor; and, whereas, after the approval of the said bond the said Baumgardner and his deputies collected a large portion of the revenue of the said county for the years aforesaid, which said Baumgardner has paid into the treasury; and, whereas, there is an error in said bond, by reason of which the same has been adjudged insufficient by the circuit court for Cabell county; therefore, Preamble.

Be it enacted by the Legislature of West Virginia :

The collection of the revenue of the said county of Cabell, for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two, by the said John B. Baumgardner, collector as aforesaid, and his deputies in said office, and any and all acts done by them, or either of them, in or about the collection of said revenue, or any part thereof, are hereby legalized and made as valid and binding, to all intents and purposes, as if the said John B. Baumgardner had given his bond and security as such collector, in the manner and form required by law. And the said John B. Baumgardner and his said deputies, and any person or persons claiming title to property sold by them, or either of them, for the payment of any part of said revenue, may plead this act in bar of any suit now pending, or which may be hereafter brought against them, or either of them, for any cause whatever, growing out of the collection of said revenue.

Official acts
legalized.

Authority to
plead this act in
bar of suits.

CHAP. 9.—An ACT to amend the law relating to the maintenance of Illegitimate Children.

Passed February 2, 1865.

Be it enacted by the Legislature of West Virginia :

Code re-enacted. The fifth section of chapter one hundred and twenty-five of the Code of Virginia, second edition, is amended and re-enacted to read as follows:

How father of illegitimate child to be tried.

“If the accused appears and pleads ‘not guilty,’ the issue shall be tried by a jury, and if he be found guilty, the court shall order him to pay to the overseers of the poor of the county or corporation, for the maintenance of the child, such sums as it may deem proper, for each year, until such time as the court may appoint, unless it sooner die; and shall order the father to give a bond in such penalty, and with such sureties, as it may deem sufficient for the performance of said order; and shall order him to jail until such bond be given in court, or filed in the clerk’s office, or the woman and the said overseers consent to his discharge, or he be otherwise legally discharged; and if found not guilty by the jury, he shall be discharged, and recover his costs against the said overseers.”

Penalties imposed.

Imprisonment.

Costs in case of innocence.

CHAP. 10.—An ACT for the Abolishment of Slavery in this State.

Passed February 3, 1865.

Be it enacted by the Legislature of West Virginia :

Slaves declared free.

1. All persons held to service or labor as slaves in this state, are hereby declared free.

Slavery prohibited in future.

2. There shall hereafter be neither slavery nor involuntary servitude in this State, except in punishment for crime, whereof the party shall have been duly convicted.

CHAP. 11.—An ACT to provide for the Removal of Suits Pending in Counties where the administration of justice is interrupted.

Passed February 3, 1865.

Be it enacted by the Legislature of West Virginia :

Authority of circuit judge to order removal.

1. Where there is no judge qualified according to law to hold the circuit court of any county, or from any cause the jurisdiction of the circuit court for such county, cannot be safely, and without interruption, exercised therein, it shall be lawful for the judge, if there be one, of such circuit, and if there be none, then for the judge of any adjoining circuit, at his discretion, and either in term time or vacation, upon the petition of any party to a civil suit at law or in chancery, or any civil proceeding pending in such county, to order the removal of such suit or proceeding, with the original papers pertaining thereto, or certified or proved copies thereof and certified or proved copies of

all proceedings, orders and decrees theretofore had or made therein, to the circuit court of any other county over which the judge who makes the order has jurisdiction, to be thereafter proceeded with as if the said suit or proceeding had been commenced in the last mentioned court.

2. Such order of removal shall only be made upon the terms that the petitioner shall, at his own expense, cause notice of such removal to be given to the other parties to the suit or proceeding, and shall deposit with the clerk of the court to which the suit or proceeding is to be removed, such sum of money to be determined by the judge who makes the order of removal, as will probably be sufficient to cover all future costs.

Conditions requisite to making the order.

CHAP. 12.—An ACT to amend the Act passed October 26, 1863, entitled "An Act providing for the formation of Corporations, and regulating the same."

Passed February 3, 1865.

Be it enacted by the Legislature of West Virginia :

1. The capital of a corporation, formed under the "act providing for the formation of corporations, and regulating the same," passed October twenty-sixth, eighteen hundred and sixty-three, shall not exceed three millions of dollars.

2. Oil companies may hold not exceeding three thousand acres of land each, notwithstanding anything to the contrary contained in the twentieth section of said act.

Quantity of land that may be held by oil companies increased.

3. The third section of said act is hereby amended and re-enacted to read as follows :

"3. The capital of every corporation now formed, or that may hereafter be formed under this act, shall be divided, as may be agreed upon by the persons desiring to be incorporated, into such number of shares and in such sums as said corporators, respectively, may deem proper and expedient."

Authority to corporations to regulate shares.

4. The fourth section of the above-mentioned act, is hereby repealed.

Law repealed.

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CHAP. 13.—An ACT making an Appropriation to the West Virginia Hospital for the Insane.

Passed February 3, 1865.

Be it enacted by the Legislature of West Virginia :

The sum of two thousand eight hundred and seventy-two dollars and twenty-five cents is hereby appropriated to discharge the liabilities of the West Virginia Hospital for the Insane, to the first of January, eighteen hundred and sixty-five, and the same shall be paid by the auditor on the draft of the treasurer of said hospital, endorsed by the president of the board of directors thereof, anything in the eighty-fifth chapter of the Code of Virginia to the contrary notwithstanding.

\$2,872 25 appropriated. For what.

CHAP. 14.—An ACT to prescribe the Time within which Persons elected or appointed to Office must Qualify.

Passed February 3, 1865.

Be it enacted by the Legislature of West Virginia :

All officers allowed 60 days.

Except justices and constables.

Authority of appointing power.

Consequence of and penalty for failure.

Laws repealed.

1. Every person elected or appointed to an office shall take the proper oaths, and, if bond be required of him by law, give his official bond, within sixty days after he has been, in the manner prescribed by law, declared elected, or has been notified of his appointment; except that justices, and constables shall take the oaths of office and give bond within thirty days after they are declared elected; and that in cases of appointment the appointing power may prescribe the time within which the oaths of office must be taken and bond given by the person appointed, if bond be required by law.

2. If any person elected or appointed to an office fail to take the proper oaths or give the proper bond, where bond is required by law, within the time prescribed by the preceding section, the office shall be deemed vacant; and if he act in such office before being duly qualified as aforesaid, he shall be fined not less than one hundred nor more than one thousand dollars.

3. The sixth and seventh sections of the act relating to official bonds, passed June twenty-ninth, eighteen hundred and sixty-three, and so much of the fourth and fifth sections of the act to provide for the assessment of taxes, passed December third, eighteen hundred and sixty-three, and of the fifth section of the act to regulate the election and qualification of justices and constables and to prescribe in part their powers and duties, passed December seventh, eighteen hundred and sixty-three, as is inconsistent herewith, are hereby repealed.

CHAP. 15.—An ACT to authorize Suits in Lewis county in Cases heretofore cognizable in the Courts of Braxton county.

Passed February 6, 1865.

Be it enacted by the Legislature of West Virginia :

Authority for removal.

Proviso.

Conditions requisite.

1. Any action at law or suit in equity which, according to the one hundred and sixty-ninth chapter of the Code of Virginia, second edition, might be brought in the county of Braxton, may be hereafter brought in the county of Lewis; but nothing herein contained shall be construed to affect any provision of law for the limitation of actions or suits.

2. No jury shall be called or impanelled in any action or suit brought in the county of Lewis by virtue of this act, until and unless the plaintiff pay to the clerk of the court twelve dollars to defray jury costs; which sum the said clerk shall pay into the treasury of said county of Lewis; and if judgment be rendered for the plaintiff, shall

tax the same in the costs to be recovered by him. If judgment be rendered against the plaintiff, no jury costs shall be taxed against him if he has paid the sum of twelve dollars to the clerk as aforesaid. Taxing of costs.

3. The act entitled "an act to authorize suits in Lewis county in cases heretofore cognizable in the courts of Braxton county," passed March first, eighteen hundred and sixty-four, is hereby repealed. Law repealed.

CHAP. 16.—An ACT making an Appropriation to the Civil Contingent Fund.

Passed February 6, 1865.

Be it enacted by the Legislature of West Virginia :

The sum of two thousand five hundred dollars is hereby appropriated on account of the civil contingent fund. \$2,500 appropriated.

CHAP. 17.—An ACT to authorize the Holliday's Cove Railroad Company to Borrow Money.

Passed February 7, 1865.

Be it enacted by the Legislature of West Virginia :

1. That the Holliday's Cove railroad be, and it is hereby empowered, in addition to the amount already authorized by law, to borrow money to an amount not exceeding five hundred thousand dollars, at a rate not exceeding seven per centum per annum ; to issue bonds, plain or coupon, for the payment of the same, and to secure said bonds by mortgage on their road or bridge, or both, and the income thereof and all the franchises of said company. Authority to borrow money.
To what amount.
At what per cent.
Provision for payment.

2. The place of payment of the principal and interest of said bonds, may be designated by the directors of the company, and sales thereof at less than par, shall not be deemed infractions of the usury law. Regulations respecting sale of bonds.

CHAP. 18.—An ACT authorizing the Boards of Supervisors of the several Counties of the State, to appoint Township Collectors.

Passed February 7, 1865.

Be it enacted by the Legislature of West Virginia :

1. It shall be lawful for the boards of supervisors of the several counties of this state, to appoint collectors in any or all of the townships thereof, whenever, in their opinion, the public interest would be thereby promoted, for the collection of all levies made for the payment of bounties to volunteers, and for the support of the families of living and deceased soldiers in their respective counties, who have heretofore volunteered, or who may hereafter volunteer in the service of the United States, and for the collection of all levies made for the payment of any loan negotiated for the purposes aforesaid. Authority to appoint township collectors.
For collection of what levies.

Regulations re-
specting appoint-
ments.

2. Such collectors may be appointed for the collection of any such levies, whether heretofore or hereafter made, provided the same have not been actually placed in the hands of the sheriff, or other collector of the county, for collection.

Duties of collec-
tors.

3. The collectors appointed by virtue of this act, shall faithfully collect and pay over to the county treasurer all money collected by them, at such times as the board of supervisors shall direct, and may distrain for taxes after thirty days from the time the lists of such levies are placed in their hands for collection.

Compensation
of collectors.

4. The boards of supervisors shall allow to the collectors aforesaid, for the collecting and paying over to the county treasurer the levies aforesaid, such commission, not exceeding three dollars for each one hundred dollars actually collected and paid over, as they shall deem just; and they shall require said collectors to give bond with security to be approved by them, in such penalty, not less than five thousand dollars, as they shall direct, made payable to the state of West Virginia, and conditioned for the faithful discharge of their duties as required by law.

Collector's bond.

CHAP. 19.—An ACT authorizing the service of Process by Individuals.

Passed February 7, 1865.

Be it enacted by the Legislature of West Virginia :

What process.

1. The process to commence a suit at law or in chancery, including writs of scire facias, mandamus, prohibition, and the alias or other process where the original is not returned executed, may be served by any credible person, as well as by the officer to whom it is directed; and the return of such person, verified by his affidavit, shall be evidence of the manner and time of service.

Return thereof.

Proviso.

2. Nothing herein contained shall be considered as implying that such service heretofore made, is invalid in law.

CHAP. 20.—An ACT for the relief of George W. Spruce, of Kanawha County.

Passed February 9, 1865.

Be it enacted by the Legislature of West Virginia:

\$387.93 appro-
priated.

1. The sum of three hundred and eighty-seven dollars and ninety-three cents is hereby appropriated for the purpose of paying George W. Spruce for his services as commissioner of the revenue of Kanawha county, (upper district,) for the year eighteen hundred and sixty-one, to be paid out of the proceeds of any uncollected taxes in said county due the state for the year eighteen hundred and sixty-one.

For what.

How paid.

2. The collector of Kanawha county for the year eighteen hundred and sixty-one, is authorized to pay to the said Geo. W. Spruce, the

sum named in the first section of this act, and shall be entitled to a credit upon the auditor's books for that amount for the year eighteen hundred and sixty-one, upon the production to the auditor of satisfactory evidence of the payment of said sum by him to said Spruce.

CHAP. 21.—An ACT to regulate the Public Printing.

Passed February 9, 1865.

Be it enacted by the Legislature of West Virginia:

1. At the present session of the Legislature, and at the regular session thereof in the year eighteen hundred and sixty-six, and in the year eighteen hundred and sixty-seven, and every second year thereafter, a public printer shall be elected, to continue in office until his successor is elected and qualified. Election and term of Public Printer.

2. The election shall be by joint vote of the two branches of the legislature, a quorum of each being present. How elected.

3. He shall give bond in the penalty of five thousand dollars, according to the act passed June twenty-ninth, eighteen hundred and sixty-three, entitled "An Act relating to official bonds." Bond.

4. He may be removed from office by joint resolution of the legislature, a majority of the members elected to each branch concurring therein. He may also be removed by the governor, during the recess of the legislature, for misbehavior, incapacity, or neglect of official duty; but in such case the governor shall report the cause of removal to the legislature at the commencement of the next session thereof. Removal from office.

5. Whenever a vacancy in the office exists during the recess of the legislature, the governor may fill the same; and the person so appointed, after giving bond and taking the proper oaths, shall hold the office until a public printer is elected by the legislature, and is qualified according to law. Vacancy.

6. For good cause, the governor may order any public printing or binding to be done by others than the public printer; but he shall communicate his reasons therefor to the legislature as soon as may be practicable. Printing by others.

7. The clerk of the house of delegates shall superintend the printing of the laws, and all matter to be printed therewith; also, of the journal of the house, and all printing ordered by the house, or by joint order or resolution of the two houses. If any such printing be not properly and promptly executed, he shall forthwith report such failure to the speaker, and with the approval of the speaker, may employ others to do the work, or any part thereof. Printing for House of Delegates.

8. The clerk of the senate shall superintend the printing of the journal of the senate, and of all printing ordered by the senate. If Printing for Senate.

any such printing be not properly and promptly executed, he shall report the failure forthwith to the president of the senate, and, with his approval, may employ others to do such work, or any part thereof.

Printing for departments.

9. Except as aforesaid, all officers of the state at the seat of government, authorized to have any printing or binding done at the expense of the state, are required to have the same done by the public printer, and no money shall be paid out of the treasury for printing or binding done in contravention of this section.

Printing of Journals of Legislature.

10. The public printer shall print two hundred and fifty copies of the journal of the house of delegates, and the same number of the journal of the senate, in octavo form, and cause the same, with the printed bills in their regular order, as hereinafter provided, to be, substantially and in workman-like manner, half-bound, and to be delivered to the secretary of the state. And the said secretary shall cause the same to be distributed as follows: Two of each to each member of the legislature, one to every recorder of the state, and the remainder as the governor may direct.

Printing of acts.

11. He shall print, in octavo form, two thousand five hundred copies of the acts of each session of the legislature, with the index and other matters directed by law to be published therewith; of which he shall deliver in sheets, as the session progresses, one hundred and forty copies to the clerk of the senate for the use of that branch, and three hundred and sixty copies to the clerk of the house of delegates for the use of that branch. The remaining two thousand, as soon as possible after the end of the session, shall be substantially and in workmanlike manner, half-bound if the number of pages in each copy exceed one hundred and fifty, but otherwise done up neatly in pamphlet form with paper covers; and in either case delivered to the secretary of the state, to be by him distributed as follows:

Distribution of same.

One copy to every judge and clerk of a court in this state;

One copy to every prosecuting attorney, sheriff, assessor, recorder, county treasurer, clerk of board of supervisors, supervisor and county superintendent of free schools;

To the governor, attorney general, secretary of the state, auditor, treasurer, adjutant general, quartermaster general, and state superintendent of free schools, one copy each;

Five copies to the clerk of the senate, one for his own use, and the others to be kept in his office for the use of the senate;

And ten copies to the clerk of the house of delegates, one for his own use, and the others to be kept in his office for the use of the house;

And eight copies to each member of the legislature, one for his own use, and the others for distribution among the people;

One copy to every public library in the state;

One copy to the West Virginia hospital for the insane;

And one copy to the editor of every newspaper published in the state;

Three copies to the librarian of congress, whereof one shall be for the library, and one for each house of congress;

Three copies to the secretary of state of the United States, one for his own office, one for the president and one for the attorney general of the United States ;

To the judge, clerk, attorney and marshal of the district court of the United States for the district of West Virginia, one copy each ;

One copy to the governor of every state and territory ;

To every justice in this state one copy ;

The residue of the said two thousand copies to be sold under direction of the secretary of the state, at a price to be fixed by him near the actual cost of the same to the state ; the proceeds of such sales to be paid into the treasury.

Sale of residue.

12. The public printer shall print in octavo form, five hundred copies of every bill which may be directed to be printed by the rules of either branch of the legislature, or by special order. Two hundred and fifty copies of every senate bill shall be reserved to be bound with the journal of the senate, and the same number of the house bills to be bound with the journal of the house, and the residue shall be delivered as follows: Seventy copies of each bill to the clerk of the senate for the use of that branch, and one hundred and eighty copies to the clerk of the house for the use of that branch.

Printing of bills and pamphlet for legislature.

13. All book work and pamphlet work done by the public printer for the state, after the first day of January, eighteen hundred and sixty-five, shall be paid for at the following prices: Seventy cents per token for press work ; for composition, seventy cents per thousand ems for plain work ; one dollar and five cents per thousand ems for rule or figure work, and one dollar and forty cents per thousand ems for rule and figure work ; but all blanks, circulars, handbills, advertisements and other kinds of printing, except book and pamphlet work, shall be paid for at the lowest customary rates of printing for private individuals or corporations ; these prices not to include paper, but the public printer is to furnish paper at the expense of the state at cost. For book binding he is to be paid according to the usual rates established among other book binders in the city of Wheeling.

Rates for book and pamphlet work.

And for binding.

14. The bills for the work to be done as aforesaid under the superintendence of the clerk of the senate and of the clerk of the house of delegates, shall, if correct, be certified by those officers respectively to the auditor. The bills for the work to be done for any executive department, shall, if correct, be certified to the auditor by the officer authorized by law to order the same. The bills for any other work, shall be certified by the governor, when he is satisfied of the correctness thereof. And such bills, in either case, shall be paid out of any money appropriated by law to pay for public printing.

Payment of bills.

15. The sixteenth section of chapter fifteen of the code of Virginia, second edition ; so much of chapter eighteen of said code, as relates to the public printer ; chapter twenty of said code ; the act passed August fourth, eighteen hundred and sixty-three, entitled "an act relating to the public printing ;" and the act of the general assembly

Laws repealed.

of Virginia, passed July sixteenth, eighteen hundred and sixty-one, entitled "an act altering the compensation of the public printer and the printer of the senate," are hereby repealed.

CHAP. 22.—An ACT to authorize an Increase of the Township Levies for the construction and repair of Roads and Bridges.

Passed February 9, 1865.

Be it enacted by the Legislature of West Virginia :

1. The voters of each township, at any legal annual meeting, or at a special meeting duly called for the purpose, if the votes in favor of the proposition are two-thirds of the whole number given, or equal in number to a majority of all the voters of the township, in addition to all taxes required by law to be levied on the property of their township, may levy taxes on such property for the opening, repair and improvement of public roads, and the building and repair of bridges on the same, not more in any one year than twenty cents on every one hundred dollars of such value.

Increased from
10 to 20 cents on
the \$100.

2. So much of section nineteen of the "act relating to the townships and township officers," passed November second, eighteen hundred and sixty-three, as conflicts with this act, is hereby repealed.

Law repealed.

CHAP. 23.—An ACT prescribing the duties of Assessors in certain Counties.

Passed February 10, 1865.

Be it enacted by the Legislature of West Virginia :

1. If the assessor of any county or district in the state shall be unable to perform the duties required of him by sections sixty-three, sixty-four, sixty-five and sixty-six, of the act passed the third day of December, eighteen hundred and sixty-three, entitled "an act to provide for the assessment of taxes," in the manner therein directed, by reason of such county or district, or any part thereof, being infested with armed rebels, such assessor shall, nevertheless, proceed to obtain and make out the lists required by said sections from the best information he can obtain; and for this purpose he may have reference to the former land and property books of such county or district.

How assessor in
disturbed coun-
ties to make
proper lists.

2. The governor is authorized, whenever he shall deem it expedient and practicable to do so, to appoint one or more commissioners, or the assessor of the county or district, to value the lands in such county or assessment district in this state, in which the commissioner's books have been destroyed or removed so that the same cannot be used for reference by the assessor of such county or district.

Commissioners
to value lands.

CHAP. 24.—An ACT to amend the act providing for the construction of a Road in the County of Hardy, passed September 10, 1863.

Passed February 10, 1865.

Be it enacted by the Legislature of West Virginia :

The act providing for the construction of a road in the county of Hardy, passed September tenth, eighteen hundred and sixty-three, is hereby amended and re-enacted so as to read as follows :

"1. Ernest Muntzing, Abram W. Smith, and John O. Idleman, are hereby appointed commissioners to open a wagon road, with a grade not exceeding five degrees of elevation, from Greenland Gap turnpike to the North Fork turnpike, in the county of Hardy. The sum of one thousand dollars is hereby appropriated for the construction of said road, out of the treasury of the state, to be paid upon the order of the said commissioners, in the same manner as other appropriations from the treasury are paid.

Names of Commissioners.

Appropriation.

"2. Said commissioners shall not draw any money out of said appropriation, until that part of the work is completed for which such draft is drawn, and then only upon their written statement upon oath, that work equal to the amount drawn is performed, and the money due for the same.

How paid.

"3. The said commissioners shall superintend the construction of said road without compensation, and may receive gratuitous labor from the citizens to aid in the construction of said road. The commissioners shall cause the road to be well made, and with as little expense as practicable, so that loaded wagons may conveniently pass the same."

Commissioners' duties.

CHAP. 25.—An ACT to authorize Suits and Proceedings which might, under existing laws, be brought in either of the counties of Wayne, Logan and Boone, to be brought and prosecuted in the county of Cabell.

Passed February 10, 1865.

Be it enacted by the Legislature of West Virginia :

1. Any action at law, suit in equity or other judicial proceeding, which, under the laws now in force, might be commenced and prosecuted in either of the counties of Wayne, Logan or Boone, may be hereafter brought and prosecuted in the county of Cabell with the same force and effect, and to the same extent, as if commenced and prosecuted in either of the said counties of Wayne, Logan or Boone.

Suits cognizable in certain counties may be bro't in Cabell.

2. All process in such suits and proceedings, including attachments, shall be issued by the clerk of the circuit court of the said county of Cabell, and directed to the sheriff or any constable of the said county, and shall be levied, served and returned by such sheriff or constable in the same manner, and with like effect, as if directed to and served by the sheriff or any constable of the county in which the same is so levied or served, and for all services performed by such sheriff or constable

Process issued and levied by officers of Cabell.

in the service or levy of process under this act, he shall be entitled to demand and receive double the fees now allowed by law for similar services.

Powers of clerk
of circuit court.

3. The said clerk of the circuit court of Cabell county shall have the custody and control of the records, papers and proceedings in each of the said counties of Wayne, Logan and Boone, and may copy and certify such records and proceedings, and issue executions and other process thereon to the same extent, and with like effect, as if he were the regularly appointed clerk of the circuit court of the county to which such records and proceedings belong; and for all services performed by said clerk, under the provisions of this section, he shall be entitled to demand and receive double the fees now allowed by law for similar services.

Operation of act
to cease.

4. Whenever the circuit court of the said county of Cabell shall be of opinion, and so enter of record, that the courts in either of the said counties of Wayne, Logan or Boone, can be held therein with safety, the operation of this act as to such county shall cease, and all suits and proceedings then pending in said county of Cabell, commenced under the provisions of this act, may, for good cause shown, be transferred to and tried and determined in the circuit court of the county where the same should have been brought, except for the provisions of this act.

Transfer of
papers.

5. When any such transfer is made, the clerk of the circuit court of the said county of Cabell shall transmit to the clerk of the court to which such transfer is made, all the original papers in the cause, and a certified copy of the record and proceedings in each case up to the time of transfer, and such suit or proceeding shall be docketed and proceeded with in said court in the same manner, and with like effect as if originally commenced in such court.

Jury expenses.

6. No jury shall be called or impanelled in any action or suit brought in the county of Cabell, under the provisions of this act, until the plaintiff shall deposit with the clerk six dollars, to pay jury expenses, which sum shall be paid by said clerk to the treasurer of said county.

CHAP. 26.—An ACT to regulate the Exemption from Civil Process of Persons employed in Military or Naval Service.

Passed February 10, 1865.

Be it enacted by the Legislature of West Virginia :

Stay of legal pro-
ceedings against.

1. If a suit or proceeding at law or in equity be commenced before any court or justice, to collect a debt or enforce a contract against the person or property of any one who has volunteered or been drafted or ordered into the military service of the United States, or of this state, or into the naval service of the United States, or who has entered such service as the substitute of another; or if any execution be issued against the person or property of such person or his surety, the court or justice, or the judge of such court in vacation, upon satisfactory

proof of the fact, by affidavit or otherwise, shall make an order staying further proceedings therein until three months after the term of service of such person shall have expired. But such suit or proceeding shall, nevertheless, if commenced in proper time, prevent the demand of the plaintiff being barred by the statute of limitations; and after the expiration of the stay of the proceedings to be ordered, as aforesaid, it may be prosecuted as if this act had not been passed. And where there are several defendants, one or more of whom may be entitled to such stay, the suit or proceeding may, nevertheless, be prosecuted, and the execution, except as against the surety as before provided, be proceeded with against the others.

Soldiers.

Statute of limitations not to run.

Co-defendants excepted.

2. The preceding section shall not apply to any case where the demand of the plaintiff arises out of any kind of tort or violence committed by the defendant, or by his order, aid or procurement, upon the property or person of another; or where the suit or proceeding is instituted to compel the defendant to account for or pay over any money for which he may be liable as a trustee or fiduciary, or as an officer of the state or of any county, township or municipal corporation; or where the suit or proceeding is instituted to compel the defendant to deliver up any property, real or personal, to the person entitled to the possession thereof. Nor shall it apply to the granting, reinstating or dissolving of any injunction.

Exception as to certain claims.

3. No person drafted or ordered into the service, as aforesaid, shall be entitled to the benefit of this act if he has employed a substitute to perform the service in his stead.

Person employing substitute excepted.

4. The eleventh section of the twenty-ninth chapter of the Code of Virginia, second edition, and the act of the general assembly of Virginia amending and re-enacting the same, passed January twenty-ninth, eighteen hundred and sixty-three, are hereby repealed.

Laws repealed.

CHAP. 27.—An ACT to amend and re-enact the Sixteenth and Thirty-third Sections of "An Act providing for the Construction and Repair of Roads and Bridges."

Passed February 11, 1865.

Be it enacted by the Legislature of West Virginia:

1. The sixteenth and thirty-third sections of the act entitled "an act providing for the construction and repair of roads and bridges," passed December fourth, eighteen hundred and sixty-three, are hereby amended and re-enacted so as to read as follows:

"16. It shall be the duty of every surveyor of roads to order out every such person, between the first day of April and the first day of October, annually, to meet with proper tools and perform the work aforesaid, on the public roads within his precinct; and if any such person, being personally warned by the surveyor, or by leaving a written notice at his usual place of abode, or by some person under the direction of the surveyor, by whom such warning can be proven, shall refuse or neglect, having had at least three days' notice, to attend by

Duty of surveyor of roads.

Refusal to work on roads.

himself or a substitute acceptable to the surveyor, on the day and at the time and place directed by the surveyor, or having attended shall refuse to obey the direction of the surveyor, or shall spend the time in idleness or inattention to the duties assigned him, every such delinquent shall forfeit and pay for neglect to attend, unless good excuse be shown therefor, or for any of the offences specified, two dollars for every such neglect or offence; which penalty, if paid within ten days from the date of the notice to attend, shall release such delinquent from one of the two days' work required by the fifteenth section of this act, but if not paid within ten days, shall be recovered by action before any justice of the township, at the suit of the surveyor, with costs of collection."

Penalty.

Bond of surveyor "38. Every surveyor of roads, before entering on the duties of his office, shall himself, with one or more good securities, execute and deliver to the clerk of his township a bond, in a penalty of one hundred dollars, conditioned for the faithful performance of the duties of his office and the payment of any money in his hands at the expiration of his term of office, to his successor. If any surveyor shall fail to pay over such money in his hands to his successor, it shall be the duty of said successor to institute a suit before a justice upon his said bond for the use of the precinct, and recover from him and his sureties such damages as may be awarded against him for any breach of his official bond, and costs. The oaths of office may be administered to such surveyor by the said clerk, who shall file the certificate thereof in the office of the recorder of his county.

Suit for failure to pay over money.

CHAP. 28.—AN ACT further to prescribe the Powers and Duties of Justices and Constables.

Passed February 11, 1865.

Be it enacted by the Legislature of West Virginia:

Suits against justices for misconduct in office.

1. So much of the eighteenth section of the act to regulate the election and qualification of justices and constables, and prescribe in part their powers and duties, passed December seventh, eighteen hundred and sixty three, as provides that one justice shall not have cognizance of an action against another for misconduct in office, is hereby repealed.

Execution, where leviable.

2. A constable to whom an execution, issued on the judgment of a justice, is delivered to be executed, may execute the same anywhere within the county in which it was issued.

Executions issued by clerk of circuit court on judgment of justice.

3. The person in whose favor a judgment is rendered by a justice, or who is entitled to receive the money or any part of it due thereon, may file in the clerk's office of the circuit court of the county in which the judgment was rendered, a transcript thereof, certified by the justice who has the custody of the docket in which such judgment is entered; and the said clerk may issue executions thereon in the same manner, and with like effect as if the judgment had been rendered by the circuit court. The transcripts, filed as aforesaid, shall be entered by the clerk in his execution docket and indexed in the name of both

plaintiff and defendant, and be filed in separate bundles for each year; for which service the clerk shall be entitled to a fee of twenty cents, to be paid by the person at whose instance the service is rendered. Clerk's fees.

4. Judgments of justices may be docketed in the judgment docket kept in the recorder's office, in a like manner and with like effect as judgments of the circuit courts. Judgments docketed in recorder's office.

5. The official dockets and papers of the justices acting within any county of this state, under the laws of the state of Virginia and the sixth section of the ordinance to provide for the organization of the state of West Virginia, passed by the late constitutional convention, shall be distributed to and among the justices who have been or may be elected in such county, pursuant to the laws of this state, as the board of supervisors of the county may by ordinance or resolution direct; and the justice to whom any docket and papers of a former justice are delivered as aforesaid, may give and certify transcripts thereof, issue executions and other process in the suits entered thereon, and do all such other acts in relation thereto as he may lawfully do in relation to his own official docket and papers. Distribution of dockets of former to present justices. Their power respecting the same.

6. On a suggestion made by the judgment creditor to the justice authorized to issue execution, that any person within the county has property in his possession or control belonging to the debtor, subject to execution, or is indebted to the debtor, whether such debt be due or not, the justice may cause such person to be served with a written notice to appear before him at the time specified in the notice, and answer respecting the said property or debt. When the suggestion is against a corporation any of its officers may also be subpoenaed to appear and answer, and like proceedings may be thereupon had against the person or corporation so notified as against a garnishee in attachment, and with like effect. Suggestion of property belonging to debtor. When against corporation.

7. In suits and proceedings before a justice, service of process and notices on a township may be made by leaving a copy thereof with the clerk of the township. Service on township.

8. When an appeal is taken by a county or township from the judgment of a justice, no security shall be required. Appeal without security.

9. Constables elected under the laws of the state of Virginia, and exercising the powers and performing the duties of their office within this state since the twentieth day of June, eighteen hundred and sixty-three, may execute and return any executions which were in their hands at the time they went out of office, and sell property levied on by them, notwithstanding the provisions contained in the two hundred and thirty-fourth section of the above mentioned act. Authority of former constables as to executions.

10. No appeal from the judgment of a justice shall be tried on motion of the appellant within less than three months from the time the transcript and papers are filed with the clerk of the circuit court, unless at least ten days notice of trial be given to the appellee, his agent or attorney. Notice of trial to appellee.

Costs of continuance.

11. When the defendant shall demand a continuance of right, pursuant to the one hundred and fourth section of the said act, the costs of such continuance shall abide the result of the suit, notwithstanding anything to the contrary contained in the one hundred and ninth section.

Attachments.

12. So much of section sixty-two of said act as requires attachments to be levied in the presence of one or more credible persons, is hereby repealed. And the appraisalment required by said section may be made at any time before the return of such attachment.

CHAP. 29.—An ACT to amend and re-enact Sections 23, 27, and 28 of Chapter 151, and Section 13 of Chapter 170, of the Code of Virginia.

Passed February 11, 1865.

Be it enacted by the Legislature of West Virginia :

1. Sections twenty-three, twenty-seven and twenty-eight of chapter one hundred and fifty-one of the code of Virginia, second edition, are hereby amended and re-enacted so as to read as follows :

Order of sale.

How proceeds disposed of.

Terms and report of sale.

Sale set aside or confirmed.

Conveyances under former judgments legalized.

Appointment of new commissioners.

“23. If the claim of the plaintiff in any suit or proceedings under this chapter be established, judgment or decree shall be rendered for him, and the court shall dispose of the specific property mentioned in the second section as may be right, and shall order the sale of any real or personal estate levied upon under and by virtue of any such attachment, which shall not have been previously sold or replevied under this chapter, and direct the proceeds of the sales of such property, and whatever else is subject to the attachment, including what is embraced by such replevy or forthcoming bond, to be applied in satisfaction of the judgment or decree. When a sale of real estate is so ordered, the court shall prescribe in the order the terms of such sale and the officer or person by whom it shall be made. The officer or person hereafter making such sale of real estate, shall report to the court which ordered the sale a description of the real estate so sold by him, the name of the purchaser and the sum for which it sold. The court, for good cause, may refuse to confirm the sale and order the property to be resold ; but if good cause for setting the sale aside be not shown, the court shall confirm the same, and shall direct a deed of conveyance of the real estate so sold, by the officer or person selling the same, to the purchaser thereof. All deeds and conveyances of real estate heretofore or hereafter made by any officer or other person under any judgment, decree or order heretofore rendered or made under any of the provisions of this chapter, are hereby legalized and made as valid and effectual for the purpose thereby intended as if the making thereof had been expressly authorized by the provisions of this chapter. And in case of the death, removal, inability or refusal to act of the officer or person appointed to make the sale and conveyance herein provided for, before such sale and conveyance shall have been made, the circuit court of the county in which such judgment,

decree or order was rendered or made, or the judge thereof in vacation, may, by an order made for that purpose, appoint some other officer or person to perform the duties required by such order of sale. But no real estate shall be sold under such order until all other property and money subject to the attachment has been exhausted, and then only so much thereof as is necessary to pay the judgment or decree."

Real estate sold last.

"27. If a defendant, against whom, on publication, a judgment or decree has been or shall hereafter be rendered in an action or suit in which an attachment has been or may be sued out and levied, as provided in this chapter, or his personal representatives, shall return to or appear openly in this State, he may, within one year after a copy of such judgment or decree shall be served upon him, at the instance of the plaintiff, or within five years from the date of such judgment or decree, if he be not so served, petition to have the proceedings reheard. Such petition shall be presented to the circuit court of the county in which the judgment or decree was rendered, and, unless it be presented on behalf of a corporation, shall state the residence of the defendant at the commencement of the present rebellion, and at the time such judgment or decree was rendered, the state of which he claims to be a citizen, and also his grounds of defence against such judgment or decree, and shall be verified by the affidavit of the party presenting the same. The said petition when not presented on behalf of a corporation, shall be accompanied by the affidavit of such defendant or his personal representative, stating the following facts:—*First*, That such defendant never voluntarily bore arms against the United States, the reorganized government of Virginia or the state of West Virginia. *Second*, That such defendant never voluntarily gave aid or comfort to persons engaged in armed hostility against the United States, the reorganized government of Virginia or the state of West Virginia, by countenancing, counseling or encouraging them therein. *Third*, That such defendant never sought, accepted, nor attempted to exercise any office or appointment whatever, civil or military, under any authority, or pretended authority, hostile to the United States, the reorganized government of Virginia, or the state of West Virginia, *Fourth*. That such defendant never yielded any voluntary support to any government or pretended government, power or constitution, within the United States, hostile or inimical thereto, or hostile or inimical to the reorganized government of Virginia or the state of West Virginia: Provided, nevertheless, that if the judgment or decree be against several defendants upon a demand founded on contract, the court may order a rehearing and permit defence to be made on behalf of all the said defendants, if the petition be accompanied by the affidavit of any one of them stating the facts above mentioned. If the petitioner claims to be a citizen of this State, he shall also make and file an affidavit that he will support the constitution of the United States and the constitution of West Virginia, and that he takes such obligation freely and of choice, without any mental reservation or purpose of evasion. Upon the filing of such petition and affidavits, a summons shall be awarded by said court against the plaintiff or his

Petition for rehearing.

Statement of petition.

Affidavit of petitioner.

Rehearing on affidavit of one of several defendants.

Affidavit of citizen of this state.

Summons against plaintiff.

personal representative, commanding him to show cause, if any he can, at the next term of such court, why the defendant or his personal representative shall not be permitted to make defence against such judgment or decree, which summons shall be issued by the clerk of such court and served upon the plaintiff or his personal representative at least thirty days before the return day thereof. Upon the return of such summons, executed, the plaintiff or his personal representative may file his own affidavit, or that of any other person, denying any one or more of the facts stated in the affidavit of the defendant or his personal representative, filed with his petition, as aforesaid, and showing wherein such defendant may have done or committed any of the acts mentioned in his said affidavit, and thereupon an issue shall be made up by said court and tried by a jury as to whether the said defendant has been guilty of the acts charged against him in said affidavits filed by the plaintiff or his personal representative, upon which issue the plaintiff shall have the affirmative. If the jury find that the defendant has been guilty of any of the acts so charged against him, such defendant, his personal representative and all others, in any way claiming under, by or through him, shall forever be precluded from appearing in or making defence against such judgment or decree, or in any manner questioning the validity thereof; but the court may grant new trials as in other cases. If the jury find that the defendant has not been guilty of any of the acts so charged against him, or if the plaintiff or his personal representative fail to appear and show cause upon the return of said summons, the defendant or his personal representative, upon executing and acknowledging a bond, with good security, to be approved by said court, conditioned to pay all costs which have been or may be awarded against him in the action or suit in which such judgment or decree was rendered, in case he shall fail to obtain a judgment or decree therein, shall be permitted to make such defence in such action or suit as he might have made if he had appeared therein before the judgment or decree was rendered, except that he shall not be permitted to make any other defence therein than that stated in his petition. But in case any property, real or personal, shall have been sold under such judgment or decree, or under any order of said court, or of the judge thereof in vacation, made in such action or suit, under any of the provisions in this chapter, the title of any *bona fide* purchaser of such property shall in no wise be affected, questioned or impeached by any judgment or decree recovered in such action or suit by such defendant or his personal representative, but such title shall be and remain as valid and effectual, to all intents and purposes, as if the judgment, decree or order, under which the said property was sold, had remained in full force. Nor shall the title of any such purchaser be in any manner affected or impeached by any error or informality in the proceedings under which such judgment, decree or order was rendered or made, or by any defect or informality in the deed of the sheriff or other officer or person for any real estate sold under such judgment, decree or order. But this section shall not apply to any case in which the petitioner or his descendant was served with a copy of the attachment, or with process in the suit

Affidavit of plaintiff.

Issue.

Effect of verdict.

Title of BONA FIDE purchaser unaffected.

Informality not to affect such title.

Exceptions to section.

in which it issued, more than sixty days before the date of the judgment or decree, or to any case in which he appeared and made defense."

"28. On any rehearing or new trial had under the preceding section, if the judgment or decree be for the defendant, the court may order the plaintiff in the original suit to restore any money paid to him under his judgment or decree therein, with interest from the date of such order, to the defendant or his personal representative, and may enter a judgment or decree against him therefor, and if the defendant or his personal representative fail to recover on such rehearing or new trial, the original judgment or decree shall be confirmed, and in either case costs shall be adjudged to the prevailing party."

Judgment
against plaintiff
for restitution.

2. Section thirteen of chapter one hundred and seventy of the code of Virginia, second edition, is hereby amended and re-enacted so as to read as follows:

"13. Any unknown party or other defendant, who was not served with process and did not appear in the case before the date of such judgment, decree or order, or the representative of such, may, within five years from that date, if he be not served with a copy of such judgment, decree or order more than one year before the end of said five years, and if he was so served, then, within one year from the time of such service, file his petition to have the proceedings reheard in the manner and form provided by section twenty-seven of chapter one hundred and fifty-one of said code, and not otherwise; and all the provisions of that section are hereby made applicable to proceedings under this section."

Rehearing where
process not
served.

CHAP. 30.—AN ACT to provide for the Qualification of Officers in Morgan, Berkeley and Jefferson Counties.

Passed February 13, 1865.

Be it enacted by the Legislature of West Virginia:

1. The governor is hereby authorized to appoint one commissioner in and for each of the counties of Morgan, Berkeley and Jefferson; and any officer heretofore elected or appointed to any office for either of said counties or any township thereof, may take the proper oaths of office and give his official bond, if such bond be required by law, before the commissioner so appointed for such county.

Appointment of
commissioners to
qualify officers.

2. The bond, if approved by the commissioner, shall be returned by him, with his approval endorsed, to the secretary of the state, to be filed in his office.

Bond to be filed.

CHAP. 31.—AN ACT in relation to the Appointment and Compensation of Sheriffs in certain unorganized Counties.

Passed February 13, 1865.

Be it enacted by the Legislature of West Virginia:

1. The circuit judge of the fifth circuit may appoint a sheriff for the county of Pocahontas; and the judge of the seventh circuit may appoint

Sheriffs in coun-
ties of ninth
district.

Bond.

sheriffs for the counties of Greenbrier, Monroe, Mercer, McDowell and Nicholas; who shall hold their offices and perform all the duties thereof until sheriffs are elected by the people and qualified according to law, for such counties respectively. Bond shall be given by any sheriff so appointed, in such penalty as the judge appointing him may prescribe.

Compensation.

2. Any sheriff appointed under this act, or under the act passed March third, eighteen hundred and sixty-four, entitled "an act supplementary to the act passed July eighth, eighteen hundred and sixty-three, entitled 'an act to provide for the trial of offenses committed in counties in which the administration of justice is interrupted by war or insurrection,'" who shall perform any services, shall receive double the compensation now allowed by law for similar services.

Residence.

3. All sheriffs appointed by judges for unorganized counties shall be residents of or refugees from the counties for which they are appointed, but where, on account of armed rebels being in possession of any such counties, the sheriffs so appointed may remove to any other county, until it is safe for him to return to his own county, it shall be lawful for him to execute or transact any business pertaining to his office at any time in the county for which he was appointed.

CHAP. 32.—AN ACT to amend the Law in relation to a Distribution of the Capitation Tax.

Passed February 14, 1865.

Be it enacted by the Legislature of West Virginia :

1. The first and second sections of chapter one hundred and nineteen of the acts of eighteen hundred and sixty-three, are hereby repealed, and the third section is so amended as to read as follows :

Requisition of state superintendent of free schools.

"3. Upon the receipt from the auditor, of a statement of the amount due each county from the capitation tax of eighteen hundred and sixty-one, eighteen hundred and sixty-two and eighteen hundred and sixty-three, the state superintendent of free schools shall draw his requisition upon the auditor, in favor of the treasurers of the several counties, for the use of free schools, for such amounts as they are respectively entitled to receive."

CHAP. 33.—AN ACT to authorize the Governor to employ additional Counsel in a certain Cause pending in the Supreme Court of Appeals of this State.

Passed February 15, 1865.

Be it enacted by the Legislature of West Virginia :

Counsel in case of Campbell vs. Caldwell.

The governor of this state is authorized to employ additional counsel, if he shall deem it necessary, to aid the counsel authorized by law in protecting the interest of the state in a certain cause pending in the supreme court of appeals of this state, in which Alexander Campbell, jr., is appellant and George W. Caldwell is appellee, and to pay such additional counsel out of the civil contingent fund.

CHAP. 84.—An ACT authorizing the present and former Sheriffs of Ohio county to Pay certain Moneys to the Treasurers of Ritchie, Triadelphia, Liberty and Richland Townships, in said county.

Passed February 16, 1865.

Be it enacted by the Legislature of West Virginia:

1. All moneys which have been heretofore appropriated for the purpose of carrying on schools within the townships of Ritchie, Triadelphia, Liberty and Richland, in Ohio county, by the school commissioners of said county, and which are still held by the sheriff of said county, or by any former sheriff or sheriffs of said county as treasurers of the school commissioners of said county, shall be paid to the township treasurers of the respective townships in which such schools are located, on the order of the school superintendent of said county, subject to the same conditions as are provided for the payment to said treasurer of other school funds in the forty-first section of the "act providing for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three.

How school money to be paid to townships.

2. It shall be the duty of the late clerk of the school commissioners of Ohio county, on or before the first day of April, eighteen hundred and sixty-five, to examine the accounts of school funds of the present and late sheriffs of Ohio county, comparing them with the appropriations which have been made by said commissioners, and with the vouchers which shall be exhibited by said sheriffs, to ascertain the amounts which may be due to any or all of the schools of such appropriations, and to certify such amounts in detail to the county superintendent of free schools in said county.

Duty of clerk of school commissioners.

CHAP. 35.—An ACT to enable the Banks of this State to become Banking Associations under the Laws of the United States.

Passed February 17, 1865.

Be it enacted by the Legislature of West Virginia:

1. Any bank of circulation now doing business in this State, which becomes an association for banking under the laws of the United States, shall be deemed to have thereby surrendered its state charter, and shall no longer continue the business of banking within this State under the laws thereof.

Surrender of state charter.

2. Any such bank may issue or reissue its circulating notes authorized by the law of this State for six months after it has so surrendered its charter; but if after the expiration of the said six months, any such bank issue or reissue, with intent that the same shall be circulated as currency, any note, bill, paper or thing, other than such as are authorized by the laws of the United States, it shall be deemed an unchartered company within the meaning of chapter sixty of the Code of Virginia, second edition.

Issue of circulation after surrender.

What acts may be done after state charter is surrendered.

3. Such bank, notwithstanding the surrender of its state charter, may sue and be sued in its corporate name, and in that name do all lawful acts for the purpose of collecting its debts, prosecuting and defending its rights, disposing of, conveying and transferring its property and claims, discharging its liabilities and winding up its affairs, as if the charter remained in full force.

Consent of the stockholders—how given.

4. The owners of two-thirds of the capital stock of any bank of circulation doing business in this State may, either by vote in a meeting of stockholders duly called and held, or by signing an agreement or agreements to that effect, authorize a majority of the directors, or of the directors of the parent bank, if it be a bank having branches, to execute the articles of association and organization certificate mentioned in the forty-fourth section of the act of congress approved June third, eighteen hundred and sixty-four, entitled "an act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," and to change and convert the said bank into a national association under the said act.

Same subject.

5. At such meeting of stockholders, every share shall have one vote and the vote of any stockholder may be cast in person or by proxy. Such agreement may be signed on behalf of any stockholder by his attorney in fact. Any executor, administrator, guardian or committee holding stock, may authorize such change and conversion without incurring any personal responsibility thereby.

Notice of the intended conversion.

6. When any such change and conversion shall have been authorized, as aforesaid, the cashier shall publish notice thereof once a week at least four weeks successively, in some newspaper printed at the seat of government, and in such other newspaper or newspapers, if any, as the directors may order.

Compensation to dissenting stockholders.

7. The circuit court of the county in which the said bank is located, or in which the parent bank is located, if it be a bank having branches, may, on the petition of any stockholder, ten days' notice of such petition having been given to the cashier, proceed to ascertain, upon the report of one or more commissioners, to be appointed by the court for the purpose, the fair market value of the shares of the said bank at the time when the last dividend was declared. The report and proceedings of the commissioners shall be subject to exceptions by any person interested, in like manner as those of commissioners in chancery, and shall be of no validity till confirmed by the court; but notice of the proceedings before the commissioners shall be sufficient if given to the cashier. Within sixty days after the value of the shares is ascertained as aforesaid, the said bank shall cause every stockholder who has not authorized the change or conversion to be paid for his shares according to such valuation, with interest thereon from the time when the last dividend was declared; and the shares so paid for shall be thereby transferred to the said bank.

8. Where there is any stock in such bank belonging² to this State,

or the literary fund or board of public works, or applicable to the support of free schools, a majority of the directors, or of the directors of the parent bank, if it be a bank having branches, are hereby authorized, so far as the said stock is concerned, to execute the articles of association and organization certificate, and to change and convert the said bank into a national association pursuant to said act of congress; and such stock shall be computed in making up the two-thirds necessary to confer the authority aforesaid.

Consent given on behalf of state stock.

9. Whenever, in adjusting the shares in any bank surrendering its charter as aforesaid, to the value of the shares of the national association into which it is changed and converted, there shall be any fractions of shares, the value of such fractions shall be ascertained from the valuation fixed as before provided, for the shares of the refusing stockholders; or if there be no refusing stockholder, or the value of the shares of refusing stockholders has not been ascertained as aforesaid, then the valuation of such fractions shall be according to the par value of the share. Upon the payment of such valuation, the fractions so paid for shall be thereby transferred to the bank.

Fractional shares.

10. Nothing herein contained shall be construed to prevent such bank from acquiring by purchase, or transfer by agreement the shares of any refusing stockholder or any fractions of shares.

Purchase of shares and fractions by agreement.

11. The capital stock of such bank shall be reduced to the extent of the par value of the shares to which it becomes entitled as aforesaid; and may be further reduced to any amount fixed by authority of the stockholders consenting to the change and conversion as aforesaid, or by the directors or a majority of them, if no order on the subject be made by the said stockholders; and such reduction may be made either by the purchase and extinguishment of shares or by reducing the par value of the share, or by both methods. Or, by like authority, the capital stock may be increased by the sale of additional shares at such price as may be agreed upon.

Reduction of capital.

Increase in capital.

12. The bonus and tax imposed by the laws of this state upon the bank so surrendering its charter, shall be paid by it into the treasury of the state, in proportion to the time from the first day of February preceding such surrender until it became a national association under the laws of the United States.

Bonus and tax.

13. When the charter of any bank is surrendered as aforesaid, all its assets, real and personal, and its claims, shall immediately and by act of law, without any conveyance or transfer, become the property of the national association into which it is changed and converted; and the said national association shall be subject to all the pre-existing liabilities of such bank.

Transfer of rights and liabilities from the old to the new institution.

СНАР. 36.—An ACT to authorize the Superintendent on the Western end of the Wheeling and Fairmont Turnpike to regulate the Tolls on the said road.

Passed February 17, 1865.

Be it enacted by the Legislature of West Virginia :

Tolls may be suspended for six months.

The superintendent for the western end of the Wheeling and Fairmont turnpike is hereby authorized, when in his judgment said road is not in a condition to justify the collection of tolls thereon, to suspend such collection for such time as he may deem proper, not exceeding altogether six months in any one year.

СНАР. 37.—An ACT to allow suits heretofore cognizable in Pocahontas and Webster Counties to be brought in Upshur County.

Passed February 17, 1865.

Be it enacted by the Legislature of West Virginia :

Suits may be brought in Upshur instead of Pocahontas and Webster.

1. At suit at law or in equity which, according to the one hundred and sixty-ninth chapter of the code of Virginia, second edition, might be brought in the county of Pocahontas or Webster may hereafter be brought in the county of Upshur ; but nothing herein contained shall be construed to affect any provision of law for the limitation of suits.

Jury costs in such cases.

2. No jury shall be called or impaneled in any action or suit brought in the county of Upshur by virtue of this act, until and unless the plaintiff pay to the clerk of the court twelve dollars to defray jury costs ; which sum the said clerk shall pay into the treasury of the said county of Upshur, and if judgment be rendered for the plaintiff, shall tax the same in the costs to be recovered by him in lieu of the sum heretofore in such case allowed by law. If judgment be rendered against the plaintiff, no jury costs shall be taxed against him if he has paid the sum of twelve dollars to the clerk as aforesaid.

СНАР. 38.—An ACT to provide for the Sale of the Property of Minors in certain cases.

Passed February 13, 1865.

Be it enacted by the Legislature of West Virginia :

Petition by guardian.

1. If the guardian of any minor think that the interest of the ward will be promoted by a sale of his estate, or any estate in which the minor is interested with others, infants or adults, whether the estate of the minor, or of any of the persons interested, be absolute or limited, and whether there be or be not limited thereon any other estate, vested or contingent, such guardian may apply by petition in a summary way to the circuit court of the county in which the estate proposed to be sold, or some part thereof, may be, stating plainly all the estate, real and personal, belonging to the minor, and all the facts calculated to show the propriety of the sale. The petition shall be verified by the oath of the plaintiff ; and the minor and all others interested shall be

Verified by affidavit.

made defendants, and also all those who would be the heirs or distributees of the minor, if he were dead; and the defendants shall have ten days' notice previous to the hearing of such petition.

Who must be parties.
Notice of petition

2. To every such minor there shall be appointed a guardian *ad litem*, who must be present at the hearing.

Guardian *ad litem*.

3. If it be clearly shown by the petition, exhibits and evidence introduced, that the interest of the minor will be promoted by the sale, and the court is of opinion that the rights of no person will be violated thereby, it may order a sale of the estate or any part thereof, taking for the purchase money, when the sale is on credit, ample security. And such sale, as the court may prescribe, may be at public auction or by private sale, on such terms and in such parcels as shall seem most beneficial to the minor.

In what case sale may be ordered.

Terms of sale.

4. At such sale neither the guardian or guardian *ad litem* shall be a purchaser, directly or indirectly.

Guardian, &c., not to purchase.

5. The proceeds of sale shall be invested or applied, under the direction of the court, for the use and benefit of the persons entitled to the estate so sold. And, before any such sale is made, the guardian shall enter into bond, with approved security, in open court, in a penalty equal to double the value of the estate to be sold, conditioned for the faithful application of the proceeds of sale according to the order; which bond may be made payable to the state; and the court may thereafter order new bond, with other security to be given, if deemed necessary; and suits may be prosecuted from time to time upon any such bond, in the name of the state, for the benefit of any person injured by a breach of the condition, until damages be recovered equal to the penalty; the party for whom such suit is brought being responsible for costs, in like manner as if he were plaintiff in the action.

Application of proceeds.

Bond to be given by guardian.

6. Whenever the guardian makes sale of any estate as herein provided, he may be authorized by the court to execute a conveyance to the purchaser with special warranty upon payment of the purchase money, or the court may order such sale to be reported for confirmation, and when confirmed, direct such conveyance to be made by the guardian or a commissioner.

Conveyance to purchaser.

7. Every such conveyance shall be as effectual in law as if the same were made by the minor when of lawful age.

Effect of such conveyance.

8. But no estate of any minor shall be sold under this act against the provisions of any will or conveyance by which the estate was devised or granted to such minor.

When sale not to be ordered.

9. Nothing herein contained shall be construed to prevent the disposal of the estates of infants and others, in the manner and under the regulations prescribed in chapter one hundred and twenty-eight of the Code of Virginia, seroud edition.

Former mode of proceeding may be adopted.

10. No attorney's fee shall be taxed in the costs of any proceeding under this act.

Attorney's fee.

CHAP. 39.—An ACT amending Section 13 of Chapter 88 of the Acts of 1863.

Passed February 18, 1865.

Be it enacted by the Legislature of West Virginia :

Section thirteen of chapter eighty-eight of the Acts of eighteen hundred and sixty-three, is hereby amended by adding at the end thereof the following :

Supervisors to state county receipts, expenditures and debt.

And it shall be the duty of said board, at every such meeting, to make out a detailed statement of the receipts and expenditures for county purposes during the preceding year, and of the county debt, if any, and for what purpose created. And to post the same at some public place in each of the organized townships of their county, within fifteen days after their adjournment.

CHAP. 40.—An ACT to repeal Chapter 38 of the Code of Virginia.

Passed February 18, 1865.

Be it enacted by the Legislature of West Virginia :

Chapter thirty-eight of the Code of Virginia, second edition, entitled "of taxes on licenses," is hereby repealed.

CHAP. 41.—An ACT to regulate the Jurisdiction of the Circuit Courts in certain cases.

Passed February 20, 1865.

Be it enacted by the Legislature of West Virginia :

When jurisdiction of court of one county may be exercised in another.

When there is no judge qualified by law to hold the circuit court of any county, or the circuit court of any county cannot safely and without interruption be held therein, the jurisdiction of such circuit court, in relation to the probate of wills, suits and controversies testamentary, the appointment, qualification, bonds and accounts of guardians, curators, committees of insane persons and personal representatives of deceased persons, and the revocation of their powers, may be exercised by the circuit court of any other West county of the same, or of an adjoining circuit.

CHAP. 42.—An ACT to provide for Recording, in the office of the Secretary of the State, Deeds and other Writings relating to Property in Counties in which no records are kept.

Passed February 20, 1865.

Be it enacted by the Legislature of West Virginia :

1. Any writing mentioned in the first section of chapter one hundred and twenty-one of the Code of Virginia, second edition, or the one hundred and nineteenth chapter, or in the one hundred and

eighteenth chapter of the said code, which is to be or may be recorded in any county of this state, in which, by reason of war or insurrection, no records are kept, may be admitted to record in the office of the secretary of the state as to any person whose name is signed thereto, when it shall have been acknowledged by him, or proved by two witnesses as to him, before the secretary of the state, or when the same shall have been acknowledged or proved, and certified in the manner required by law. When any writing admitted to record in the office of the secretary of the state, or a certified copy thereof, is offered in evidence, it shall not be necessary to prove that no records were kept in the proper county by reason of war or insurrection, at the time the same was so admitted to record; but it shall be so presumed, unless evidence to the contrary be produced.

What writings may be recorded in office of secretary.

Effect of writing or copy as evidence.

2. It shall be the duty of the secretary of the state, upon being satisfied at any time, that no records are kept in a county by reason of war or insurrection, to admit to record all writings which, as the law now is, might be recorded in such county, and to record the same in a well bound book to be provided at the public expense, and kept in his office. Writings admitted to record under this act, shall be subject to the same tax as if they were recorded in the counties in which they might otherwise be recorded, to be paid to the secretary before they are admitted to record. The secretary shall account for and pay into the state treasury quarterly, all taxes received by him under this act. The secretary shall charge and receive the same fees for recording any writing under this act, that a recorder would be entitled to charge and receive for similar services.

Duty of secretary.

Tax on writings.

Fees of secretary.

3. The recording of any writing admitted to record under the provisions of this act, shall have the same effect as if such writing had been recorded in the county wherein it might otherwise have been recorded, until records can again be kept in such county, and no longer.

Effect of records.

4. Copies of writings admitted to record by the secretary of the state pursuant to this act, certified by him under his hand to be true copies, shall have the like effect as copies certified by a recorder, of writings duly recorded in his office; and the secretary may charge the same fees for such copies as the recorder.

Effect of certified copies.

5. The governor, whenever he is satisfied that the writings recorded in the office of the secretary of the state as aforesaid, relating to property in any county, or which, as the law now is, should be recorded therein, can safely be removed to and kept in such county, may order the said writings to be delivered to the recorder thereof; and the recorder shall thereupon duly record the same in his office, in like manner and with like effect, as if the same had been originally admitted by him to record, and may charge the same fees for such recording. And if any original writing admitted to record by the secretary of the state, be lost or destroyed, a copy certified by the secretary, under his hand may, at any time, be admitted to record, and recorded in the proper county, in place of such original.

Removal of writings.

Certified copy may be recorded.

CHAP. 43.—An ACT to alter part of the division line between the Counties of Randolph and Upshur.

Passed February 21, 1865.

Be it enacted by the Legislature of West Virginia :

Alterations of lines.

1. The division line between the counties of Randolph and Upshur is hereby altered so as to run as follows : Beginning at the forks of the Middle Fork river, thence a straight line to the top of Kelly Knob, thence a straight line to Rader's Spring, at the southeast corner of the Upshur county line ; and so much of the county of Randolph as is included within said line, is hereby annexed to, and made a part of the county of Upshur.

Addition to Upshur.

When to be of force.

2. The annexation herein provided for, shall not be of force until the same is ratified by a vote of the qualified voters residing within the boundary described in the preceding section, in the manner hereinafter provided, nor until the surveyor of the county of Upshur shall run and mark the said lines, and make three plats thereof, each of which he shall duly certify and forward one to the secretary of the state, another to the recorder of the county of Randolph, and the third to the recorder of the county of Upshur, who shall file and carefully preserve the same in their respective offices.

Plats of lines.

Fees of surveyor.

3. The account of the said surveyor for his fees and expenses incurred under the provisions of this act, shall be audited by the board of supervisors, and paid out of the treasury of the county of Upshur.

Poll on question of annexation.

4. On the first Monday in May next, a poll shall be opened at the regular place or places of voting, within the said boundary, as follows : "For annexation," and "Against annexation," which poll shall be opened at nine o'clock, A. M., and closed at sun-down. If two-thirds of all the votes cast shall be "for annexation," then this act shall be of force from and after the first day of August, eighteen hundred and sixty-five, in case all the other provisions of this act shall have been complied with, and if not, then from and after the day on which such provision shall be complied with. The taking of said poll shall be conducted, certified and returned in the manner provided by law for conducting, certifying and returning the polls at elections for state and county officers, except that a copy of said poll shall be certified to the board of supervisors of the county of Upshur. It shall be the duty of the board of supervisors of the said county of Randolph to convene within ten days after the taking of said poll, at which time they shall declare the result of the vote so taken, and enter the same in their minutes, and certify and transmit a copy of such entry to the board of supervisors of the county of Upshur.

Result of poll.

Manner of taking poll.

Duty of supervisors of Randolph.

CHAP. 44.—An ACT for the establishment of a Union School in the City of Parkersburg, and to provide for the erection of School Buildings therein.

Passed February 21, 1865.

Be it enacted by the Legislature of West Virginia :

1. The board of education for the township of Parkersburg, in Wood county, is hereby authorized to call a meeting of the qualified

voters of the city of Parkersburg, at the earliest day it may deem proper after the passage of this act, having given notice thereof in manner and form as prescribed in section ten of "an act providing for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three, which meeting shall be organized and conducted as provided for the annual township meetings; and when so organized, the board of education shall submit the proposition for the establishment of a union school, with the reasons for the same, together with a carefully prepared estimate of the cost; and if, after full deliberation and discussion, a majority of the qualified voters present and voting, shall decide in favor of the proposition, such school shall be established.

Board of education to submit to voters proposition for school.

2. The board of education may levy, if authorized by a majority of the voters as above prescribed, a tax of not exceeding in any one year, five mills on every dollar on the property of said city for the purpose of purchasing ground and erecting school buildings for the education of the youth of said city. The powers of the board of education in respect to said levy, to be restricted only by section forty-eight of the act above referred to.

Tax for building purposes.

3. The board of education of said township, shall make the levy aforesaid only on the returns of the assessors appointed by the city of Parkersburg; but may appoint a collector who shall report and pay over, after the tax bills shall be placed in his hands by the proper officer, the amount by him collected, to the order of the board of education; such report specifying the purpose in building, to which the money is to be applied.

Appointment of collector of tax.

4. The board may require such bond of the collector as it may deem sufficient, and shall record and report all its proceedings under this act, in the same manner as required by the act aforesaid, and shall be governed by the provisions of said act, except where the same are inconsistent with the provisions of this act.

Powers and duty of board.

CHAP. 45.—An ACT requiring the Banks in this State to redeem their issues in Legal Tender Money of the United States.

Passed February 22, 1865.

Be it enacted by the Legislature of West Virginia:

1. The several banks and their branches in this state, shall, from and after the first day of March, eighteen hundred and sixty-five redeem their circulating notes in legal tender money of the United States, when demanded: Provided, that after the day herein fixed, the said banks or their branches, shall not be compelled to pay said legal tender money for any notes held by or due to any other bank or banking company, which does not redeem its own notes when demanded, in the legal tender money of the United States.

Banks to redeem issue in legal tender money.

Proviso.

2. If any note due from any bank be presented for payment after

Penalty for failure so to redeem.

the said first day of March, eighteen hundred and sixty-five, within the usual business hours, at the bank or office where payable, and be not paid in legal tender money of the United States when so presented, the party presenting the same may, on motion in the circuit court, after ten days' notice, or by warrant before a justice, (according to the amount,) recover from the bank the amount of such note with interest thereon at the rate of twelve per centum per annum, from the time of such failure until paid.

Redemption by branches.

3. It shall be the duty of every branch of a bank, in addition to the redemption required at such branch, to redeem its circulating notes on demand at the parent bank, in legal tender money, and for failure so to redeem the same, the branch in default shall be liable to interest at the rate of twelve per centum, to be recovered in the same manner as prescribed in the second section.

CHAP. 46.—An ACT to Incorporate the Parkersburg and Burning Springs Railroad Company.

Passed February 22, 1865.

Be it enacted by the Legislature of West Virginia :

Names of corporations.

1. James Cook, Jefferson Gibbens, J. N. Camden, D. R. Neal, J. E. Wharton, J. G. Blackford, J. J. Jackson, Jr., Alfred H. Rogers, B. F. Stewart, Abram Enoch, D. N. Wolfe, R. P. Steed, Beverley Smith, M. Woods, Eugene List, S. Newberger, P. D. Gambrill, A. G. Leonard, J. G. Blair, Archibald Russell, A. Dishel, J. R. Murdoch, J. M. Leach, and their associates, successors and assigns, and all who shall become stockholders, when three thousand shares at fifty dollars each shall have been subscribed as hereinafter provided, are hereby made a body politic and corporate, under the name, style and title of the Parkersburg and Burning Springs Railroad Company: Provided, said subscription shall have been made in good faith, within two years from the passage of this act.

Style of company.

Route prescribed

2. The said company is hereby authorized to construct a railway from the city of Parkersburg, or any point on the Northwestern Virginia Railroad between that city and Petroleum Station, on said road, southerly and westwardly, from said road up the Little Kanawha river, or any of its tributaries, to Burning Springs, and the head waters of the Little Kanawha, and make such sidings, branches and extensions not exceeding ten miles in length, as they may deem necessary and convenient to the development of the mineral and agricultural wealth of the country between the Little and Great Kanawha rivers: Provided, no portion of this road is to be constructed in the valley of Elk River, except to connect with the West Virginia Central Railway Company.

Proviso.

Capital stock.

3. The capital stock of said company may be increased at the option of the stockholders or directors thereof, as the by-laws of the company may provide, to one hundred thousand shares, and the said cor-

poration or directors, or any three of them, may open, or appoint an agent or agents to open books for subscriptions, at any point they may select, to procure said stock, or any portion thereof by them determined.

Subscription therefor.

4. The said books shall be opened and the subscriptions received, in the manner prescribed by the Code of Virginia, second edition, prescribing general regulations for the incorporation of railroad companies. The said company shall be subject to all the provisions and liabilities, and entitled to all the benefits of the aforesaid Code, especially such as are specified in chapters fifty-six, fifty-seven and sixty-one thereof, and of all other general laws now in force relating to railway companies, except so far as the provisions of this act are or may be inconsistent therewith.

Company subjected to provisions of Code of Virginia.

5. Said company shall have power to borrow money, to accept and receive donations in lands, money or other things, from the Congress of the United States, or from other sources, for the purpose of carrying on the object of this act, and to issue proper certificates or evidences of all loans made by it, and to pledge the property of the company for the payment of the same and the interest that may accrue thereon; and the said company shall be required to commence the construction of their said railway within three years from the passage of this act, and shall finish one-fourth thereof within five years from the time of commencement.

Authority to borrow money and receive donations

Commencement and progress of work.

6. The president and directors of the said company, or a majority of them, shall be and are hereby authorized to make and execute bonds or certificates of indebtedness, under the seal of the said company, for such sum or sums, and payable at such time or times, and to sell and dispose of the same on such terms as to the said president and directors may seem proper: Provided, that nothing herein contained shall be taken to authorize the said company to issue anything in the nature of a bank note, or other paper to be used for circulating as a currency.

Authority to issue bonds.

Proviso.

7. So much and such parts of the Code of Virginia hereinbefore recited, or of any act or acts as may be inconsistent with any of the provisions of this act, shall be held not to apply to the company hereby incorporated, as far as the same may affect the charter granted by this act.

Code of Virginia construed.

8. The legislature reserves the right to alter or amend this act, but such alteration or amendment shall not affect or impair the right of the creditors of the corporation to have the property and assets thereof applied in discharge of their respective claims, or of the stockholders to have the surplus which may remain after providing for the debts and liabilities of the corporation, distributed among themselves according to their respective interests.

Right of Legislature to amend this act.

9. The several counties through which the line of the said railroad

Counties authorized to take stock. or any branch or extension thereof may pass, are hereby authorized to subscribe to the capital stock of said company to the amount not exceeding two thousand shares each.

CHAP. 47.—An ACT concerning the Fiscal Year.

Passed February 22, 1865.

Be it enacted by the Legislature of West Virginia :

Commencement and end of fiscal year.

1. The fiscal year shall hereafter commence on the first day of January, and end on the thirty-first day of December, and the fiscal year eighteen hundred and sixty-five shall be deemed to have commenced as of the first day of January, eighteen hundred and sixty-five, and shall end on the thirty-first day of December of the same year.

Law repealed.

2. The eleventh section of chapter forty-five of the Code of Virginia is hereby repealed.

CHAP. 48.—An ACT repealing the Acknowledgment of Deeds and other writings, before Justices.

Passed February 22, 1865.

Be it enacted by the Legislature of West Virginia :

Acknowledgments taken by justice out of his township sufficient.

1. Where the acknowledgment of any deed or other writing, or the privy examination of a married woman respecting the same, has been heretofore taken by any justice out of his township, or it does not appear by the certificate of the justice that such acknowledgment or privy examination was taken within his township, the same shall nevertheless be sufficient, unless there be other lawful objection thereto.

Justice EX OFFICIO a notary public for certain purposes.

2. Every justice who is now in office, or may be hereafter elected and qualified, shall be, within his county, by virtue of his office, a notary public to administer and certify oaths, and to take acknowledgments of deeds and other writings, and the privy examination of married women respecting the same ; but for those purposes only.

CHAP. 49.—An ACT for the relief of John Slack, late Sheriff of Kanawha County, and his Sureties.

Passed February 22, 1865.

Be it enacted by the Legislature of West Virginia :

John Slack and sureties released from paying two judgments.

John Slack, late sheriff of Kanawha county, and Daniel H. Kline, Samuel Hensley, William Donnelly, Robert Blane, James H. Frey, Samuel Rust, Joseph Friend, and S. Patrick, his sureties, are hereby released from paying a judgment obtained against them in the circuit court of the city of Richmond, bearing date May tenth, eighteen hundred and fifty-nine, for fifteen thousand six hundred and eighty dollars and forty cents, with interest at twelve per centum per annum, and damages and costs, for certain taxes and liabilities alleged to be due the state of Virginia from said Slack as sheriff as aforesaid, for the

year eighteen hundred and fifty-seven ; and also from a judgment of same court of like date, for sixteen thousand two hundred and sixty-eight dollars and fifty cents, with interest at six per centum per annum and damages and costs, for similar taxes and liabilities for the year eighteen hundred and fifty-eight.

CHAP. 50.—An ACT requiring Oaths in certain cases.

Passed February 23, 1865.

Be it enacted by the Legislature of West Virginia :

1. Any person who shall have heretofore borne arms, or who shall hereafter bear arms against the government of the United States or of this state, or who shall have heretofore accepted or held, or who may hereafter accept or hold any office, civil or military, under any pretended government, either state or federal, in opposition or inimical to the government of the United States or of this state, except such persons as are now in the army of the United States as volunteers, or who have been honorably discharged therefrom, shall take and subscribe an oath to support the constitution of the United States and the constitution of the state of West Virginia, to be filed in the office of the recorder of the county where such person resides.

What persons required to take oath of allegiance.

2. Any person embraced in the foregoing section, failing to comply with the requirements thereof, within thirty days after being notified to do so by any person, shall, on conviction, be fined not less than one hundred dollars, at the discretion of a jury, and in addition to such fine may be imprisoned not exceeding thirty days, at the discretion of the court. If any person who may be convicted under the provisions of this section, shall fail for thirty days after such conviction to take and subscribe the oath mentioned in the first section, he shall, on conviction, be fined by a jury at least double the amount of the last fine against him, and may in addition to such fine, be imprisoned, at the discretion of the court, not exceeding sixty days.

Penalty for failure to take such oath.

3. It shall be the duty of the prosecuting attorney in each county to bring to the notice of said courts all such cases as are embraced in the first section of this act, for action thereon.

Duty of prosecuting attorney.

CHAP. 51.—An ACT to establish a Court of Limited Jurisdiction in the City of Wheeling.

Passed February 24, 1865.

Be it enacted by the Legislature of West Virginia :

1. There shall be established a court of record of limited jurisdiction within the city of Wheeling, to be called "The Municipal Court of Wheeling."

Style of court.

2. On the fourth Thursday in May, in the year eighteen hundred and sixty-five, and in every fourth year thereafter, there shall be elect-

First election for judge.

- His term.** ed by the voters of the city a judge of the said court, to hold his office until his successor is elected and qualified.
- Vacancy.** 3. If, for any cause, the office be vacant during the term, such vacancy shall be filled for the unexpired portion of the term by a special election, to be held as soon as practicable at such time as the council of the city may order.
- Regulations for election.** 4. The regular and special elections for the said judge, except as to the time of holding the same, shall be subject to the same regulations as the elections for mayor and members of the council of the city.
- Judge's salary.** 5. During his service in office he shall receive from the treasury of the city a salary, to be prescribed by ordinance of the council; but after the salary has been so prescribed, no ordinance increasing or diminishing the same shall take effect until an election to the office has intervened.
- Judge's removal.** 6. He may be removed from office by the council of the city, two-thirds of the members of each branch concurring in such removal; but before any order or resolution for his removal is passed, he must have reasonable notice of the causes alleged therefor, and an opportunity to be heard in person or by counsel as he may elect.
- Police jurisdiction.**
How regulated. 7. Where any fine, penalty or punishment may lawfully be imposed for a violation of an ordinance of the city, the municipal court shall have exclusive original jurisdiction of the case. The proceedings in such case shall be by summons on behalf of the city as plaintiff, and shall conform to the regulations, so far as they are applicable, respecting civil suits and proceedings before justices. But the judge, for good cause shown, may, by endorsement on any such summons, order the defendant or defendants to be arrested and brought forthwith before him to be dealt with according to law.
- Justices' jurisdiction conferred**
And regulated. 8. The said court shall also, within the city, have the same jurisdiction and powers as a justice, within his county, in relation to the apprehension, examination, commitment, or admitting to bail, of any person charged with a criminal offense, whether committed in said city or elsewhere; and in the exercise of such jurisdiction and powers shall be subject to the same regulations.
- When and where court to be held.** 9. For the exercise of the jurisdiction and powers conferred by the last two sections, (hereinafter called *the police jurisdiction* of the said court,) the court shall be held at such times, and at such places in the city, as to the said judge may seem convenient and proper.
- Absence or inability of judge to act.** 10. When the said judge is, from sickness or other cause, incapable of acting, or is absent from the city, or the office is vacant, the mayor of the city, or some person appointed for the purpose by the council, shall exercise the police jurisdiction of the said court.
- Civil jurisdiction.** 11. The said court shall also have, within the city, the same jurisdiction and powers in civil suits and proceedings at law, (but not in

chancery,) where the amount in controversy exceeds one hundred dollars, exclusive of interest and costs, or the possession or title of real or personal estate is concerned, as the circuit court of Ohio county now has or may hereafter be vested with, but in the following cases only :

Same as that of Ohio county circuit court in certain cases only.

I. Where the defendant or one of the defendants resides in the city ;

II. Where the cause of action arose within the city ;

III. Where the property real or personal, the title or possession of which is in controversy, or some part of such property, is in the city.

IV. Where the defendant or one of the defendants, being a non-resident of the state, is found in the city, or has estate or effects therein; and any demand against a resident of the city, or a corporation or firm doing business therein, or any stock or share in the capital of such corporation or firm, shall be deemed effects in the city within the meaning of this clause.

12. The said court shall also have jurisdiction, without reference to the amount in controversy, of civil suits and proceedings at law instituted to recover any taxes, debt or demand alleged to be due the said city, or to recover damages for breach of the condition of any bond made payable to the city, or to recover compensation for damage alleged to be done by the defendant to any property, real or personal, belonging to the city.

Jurisdiction of suits for anything due city.

13. For the exercise of the jurisdiction and powers conferred by the last two sections, (hereinafter called *the civil jurisdiction* of the said court,) monthly sessions of the said court shall be held, commencing on the third Monday of every month and continuing until the court is adjourned by the judge thereof to the succeeding term. But if any such term be not commenced on the day hereby appointed, or the Tuesday or Wednesday next after the same, all suits and proceedings then pending therein shall stand continued, without any special order to that effect, to the succeeding term.

Monthly sessions for trial of civil suits.

14. The said monthly sessions shall be held at such place within the city as the council may from time to time provide for the purpose. The council shall also provide an office in the city for the clerk of the said court.

Where held.

15. Rules shall be held in the clerk's office of the said court, commencing on the second Monday of every month, and the said rules may continue for three days.

Rules.

16. Questions of fact to be tried by a jury in the said court, either in the exercise of its police or civil jurisdiction, shall be tried by a jury of six persons, under the regulations, so far as they are applicable, respecting such trials before justices.

Trial by jury.

17. In other respects the said court and its officers, in the exercise of its civil jurisdiction, shall be governed by the usages and principles of law applicable to similar cases in the circuit courts; but when pursuant to the twelfth section, the said court shall have jurisdiction of

Court to follow usages of circuit courts.

any civil suit or proceeding in which the amount claimed, exclusive of interest and costs, does not exceed one hundred dollars, it may adopt the mode of proceeding prescribed for civil suits before justices.

Or justices.

18. It shall not be necessary in any suit, or proceeding in the said court, that the facts authorizing it to take jurisdiction of the case should be set forth upon the record, but jurisdiction shall be presumed unless the contrary appears by the record.

Jurisdiction presumed.

19. All process, executions, rules and orders of the said court, whether issued in the exercise of its police or civil jurisdiction, shall be signed by the judge or clerk thereof. Such process and executions shall be directed to the sergeant of the city, and be executed by him or one of his deputies; except that the judge of the said court may at any time appoint a special officer to act in any case, or to serve any particular process, execution, rule or order. In the execution of the process, executions, rules and orders of the said court, the sergeant, deputy or special officer shall have the same powers and rights, be subject to the same liabilities, govern his proceedings by the same rules and principles of law, and be entitled to the same fees, as the sheriff of the county in like cases; and such fees may be collected by the sergeant or his deputies, in like manner as the sheriff is by law authorized to collect his fees. The sergeant and his sureties shall be liable for the acts and omissions of his deputies, in like manner as the sheriff and his sureties are for his deputies.

Issue and execution of process.

Powers and right of sergeant, &c.

30. It shall be lawful for the council of the city, notwithstanding anything contained in the preceding section to the contrary, to prescribe by ordinance such compensation or salary as they may deem reasonable for the sergeant of the city, in lieu of any fees which would otherwise accrue to the said sergeant or his deputies from the cases within the police jurisdiction of the said court; and in such case, the said sergeant or his deputies shall, nevertheless, collect the said fees as aforesaid, but shall account for and pay over the same to the treasury of the city.

Council may substitute salary for fees of sergeant.

21. The sergeant of the city shall give bond, to be approved by the said court or judge thereof, in the penalty of ten thousand dollars, payable to the state of West Virginia and conditioned for the faithful discharge by him of the duties of his office, which bond shall be filed in the clerk's office of the said court; and the provisions of the act relating to official bonds, passed June twenty-ninth, eighteen hundred and sixty-three, shall be held applicable thereto.

Bond of sergeant.

22. The council of the city shall provide by ordinance for the election or appointment, term of office, and removal when necessary, of a clerk of the said court, who shall perform the same duties in relation to the civil jurisdiction thereof that the clerk of the circuit court, by the usages and principles of law, is required to perform for that court; and such services in relation to the police jurisdiction of the municipal court as may be directed by the judge thereof, or be prescribed by rule or order of the said court.

Clerk of court.

23. For services performed by him by virtue of his office, in relation to the police jurisdiction of the municipal court, the clerk thereof may charge the same fees as a justice for similar services; and in other cases the same fees as the clerk of the circuit court. And such fees, in any case, shall be collected and accounted for by the sergeant of the city, in like manner as fees of the clerk of the circuit court are collected by the sheriff. The council of the city may allow the clerk of the municipal court, out of the treasury of the city, such further compensation, if any, as they deem reasonable.

Clerk's fees.

24. The clerk of the municipal court shall give bond, to be approved by the said court or the judge thereof, in the penalty of three thousand dollars, payable to the state of West Virginia and conditioned for the faithful discharge by him of the duties of his office; which bond shall be filed in the office of the recorder of Ohio county, and the above mentioned act relating to official bonds shall be held applicable thereto.

Bond of the clerk

25. A seal shall be provided for the said court by the council of the city, and the same may be altered or renewed as the court shall order. Full faith and credit shall be given to the records of the said court, and the certificates of its judge or clerk, whether the seal of the court be affixed thereto or not, in like manner and with the same effect as if the same were records of a circuit court, or certificates of the judge or clerk of a circuit court, similarly authenticated.

Seal.

Credit given to records.

26. The judge and clerk of the municipal court are hereby authorized, within the said city, to administer and certify oaths in any case in which such oaths may lawfully be administered.

Judge and clerk may administer oaths.

27. In cases within the police jurisdiction of the municipal court, the judgment of the said court shall be subject to appeal to the circuit court of Ohio county, in like manner and subject to the same restrictions and regulations as if it were the judgment of a justice; except that no such appeal shall lie or be granted, unless some counsel practising in the said circuit court certify that he is satisfied there is error in law or fact in the said judgment to the prejudice of the party applying for such appeal. If the case involves the validity of an ordinance of the city, or the right of the city to levy a tax, an appeal shall lie, or may be granted, without regard to the amount in controversy. In any case in which an appeal is taken or granted on behalf of the city, no undertaking or security shall be required.

Appeals in police cases.

28. In cases within the civil jurisdiction of the municipal court, after a final judgment or order of the said court, any party thereto who is aggrieved by such judgment or order, may present his petition to the circuit court of Ohio county or the judge thereof, for a writ of error or supersedeas to the said judgment or order. With such petition there shall be a transcript of the record of so much of the case as to enable the circuit court to decide properly whether such petition ought to be granted or not, and on what terms, and to decide all questions arising in the case if the petition be granted. The party intend-

Appeals in civil cases.

ing to petition shall notify the opposite party or his counsel of such intention, and so much of the record shall be copied as any party may desire, with the exceptions specified in the seventh section of chapter one hundred and eighty-two of the Code of Virginia, second edition. The petition shall assign errors appearing by the record, and shall not be considered by the circuit court unless some counsel practising therein certify that, in his opinion, there is error to the prejudice of the petitioner in the said judgment or order.

Same subject.

29. Upon such petition the said circuit court may allow a writ of error or supersedeas, with like effect and upon like conditions as such writs may be granted by the supreme court of appeals to final judgments of the circuit courts; and the proceedings to be thereupon afterwards had shall be governed by like usages, rules and principles of law, except that no record, statement of the case or assignment of errors shall be required to be printed, nor shall either party be required to furnish a copy thereof to the other or his counsel.

Limitation of appeals.

30. No petition shall be presented for a writ of error or supersedeas to any final judgment or order of the said municipal court after two years have elapsed from the date of such judgment or order; and any writ of error or supersedeas allowed to such a judgment or order shall be dismissed, if it appear that two years or more have elapsed since the date of such judgment or order before the record of the case was delivered to the clerk of the circuit court, or before bond was given by the appellant according to the condition on which the writ was allowed.

How executions obtained from circuit court.

31. A transcript of any judgment rendered by the municipal court, certified by the judge or clerk thereof, may be filed, by any party interested, in the clerk's office of the circuit court of Ohio county, and the clerk of the said circuit court may issue executions thereon in like manner and with like effect as if such judgment had been rendered by the said circuit court, but such execution shall not be levied within the city. Judgments rendered by the municipal court may be docketed in the judgment docket kept in the recorder's office of any county, in like manner and with like effect as other judgments; and upon every judgment of the municipal court, the judgment creditor shall be entitled to all liens and remedies to secure or recover the same against any person whatsoever, to which he would be entitled if it were a judgment of the circuit court of Ohio county.

Office of alderman abolished.

32. The office of alderman of the city of Wheeling shall be abolished from and after the first day of July next. The dockets and papers of the said aldermen shall after that date be filed in the clerk's office of the said municipal court, and the said clerk may issue executions or other proper process to enforce any unsatisfied judgments theretofore rendered by any such alderman.

CHAP. 52.—An ACT to amend the Charter of the West Virginia Central Railway Company.

Passed February 24, 1865.

Be it enacted by the Legislature of West Virginia:

1. Sections eight, nine and twelve of the act passed March second, eighteen hundred and sixty-four, entitled "an act to incorporate the West Virginia Central Railway Company," are hereby amended and re-enacted so as to read as follows:

Sections 8, 9, and 12 re-enacted.

"8. The said company shall not be required to construct and equip that portion of said railway which lies north of the Baltimore and Ohio Railroad, until the state of Pennsylvania, or some company incorporated under the laws thereof, shall make provisions for the construction and equipment of a similar railway through the state of Pennsylvania connecting therewith, and enter, in good faith, upon the construction thereof; and as soon as a railway shall be commenced in the said state of Pennsylvania to connect with the railway authorized by this act, then the West Virginia Central Railway Company shall commence the construction of that portion of their railway lying between the Pennsylvania line and the Baltimore and Ohio Railroad, and thereafter proceed to complete and equip the said portion, so that the same shall be in operation for the transportation of passengers and freight from the Pennsylvania line to the Baltimore and Ohio Railroad, as soon as the railway in the state of Pennsylvania intended to connect therewith shall be in operation from the point of connection at the Pennsylvania line to some other railroad connecting therewith: Provided, that, if the West Virginia Central Railway Company, after it is organized under the provisions of this act, should ascertain by actual survey or otherwise, that the purposes of the company cannot be better attained by a change of the route as authorized by the second section of this act, and should determine to locate the route through the county of Preston, the said Central Railway shall intersect the Baltimore and Ohio Railroad at some point east of Grafton, in the county of Taylor or Preston.

Within what time the northern section of the road is to be put in operation.

If the route thro' Preston county be adopted, where the B. & O. R. R. may be crossed.

"9. It shall be lawful for the board of public works, at any time after the passage of this act, to subscribe on the part of the state to the capital stock of the West Virginia Central Railway Company, eight thousand shares; which shares shall be paid for in the transfer by said board, of all the work or works and improvements made by the state of Virginia on state account, on that portion of the Covington and Ohio Railroad from the town of Charleston, in the county of Kanawha, to the terminus of the line of the location of the said Covington and Ohio Railroad westward. The said eight thousand shares shall be held to be the minimum value of said works and improvements. And, if at any time after the organization of the West Virginia Central Railway Company, and before any additional work is done upon the said part of the Covington and Ohio Railroad so transferred, the board of public works should desire an actual estimate made of the value of said part of said Covington and Ohio Railroad, and such valuation cannot be

Subscription on behalf of the state.

agreed upon by the board of public works and the West Virginia Central Railway Company, two disinterested engineers shall be selected for the purpose of making such valuation, one of whom shall be selected by the board of public works and one by the West Virginia Central Railway Company; which engineers, in case of disagreement, shall choose an umpire, whose valuation and determination in the premises shall be final, unless good cause be shown against their award. And in the event that the said works and improvements shall, by agreement of the board of public works and West Virginia Central Railway Company, or by the award aforesaid, be valued at a greater sum than four hundred thousand dollars, the board of public works shall subscribe such greater sum to the capital stock of said West Virginia Central Railway Company, to be paid for by the transfer herein provided for.

Right reserved to amend the charter.

“12. The legislature reserves the right to alter or amend this act, but such alteration or amendment shall not affect or impair right of the creditors of the corporation to have the property and assets thereof applied in discharge of their respective claims, or of the stockholders to have the surplus which may remain, after providing for the debts and liabilities of the corporation, distributed among themselves according to their respective interests.”

CHAP. 53.—An ACT to allow Suits heretofore cognizable in Calhoun County to be brought in Kanawha County.

Passed February 21, 1865.

Be it enacted by the Legislature of West Virginia:

Authority for removal.

Any suit at law or in equity which, according to the one hundred and sixty-ninth chapter of the Code of Virginia, second edition, might be brought in Calhoun county, may hereafter be brought in Kanawha county; but nothing contained in this act, or the act to authorize suits to be brought in Ritchie county in cases theretofore cognizable in the courts of Calhoun county, passed August fifth, eighteen hundred and sixty three, shall be deemed to affect any provision of law for the limitation of suits.

CHAP. 54.—An ACT for the better Organization of State Guards.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia:

Authority of governor.

Number of companies.

1. The governor is hereby authorized to organize, arm and equip so many companies of state guards as he may deem necessary for the protection of the state against marauders. Each company shall consist of not less than twenty-five nor more than one hundred men, rank and file; and no one shall be enlisted into any company who is unable to perform efficient military duty.

2. Each company shall have one captain, two sergeants and four corporals; and if it exceed fifty men, rank and file, one lieutenant. Company officers
The officers of the said companies shall be appointed and commissioned by the governor, and shall be removed at his pleasure.

3. The said companies shall be enlisted for the term of one year, Term of enlistment.
unless sooner discharged; and the signing of the enlistment roll shall be deemed a muster into the military service of the state.

4. The state is hereby divided into three military divisions, as follows:

First, The "Western Division" to consist of that part of the state south of the Great Kanawha river and east of New river, and to include Monroe county. Military divisions of state.

Second, The "Eastern Division" to consist of that part of the state east of the Allegheny mountains.

Third, The "Middle Division" to consist of all the state not embraced in the western and eastern divisions.

5. Each of the divisions shall be under the command of a captain, Division commanders.
to be selected by the governor out of those in commission; and such captain, while so in command, shall be entitled to the rank of major. He shall, subject to the orders of the governor, have control of all the state guards within his division. He shall, whenever in his opinion, the public safety requires it, order the state guards within his division, or so many of them as he may deem necessary, into actual service, and may relieve them therefrom whenever he may deem it proper to do so: Their authority.
Provided, however, that the governor may order the said state guards, or any part thereof, into actual service, and relieve them therefrom, or disband them or any part of them, whenever, in his opinion, it may be proper to do so. Authority reserved to governor.
He may also, whenever he may deem it necessary, order the guards of the several divisions to the assistance of each other; and in such case shall designate the officer who shall command the whole.

6. Commandants of companies shall report on the last day of each month, as follows:

To the adjutant general of the state, through the captain commanding the division, a full and complete report of the condition of their respective companies, giving the number of men present for duty, number sick and number absent, with authority for such absence, the amount of ammunition on hand, with a full history of the marches, battles and skirmishes in which the company has been engaged, and the number of prisoners captured during the month. Reports of company commanders.

To the quartermaster general of the state, through the captain commanding the division, the kind and quantity of property captured from the enemy during the month.

7. The governor may require, in addition to the above, such other returns and reports from commandants of companies and divisions as he may deem proper. Further reports.

Discipline.

8. The officers and men herein provided for shall be subject to the articles and regulations for the government of the armies of the United States.

Captured property.

9. Property captured from the enemy by the several companies shall be turned over by the commandants thereof to the captain commanding the division, who shall dispose of the same for the benefit of the state, in such manner as the governor may direct.

Pay, clothing and rations.

10. The non-commissioned officers and privates of said companies, for the time they are in actual service, under the orders of the governor or of the captain commanding the division, as hereinbefore provided, shall have the same pay, clothing and rations as are allowed by law to persons of the same grade and arm in the military service of the United States. The pay of the officers of the said companies shall be as follows:

Pay of officers.

A captain, while in actual service, shall receive sixty dollars per month.

A lieutenant, while in actual service, shall receive fifty dollars per month.

The captain commanding the division, for the time he shall be so in command, shall receive an additional sum of twenty dollars per month. Each of the said companies shall be mustered for pay on the last day of every second month of their service, by the officer in command thereof. The pay-roll shall be made out as near as may be in the form prescribed in the army regulations of the United States, and shall be verified by the affidavit of the mustering officer. It shall be the duty of such mustering officer to make three fair copies of each pay-roll, one of which he shall transmit to the governor, another to the captain commanding the division, and the third shall be filed and preserved by him for future reference.

Pay-roll.

How money for payment drawn.

11. For the payment of officers and men called into service under the provisions of this act, the governor shall issue his warrant once in every two months for a sufficient sum for the purpose, drawn on the treasury of the state; which shall be paid by the treasurer out of any money in the treasury not otherwise appropriated.

12. The governor may make such order for the surgical and medical attendance of the said guards as he may deem necessary.

CHAP. 55.—An ACT concerning the Collection of Taxes in certain Counties.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia:

1. The governor, auditor and treasurer, or any two of them, are hereby authorized, by writing under their hands, to be recorded in the journal of the executive proceedings, to allow, or agree to allow to the sheriff or collector of any county, if they find it expedient and

proper to do so, a commission (in addition to that mentioned in the twenty-fourth section of the act passed December seventh, eighteen hundred and sixty-three, entitled "an act for the collection of taxes,") not to exceed ten per cent on the amount of state taxes with which such sheriff or collector is chargeable, and in addition thereto, two and a half per cent on such portion thereof as he shall punctually pay into the treasury of the state within the time required by law.

Additional commission to certain sheriffs and collectors.

2. The preceding section shall not apply to the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Monongalia, Marion, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood and Mason.

Excepted counties.

3. The provisions of the third section of the said act, requiring the sheriff or collector to give notice of the days fixed by him for receiving taxes, shall be applicable only to the counties named in the preceding section.

Notice of days of receipt of taxes.

4. The act passed February twelfth, eighteen hundred and sixty-four, entitled "an act further to provide for the collection of taxes," is hereby repealed.

Law repealed.

CHAP. 56.—An ACT to amend the Laws relating to Elections by the People.

Passed February 23, 1865.

Be it enacted by the Legislature of West Virginia :

1. No one shall vote at any election out of the township of which he is at the time a resident, except as hereinafter provided.

No one to vote out of his township.

2. If the vote of any person offering to vote at an election shall be challenged by any voter present, the supervisor and the inspectors of the election shall refuse to allow such person to vote until he shall produce to them an affidavit as follows :

Affidavit may be required of voter.

"Township of——, ——county, to wit :

"I, A. B., (name of affiant,) do solemnly swear that I have never voluntarily borne arms against the United States, the reorganized government of Virginia, or the State of West Virginia; that I have never voluntarily given aid, comfort or assistance to persons engaged in armed hostility against the United States, the reorganized government of Virginia, or the State of West Virginia; that I have not at any time sought, accepted, exercised, or attempted to exercise, any office or appointment whatever, under any authority or pretended authority, hostile or inimical to the United States, the reorganized government of Virginia, or the State of West Virginia; that I have not at any time yielded a voluntary support to any government, or pretended government, power or constitution within the United States, hostile or inimical thereto, or hostile or inimical to the reorganized government of Virginia, or the State of West Virginia: that I will support the constitution of the United States, and the constitution of the State of

Form of affidavit.

West Virginia; and that I take this oath freely, without any mental reservation or purpose of evasion."

How subscribed
and sworn to.

Such affidavit shall be subscribed by the party making the same, and may be sworn to before the supervisor or one of the inspectors of the election at which he offers to vote, or before any person authorized to administer oaths; and the taking of any such affidavit falsely shall be perjury, of which the party may be convicted in any court having jurisdiction of the offence. Every affidavit so taken as aforesaid, shall be delivered to the inspectors of the election and shall be by them returned to the office of the recorder of their county, whose duty it shall be to file and preserve the same in his office. But this section shall not apply to any person who has heretofore volunteered in the military service of the United States, and who has been or may hereafter be honorably discharged therefrom.

Persons excepted.

Absent voter
may send ballot
to clerk of super-
visors.

3. Any person entitled to vote, who is necessarily absent from his township on the day of an election, in the service of the United States or of this state, may at any time within thirty days preceding the election, enclose and transmit his ballot as provided for in section twenty-six of the act passed November thirteenth, eighteen hundred and sixty-three, entitled "an act to regulate elections by the people," or he may address the same to the clerk of the board of supervisors of the county of which he is a resident, by his name or official designation. If such ballot be addressed to the clerk of the board of supervisors, and be received by him in time, it shall be his duty to transmit or deliver the same to the supervisor or one of the inspectors of the township of which the voter is a resident, if an election be held in such township; but if from any cause an election cannot be held in such township, or if there be not time to transmit the ballot to such township, he shall deliver the ballot so received by him to the supervisor or one of the inspectors of the township in which said clerk shall reside, if an election be held therein, and if not, then of any township wherein an election shall be held in said county, on or before the day of the election; and if the inspectors, or, when they differ, the supervisor and one of the inspectors be satisfied that the signature on the outside of the envelope or cover is genuine, and the person whose signature it is, would, if present in the township in which he resides, be entitled to vote therein, they shall open the envelope or cover, and if the ballot found therein be single, shall deposit the same in the box in the manner required by said section; and such ballot shall have the same effect as if deposited in the township of which such voter is a resident: Provided, that nothing herein contained shall prevent any citizen residing in an unorganized county, who shall be entitled to vote therein, from voting in any township or election precinct within said county. Any expenses incurred by the clerk of the board of supervisors under the provisions of this section, shall be audited by the board of which he is clerk, and paid by the county treasurer.

Clerk to trans-
mit ballot to
township in
which it may be
cast.

Duty of super-
visor and inspec-
tors.

Voter in unor-
ganized county.

Expenses of
clerk.

СНАР. 57.—An ACT creating a Board for the Examination of certain Military Claims.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia :

1. The auditor, adjutant general, and quartermaster general of the state, are constituted a board of claims, to examine, adjust and audit such claims as in the opinion of said board shall be just and proper, not otherwise provided for, accruing to the citizens of this state, growing out of military service, of the following character :

Board constituted.

I. Claims for services rendered by the state troops since the nineteenth day of June, eighteen hundred and sixty-one.

What claims to be audited.

II. Claims for subsistence and supplies furnished the state troops when called into service.

III. Claims for necessary transportation of state troops, and for transportation of arms, supplies, &c., for their use.

IV. Claims for services rendered by officers organizing state troops under orders of the governor, and for necessary expenses incurred in publishing orders and notices, and for printing done upon the orders of such officers.

V. Claims for subsisting and equipping volunteer recruits, under the order or by the authority of the governor.

2. The said board shall have the power to require the attendance of witnesses, and to examine them under oath, which oath may be administered by any member of the board ; to require the production of any books and papers deemed necessary to properly adjust any claim ; and to decide upon all claims, fixing the amount from the evidence they may have before them, as shall seem just and equitable.

Powers of board.

3. Said board shall hold monthly meetings at the capitol building, of which due notice shall be given by publication in at least two newspapers published in this state, and shall make to the governor a report of their action at each meeting, certifying in triplicate to him all claims audited by them.

Meetings.

4. Duplicates of the claims thus certified to the governor, shall be filed in the office of the secretary of the state, with a view to having the amounts paid out, refunded by the general government.

Duplicates of claims to be filed

5. Said board is hereby authorized to employ a competent clerk whose duty it shall be to keep a full and correct record of all claims presented, make true abstracts thereof for the use of the board, execute all orders of the board, and receive as compensation, such sum as the board may fix, which compensation, together with the necessary expenses of the board, shall be paid in the same manner that the other claims are paid.

Clerk of board.

His duty and compensation.

6. The governor shall transmit to the next legislature, the report of the said board, in order that provision may be made for the payment of said claims.

Report to the legislature.

CHAP. 58.—An ACT concerning Delinquent Taxes levied for County purposes.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia :

Delinquent taxes for county purposes.

1. The sheriff or other collector, after ascertaining which of the taxes levied on real estate for county purposes cannot be collected, shall annually make out and return to the board of supervisors of the county, at its stated meeting in April, an alphabetical list thereof, which list shall designate the delinquencies of each township separately, and be in the following form :

“List of real estate in the county of ———, delinquent for the non-payment of county taxes due thereon for the year ———,

Name of person.	Residence.	Estate held.	Quantity of land.	Description and location of land.	Distance & bearing from court house.	Amount of taxes.	Why returned delinquent.

Form of list to be returned to supervisors.

Oath of sheriff.

And the sheriff or collector returning such list, shall, at the foot thereof, make and subscribe the following oath: “I, A. B., sheriff (or collector,) of the county of ———, do swear that the foregoing list is, I verily believe, correct and just, that I have used due diligence to find property within my bailiwick liable to distress for the said taxes, but have found none.”

Copy of list to be posted.

2. The sheriff or collector shall post a copy of said list at the front door of the court house of his county on a court day, or during the sitting of the board of supervisors next preceding or during the term or sitting at which the list may be presented to the board of supervisors.

Copy of list, when correct to be certified to recorder.

3. The said list shall be presented to the board of supervisors of the county, and examined by said board. The board having become satisfied of the correctness of said list, or having corrected the same if erroneous, shall direct its clerk to certify a copy thereof to the recorder. The original list shall be preserved by the clerk in his office. After the said copy is so certified, the sheriff or collector shall not receive any of the taxes mentioned therein, but said taxes with interest thereon at the rate of fifteen per centum per annum from the fifteenth day of December, in the year in which the same were levied, may be paid to the recorder of the county, who shall deliver to the person paying said taxes, a certificate of payment, for which he shall

Taxes thereafter to be paid to recorder.

pay to the recorder a fee of fifty cents; and the recorder shall pay the said taxes and interest to the treasurer of his county, at the times and in the manner he is required to pay taxes on deeds and the seal of his office, prescribed by the sixth section of the one hundred and seventh chapter of the acts of one thousand eight hundred and sixty-three. For a failure to pay over to the treasurer as aforesaid, the recorder shall be liable to the forfeiture mentioned in the seventh section of the said chapter.

Duty and fees of recorder.

4. If any officer shall return in such list, real estate as delinquent for the non-payment of taxes, when such taxes or any part thereof shall have been actually received by him, he shall forfeit, if the return was by design, ten times the amount of the taxes actually received, and if the return was by mistake, twice the amount. One-half of such forfeiture shall, in each case, be to the county, and the other half to the person charged with such taxes. And any such officer who shall return in such list any real estate as delinquent, when he had either found or might have found sufficient property within his bailiwick liable to distress for the taxes for which such real estate was returned delinquent, shall forfeit to the county a sum equal to five times the amount of the said taxes.

Penalty for false return.

Penalty for failure to distraint when possible.

5. The recorder shall enter in a well bound book, properly indexed, in suitable columns, the name of the owner of each tract, his residence if known, the estate held, the number of acres, the description and location thereof, the distance and bearing from the court house, the amount of taxes due thereon, the year for which the same were levied, and in a separate column he shall enter the amount paid to him for the redemption of each tract which may be redeemed, and the date of such redemption.

Further duties of recorder.

6. Such taxes, so entered, shall constitute a lien upon the lands chargeable therewith from the date of the levy thereof; and interest shall be computed thereon at the rate of fifteen per cent per annum from the fifteenth day of December in the year in which the taxes were levied until payment. The lien aforesaid shall have priority over all other liens, except the lien for taxes due the state, and shall be valid, although the delinquent taxes due the state shall have been paid to the auditor.

Such taxes to constitute a lien.

7. Whenever the title to any land so returned delinquent for the non-payment of county taxes, shall pass to another other than the state, by deed, devise, gift or descent, the person to whom the same shall pass, shall pay all liens thereon for taxes for county purposes, with interest as aforesaid, to the date of such payment; and if such lien be not discharged, the supervisors of the county, in their corporate name, may enforce such lien in the circuit court of their county against the person having title to such land.

Lien to be enforced against purchaser or heir.

8. Whenever there shall be a sale, in whole or in part, of a tract of land for delinquent taxes due the state, all delinquent taxes due the county on such tract, shall be paid to the recorder of the county; and

Purchaser at sale for state taxes to pay county taxes.

any purchaser, other than the state, shall produce to the court the certificate of the recorder that all liens for delinquent county taxes prior to such application are paid, before the court shall order the plat and certificate of such lands to be recorded.

Redemption of
land by payment
to purchaser.

9. The owner of any real estate sold for delinquent taxes due the state, upon which there are delinquent taxes due the county, his heirs or assigns, or any person having a right to charge such real estate with debt, may redeem the real estate from the lien of the delinquent taxes thereon due the county, by paying to the purchaser, his heirs or assigns, within two years from the sale thereof, the amount said purchaser, his heirs or assigns may have paid to the recorder, in discharge of any lien for county taxes, with interest thereon at the rate of ten per cent per annum, from the time that the same may have been so paid.

By payment to
recorder.

10. What is authorized to be paid by the preceding section, may be paid within the said two years, to the recorder of the county whose officer may have sold such real estate, in any case in which the purchaser, his heirs or assigns may refuse to receive the same, or may not reside or cannot be found in the county.

Same subject.

11. In all cases in which the former owner, his heirs or assigns, or any person having the right to charge such real estate with a debt, under and by virtue of the twenty-second and twenty-seventh sections of chapter thirty-seven of the code of Virginia, may redeem such real estate for delinquent taxes due the state, such owner, his heirs or assigns, or any person having the right under the twenty-seventh section of said chapter to charge said real estate with a debt, may redeem said real estate from the delinquent county taxes, by the payment thereof to the recorder of the county in which the same is situated, with ten per cent interest thereon from the fifteenth day of December in the year in which the same accrued, till payment.

CHAP. 69.—An ACT to amend the General Free School Law.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia :

1. The seventh, seventeenth, twenty-first, twenty-fifth, thirty-first, thirty-seventh, thirty-ninth, forty-second and forty-fourth sections of "an act providing for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three, shall be amended and re-enacted so as to read as follows :

"7. The board of education shall take the control and management of free schools within their district, in pursuance of which they shall be charged with the following powers and duties :

"First, they shall establish a sufficient number of free schools for the education and instruction of every individual resident within their district, between the ages of six and twenty-one years, and all persons

Powers and du-
ties of board of
education.

Establishment
of schools.

resident within the same, who have been honorably discharged from the military or naval service of the United States or of this state, who may apply for admission and instruction in person, or by parent, guardian or next friend, and such person so discharged, shall be entitled to attend such school for the term of five years. Second, they shall cause suitable lots of ground to be procured, and suitable buildings to be erected, purchased or rented for school houses, and shall supply them with the proper fuel, and with such furniture and fixtures as are necessary to the comfort, health, good order and progress of the pupils. Third, they shall have the appointment of all the teachers of the public schools within their district, shall fix the amount of teachers' salaries, and may dismiss them at any time for incompetency, cruelty, negligence or immorality. Fourth, they shall direct what branches of learning, in addition to those prescribed in the sixth section of this act, shall be taught in each school, and may suspend or expel from any school any pupil found guilty, on full examination and hearing, of refractory or incorrigibly bad conduct. Fifth, they shall visit all the schools of their district once within two weeks after the opening, and again within two weeks preceding the close of each school, and at such other periods during the term, as in their opinion the exigencies of each school may require; at which visits they shall examine the register of the teacher, and see that it is properly kept, and other matters touching the school house, furniture, fixtures, libraries, studies, discipline, mode of teaching and improvement of the school; shall confer with the teacher in regard to its condition and management, and make such suggestions as in their view would promote the interest and efficiency of the school, and the progress and good order of the pupils. The results of such visitation they shall cause to be entered on their minutes. Sixth, they shall pay all necessary expenses of the schools by drafts upon the township treasurer, or other proper disbursing officer of the funds raised within each district for school purposes, which drafts shall be signed by the clerk of the township as secretary of the board, and an account of the same shall be entered by him in a book to be kept for the purpose. Seventh, they shall annually, on or before the first day of September in each year, make a report to the county superintendent, setting forth the number of schools within their districts; the number and condition of their school houses; the number of scholars in attendance during the year, distinguishing between males and females; the average of daily attendance; the length of time the schools have been kept open during the year; the amount of tax levied and collected for school purposes within their district during the year; the number of teachers employed, distinguishing between male and female; the averages of each per month, including board; the amount expended for building, repairing and furnishing school houses; the amount and value of apparatus and libraries belonging to their district for the use of schools; and such other information as may be necessary and beneficial, in order to form a just estimate of the operation of the school system. Eighth, it shall be the duty of the board of education to make settlement with the township treasurer, at their regular ses-

Education of discharged soldiers.

School houses.

School teachers.

Branches taught

Expulsion of pupils.

Visits to schools.

Payment of expenses of schools.

Report to county superintendent.

Settlements with township treasurer.

sion in April annually; but if from want of time or for other reason a settlement cannot be made in that month, then it shall be the duty of the board to appoint a committee, composed of one or more of their members, to make such settlement as soon as practicable; and the result shall be reported to the clerk, and an abstract recorded in the records of the board.

Schools for colored children.

" 17. The township boards of education, in their respective townships, shall be and they are hereby authorized and required to establish within their respective jurisdictions, one or more separate schools for colored children, when the whole number by enumeration exceeds thirty, so as to afford them, as far as practicable, under all the circumstances, the advantages and privileges of a free school education; and all such schools so established, shall be under the management and control of the board of education; but in case the average attendance of colored children shall be less than fifteen for any one month, it shall be the duty of said board or other school officers, to discontinue said school or schools for any period not exceeding six months at any one time, and if the number of colored children shall be less than fifteen in attendance, or not exceeding thirty by enumeration, the directors shall reserve the money raised on the number of colored children, and the money so reserved shall be appropriated for the education of colored children, in such way as the township board shall think best.

Visits of county superintendent to schools.

" 21. It shall be the duty of the county superintendent to visit all the schools within his county, and to note the course and method of instruction, and the branches taught, and to give such directions in the art of teaching and the method thereof in each school, as to him shall seem necessary and expedient, so that uniformity in the course of studies and methods of instruction employed, shall be secured as far as practicable in the schools of the several grades respectively. He shall acquaint himself, so far as practicable, with the character and condition of each school, noting any deficiencies that may exist, either in the government of the school, the classification of its pupils, or the method of instruction employed in the several branches, and shall make such suggestions in private to the teachers as to him shall appear necessary to the good order of the school, and progress of the pupils. He shall note the character and condition of the school houses, the sufficiency or insufficiency of their furniture and fixtures; and shall make such suggestions to the several township boards of education as in his opinion shall seem conducive to the comfort and progress of the pupils of the several schools.

Compensation of county superintendent and commissioners.

" 25. It shall be the duty of the board of supervisors, to make such allowance out of the school fund, in payment for their services, to each county superintendent, not less than one hundred nor more than five hundred dollars, and to each school commissioner not more than one dollar per diem, while on duty, as justice and right may require.

Reports of state superintendent.

" 31. He shall annually, on or before the fifteenth day of March, report to the auditor the number of persons between the ages of six and twenty-one years, in each county in the state, also all township boards which have failed to make the enumeration required in the

sixth section of this act, and shall, at each session of the legislature, make a report to the same in regard to the condition of free schools within the state, embracing all statistics compiled from the reports of the county superintendents, which will be necessary to give a proper exhibition of the workings of the system, together with such plans as he may have matured for the management and improvement of the free school fund, and for the better and more perfect organization and efficiency of free schools, and likewise all such matters in relation to his office and to the free schools, as he may deem it expedient to communicate.

"37. There shall likewise be distributed, according to the second section of the tenth article of the constitution, and in the manner herein provided, the net proceeds of all fines, confiscations and forfeitures accruing to this state under the laws thereof, together with the proceeds of a capitation tax of one dollar on each white and colored male inhabitant over twenty-one years of age, and such sum as may be produced by a tax of ten cents upon the hundred dollars valuation of all taxable property of the state, at the last annual assessment; which tax shall be assessed and collected at the same time and in the same manner as other state taxes are assessed and collected. And the officer collecting such tax, shall be allowed a commission thereon at the same rate per cent as may be allowed by law for the collection of other state taxes; which taxes, when so collected, shall be paid into the treasury of the state, to be distributed annually with other school funds herein described, to the several counties of the state in proportion to their enumeration of scholars.

Distribution of proceeds of fines and taxes.

Commission of collector.

"39. It shall be the duty of the board of education of each township of the state, to submit to a meeting of the qualified voters of their township, at the regular annual township meeting, an estimate, as near as practicable, of the amount of money necessary for the purpose of prolonging the schools in the districts after the state funds have been exhausted, so that free schools shall be continued in every district for the term of six months at least, in every year; and said meeting shall have authority to assess the amount of tax to be levied for such purpose, not exceeding twenty-five cents upon the hundred dollars valuation as aforesaid. The minutes of the meeting shall be recorded and preserved in the record-book of the township board of education. And the rate per cent so decided upon, the board shall make known by certificate in writing within ten days, including any tax which may have been voted by a special meeting for the establishment of high schools, as provided in the tenth section, to the assessor, who shall levy the entire amount of such assessment on all the taxable property of the township, and make a return thereof to the county superintendent; and such taxes so levied for school purposes, shall be collected as the state taxes are collected. And the officer collecting the same, shall be allowed a commission thereon at the same rate per cent as may be allowed for the collection of said state taxes; and he shall make payment of said moneys to the treasurer of the township, as other school funds are paid.

Increase of township levies authorized.

Commission of collector.

"42. The township treasurer shall annually, between the fifteenth

Time of treasurer's settlement changed.

day of August and the first day of September, settle with the county superintendent, and account to him for all moneys received, from whom, and on what account, and the amount paid out for school purposes in his township. The county superintendent shall examine the vouchers for such payments, and if satisfied with the correctness thereof, shall certify the same, which certificate shall be a discharge of such treasurer; and at the expiration of his term of service, said treasurer shall deliver over to his successor in office all books and papers, with all money or other property in his hands belonging to said township or to schools therein; and also all orders he may have redeemed since his last annual settlement with the county superintendent, and take receipt therefor, which he shall deposit with the township clerk within ten days thereafter.

Delivery of books and papers to successor.

Increase of district tax authorized.

"44. It shall be the duty of the several township boards of education, as soon as practicable after their township has been sub-divided, as provided in the sixth section of this act, to provide school houses in such locations as will best accommodate the majority of the inhabitants of such sub-divisions, and to furnish them with such furniture and other appendages as are necessary to the comfort, health and progress of the pupils; and for this purpose they are hereby empowered to levy a tax not exceeding twenty cents on the hundred dollars, on taxable property of the district, which tax shall be assessed by the township clerk upon the basis of the last valuation for state purposes; and a duplicate of such assessment shall be delivered to such collector as may be appointed by the board, and when collected, shall be paid over to such treasurer as the board, under proper regulations, looking to the security of the fund, may appoint; and the amounts so collected and paid over, together with all gifts, grants, donations and devises, which may be made for such purpose, shall constitute a building fund, to be exclusively appropriated to the purchase of sites for school houses, the construction and furnishing of the same, or for the rent, hire or repair of such property for the use of the free schools of the district."

Building fund.

Text books.

2. The state superintendent of free schools may prescribe a series of class books to be used in the free schools throughout the state.

CHAP. 60.—An ACT in relation to Township Meetings and Elections.

Passed February 25, 1865.

Be it enacted by the Legislature of West Virginia:

Any township meeting specified in section four of the act passed September twenty-fifth, eighteen hundred and sixty-three, entitled "an act providing for and regulating township meetings and elections," may be hereafter held in townships entitled to elect one justice where ten voters are present, and in townships entitled to elect two justices where fifteen voters are present.

Number necessary for township meeting.

CHAP. 61.—An ACT more effectually to prevent the Sale or Use of Intoxicating Liquor contrary to Law.

Passed February 27, 1865.

Be it enacted by the Legislature of West Virginia :

Section ten of chapter two hundred and one of the code of Virginia, second edition, is hereby amended and re-enacted to read as follows:

“10. If any justice suspect any person of selling, by retail, wine or ardent spirits, or a mixture thereof, contrary to law; or of selling or offering or exposing for sale, any intoxicating liquor, or keeping open any distillery, bar, office, stall or room in his possession or under his control, at which such liquor had theretofore usually been sold, or permitting any person to drink any intoxicating liquor at the same, on the day of an election and within two miles of the place of such election, or during the night succeeding such day, contrary to the sixty-fourth section of the act passed November thirteenth, eighteen hundred and sixty-three, entitled “an act to regulate elections by the people,” such justice shall summon the person suspected of such offense, and such witnesses as he may think proper, to appear before him; and upon the person so suspected appearing or failing to appear, if the justice, on examining the witnesses under oath, find sufficient cause, he shall direct the prosecuting attorney for the county to institute a prosecution against the person so suspected, and shall recognize the material witnesses, or cause them to be summoned to appear at the next term of the circuit court of the county. Such justice may also require the person suspected to enter into recognizance to keep the peace and be of good behavior for a time not exceeding one year. If such recognizance be given by the person so suspected, the condition thereof shall be deemed to be broken if during the time for which it is given such person shall sell, by retail, wine or ardent spirits, or a mixture thereof, contrary to law, or violate, in any particular, the sixty-fourth section of the above mentioned act to regulate elections by the people.

Justice to summon person suspected of selling liquor contrary to law.

Prosecution of such person.

Recognizance.

How broken.

CHAP. 62.—An ACT for the relief of certain Militia of Upshur County.

Passed February 27, 1865.

Whereas, certain militia of Upshur county, in the year eighteen hundred and sixty-three, while in discharge of their duty in the service of the state, were captured by armed rebels, taken to Richmond and there imprisoned, and many of them have died during such imprisonment; therefore,

Preamble.

Be it enacted by the Legislature of West Virginia :

1. There is hereby appropriated, out of the treasury of the state, a sum of money sufficient to pay to each of the said militia, if living, or his personal representative, if he be dead, thirteen dollars per month during his imprisonment as aforesaid, or if he died during such imprisonment, then at that rate per month from the time of his capture until his death.

Appropriation.

How to be drawn

2. The money so appropriated shall be drawn only on the requisition of the governor, certifying that satisfactory evidence has been produced to him showing that the person in whose favor, or in favor of whose personal representative such requisition is made, was captured, as aforesaid, while in discharge of his duty in the service of the state.

CHAP. 68.—An ACT to amend and re-enact the First Section of the Act entitled "An Act to prescribe the manner in which Money may be paid into the Treasury of the State," passed July 16, 1863.

Passed February 27, 1865.

Be it enacted by the Legislature of West Virginia :

The first section of the act entitled "an act to prescribe the manner in which money may be paid into the treasury of the state," passed July sixteenth, eighteen hundred and sixty-three, is amended and re-enacted so as to read as follows :

Into what banks
money due the
state may be
paid.

"1. All money to be paid into the treasury of this state shall be paid into the Merchants' and Mechanics' Bank of Wheeling, at the city of Wheeling, or one of its branches at Point Pleasant, Clarksburg or Morgantown; or into the Northwestern Bank of Virginia, at Wheeling, or at one of its branches at Parkersburg or Wellsburg; or into the Exchange Bank of Virginia, at Weston; or into the Fairmont Bank, at Fairmont; or into any bank within this state that now is, or may hereafter be, organized and authorized by the comptroller of the currency to commence the business of banking under the act of the congress of the United States, approved June third, eighteen hundred and sixty-four, entitled "an act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," to the credit of "the treasury of West Virginia," and the person so paying the same shall take from the proper officer of such bank or branch, or banking association, a certificate of the fact. The treasurer, on the delivery to him of such certificate, shall retain and file the same, charging the amount therein specified to the proper bank or branch, or banking association, and delivering to the person who made the payment at the bank, duplicate receipts for the amount so paid, specifying on what account the same was paid. The person making the payment shall forthwith hand over one of the said receipts to the auditor, who shall retain and file the same, charging the amount to the treasurer's account and endorse on the other receipt, which is to be retained by the person making the payment, as follows: 'A duplicate hereof has been filed in the auditor's office,' and affix his signature and the proper date to such endorsement. And no receipt of the treasurer shall be an acquittance or discharge to any person for any sum of money due this state, unless endorsed by the auditor as aforesaid; and any person liable to pay money into the treasury, who shall pay the same otherwise than according to this act, shall remain liable for such money and be subject to the same fine, penalty, forfeiture or damages to which he would have been subject if he had not paid the same."

Duty of treasurer.

Duty of auditor.

Payment otherwise made invalid.

CHAP. 64.—An ACT further to provide for the discharge of the Duties of the Governor in certain Cases.

Passed February 27, 1865.

Be it enacted by the Legislature of West Virginia :

In case of the removal of the governor from office, or of his death, failure to qualify within the time prescribed by law, resignation, removal from the seat of government, or inability to discharge the duties of the office, the said office, with its compensation, duties and authority, shall devolve upon the president of the senate; and in case of his inability or failure from any cause to act, on the speaker of the house of delegates; and in case of his inability or failure from any cause to act, on the secretary of the state; and in case of his inability or failure from any cause to act, on the attorney general.

Officers to act as governor, designated.

CHAP. 65.—An ACT to amend the Charter of Elizabethtown, in the county of Marshall.

Passed February 23, 1865.

Be it enacted by the Legislature of West Virginia :

The charter of Elizabethtown, in the county of Marshall, is hereby amended so as to reduce the number of councilmen now required to be elected by the charter, from twelve members to the number of five.

Number of councilmen reduced.

CHAP. 66.—An ACT authorizing the Governor to purchase Breech-loading Rifles for the use of State Guards.

Passed February 23, 1865.

Be it enacted by the Legislature of West Virginia :

1. The sum of three thousand dollars is hereby appropriated for the purchase of breech-loading rifles, to be placed in the hands of state guards for the defence of the state.

Appropriation.

2. To carry out the provisions of the preceding section, the governor is authorized to issue his warrant, drawn upon the treasury of this state, for the sum hereby appropriated, and to be paid by the treasurer out of any money in the treasury not otherwise appropriated; which money shall be expended by the governor in the purchase of breech-loading rifles, which shall be distributed by him among the several companies of state guards, as, in his discretion, he may deem proper.

How to be drawn and expended.

CHAP. 67.—An ACT to make provision for the purchase of Iron Bedsteads for that part of the Jail of Ohio County now used as a Penitentiary.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia :

The sum of five hundred dollars is appropriated out of any money in the treasury, not otherwise appropriated, for the purpose of supplying iron bedsteads in the cells, to each convict now confined in the jail of Ohio county. Said money shall be expended under the direction of the governor.

Appropriation.

CHAP. 68.—An ACT increasing the Allowances for the Guard to the Jail of Ohio County.

Passed February 23, 1865.

Be it enacted by the Legislature of West Virginia :

1. The board of supervisors of Ohio county are authorized, whenever, in their opinion, it is necessary for the safe keeping of the state convicts confined in the jail of said county, to employ two efficient guards for the said jail, at a sum not exceeding two dollars per day each, the accounts for which shall be certified quarterly by the keeper of said jail to the governor, and, if approved by him, shall be paid from the state treasury.

Pay of guards limited.

Appropriation.

2. The sum of one thousand dollars is hereby appropriated out of any money in the treasury not otherwise appropriated, for the payment of said guards.

CHAP. 69.—An ACT defining the Terms on which Foreign Corporations may hold Real and Personal Estate in this State.

Passed February 23, 1865.

Be it enacted by the Legislature of West Virginia :

1. Any corporation duly chartered by the laws of any one of the United States or territories thereof, for the purpose of mining for petroleum or rock oil, for coal oil, for coal, iron or other minerals in said state or territory, may hold real and personal estate in this state, if its charter authorize it to do so, upon the same terms, in like quantity and on the same condition imposed upon corporations created by the laws of this state.

Authority granted.

Corporation to file copy of law under which it is formed.

2. Every such corporation desiring to hold real estate within this state, shall file in the office of the secretary of the state a duly certified copy of the law under which it is formed, which shall be preserved by the secretary. It shall cause to be recorded in the office of the secretary of the state, and in the office of the recorder of the county in which its real estate, or the greater portion thereof, is situated, whenever such county is organized, a duly certified copy of its charter, to be recorded by the secretary in the books in which certificates of incorporation issued under the laws of this state are recorded.

And copy of charter.

Appointment of attorney.

3. Every such foreign corporation shall by power of attorney, duly executed by it, appoint some person residing in this state its attorney, with authority to accept service of all lawful processes and notices against such corporation in this state, and if he refuse so to accept such process or notice, service may be made on such attorney, and such service shall be equivalent to service on his principal.

Power of attorney to be filed.

4. Such power of attorney shall all be filed in the office of the secretary of the state, and if such attorney dies or removes from this state, the said corporation shall appoint another attorney with like powers.

5. Every such foreign corporation which shall, after the first of July, eighteen hundred and sixty-five, operate in this State without such appointment of an attorney, or shall have failed to comply with the second section of this act, shall forfeit and pay not less than one hundred and not over three hundred dollars, to be recovered as other fines, and when so recovered, to be applied to the use of free schools. Penalty for violation of this act.

6. Every such power of attorney in this act mentioned, shall be recorded by the secretary of the state in the manner provided by the fifteenth section of the said act of the legislature of this State. Record of power of attorney.

7. The said foreign corporations shall be subject to the sixty-third section of the said act. Usury.

8. For any recording which may be done pursuant to this act, the secretary of the state and recorder may charge at the rate of ten cents per hundred words. Fee for recording

CHAP. 70.—An ACT making an Appropriation for the Soldiers' National Cemetery at Gettysburg, Pennsylvania.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia :

1. The sum of twenty-five hundred and twenty-three dollars and eighteen cents is hereby appropriated to aid in the erection of a monument and the permanent enclosure and adornment of the grounds of the Soldiers' National Cemetery at Gettysburg, Pennsylvania. Appropriation.

2. The amount hereby appropriated shall be subject to the order of the governor, and the whole or any part thereof may be paid by him, if required for the purposes named in the first section of this act, to the treasurer of the Soldiers' National Association at Gettysburg, Pennsylvania. How drawn.

CHAP. 71.—An ACT to relinquish to the Elk River Bridge Company the Stock in said Company belonging to the State.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia :

The interest or stock of this State in the Elk River Bridge Company is hereby relinquished to the said bridge company for the benefit of the stockholders thereof other than the state ; provided, that this act shall be of no effect until the said bridge company shall cause to be erected across the said river a bridge suitable for passengers and wagons: Provided, however, that if the state, by her legislature, shall at any time within one year from the passage of this act, or at any time before the said bridge company shall have completed a bridge upon the piers and abutments owned by them, appropriate on the part of the state an amount toward the erection of the said bridge, proportionate Stock relinquished when bridge built.

If appropriation made by state, stock to revert.

to her interest in the same, then the interest so relinquished shall revert to and become the property of the state as though this act had not been passed: Provided, further, that the state does not by this act relinquish her interest in any claim that she may have in common with the other stockholders in the bridge company against the government of the United States for the bridge destroyed by the army on the thirteenth day of September, eighteen hundred and sixty-two.

Reservation of
claim against
United States.

CHAP. 72.—An ACT to authorize the Council of the City of Wheeling to collect a Tax on Personal Property in said city.

Passed February 24, 1865.

Be it enacted by the Legislature of West Virginia:

1. The council of the city of Wheeling shall have authority, under such regulations as they may prescribe by ordinance, to assess, levy and collect an annual tax for the use of the city, on personal property in the city, not to exceed, in any year, fifty cents on every hundred dollars of the assessed valuation thereof; and the words "personal property" shall be deemed to include all subjects of taxation which the assessors acting under the laws of the state are or shall be by law required to enter on their personal property books for the purpose of state taxation.

Limit of taxa-
tion.

Law repealed.

2. The third section of the act of the general assembly of Virginia, passed March ninth, eighteen hundred and thirty-eight, entitled "an act to amend the act entitled 'an act to incorporate the city of Wheeling, in Ohio county,'" is hereby repealed.

CHAP. 73.—An ACT to empower certain Railroad Companies to purchase and hold Real Estate in the City of Parkersburg and Wood County.

Passed February 23, 1865.

Be it enacted by the Legislature of West Virginia:

The, Baltimore and Ohio Railroad Company, the North-western Virginia Railroad Company, and the Marietta and Cincinnati Railroad Company, or any of them, or any railroad company connecting with any of the above named companies, or which may become the purchaser or purchasers of the North-western Virginia Railroad, are empowered to purchase and hold the following real estate in the city of Parkersburg, viz: Lots numbered thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight and thirty-nine, on the plat of said city, being in quantity two and two-thirds acres of ground, bounded by Washington, Greene, Littleton and Avery streets, being the same formerly held by the North-western Virginia Railroad Company, known as the Central Depot, together with such other real estate in said city and in Wood county, not exceeding twenty acres in addition to the lands which such companies now have the right to acquire by law, as may be necessary for depot buildings, machine shops and other purposes appertaining to the business of railroad companies.

Real estate in
Parkersburg.

In Wood county.

CHAP. 74.—An ACT in relation to the Time of holding the Terms of the Circuit Court in the First Judicial Circuit.

Passed February 23, 1865.

Be it enacted by the Legislature of West Virginia :

1. The commencement of the terms of the circuit court in the county of Brooke, of the first judicial circuit, from and after the passage of this act, instead of being as heretofore prescribed by law, shall be as follows: On the second Tuesday of March, fourth Tuesday of June, September and November. Change of terms in Brooke.

2. Hereafter rules shall be held in the clerk's office of said court on the first Tuesday of every month. Rules.

3. The judge of said circuit may dispense with the summoning of grand jurors and the issuing of writs of *venire facias*, under the eighth section of the act passed November fourth, eighteen hundred and sixty-three, entitled "an act in relation to juries," at either one of the terms of the courts in the several counties of the first circuit. Juries.

CHAP. 75.—An ACT appropriating the Public Revenue for the Fiscal Year 1865.

Passed February 23, 1865.

Be it enacted by the Legislature of West Virginia :

All payments made by the treasurer of this state, in excess of appropriations authorized by law, to the first day of January, eighteen hundred and sixty-five, upon warrants legally issued by the auditor, are hereby legalized; and the surplus of all appropriations made prior to the first day of January, eighteen hundred and sixty-five, and all money in the treasury not appropriated prior to the first day of January, eighteen hundred and sixty-five; as well as all money that may have come or that may come into the treasury from the first day of January, eighteen hundred and sixty-five, to the first day of January, eighteen hundred and sixty-six, shall constitute a general fund and be appropriated as follows: General fund.

For expenses of the legislature for the session commencing on the seventeenth day of January, eighteen hundred and sixty-five, including pay of officers, printing and stationery, seventeen thousand dollars. Legislature.

For rent of the Linsley Institute from the first day of January, eighteen hundred and sixty-five to the first day of January, eighteen hundred and sixty-six, furniture, and repairs to the same and the premises, fifteen hundred dollars. Rent of Linsley Institute.

For salaries of the judges of the supreme court of appeals and of the circuit courts, thirty thousand dollars. Judges.

For salary of the clerk of the supreme court of appeals, one thousand dollars. Clerk of supreme court.

For salary of the reporter of the supreme court of appeals, nine hundred dollars. Reporter.

- Expenses of courts. For contingent expenses of courts, three thousand dollars.
- Criminal charges. For criminal charges, including convicts in jails and their removal, witnesses', jurors' and jailors' fees, twenty thousand dollars.
- Hospital for insane. For the West Virginia Hospital for the Insane, fourteen thousand dollars.
- Lunatics. For expenses of lunatics confined in jails, two thousand dollars.
- Salaries of executive officers. For salary of the governor, two thousand dollars; auditor, one thousand five hundred dollars; treasurer, one thousand four hundred dollars; secretary of the state, one thousand three hundred dollars, and attorney general, one thousand dollars.
- For salary of adjutant general, fifteen hundred dollars.
- For salary of the quartermaster general, thirteen hundred dollars.
- For the governor for rent of the executive mansion, seven hundred and fifty dollars.
- Contingent expenses of executive offices. For contingent expenses of the auditor's office, including stationery, books, printing, postage and fuel, two thousand dollars.
- For contingent expenses of the office of the secretary of the state, including necessary clerk hire, thirteen hundred dollars.
- For contingent expenses of the treasurer's office, one hundred and twenty-five dollars.
- For contingent expenses of the adjutant general's office, including all arrears, seven hundred and fifty dollars.
- For contingent expenses of the quartermaster general's office, including all arrears, two thousand five hundred dollars.
- Public printing. For public printing, six thousand dollars.
- Salaries of clerks. For salary of the clerk in the adjutant general's office, eight hundred dollars.
- For salary of clerks in auditor's office, one thousand dollars.
- For salary of clerk in treasurer's office, four hundred dollars.
- Vaccine agent. For salary of vaccine agent, one hundred dollars.
- Printing report on Code. For printing two hundred copies of the report of Daniel Lamb, by virtue of his contract with the joint committee of the legislature for revising, collating and digesting the "code of West Virginia," three thousand dollars.
- Janitor. For janitor and guard of executive offices, five hundred dollars.
- Civil contingent fund. On account of the civil contingent fund, seven thousand five hundred dollars.
- Militia claims. For militia claims allowed by regimental courts under act of March third, eighteen hundred and sixty-four, six thousand dollars.
- William Ewing. To William Ewing for printing blanks for the adjutant general of Virginia, twenty-three dollars.
- Benj. Rollins. To Benjamin Rollins, late jailor of Jackson county, one hundred and fifty-one dollars.
- Commissioner of immigration. And to the commissioner of immigration for expenses of printing and circulating documents, three hundred dollars.

CHAP. 76.—An ACT to Regulate the Salaries of the Quarter Master General and Adjutant General of this State.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia :

1. So much of the fourth section of chapter twenty-one of the acts of eighteen hundred and sixty-three, entitled "an act for the appointment of a quartermaster general, and prescribing in part his duties," as relates to the salary of quartermaster general, and when the same is payable, is hereby amended and re-enacted so as to read as follows: "And said quartermaster general shall receive for his services the sum of thirteen hundred dollars per annum, payable quarterly as other salaries are paid." And so much of the first section of chapter eighty of the acts aforesaid entitled "an act fixing the compensation of certain officers and clerks," as relates to the salary of the adjutant general, is hereby amended and re-enacted so as to read as follows: "The adjutant general shall be paid the annual salary of fifteen hundred dollars."

Salary of quartermaster general fixed.

Salary of adjutant general fixed.

2. This act shall be in force from the fourth day of March, eighteen hundred and sixty-five. Commencement.

CHAP. 77.—An ACT Prescribing how Taxes on Lands in certain counties may be paid into the Treasury.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia :

1. In counties where collectors of the public revenue cannot be employed, any person may pay into the treasury the taxes on his land in the same manner as is provided for payment by non-residents of a county in the third section of chapter thirty-six of the Code of Virginia, second edition.

In cases where collector cannot be employed.

2. Where there has been no collector in any such county since the year eighteen hundred and sixty, or for any one or more years since, upon payment of the taxes for any such year, the auditor shall give a certificate of the payment so made, and shall transmit a list of the taxes so paid to the sheriff or collector of such county when appointed or elected.

Duty of auditor in such cases.

CHAP. 78.—An ACT to Facilitate the Organization of National Banking Associations.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia :

1. The Exchange Bank of Virginia, at Weston, may subscribe for not exceeding fifty thousand dollars of the capital stock of any national banking association which may be organized in Lewis county.

Exchange Bank of Va. may subscribe to national bank.

How directors of bank may take stock in national bank.

2. The directors of any other bank or branch in this state, if authorized by written consent of the stockholders owning two-thirds of the stock, (and in making up the said two-thirds, the stock standing in the name of the state, the literary fund, and internal improvement fund, shall be counted as consenting thereto,) may subscribe for and take stock, to such extent as they may deem expedient and proper in any national banking association which may be organized within the county in which such bank or branch is located.

CHAP. 79.—An ACT to prevent the Prosecution of Suits and the suing out of Process by persons engaged in Rebellion.

Passed February 23, 1865.

Be it enacted by the Legislature of West Virginia :

Oath of defendant that plaintiff has aided rebellion.

1. If the defendant, or one of the defendants, his agent or attorney, in any action or suit now pending, or which may hereafter be brought in any court, or before any justice, make oath that he has good cause to believe, and does believe, that the person for whose use or benefit the action or suit is prosecuted, is aiding or abetting, or has theretofore at any time, aided or abetted the so-called Confederate States of America, or the rebel state government at Richmond, in any hostile action against the United States or this state, the court or justice, if such defendant so require, shall make an order directing the attorney for the plaintiff (or if there be more than one attorney for the plaintiff, such one or more of them as to the court or justice may seem proper,) to disclose upon oath, within such reasonable time to be designated in the said order, as the court or justice may appoint, for whose use or benefit the said action or suit is prosecuted, and shall dismiss the said action or suit, if such order be not complied with, unless good cause be shown why it was not. And the court or justice shall further make an order, if the said defendant so require, dismissing the action or suit, unless the person for whose use or benefit the same is prosecuted, within such reasonable time (not less than thirty days,) to be designated in such order, as the court or justice may appoint, take the affidavits prescribed by the act passed February eleventh, eighteen hundred and sixty-five, entitled "an act to amend and re-enact sections twenty-three, twenty-seven and twenty-eight of chapter one hundred and fifty-one, and section thirteen of chapter one hundred and seventy of the Code of Virginia," and file the same in the papers of the cause. But if the action or suit be prosecuted for the use or benefit of a corporation, married woman, infant, insane person, personal representative of a deceased person, or commissioner of an enemy of the state, no order dismissing the same shall be made; and if it be brought for the use and benefit of a resident of another state, or a territory of the United States, or of the District of Columbia, that part of the said oath requiring the person who takes it to support the constitution of this state, shall be omitted. The affidavit of such party, or of any attorney for the plaintiff, shall be received

Disclosure required of plaintiff's attorney.

Affidavit required of plaintiff.

Persons excepted from act.

as *prima facie* evidence that the person for whose use or benefit the action or suit is prosecuted, is entitled to the benefit of this section.

2. When such action or suit is prosecuted for the use or benefit of two or more persons, as partners or otherwise, (of which fact the affidavit of either of them, or of any attorney for the plaintiff, shall be *prima facie* evidence,) and one of such persons shall take the oath prescribed by the act of November sixteenth, eighteen hundred and sixty-three, or the said oath as modified by the preceding section, and file proper certificate or evidence thereof, as aforesaid, such action or suit shall not be dismissed.

Oath of one of several plaintiffs sufficient.

3. Any oath mentioned in or required by this act, may be taken in this state before any person authorized to administer oaths; and out of the state before the judge or clerk of any court of record, or any notary public, justice, alderman, mayor or recorder. A certificate thereof under the hand of the officer taking the same, shall be sufficient, and his statement or certificate therein contained, as to his own official character, shall be received as *prima facie* evidence thereof.

How oath may be taken.

4. If any person shall hereafter sue out any execution, writ of *scire facias*, or supersedeas, upon or to any judgment, decree or order, heretofore or hereafter rendered or made, without having taken the oath required by the first section of this act, it shall be the duty of the court in which such execution or writ is sued out, upon the filing of an affidavit of the defendant in such execution or writ, or of any other person, that the person or persons suing out such execution or writ, has or have been guilty of any of the acts mentioned in the first section, to quash or dismiss such execution or writ, unless the person suing out and prosecuting the same, shall take and file the oath required by said section. But this section is subject to the qualifications contained in the first and second sections of this act.

Duty of court if oath not taken.

CHAP. 80.—An ACT to amend and re-enact the Charter of the Town of Fairmont, in the County of Marion.

Passed February 28, 1865.

Be it enacted by the Legislature of West Virginia:

The charter of the town of Fairmont, in the county of Marion, is hereby amended and re-enacted so as to read as follows:

1. The corporate limits and boundaries of the town of Fairmont shall be as follows: Beginning at the mouth of Coal Run, thence up said run, north fifty-six and a quarter degrees west, thirty-five poles; north eighty-eight degrees west, thirty-five poles; north thirty-one and a half degrees west, up the eastern branch of said run, thirty-three poles, to a point near bridge across said branch of said run; north eighteen and two-thirds degrees east, sixteen poles; north twelve and a half degrees west, twenty-four and a half poles; north twenty-three and a quarter degrees west, crossing Maryland and Ohio river turn-

Corporate boundaries.

pike, eighteen poles, to stone near red oak ; thence leaving said run north seventy-eight degrees east, eighty-eight poles, to post ; south sixty-seven degrees east, twenty-five poles, to post on said Maryland and Ohio river turnpike ; north eighty-seven degrees east, twenty and a quarter poles, to stone, corner of lot formerly owned by Oliver Jackson ; thence south fifteen degrees east, eighty-eight poles, to stone on Monongahela river ; thence up said river, with its meanderings to the beginning.

Municipal authorities.

2. The municipal authorities of said town shall be a mayor, recorder, and five councilmen, who, together, shall form a common council.

Corporation.

3. The mayor, recorder and councilmen, so soon as they have been elected and qualified as hereinafter provided, shall be a body politic and corporate, by the name of "The Town of Fairmont;" and shall have perpetual succession and a common seal ; and by that name may sue and be sued, implead and be impleaded ; may purchase and hold real estate necessary to enable them the better to discharge their duties, and needful for the good order, government and welfare of said town.

Powers of council.

4. All the corporate powers of said corporation shall be exercised by the said council, or under their authority, except where otherwise provided.

Officers appointed by council.

5. There shall be a town sergeant, a treasurer and commissioner of the revenue, appointed by the council, to continue in office at its pleasure, and perform the duties respectively as hereinafter prescribed, or as may be required by the council.

Same subject.

6. The duties of the office of recorder, treasurer and commissioner of the revenue may be discharged by the same person, or otherwise, as the council may from time to time determine.

How officers elected.

7. The mayor, recorder and councilmen shall be elected by the citizens of the said town who may be entitled to vote under this act, and (except when elected to fill vacancies,) for the term of one year, and until their successors shall have been elected and qualified, and shall be freeholders and residents in said town and entitled to vote for members of its common council.

When election to be held.

8. The first election under this act shall be held on the third Saturday in March, eighteen hundred and sixty-five, at the court house in said town under the supervision of a justice of Fairmont township; and annually thereafter there shall be an election on the same day in each year, at such place and under such supervision, rules and regulations as the council of said town may prescribe. The person conducting the first election shall grant certificates to the person elected, which shall be entered upon the records with the ordinances of said council, and their term of office shall commence on the first day of April next after their election.

Certificates of election.

9. All persons resident in said town and entitled to vote for county and township officers, shall be entitled to vote for mayor, recorder and councilmen. Qualification of voter.

10. When a vacancy shall occur from any cause in the office of mayor, recorder, or in council, the vacancy shall be filled by appointment by the council. Vacancies, how filled.

11. At all elections the vote shall be by ballot, and when two or more persons for the same office at any election shall receive an equal number of votes, the person or persons conducting such an election shall decide which of said persons shall be returned elected. And all contested elections shall be heard and determined by the council for the time being. Elections.

12. The mayor, recorder, councilmen, sergeant, treasurer and commissioner of the revenue shall each, before entering upon the duties of his office, and within ten days after being furnished with a certificate of his election, take and subscribe the oath of loyalty prescribed for county and township officers, and that they will truly, faithfully and impartially discharge the duties of their said offices, respectively, to the best of their abilities so long as they continue therein. The recorder shall take such oath or affirmation before a justice or other officer authorized to administer oaths, and thereupon he shall administer the oaths aforesaid to the other officers and councilmen. Certificates of the said oaths or affirmations shall be recorded in the journal of the proceedings of the council. Oaths of officers.

13. When any four of the newly elected councilmen shall have been so qualified, they shall enter upon their said offices and supersede the former councilmen. When new council to act.

14. If any one elected mayor, recorder or councilman shall not have been eligible, or shall fail or refuse to take the oath or affirmation required under this act, within the ten days aforesaid, such office shall be declared vacant, and the vacancy filled as hereinbefore prescribed, but in all cases from among the citizens of the town eligible to such office or position under this act. Vacancies.

15. The council shall be presided over at its meetings by the mayor, or, in his absence, by one of the councilmen selected by a majority of the council present, and a majority of the council shall be necessary to constitute a quorum to do business. Council.

16. The council shall cause to be kept in a journal, an accurate record of all its proceedings, by-laws, acts and orders, which shall be fully indexed and opened to the inspection of the voters of the town. Its journal.

17. The proceedings of the last meeting shall be read to the council, corrected where necessary, and signed by the person presiding for the time being. Upon the call of any member, the ayes and noes on any question shall be called and recorded in the journal. The mayor, though voting as a member of the council in cases of a tie, shall have the casting vote. Its Proceedings.

Its powers.

18. The council so constituted shall have power within said town to lay off, open, curb and pave streets, alleys, walks and gutters for the public use, and to alter, improve and fight the same, and have them kept in good order and free from obstructions on or over them; to regulate the width of side-walks and streets, and to order the side-walks, foot-ways and gutters to be curbed, paved and kept in good order, free and clean, by the owners or occupants of the adjacent property; to lay off public grounds and provide, contract for and take care of public buildings proper to the town; to prevent injury or annoyance to the public or individuals from any thing dangerous, offensive or unwholesome; to abate or cause to be abated any thing which, in the opinion of a majority of the whole council, shall be a nuisance; to regulate the keeping of gun-powder and other combustibles; to provide for the burial of the dead; and for this purpose may purchase and hold the necessary land for a cemetery, near or convenient to said town, and provide for its improvement and security; to provide for the regular building of houses and other structures in or for said town; for the making of division fences, and to provide for shade and ornamental trees, and against danger or damage from fires or contagious diseases; to provide a revenue for the town and appropriate the same, and to provide the annual assessment of taxable persons and property of the town; to adopt rules for the transaction of business and the government regulations of its own body; to promote the general welfare of the town, and protect the property and preserve peace and good order therein; to keep a town guard; appoint and order out a patrol for the town when deemed necessary; to appoint such officers as they may deem proper, including a sergeant, commissioner of the revenue and treasurer; to define their powers, prescribe their duties, fix their term of service and compensation, require and take from them bonds, with such sureties and in such penalty as the council may determine, conditioned for the true and faithful discharge of their duties, and remove them at pleasure, (all bonds to be made payable to the town by its corporate name); to erect or authorize, or prohibit the erection, of gas works or water works, in or near the town; to prevent injuries to or pollution of the same, for all which purposes named in this clause, except that of taxation, the council shall have jurisdiction for one mile beyond the borough; to regulate and provide for weighing and measuring of hay, coal and other articles sold or for sale in said town, and to regulate the transportation thereof through the streets, and generally to do such things as the council shall deem necessary for the interests, prosperity, peace and good order of the citizens of said town; Provided, that the streets and alleys shall not be extended east of Quincy street without the consent of the owners of the lands through which the streets and alleys are sought to be extended.

Its ordinances.

19. To carry into effect these enumerated powers and all others conferred upon the said town or its council, expressly or by implication, in this or any other acts of the legislature, the council shall have power to adopt and enforce all needful orders, by-laws and ordinances not contrary to the constitution and laws of this State, and to pre-

scribe, impose and enforce reasonable fines and penalties, including imprisonment for a term not exceeding thirty days, under the judgment and order of the mayor of the said town, or the person lawfully exercising his functions. The council, with the consent of the supervisors of Marion county, entered of record, may have the right to use the jail of said county for any purpose necessary in the administration of its affairs.

20. The annual levy ordered by the council may be upon all male persons within said town over sixteen years of age, dogs, hogs and other animals, and on all real estate within said town which is not exempt from state taxation, and all such other subjects in said town as may at the time be assessed with state taxes, provided the tax do not exceed one dollar on every one hundred dollars of value of unimproved lots, and seventy-five cents on every one hundred dollars of the value of real and personal property, or two dollars per head on each taxable person.

Town levy.

21. When anything for which a state license is required is to be done within the said town, the council may require a town license to be had for doing the same, and may impose a tax thereon for the use of the town, and the council may, in any case, require from the person so licensed a bond, with sureties, in such penalty and with such conditions as it may determine.

Town licenses.

22. The sergeant shall collect the town taxes, fines, levies and licenses, and after thirty days from the time he may receive the books of the commissioner of the revenue of said town, may distrain and sell therefor in like manner as a sheriff may for state taxes, and shall in all respects have the same powers as a sheriff to enforce the payment and collection thereof, and shall, within the corporate limits of the town, exercise all the duties that a constable can legally exercise in regard to the collection of claims, executing and levying process, and shall be entitled to the same compensation therefor, and he and his securities shall be liable to all the fines, penalties and forfeitures that a constable is legally held liable to for any failure or dereliction in said office, to be recovered in the same manner and before the same tribunals that the same are now recovered against constables.

Duties and powers of sergeant.

His compensation.

23. There shall be a lien on real estate for the town taxes assessed thereon from the commencement of the year for which they are assessed, and the council may order and require the same to be sold or rented by the sergeant at public auction for the arrears, with interest thereon, with such per centum as the council may prescribe for charges and expenses thereof, and may regulate the terms upon and time within which the same may be redeemed. No such sale or renting shall be ordered until such realty shall be returned delinquent, and the sale shall be after twenty days notice, posted at the court-house door and the post-office in said town.

Unpaid taxes to constitute lien.

24. The council may prohibit any theatrical or other performance, show or exhibition it may deem injurious to the morals or good order of the town.

Council may prohibit show.

Duty and powers
of mayor.

25. The mayor shall be the chief executive officer of the town, shall take care that the by-laws, ordinances and orders of the council are faithfully executed, shall be ex-officio a conservator and justice of the peace in the town, and shall within the same, exercise all the powers and duties vested in justices, except that he shall have no jurisdiction in civil causes; shall have control of the police of the town, and may appoint special police officers; shall see that peace and good order are preserved, and that the persons and property are protected in the town; shall have power to issue execution for all fines and costs imposed by him, or may require the immediate payment thereof, and in default of such payment, may commit the party in default to the jail of the county until the fine and costs be paid, but the term of imprisonment in such case shall not exceed thirty days. He shall from time to time recommend to the council such measures as he may deem needful for the welfare of the town, and shall receive a compensation for his services to be fixed by the council, which shall not be increased or diminished for the term for which he was elected.

His compensa-
tion.

Duty and com-
pensation of re-
corder.

26. The recorder shall keep a journal of the proceedings of the council, and have charge of and preserve the records of the town, and shall receive a compensation for his services to be fixed by the council, which shall not be increased or diminished for the term for which he was elected.

Treasurer.

27. All moneys belonging to said town, shall be paid over to the treasurer, who shall pay out the same upon the order of the mayor, countersigned by the recorder, and not otherwise, and for any default or liability upon the part of the treasurer or sergeant, the council, in the corporate name of said town, may on motion, after ten days' notice, obtain judgment before the circuit court of said county, on account thereof against them and their securities respectively, or any or either of them, or their heirs or legal representatives.

Town exempt
from road expen-
ses.

28. The said town, and taxable persons and property therein, shall be exempt from all expense or liability for the construction or repair of roads or bridges outside the corporate limits of said town.

Previous rights
of town confirm-
ed.

29. All rights, privileges and properties of the said town heretofore acquired and possessed, owned and enjoyed by any act now in force, shall continue and remain vested in said town in this act, and all laws, ordinances, acts, resolutions, rights and liabilities existing and now in force not inconsistent with this act, shall continue in full force and effect until regularly repealed or cancelled by a council elected as provided under this act.

CHAP. 81.—An ACT in relation to the Statutes of Limitation.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

Period excluded
from computa-
tion.

In computing the time within which any civil suit, proceeding or appeal shall be barred by any statute of limitations, the period from

the seventeenth day of April, eighteen hundred and sixty-one to the date of the passage of this act, shall be excluded from such computation.

CHAP. 82.—An ACT making an Appropriation to the West Virginia Hospital for the Insane.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

The sum of five thousand dollars is hereby appropriated for the purpose of placing a temporary roof of boards over that portion of the building of the West Virginia Hospital for the Insane which is now unfinished, and which has the lower tier of joists and window frames in place, and otherwise to protect the building from waste and damage, and to extend and enlarge the heating apparatus now in use.

\$5,000 appropriated.

CHAP. 83.—An ACT allowing further time for the Collection of the Taxes of 1861 and 1862, in the county of Randolph.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

Jesse F. Phares, the sheriff of Randolph county, is allowed until the thirty-first day of December, eighteen hundred and sixty-five, to collect and pay into the treasury of the state, all taxes and licenses assessed in said county, and remaining unpaid, for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two; and he is authorized to distrain for the same for the time aforesaid; and upon the payment of the whole of the aforesaid taxes and licenses into the treasury on or before the thirty-first of December, eighteen hundred and sixty-five, the auditor is authorized to pay to said Phares, a commission not exceeding twenty per cent upon any amount he may collect of said taxes and licenses and pay into the treasury as aforesaid.

Time for collection extended.

Commission of sheriff.

CHAP. 84.—An ACT in relation to a Judge for the Tenth Circuit.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

1. The governor may appoint and commission a judge for the tenth circuit, to fill the vacancy now existing in that circuit; such temporary appointment to expire when the person elected at the next October election to fill such vacancy, shall be duly qualified to act.

Vacancy to be temporarily filled by governor.

2. An election shall be held in said circuit at the next October election, to fill said vacancy.

Election to fill vacancy.

CHAP. 85.—AN ACT to authorize Suits and Proceedings which might, under existing laws, be brought in either of the counties of Clay or Nicholas, to be brought and prosecuted in the county of Kanawha.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia :

Transfer author-
ized.

1. Any action at law, suit in equity, or other judicial proceeding, which, under the laws now in force, might be commenced and prosecuted in either of the counties of Clay or Nicholas, may be hereafter brought and prosecuted in the county of Kanawha, with the same force and effect, and to the same extent, as if commenced and prosecuted in either of the said counties of Clay or Nicholas.

Regulation re-
specting process.

2. All process in such suits and proceedings, including attachments, shall be issued by the clerk of the circuit court of Kanawha county, and directed to the sheriff or any constable of either of the counties of Kanawha, Clay or Nicholas, and shall be levied, served and returned by such sheriff or constable, or any private person, in the same manner and with like effect, as if directed to and served by the sheriff or any constable, or person of the county in which the same is to be levied or served.

Re-transfer.

3. Whenever the circuit court of the said county of Kanawha shall be of opinion, and so enter of record, that the courts in either of the said counties of Clay or Nicholas can be held therein with safety, the operation of this act as to such county shall cease. And all suits and proceedings then pending in said county of Kanawha, commenced under the provisions of this act, shall, for good cause shown, be transferred to, and tried and determined in the circuit court of the county wherein the same should have been brought, except for the provisions of this act.

Jury costs.

4. No jury shall be called or impaneled in any action or suit brought in the county of Kanawha under the provisions of this act, until the plaintiff shall deposit six dollars to pay jury expenses; which sum shall be paid by said clerk to the treasurer of said county.

CHAP. 86.—AN ACT to render more available the Timber, Coal, Ore and Mineral Lands in this State.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia :

Petition for right
of way.

1. A person owning lands having timber upon them, or containing coal, ore or other minerals, and desiring to obtain a subterranean or surface right of way by railroad or otherwise, through or over a railroad, turnpike, or canal, or state or county road, or land belonging to another, for the purpose of mining for and conveying such minerals or timber to market, or otherwise making use of the same; or desiring to obtain land on or near a railroad, navigable stream, or public road for a place of deposit and shipment of such timber or minerals;

Or for land for
place of deposit.

or desiring both of the said privileges, may petition the circuit court of the county in which the railroad, turnpike, or canal, or state or county road to be crossed over or under, or land proposed to be taken for such right of way, or some part thereof, is situated, or in which the land proposed to be taken for such place of deposit and shipment, or some part thereof is situated, for a writ of *ad quod damnum*, setting forth in his petition the matters which seem to him to show the necessity or propriety of granting the same, and the public and private benefit anticipated to accrue therefrom.

2. Of such petition, ten days' previous notice shall be given in the manner prescribed in the seventh section of the fifty-sixth chapter of the Code of Virginia, second edition, to each tenant, or the guardian or committee of the tenant of the freehold of any lands not owned by the petitioner which would be affected thereby; or if in case of a railroad, turnpike or canal, to some agent of the same, or if in case of a state road, to the board of public works, or if in case of a county road, to the board of supervisors of the county.

Notice of petition.

3. If the court, on hearing the petitioner and other parties interested, deem it proper to issue the writ, such writ shall be directed to the sheriff of the county, commanding him to summon and impanel a jury of twelve discreet men, not interested in the matter nor related to any of the parties, to meet on or in view of the railroad, turnpike, or canal, or state or county road, or land proposed to be taken, on a certain day to be specified in the writ. But if the writ be not executed on the day so specified, it may be executed on such day as the sheriff may from time to time appoint, at least ten days' notice thereof being given to the parties; and if the inquest, being commenced, cannot be completed in one day, the jury shall stand adjourned from day to day till it is completed.

Writ of *ad quod damnum*.

When to be executed.

4. The jury duly sworn by the sheriff, shall inquire and say whether, if the land proposed to be taken for the purposes specified in the petition, the mansion house of any person, or the outhouses, yard, garden or orchards belonging thereto, or any mill, warehouse, store or shop, will be taken or materially injured, with any other facts deemed pertinent by themselves. They shall also designate by proper boundaries or description, what land not belonging to the petitioner, should in their opinion, be set apart and taken for the purposes aforesaid, not more than fifty feet in width, for the said right of way, nor more than one acre of land for such place of deposit and shipment; and shall say what would be a just compensation therefor to the several owners thereof.

Duty of jury.

5. When the inquest is completed, it shall be signed by each juror and delivered to the sheriff to be returned with the writ.

Inquest.

6. If by such inquest it appear that any person to whom notice was not given, will sustain damage if the land be taken, notice shall be given to him in the manner specified in the second section of this act, to show cause why the petition should not be granted.

Notice to person interested.

Duty of court after inquest.

7. If by the inquest or other evidence, it appear to the court that by taking any land for the purpose aforesaid, the mansion house of any person, or the outhouses, yard, garden or orchards belonging thereto, or any mill, warehouse, store or shop, will be materially injured, no order shall be made allowing such land to be taken. But if it shall not so appear, the court shall then grant or refuse such order, as may seem to it proper; and if it be granted, may impose such conditions and terms on the petitioner as to it may seem right. The court may set aside the inquest and issue a new writ, if there appear good cause for so doing.

Nothing except right of way granted.

8. The provisions of this act shall not be so construed as to give any party or parties any other right in the proposed railroad, turnpike, or canal, or state or county road to be crossed, or land to be condemned under this act, except the right of crossing the same; and in all cases where the right shall be granted the applicant to cross any such railroad, turnpike, or canal, or state or county road, or land, the applicant shall be required so to arrange said crossings as not to interrupt the free use or navigation of any such canal or railroad.

Arrangement of crossings.

CHAP. 87.—An ACT to Incorporate the Monongahela and Lewisburg Railroad Company.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia:

Names of corporators.

1. James Evans, William Lazier, Henry Dering, D. H. Chadwick, B. F. Smith, G. M. Hagans, William Wagner, William A. Hanway, Samuel Sares, S. S. Yeager, Alfred Yeager, Amos Courtney, E. C. Bunker, W. T. Willey, James T. McClaskey, Henry Potter, Andrew J. Stone, James J. Burns, Joseph W. Cromwell, George W. Martin, Felix S. Martin, Jacob Morgan, Oliver Jackson, Benjamin D. Fleming, Luther Haymond, John Irwin, Thomas S. Spates, James P. Bartlett, Benjamin F. Shuttlesworth, Waldo P. Goff, Adam Bumgardner, F. Robinson, Ira Hart, John Maxwell, A. W. Martin, F. Berlin, Levi Leonard, P. F. Pinnell, Andrew Poundstone, Thos. G. Farnsworth, J. D. Rapp, Valentine Strader, Richard Fretwell, Thomas J. Farnsworth, O. B. Loudin, E. G. Burr, Isaac A. Morgan, C. S. Haynes, George Clark, George W. Burner, William Hyre and Benjamin C. Rapp, and their associates, successors and assigns, and all who shall become stockholders, when ten thousand shares of the capital stock shall have been subscribed as hereinafter provided, are hereby made a body politic and corporate, by the name, style and title of the Monongahela and Lewisburg Railroad Company: Provided, said subscription shall be made in good faith within four years after the passage of this act.

Style of company
Proviso.

Route prescribed

2. The said company is hereby authorized to construct a railroad from some point on the Pennsylvania and West Virginia State line in the county of Monongalia, to be designated by said company, by the way of Morgantown, in the aforesaid county, Fairmont or Palatine, in the county of Marion, Clarksburg, in the county of Harrison, Buck-

hannon, in the county of Upshur, to the Covington and Ohio railroad near Lewisburg, in the county of Greenbrier, and to provide everything necessary for convenient transportation on the same.

3. The capital stock of said company shall be five millions of dollars, divided into shares of fifty dollars each; and books may be opened by the said incorporators, or any three of them, to receive subscriptions to the said capital stock, within two years after the passage of this act, at such places as said incorporators, or any three of them, may designate. Capital stock.

4. The said books shall be opened and the subscriptions received in the manner provided in the Code of Virginia, second edition, prescribing general regulations for the incorporation of railroad companies. The said company shall be subject to all the provisions and liabilities, and entitled to all the benefits of the aforesaid code, especially such as are specified in chapters fifty-six, fifty-seven, and sixty-one thereof, and of all other general laws now in force relating to railway companies, except so far as the provisions of this act are or may become inconsistent therewith. How subscriptions to be received.
Company subjected to provisions of code.

5. If the capital stock of said company shall be insufficient for the purposes of this act, the said company shall have power, and are hereby authorized to increase the same by addition of as many shares as may be deemed necessary; and said company shall have power to borrow money, to accept and receive donations in lands, money or other thing, from the Congress of the United States, or from other sources, for the purpose of carrying on the object of this act, and to pledge the property of the company for the payment of the same, and the interest that may accrue thereon; and the said company shall be required to commence the construction of their said railroad within five years from the passage of this act, and shall finish one-fourth thereof within ten years from the time of commencement. Increase of capital stock.
Powers of company.
Commencement and progress of work.

6. The president and directors of said company, or a majority of them, shall be and are hereby authorized to make and execute bonds or certificates of indebtedness, under the seal of the said company, for such sum or sums, and payable at such time or times, as to the said president and directors may seem proper: Provided, that nothing herein contained shall be taken to authorize the said company to issue anything in the nature of a bank note or other paper to be used for circulation as a currency. Authority to issue bonds.

7. So much and such parts of the Code of Virginia hereinbefore recited, or of any other act or acts as may be inconsistent with any of the provisions of this act, shall be held not to apply to the company hereby incorporated, so far as the same may affect the charter granted by this act. Code of Virginia construed.

8. The legislature reserves the right to alter or amend this act; but such alteration or amendment shall not affect or impair the right of the creditors of the corporation to have the property and assets thereof Alteration of charter.

applied in discharge of their respective claims, or of the stockholders to have the surplus which may remain after providing for the debts and liabilities of the corporation, distributed among themselves according to their respective interests.

CHAP. 88.—An ACT for the Protection and Safety of Passengers on Railroads.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia :

Duty of railroad companies.

1. It is made the imperative duty of each and every railroad company in this state to keep all the doors of their passenger cars, in which passengers are carried, unlocked while the train or cars are in motion ; and for each and every offense in violation of this act, the company shall be subject to a fine not exceeding one hundred dollars, recoverable before the circuit court or any justice in the county in which the offense may be committed.

Penalty for failure therein.

Agents and conductors criminally responsible

2. The agent or agents, conductor or conductors, having charge of trains or passenger cars shall be held criminally responsible for any violation of this act, and shall in the commission thereof be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding one thousand dollars and be imprisoned for a period not exceeding one year.

CHAP. 89.—An ACT to prevent Recruiting in this State by unauthorized Persons, in or for Military Organizations of other States.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia :

Certain recruiting forbidden.

1. It shall be unlawful for any person or persons to enlist or recruit, or attempt to enlist or recruit in the state of West Virginia, men in or for any military organizations of any other state ; or for any person or persons in this state to offer any bounty, premium, or fee of any kind, to induce residents of this state to go into any other state to enlist or be accepted as substitutes, or in any way to induce or attempt to induce emigration from the state for any such purpose : Provided, that the provisions of this act shall not apply to any person or persons authorized to recruit for such military organization by the secretary of war or the governor of this state.

Proviso.

Penalty.

2. Any person found guilty of violating any of the provisions of this act, shall forfeit and pay for every such offence a fine of not less than three hundred dollars nor more than one thousand dollars, which shall go to the school fund ; and shall be imprisoned in the jail of the proper county not less than thirty days nor more than one year, and in case he fails to pay the fine and costs assessed before or at the expiration of the term of his imprisonment as aforesaid, his imprisonment shall continue until such fine and costs shall be paid.

CHAP. 90.—An ACT legalizing the Record of certain deeds and other Writings.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia :

All deeds and other writing admitted to record under chapter one hundred and twenty-one of the code of Virginia, by the clerks of the late county courts thereof, within this state, from the commencement of the last terms of said courts to the date of the qualification of the recorders of said counties, are hereby declared to be as legal and valid as if the provisions of the tenth section of said chapter had been complied with by the said clerks.

What writings
legalized.

CHAP. 91.—An ACT making Appropriations for the Payment of a Clerk for the Board created for the examination of certain Military Claims, and for Expenses of taking Testimony in the case of John W. Kennedy.

Passed March 1, 1865.

Be it enacted by the Legislature of West Virginia :

The sum of two hundred and fifty dollars is hereby appropriated for the payment of a clerk provided for by an act passed February twenty-fifth, eighteen hundred and sixty-five, entitled "an act creating a board for the examination of certain military claims." And fifteen dollars are hereby appropriated to James P. Rogers, a notary public of the city of Wheeling, for taking testimony in the case of John W. Kennedy, under direction of the joint committee.

Clerk of board.
James P. Rogers.

CHAP. 92.—An ACT to provide for the Sale of certain Lands for the Benefit of the School Fund.

Passed March 2, 1865.

Be it enacted by the Legislature of West Virginia :

1. The assessors for all the counties in this state which are now organized shall, within four months from the passage of this act, and the assessors for all the counties not now organized, shall within the same period from the time assessors may be elected and qualified for such unorganized counties, furnish to the recorders of their respective counties, any lists or copies thereof which may come to their possession, of all real estate purchased by any sheriff or collector, on behalf of the commonwealth of Virginia in the year eighteen hundred and sixty, for taxes due thereon. It shall be the duty of all recorders to whom such lists or copies thereof may be delivered, or into whose possession they may otherwise come, to secure and carefully file and preserve the same in their offices. Every recorder shall, within sixty days from the time such list or copy thereof comes into his possession, make out a copy thereof, properly certified by such recorder, and when so made and certified, shall be sent by him to the auditor. Said

Duty of assessors.
Duty of recorders.

Duty of auditor. recorder shall receive the same compensation that he receives for similar services in other cases. The auditor shall receive all such copies which appear to be properly certified, and file and preserve the same in his office.

Redemption of certain lands. 2. All lands in this state heretofore vested in the state of Virginia by forfeiture, or by purchase at the sheriffs' sales for delinquent taxes and not released or exonerated by the laws thereof, or by the operation of the seventh section of the ninth article of the constitution of this state, may be redeemed by the former owners, by payment into the treasury of this state, upon the certificate of the auditor of the amount of taxes and damages due thereon at the time of such redemption, on or before the twentieth day of June, eighteen hundred and sixty-eight.

Lands not redeemed, to be sold. 2. All waste and unappropriated lands within this state, and all lands in this state heretofore vested in the state of Virginia by forfeiture or by purchase at the sheriffs' sales for delinquent taxes, not released and exonerated, or redeemed in the manner prescribed in the second section of this act, shall be sold for the benefit of the school fund, in the manner hereinafter directed.

Appointment and duty of commissioner of school lands. 4. It shall be the duty of the circuit courts of this state, from time to time, to appoint for each county of their circuits, a commissioner or commissioners, to be styled the commissioner of school lands, whose duty it shall be to ascertain and report to said courts the quantity of lands in his county subject to sale according to the preceding section, designating particularly the number of tracts and the quantity contained in each tract, and also the local situation, and the probable value of each tract, together with all the information which he may be enabled to procure in relation to the state of the title to such lands.

Sale of lands. 5. Upon the return of said commissioner, it shall be the duty of the said courts, by orders entered of record, to direct the said commissioner to make sale of said lands in the same manner in all respects, as in the case of other lands directed to be sold under decrees of said courts: Provided, that no such sale shall be made elsewhere than at the court house of the county in which the land directed to be sold is situated, on some court day for such county, nor unless public notice of the time and place of sale shall have been published in some newspaper nearest the place of sale, and posted at the door of the said court house, and at least four of the most public places in said county, for thirty days next preceding said sale. The said courts are also empowered and authorized, in all cases, to direct such surveys and divisions of said lands, as may be deemed necessary and expedient to promote the advantageous sales of said lands, the expenses of which surveys shall be reported to the courts aforesaid, and be paid out of the proceeds of the sales of said lands. But in no case shall the state be subjected to any expense by reason of said surveys beyond the proceeds of the sale of said lands, and no survey of any such lands

Place and notice of sale.

Surveys of such lands.

shall be executed unless the surveyor will consent to receive his compensation for his services in making said surveys entirely out of the proceeds of said lands.

6. All sales made by virtue of this act, shall be made by the commissioner appointed as aforesaid under the orders of the said courts, in the manner and on the terms herein mentioned. He shall require one-fourth of the purchase money in hand, and require bond with good security for the payment of the residue thereof, in twelve months from the date of said sale, with interest from such date; and he shall moreover, reserve the title to said lands by way of further security for the payment of the deferred instalment. The said commissioner shall return a report of the sales made by him to the auditor, and also to the court from which he received his appointment, designating particularly the local situation of each tract, the name of the purchaser, and the price at which it was sold, and also the costs of sale; and the bonds taken for the deferred instalments of the purchase money shall be returned by the commissioner to the court by which he may have been appointed, and shall have the force of judgments, and in case of the failure of the obligors to pay the amount thereof to the commissioners when they shall become due, it shall be the duty of the commissioner to employ a competent and reliable attorney to move, having first given the obligors ten days' notice of such motion, for an award of execution on said bonds, for which service he shall be allowed the same fees as on other motions of a like kind, which shall, together with the other necessary costs and commissions attending the collection of said bonds, be taxed and included in said executions. The said commissioner shall also pay into his court all moneys collected or received by him by virtue of any such sales, and the said court shall then make an order allowing him such commissions, not exceeding ten per cent, and other reasonable expenses attending the survey and sale of said lands, as in its judgment may seem proper, and direct the residue thereof to be paid into the state treasury for the benefit of the school fund.

Manner and terms of sale.

Report of sale.

Effect of bonds for purchase money.

Compensation of commissioner.

7. It shall be the duty of the prosecuting attorney in each county, to appear and represent the interests of the state in all matters pertaining to the sales and other proceedings directed by this act.

Prosecuting attorney.

8. No commissioner under this act shall enter upon the discharge of the duties of his office, until he shall have taken an oath in open court to execute the duties faithfully and impartially, and also shall have given bond in a reasonable sum, payable to the state of West Virginia, in open court, with at least two good securities, conditioned that he will faithfully and honestly account for and pay over all money, bonds and other securities according to the order of said courts, and do and perform all other duties of his said office according to the provisions of this act.

Oath and bond of commissioner.

9. Whenever any purchaser of any lands at any sale made under the provisions of this act, shall have paid the whole amount of pur-

Conveyance to purchaser.

chase money by him stipulated to be paid therefor, it shall be the duty of the court by whose order the said sale was made, to direct the said commissioner to convey to the said purchaser by deed with warranty, all the interest of the state in said lands.

Title by possession confirmed.

10. No lands shall be sold under the provisions of this act, when the same shall have been in the actual possession of any person claiming title thereto for the space of ten years continuously before the same may be reported to court for sale, if such person in the possession thereof has paid all taxes charged, or properly chargeable thereon, and the title of the state in and to any such lands shall be deemed to be transferred to and vested in such occupant.

Conveyance to purchaser in 1860.

11. Any person who may have purchased any real estate at a sale thereof made in the year eighteen hundred and sixty, for the taxes due thereon, and who has failed to obtain a deed therefor, either by reason of the loss of the receipt of the sheriff for the purchase money, or by the failure of the sheriff to give such receipt, may file his petition in the circuit court of the county in which such real estate, or any part thereof may be, setting forth the person in whose name such real estate was sold, the quantity and description thereof, the amount of tax for which it was sold, and the amount due thereon at the filing of such petition; and the reasons why he had not obtained such deed. If the court shall be satisfied of the truth of the facts stated in said petition, it shall order a deed to be made to such purchaser for said real estate, in the manner prescribed by chapter thirty-seven of the code of Virginia, upon the payment to the sheriff of all taxes due thereon.

CHAP. 93.—AN ACT to provide Free Schools for the City of Wheeling.

Passed March 2, 1865.

Be it enacted by the Legislature of West Virginia :

School district.
Board of education.

1. The city of Wheeling and parts of townships connected therewith shall constitute but one school district; and the board of education thereof shall consist of three commissioners from each of the townships of the district, elected by the qualified voters thereof in conformity with the provisions of the second section of "an act for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three. The official term of all commissioners elected under this act shall commence on the first day of July next succeeding the time of their election.

Rights and powers of board.

2. The board of education for the school district of Wheeling shall be invested with the same rights, and shall exercise the same powers and perform the same duties as appertain to the boards of education of the several townships by the "act providing for the establishment of a system of free schools," passed December tenth, eighteen hundred and sixty-three, except so far as shall be otherwise provided in this act. The said board shall, at their first meeting, elect one of their number clerk, who shall perform all the duties which are devolved by the last mentioned act upon clerks of townships as secretaries of boards

Clerk of board.

of education, but shall not in consequence of being clerk be deprived of his right to vote upon any question pending before the board. Wherever the word "township" occurs in the act above mentioned, it shall be construed to mean "school district" whenever necessary to give effect to the provisions of this act. The treasurer of Ohio county shall be treasurer of all the funds for school purposes belonging to the school district of Wheeling, and he shall conform to all the requirements made of township treasurers in regard to funds for school purposes. Said board of education may hold stated meetings at such times as they may appoint, ten members of said board at all meetings thereof constituting a quorum for business; and special meetings thereof may be called by their president or at the request of ten members, by the clerk, on giving one day's notice of the time and place of the same.

Treasurer of district funds.

Meetings of board.

3. The board of education of the school district of Wheeling shall have power to establish in said district an adequate number of primary schools, in which the rudiments of education shall be taught; and they shall have power to divide the said district into three sub-districts, and to establish in each of said sub-districts a grammar school, to be so located as best to accommodate the inhabitants thereof, in which shall be taught such of the common branches of education, and to such extent as the said board shall prescribe; and said board may also have power to establish a central high school, in which shall be taught algebra, geometry, natural philosophy, chemistry, philosophy, with such other branches of mathematics, or natural sciences or literature as the board may determine, including such as may be necessary for the admission of pupils to the colleges of this or neighboring states.

Primary schools.

Grammar schools.

High school.

4. Admission to the various schools in this system shall be gratuitous to all white children, wards and apprentices of actual residents in said district, between the ages of six and twenty-one years, and the board of education shall have power to admit to said schools other pupils not under the age of six years upon such terms or upon the payment of such tuition as they may prescribe, provided that no pupil shall be admitted to the grammar schools who fails to sustain a thorough examination in the studies of the primary schools, and no pupil shall be admitted to the high school who fails to sustain a thorough examination in the various studies of the grammar schools; and provided further, that the said board shall have power to make and enforce rules for the exclusion of children when their attendance would be dangerous to the health or detrimental to the morals or discipline of the school.

Admission to the various schools.

5. Said board shall have power to make all necessary rules and regulations for the government of said schools; for the admission of pupils therein, and for the examination that pupils must pass preparatory to admission into the schools of higher grade than the primary; to purchase all necessary stationery, text books and books of reference for the use of teachers and indigent children, and to incur all other ex-

Powers of board of education.

penses necessary to make the system efficient for the purposes for which it is established, and to pay the same from the school funds of said district.

- District superintendent.** 6. The board of education of said school district shall, annually, at their first meeting in July, or at the same meeting adjourned, elect and fix the salary of the superintendent of schools of the district of Wheeling, whose duty it shall be to perform, in and for the school district of Wheeling, all the duties which in the general school law of the state are devolved on county superintendents, so far as they are not inconsistent with or superceded by the provisions of this act; also such other appropriate duties as agent of the board as said board may devolve upon him; but the said board shall have power to appoint a committee, which shall include said superintendent, and whose duty it shall be to examine teachers and grant certificates in accordance with the provisions of the thirty-fifth section of the general school law.
- His duty.**
- Committee of examination.**
- General school law not effect district.** 7. The provisions of the general school law, in regard to county superintendents, shall be held applicable in Ohio county only to the schools of those townships not included in the school district of Wheeling.
- Duty of state superintendent and auditor.** 8. The state superintendent, in his report to the auditor, shall specify separately the results of enumerations of youth in the school district of Wheeling, and in the remainder of the county. And the auditor in apportioning money for school purposes shall apportion to the school district of Wheeling and the rest of the county separately, according to their respective numbers of youth as shown in the list furnished him by the state superintendent.
- Township levies.** 9. At the annual meeting of any of the townships included within the said school district, the qualified voters present on levying taxes for school purposes, as provided in the thirty-ninth section of the general school law, passed December tenth, eighteen hundred and sixty-three, may, by a majority vote, appropriate the avails of such taxes to be expended within their respective townships for any of the following purposes, to wit:
- For night schools.** For the establishment and maintenance of night schools for the benefit of such youth of their townships as are not able to attend the day schools.
- For extra branches of study.** For providing instruction in the free schools of their township in the German language, linear and perspective drawing, vocal music or other studies not included in the regular course of study prescribed by the board, but approved of by said board, and to be under the supervision and management of the superintendent of the schools.
- For furniture, &c.** For extra furniture or apparatus for scientific illustration or gymnastic purposes; for libraries, books of reference, maps or charts for the use of said schools; for introducing superior methods of ventilation or furnishing bells for the school houses.
- For works of art.** For pictures, busts or other works of art for the adornment of the school rooms.

For the embellishment of the school grounds with shade trees, shrubbery, &c. For embellishing grounds.

10. It shall be the duty of the board of education to determine at their annual meeting in the month of July, as near as practicable, the amount of money necessary, in addition to all other available funds, to continue the schools of the district for a term not less than nine school months, and they shall cause such amount to be assessed on all the taxable property of the district, not exceeding forty cents upon the one hundred dollars valuation thereof, and the same shall be levied and collected by the same officers and in the same manner as county levies are made and collected, and shall be paid over to the treasurer of Ohio county under the conditions prescribed in the fortieth and forty-first sections of the general school law as modified in this act. The collecting officer for collecting and paying over the taxes to be assessed by said board of education, shall be entitled to receive a commission of three per cent upon the amount collected, and no more. Assessment and collection of school taxes.
Commission of collector.

11. All parcels of land within the school district of Wheeling which have been heretofore conveyed to the school commissioners of the city of Wheeling, or the school commissioners of Ohio county, as sites for public schools, and all real and personal property held by either of said boards of school commissioners for school purposes, within said district shall be deemed to be vested in the board of education of the school district of Wheeling. Certain property vested in board.

12. The present clerk of school commissioners of the city of Wheeling shall, on or before the first day of July of the present year, examine the accounts of moneys received and expended by the present and the late sheriffs of Ohio county for school purposes, comparing them with the appropriations which have from time to time been made by said commissioners, and also with the vouchers which may be exhibited by said sheriffs, and shall certify the amount of any balances which may be found due to the schools within said district to the superintendent of schools of said district, as soon as he shall have been elected. And the said sheriffs are hereby authorized and required to pay over such amounts to the treasurer of Ohio county, on the order of said superintendent, said order to be issued on the same conditions as are prescribed in the general school law for the payment of school funds to township treasurers. Duty of present clerk of school commissioners.
Duty of sheriff of Ohio county.

CHAP. 94.—An ACT making an Appropriation for the Board of Public Works.

* Passed March 2, 1865.

Be it enacted by the Legislature of West Virginia :

The sum of one hundred dollars is hereby appropriated for the contingent expenses of the board of public works. \$100 appropriated

CHAP. 95.—An ACT in relation to the Coal River Navigation Company.

Passed March 2, 1865.

Preamble.

Whereas, The locks and dams of "The Coal River Navigation Company," situate in the counties of Kanawha and Boone, have been to a great extent destroyed and rendered worthless, and the company completely disorganized: And whereas, the public interest imperatively demands that said company should be speedily reorganized, in order to prevent the said locks and dams from being totally destroyed, therefore,

Be it enacted by the Legislature of West Virginia :

Duty of board of public works.

1. The board of public works are hereby authorized and required to take such steps for the speedy reorganization of the said Coal River Navigation company, as in their opinion will be most conducive to that end, in order that the works of said company may be protected from total destruction.

Sale authorized.

2. In case the said board cannot otherwise procure the reorganization of said company, they are hereby authorized to sell at public auction the interest of this state in said company: Provided, that before said sale shall be confirmed, the purchaser or purchasers shall engage in sufficient bonds (to be approved by said board of public works,) that the state of West Virginia shall not be held liable for any bonds or evidences of indebtedness heretofore issued by said Coal River Navigation Company, or by the state of Virginia for the use of said company.

Proviso.

JOINT RESOLUTIONS.

[No. 1.] In reference to printing the Governor's Message.

Resolved by the Legislature of West Virginia: That five thousand copies of the governor's message be printed for the use of the two houses.

ADOPTED, January 17, 1865.

[No. 2.] Referring the Documents accompanying the Governor's Message.

Resolved by the Legislature of West Virginia: That the documents accompanying the governor's message be referred to a joint committee of five, three to be appointed for the House and two for the Senate, to report what portions of the said documents, and what number of each, should be printed for the use of the two houses.

ADOPTED, January 17, 1865.

[No. 3.] Fixing a time for Electing a Senator of the United States.

Resolved by the Legislature of West Virginia: That the two houses proceed on Tuesday, the thirty-first instant, at eleven o'clock, A. M., to the election of a Senator of the United States, to fill the vacancy that will occur on the fourth of March next, by the expiration of the term of Hon. W. T. Willey.

ADOPTED, January 20, 1865.

[No. 4.] Designating certain Documents to be Printed.

Resolved by the Legislature of West Virginia: 1. That there be printed for the use of the two houses, one thousand copies each of the following documents communicated by the governor with his message, viz:

Report of the treasurer, with the statements accompanying the same.

Report of the commissioner of immigration.

Report of the adjutant general on military claims, without the vouchers or papers accompanying the same.

Reports and letters relating to the Soldiers' National Cemetery.

Letters relating to land scrip for agricultural college.

Correspondence relating to the Bank of Virginia, at Charleston, Kanawha county.

Report of the state superintendent of free schools, with papers accompanying the same.

Report of the superintendent of the penitentiary.

Report of the quartermaster general, and accompanying papers.

The annual report of the adjutant general, with the accompanying papers.

2. That of the thousand copies to be printed as above of the annual report of the adjutant general and accompanying papers, two hundred and fifty be half bound, to be distributed, one copy to each member of the legislature, and the remainder as the governor may direct.

ADOPTED, January 20, 1865.

[No. 5.] Appointing a day for Instituting Proceedings for the Removal of John W. Kennedy, Judge of the Tenth Judicial Circuit.

Resolved by the Legislature of West Virginia: That notice be given to John W. Kennedy, judge of the tenth judicial circuit, that the Senate and House of Delegates will, on Thursday, the sixteenth day of February next, proceed to consider, and thereafter to determine the question of his removal from office, pursuant to the thirteenth section of the sixth article of the constitution, and that the following causes are alleged for such removal, that is to say:—

I. Disloyalty.

In this, that on or about the first day of May, eighteen hundred and sixty-one, the said John W. Kennedy rode through the streets of Harper's Ferry, in the county of Jefferson, waving his hand, and made use of the following language: "Huzza! Old Abe Lincoln has run away from Washington City—Huzza!"

Further, that on or about the first day of April, eighteen hundred and sixty-four, the said John W. Kennedy, by virtue of his office as judge of the tenth judicial circuit, did appoint a rebel named Daniel Sheets, sheriff of Jefferson county; and that on or about the first day of October, eighteen hundred and sixty-four, the said John W. Kennedy was at Harper's Ferry, in Jefferson county, attending a convention, endeavoring to get said Sheets the nomination for sheriff of said county.

Further, that on or about the first day of April, eighteen hundred and sixty-four, said John W. Kennedy appointed a rebel named Thomas Hollis, sheriff of Berkeley county. Said Thomas Hollis had been a volunteer in the rebel army, and held a position in the rebel quartermaster's department. Said Thomas Hollis has been notoriously disloyal since the war commenced.

Further, that on or about the twentieth day of September, eighteen hundred and sixty-three, the said John W. Kennedy, then holding a commission as judge of the tenth judicial circuit, said, at the McLure House, in the city of Wheeling, West Virginia, whilst speaking of the restored government of Virginia, that the restored government of Virginia was an usurpation, and that the government of West Virginia was a bogus concern.

II. Non-residence in the tenth judicial circuit.

In this, that the said John W. Kennedy has been for a long time a non-resident of the tenth judicial circuit, but has been for the last three months a resident of the city of Baltimore, State of Maryland.

ADOPTED, January 21, 1865.

[No. 6.] Directing the printing of the Auditor's Report.

Resolved by the Legislature of West Virginia: That the public printer be directed to print, for the use of the two houses, one thousand copies of the auditor's report transmitted by the governor on the twentieth of January, eighteen hundred and sixty-five.

ADOPTED, January 21, 1865.

[No. 7.] Appointing a Time for the Election of State Superintendent of Free Schools.

Resolved by the Legislature of West Virginia: That the two branches will proceed on Thursday, the second day of February next, at the hour of eleven o'clock, A. M., to elect a state superintendent of free schools, to fill the vacancy which will occur on the third day of March next, by the expiration of the term of Prof. W. R. White, the incumbent.

ADOPTED, January 23, 1865.

[No. 8.] Instructing the Members of Congress from this State to vote for the Constitutional Amendment for abolishing Slavery.

Resolved by the Legislature of West Virginia: That our senators in congress be instructed, and our representatives requested, to cast their votes in favor of the proposed amendment to the constitution of the United States for the abolishment of slavery.

ADOPTED, January 23, 1865.

[No. 9.] Appointing a Time for opening and counting Election Returns.

Resolved by the Legislature of West Virginia: That Tuesday next, the twenty-fourth instant, at eleven o'clock, A. M., be appointed for opening the returns of the late election for governor, secretary of the state, auditor and treasurer, and ascertaining and declaring the result pursuant to the fifth section of the fifth article of the constitution, and the thirty-sixth section of the act to regulate elections by the people.

ADOPTED, January 23, 1865.

[No. 10.] Raising a Joint Committee to consider the subject of immediately abolishing Slavery in this State.

Resolved by the Legislature of West Virginia: That a special committee of five on the part of the house, and three on the part of the senate, be appointed to inquire into the expediency and constitutionality of providing for the immediate abolishment of slavery in this state, and that they report by bill or otherwise.

ADOPTED, January 23, 1865.

[No. 11.] Directing the Auditor to furnish certain Information to the State Superintendent of Free Schools.

Resolved by the Legislaturo of West Virginia: That the auditor report immediately to the state superintendent of free schools the amount of the capitation tax of eighteen hundred and sixty-one, eighteen hundred and sixty-two, eighteen hundred and sixty-three, and the amount to which each county is now entitled.

ADOPTED, January 27, 1865.

[No. 12.] Directing the Governor to present Flags to certain Regiments of this State.

Resolved by the Legislature of West Virginia: 1. The governor is hereby authorized to present to the First Veteran Regiment of Volunteer Infantry of this state a suitable flag, inscribed on opposite sides with the names of the engagements in which the respective regiments composing the "First" have participated; and he is hereby further authorized to present to each of the old regiments of this state; not heretofore provided for in this respect, a suitable flag, appropriately inscribed.

2. The expenses incurred under authority conferred by the foregoing resolution, shall be paid out of the civil contingent fund.

ADOPTED, January 27, 1865.

[No. 13.] Raising a Joint Committee to Examine the Jail of Ohio County.

Resolved by the Legislature of West Virginia: That a committee of two on the part of the senate, and three on the part of the house of delegates, be appointed to examine and report on the condition of the jail of Ohio county, or that part now used as a penitentiary for this state.

ADOPTED, January 30, 1865.

[No. 14.] Ratifying the proposed Amendment to the Constitution of the United States abolishing Slavery.

Whereas, the senate and house of representatives of the United States of America in congress assembled, by a concurrent vote of two-thirds of both houses, has proposed to the legislatures of the several states the following amendment to the constitution of the United States, to be classified as article thirteen, of the amendments to said constitution, namely:

"ARTICLE XIII.

1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States at any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation;" therefore,

Resolved by the Legislature of West Virginia: That the said proposed amendment is hereby ratified.

ADOPTED, February 3, 1865.

[No. 15.] Raising a Commission on the subject of Normal Schools.

Resolved by the Legislature of West Virginia: That the governor appoint a commission consisting of five persons, whose duty it shall be to make due examination and report to the next legislature a definite plan for the location, internal arrangement and support of one or more normal institutions.

ADOPTED, February 3, 1865.

[No. 16.] Requesting our Senators and Representatives in Congress to procure an Amendment to the National Banking Law.

Resolved by the Legislature of West Virginia: That our senators and representatives in congress be requested to procure, if possible, an amendment to the act of congress, approved June third, eighteen hundred and sixty-four, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," so as to allow state banks having branches to become national banking associations under the said act, and still use a portion of their capital for banking purposes and keep offices of discount and deposit at the several places where such branches are now located.

Resolved further, That the president of the senate and speaker of the house of delegates be directed to certify and forward a copy of these resolutions to each of our senators and representatives in congress.

ADOPTED, February 4, 1865.

[No. 17.] Requesting the Exemption of certain State Troops from Draft.

Whereas, The people of West Virginia have at all times responded with alacrity to the calls of the president of the United States for troops to aid in the suppression of the rebellion: And whereas, it has been necessary to a great extent that such troops should be employed elsewhere than in this state, in consequence of which our border counties have been in many cases left entirely unprotected: And whereas, in order to protect such counties as much as possible, the governor of the state has been compelled, and will still be compelled, at great expense, to employ state troops for that purpose: And whereas, the late call of the president of the United States for three hundred thousand additional volunteers, will require nearly or quite all of the able bodied men in the counties on or near the border, and thereby deprive such counties of all protection whatever, therefore

Resolved by the Legislature of West Virginia: That his excellency, the president of the United States, is hereby respectfully requested to exempt from draft such of the state troops of this state as may actually be employed by the governor in defense of the border counties, while in active service, and to cause a credit to be given to this state upon her quota under the late call for three hundred thousand men, for the full amount of troops so employed.

Resolved, That his excellency, the governor, be requested to transmit a copy of the foregoing preamble and resolution to the president of the United States, and request his compliance therewith.

ADOPTED, February 8, 1865.

[No. 18.] Requesting our Members of Congress to secure an Act refunding certain sums expended by this State for Military purposes.

Whereas, The state of West Virginia has expended large sums of money for military purposes which are justly chargeable to the government of the

United States, no part of which has ever been paid by the United States government,

Resolved by the Legislature of West Virginia: That our senators in congress be instructed, and our representatives requested, to use their most earnest efforts to secure the passage of an act refunding to this state the sums thus expended.

Resolved, That the governor be requested to forward a copy of the foregoing preamble and resolution to each of our senators and representatives at Washington.

ADOPTED, February 11, 1865.

[No. 19.] Fixing a time for Electing a Public Printer.

Resolved by the Legislature of West Virginia: That the two branches will proceed on Tuesday, the fourteenth instant, at eleven o'clock A. M., to elect a public printer.

ADOPTED, February 11, 1865.

[No. 20.] Providing for a Committee to Investigate the Charges against John W. Kennedy, Judge of the 10th Circuit.

Resolved by the Legislature of West Virginia: That a committee of three from the house and two from the senate, be appointed to investigate the charges against John W. Kennedy, judge of the tenth judicial circuit.

ADOPTED, February 13, 1865.

[No. 21.] Respecting the Branch of the Bank of Virginia, at Charleston.

Resolved by the Legislature of West Virginia: 1. The governor is hereby authorized to employ such person as he may judge proper, to examine and report to him what interest this state has in the branch of the bank of Virginia, at Charleston, the nature and condition of its assets, and the measures necessary to protect the interest of the state in relation thereto.

2. The person having the custody or control of the books and papers of said branch, is hereby directed and required to submit the same to the inspection and examination of the person so to be appointed by the governor.

3. The governor is authorized, in his discretion, to institute suit or suits at law or in equity, in the name of the state or otherwise, as in his judgment may be necessary to protect the interest of the state therein, and that he pay the expenses attending the same out of the civil contingent fund.

ADOPTED, February 17, 1865.

[No. 22.] Authorizing the Secretary of the State to employ a Clerk.

Resolved by the Legislature of West Virginia: That the secretary of the state be and he is hereby authorized to employ in his office such clerical

assistance as may be necessary to secure the prompt and correct transaction of the business therein, and to pay for the services rendered out of the fund appropriated for contingent expenses of his office.

ADOPTED, February 18, 1865.

[No. 23.] Proposing to celebrate the Anniversary of Washington's Birthday.

Resolved by the Legislature of West Virginia: That the Senate and House of Delegates will celebrate the memory of George Washington on the twenty-second instant, by causing his farewell address to be read in joint session in the hall of the House of Delegates.

ADOPTED, February 20, 1865.

[No. 24.] Postponing the Trial of Judge Kennedy on the part of the Senate.

Resolved by the Legislature of West Virginia: The joint order of this day for the trial of judge John W. Kennedy, is postponed on the part of the Senate until the House of Delegates shall have acted on the subject.

ADOPTED, February 23, 1865.

[No. 25.] Authorizing the Board of Public Works to let out the Parkersburg and Staunton Turnpike.

Resolved by the Legislature of West Virginia: That the board of public works be authorized to let out so much of the Staunton and Parkersburg turnpike road as lies within the counties of Wood and Wirt, for such time as said board may deem expedient, to such person or persons as will agree to repair and put the same in good order for use, including the bridges, for the tolls that may be collected on such part of said road: the said board taking such bond from the lessees, with such security, and in such penalty as it may deem sufficient, conditioned for the repairing and putting in order as aforesaid.

ADOPTED, February 27, 1865.

[No. 26.] Removing John W. Kennedy, Judge of the Tenth Circuit.

Whereas, John W. Kennedy, judge of the tenth circuit, has been placed upon trial before the legislature of this state, upon charges and specifications contained in a joint resolution adopted by the said legislature on the twenty-first day of January, eighteen hundred and sixty-five;

And, whereas, it is proved to the satisfaction of the legislature that on or about the first day of April, eighteen hundred and sixty-four, the said John W. Kennedy, by virtue of his office as judge of the tenth judicial circuit, did appoint Thomas Hollis sheriff of Berkeley county, the said Thomas Hollis then being a rebel;

And, whereas, it is further proved to the satisfaction of the legislature, that on or about the twentieth day of September, eighteen hundred and sixty-three, the said John W. Kennedy, then being judge of the tenth judicial circuit, did, at the McLure House, in the city of Wheeling, West Virginia, in a certain

conversation then and there had by him, say that "the restored government of Virginia was an usurpation," and that the government of West Virginia was a "bogus concern;" therefore,

Resolved by the Legislature of West Virginia: That John W. Kennedy be and he is hereby removed from the office of judge of the tenth judicial circuit.
ADOPTED, February 27, 1865.

[No. 27.] Relating to the Arrangement of the Military Sub-Districts in Organized Counties.

Resolved by the Legislature of West Virginia: That the governor be requested to take the necessary steps to have the military sub-districts of the state so altered and arranged that they will correspond with the townships in such counties as are organized into townships.

ADOPTED, February 28, 1865.

[No. 28.] Relating to the Revenue of Cabell County for 1861 and 1862.

Resolved by the Legislature of West Virginia: 1. John B. Baumgardner, collector of the revenue for Cabell County for the years eighteen hundred and sixty-one and eighteen hundred and sixty-two, is hereby authorized and required to place the revenue of the said county for the years aforesaid remaining in his hands uncollected, in the hands of the sheriff of Cabell county for collection, and take his receipt therefor and forward the same to the auditor on or before the first day of April next, and it shall be the duty of said sheriff to receive, collect and account for the same in the same manner as the revenue of said county for the year eighteen hundred and sixty-five is collected and accounted for.

2. The auditor shall not be required to make a final settlement with said Baumgardner until the said sheriff shall make his return in regard to the revenue placed in his hands for collection as aforesaid.

ADOPTED, February 28, 1865.

[No. 29.] Proposing an Amendment to the Constitution of the State.

Resolved by the Legislature of West Virginia: The following is proposed as an amendment to the constitution of this state, to be added at the end of the first section of the third article thereof, to become part of the said constitution when ratified according to the provisions thereof, namely:

"No person who, since the first day of June, eighteen hundred and sixty-one, has given or shall give voluntary aid or assistance to the rebellion against the United States, shall be a citizen of this state or be allowed to vote at any election held therein, unless he has volunteered into the military or naval service of the United States and has been or shall be honorably discharged therefrom."

ADOPTED, March 1, 1865.

[No. 30.] Providing for the Publication of the Amendment proposed to the Constitution of this State.

Resolved by the Legislature of West Virginia: The public printer is hereby authorized to contract for the publication of the proposed constitutional amendment passed by this Legislature, for at least three months prior to the next general election, in one newspaper in each of the counties of this state in which a newspaper is printed during that period.

ADOPTED, March 1, 1865.

[No. 31.] Joint Resolution providing for the Distribution of the Acts and Journals.

Resolved by the Legislature of West Virginia: That the five hundred copies of the acts in sheets, to which the members of this Legislature are entitled, be by the public printer bound as the other acts of the session are bound, and delivered to the clerk of the House of Delegates, whose duty it is made to forward the same as soon as practicable, to the members of this Legislature.

Resolved further, That the sergeant at arms of the House of Delegates pay to the clerk of that branch, out of the fund appropriated for expenses of the Legislature, sixty dollars, to pay cost of forwarding to the members of the Legislature the remaining sheets of the journals of the two Houses, the acts mentioned in the preceding resolution, and the bound journals of the two Houses at the present session.

ADOPTED, March 2, 1865.

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