In the
Supreme Court of Ohio

DEPARTMENT OF DEVELOPMENT SERVICES FOR THE CITY OF NORTH CANTON,	:	Case No. 2025-0458
	:	On Appeal from the Stark County Court of Appeals, Fifth Appellate District
Plaintiff-Appellee,	:	
v.	:	
	:	Court of Appeals Case No. 2024CA00108
CF HOMES LLC, et al.,	:	
Defendant-Appellant.	:	

BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL DAVE YOST IN SUPPORT OF APPELLEE

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INTRODUCTION

CF Homes asks the Court to decide whether Article I, Section 14 of the Ohio Constitution demands a higher showing of probable cause than the Fourth Amendment of the United States Constitution for civil, non-investigative warrants obtained for health-and-safety inspections. But that question rests on an incorrect premise: It assumes that Article I, Section 14 demands a warrant for such searches in the first place. What constitutes probable cause is relevant, after all, only if a warrant is required. No warrant is required for health-and-safety inspections under the original meaning of Article I, Section 14 of the Ohio Constitution and this Court's precedent, however; the relevant constitutional inquiry turns instead on whether an inspection is reasonable. *State ex rel. Eaton v. Price*, 168 Ohio St. 123, syl.2 & 138 (1958), *affirmed by an equally divided court in Ohio ex rel. Eaton v. Price*, 364 U.S. 263 (1960). The inspections at issue here are.

The backdrop of this important constitutional case begins with a straightforward premise: that Cities have an interest in guaranteeing safe housing for their residents. *See Mariemont Apt. Ass'n v. Vill. of Mariemont*, 2007-Ohio-173, ¶29 (1st Dist.); *see also* R.C. 715.29. North Canton has taken that responsibility to heart. To ensure a "safe and sanitary environment" for tenants and their guests, it requires landlords to obtain a rental license. *See* North Canton Ordinance §§703.01 and 703.03. Before a landlord may receive a license, a rental property must be inspected to ensure compliance with health and safety requirements. North Canton Ordinance §703.04(c). If a

landlord fails to schedule an inspection, the City may obtain a warrant allowing the inspection to proceed. North Canton Ordinance §703.04(c)(4)(C)(i).

CF Homes, a North Canton landlord and the appellant in this case, does not now dispute that North Canton's ordinances comply with the requirements of the Fourth Amendment. The United States Supreme Court recognized in *Camara v. Municipal Court of San Franciso*, that "'[t]ime and experience have forcefully taught that the power to inspect dwelling places, either as a matter of systematic area-by-area search or … to treat a specific problem, is of indispensable importance to the maintenance of community health.'" 387 U.S. 523, 537 (1967) (quoting *Frank v. Maryland*, 359 U.S. 360, 372 (1959)). It therefore held that while building inspections require a warrant under the Fourth Amendment, such a warrant may be issued when there are "reasonable legislative or administrative standards for conducting an area inspection." *Id.* at 538. Rather than allege a Fourth Amendment violation, CF Homes argues only that North Canton's ordinances violate the *Ohio* Constitution. Specifically, it argues that Article I, Section 14 of the Ohio Constitution demands a greater showing of probable cause before courts may issue an administrative warrant than the United States Supreme Court required in *Camara*.

CF Homes's argument never gets off the ground. It assumes that a warrant is required under Article I, Section 14 of the Ohio Constitution. But that assumption is wrong. Nearly a decade before *Camara*, this Court held that the Ohio Constitution *does not* require warrants for building inspections that are designed to ensure "the healthful, safe, and sanitary environment of the occupants." *Eaton*, 168 Ohio St. at

syl.¶1–2 & 138. It held that the relevant question under the Ohio Constitution with respect to administrative searches is whether a search is reasonable. *Id.* at 137–38.

The Court has never overruled *Eaton* and it should not do so now. *Eaton*'s reasoning is as relevant today as it was over sixty years ago. The text of the Ohio Constitution has not changed. It still makes "reasonableness" the touchstone of searches under Article I, Section 14. *See* Ohio Const., art. I, §14. The history of building inspections also has not changed. The Court in *Eaton* noted that it had long "been taken for granted throughout the United States that inspections of buildings, including dwellings, under reasonable regulations did not constitute 'unreasonable search and seizure' in the constitutional sense." *Id.* at 130. That history is as relevant now as it was in 1958.

STATEMENT OF AMICUS INTEREST

As the State's chief law officer, R.C. 109.02, the Ohio Attorney General is interested in an interpretation of Article I, Section 14 of the Ohio Constitution that is consistent with the amendment's purpose of protecting Ohioans from unreasonable searches and seizures. The Attorney General also represents numerous state agencies that are authorized to conduct administrative searches. As discussed in greater detail below, *see* 45–48, he is interested in ensuring that those agencies may exercise their statutory obligations in a manner consistent with both the United States and Ohio Constitutions.

STATEMENT OF THE CASE AND FACTS

I. Landlord CF Homes refused to consent to a rental-licensing inspection so North Canton sought and obtained a warrant.

North Canton requires all rental properties to obtain a license. North Canton Ordinance §703.03. CF Homes, a North Canton landlord, refused to consent to the inspection that the City requires as part of the licensing process. North Canton therefore filed an application for a search warrant in the Stark County Court of Common Pleas. Warrant Application, R.1. In connection with its application, the City noted that its rental-licensing ordinance imposed a "universal requirement to have rental properties in the City of North Canton inspected to provide a safe and sanitary environment for the residents and their guests." *Id.* at 2.

CF Homes opposed North Canton's warrant request. As is relevant here, it argued that Article I, Section 14 of the Ohio Constitution requires a greater showing of probable cause than does the Fourth Amendment. *See* R.7, CF Homes Motion for Judgment on the Pleadings.

The trial court rejected CF Homes's argument and issued the warrant that North Canton sought. *See* Judgment Entries, R.12 and 13. It held that the Fourth Amendment and Article I, Section 14 provide similar protections. R.12, Judgment Entry at 9 n.4. It further held that North Canton had satisfied the probable cause requirement for administrative warrants that the United States Supreme Court established in *Camara v. Municipal Court of San Franciso*, 387 U.S. 523 (1967). *Id.* at 10–13.

II. CF Homes appealed and the Fifth District affirmed.

CF Homes appealed, again arguing that the probable-cause standard for administrative inspections that the United States Supreme Court adopted in *Camara* is incompatible with the requirements of the Ohio Constitution. Article I, Section 14, CF Homes argued, requires courts to apply to administrative inspection warrant applications the same probable-cause standard that governs criminal warrants.

The Fifth District rejected CF Homes's argument. *Dept. of Dev. Servs. for the City of N. Canton v. CF Homes, L.L.C.*, 2025-Ohio-1342, ¶20 (5th Dist.) ("App.Op."). It noted that the text of Article I, Section 14 "is nearly identical to the language contained in the Fourth Amendment," and that this Court has held that the Ohio Constitution "afford[s] the same level of protection" as the Fourth Amendment. *Id.* at ¶21 (citing *State v. Hoffman*, 2014-Ohio-4795, ¶11).

Judge King concurred. He noted that he agreed with the Fifth District's opinion and joined the court's judgment, but expressed concerns about adopting *Camara*'s probable-cause standard as a matter of Ohio constitutional law. App.Op.¶28 (King, J., concurring). Judge King put those concerns aside, however, because this Court in *Eaton* had already approved of an ordinance that established "minimum standards governing utilities, facilities and other physical things and conditions essential to make dwellings safe, sanitary and fit for human habitation" and that authorized inspectors to ensure compliance by entering and inspecting dwellings "at any reasonable hour." *Id.* at ¶34 (quoting *Eaton*, 168 Ohio St. at 138).

CF Homes filed a memorandum in support of jurisdiction in which it raised two propositions of law, both of which focused on the probable-cause standard that applies to administrative search warrants under Article I, Section 14 of the Ohio Constitution. The Court agreed to review both propositions of law. *06/10/2025 Case Announcements*, 2025-Ohio-2048.

ARGUMENT

Appellant's Proposition of Law 1:

> *When municipalities seek warrants to force noncriminal interior searches, the requirement of Probable Cause in Article I, Section 14 is more protective of Ohioans' occupied homes than the Fourth Amendment baseline established in Camara.*

Appellant's Proposition of Law 2:

> *The original public meaning of Probable Cause in 1851 connotes that courts must confirm evidence suggesting the probability, however slight, of unlawfulness located at the home the municipality seeks a warrant to search.*

The Fourth Amendment is a coat of many colors. It contemplates a variety of searches, with different legal standards that apply depending on the type of search involved. Searches that the Fourth Amendment authorizes include traditional criminal searches, *see McDonald v. United States*, 335 U.S. 451 (1948), warrantless searches of closely regulated businesses, *New York v. Burger*, 482 U.S. 691 (1987), warrantless searches of businesses that *are not* closely regulated, *see City of Los Angeles v. Patel*, 576 U.S. 409 (2015), and administrative inspections conducted pursuant to a warrant, *Camara v. Municipal Court of San Franciso*, 387 U.S. 523 (1967).

This case involves the last type of search—an administrative inspection conducted pursuant to a warrant. Although CF Homes structures its arguments in this case as involving two separate propositions of law, those two propositions ultimately assert

only a single legal claim: that the United States Supreme Court in *Camara* watered down the probable-cause standard that applies to administrative inspection warrants and that Article I, Section 14 of the Ohio Constitution demands a greater showing of probable cause before courts may issue such warrants. Specifically, CF Homes argues that the Ohio Constitution requires courts to apply the same probable-cause standard to criminal warrants *and* to warrants that authorize administrative health and safety inspections. It further argues that North Canton's rental-property inspection ordinance requires a lesser probable cause showing and that the ordinance therefore violates Article I, Section 14 of the Ohio Constitution—even though it otherwise satisfies the requirements of the Fourth Amendment.

CF Homes asks the wrong question. What constitutes probable cause is relevant only if Article I, Section 14 requires a warrant. But this Court has already held that the Ohio Constitution *does not* impose a warrant requirement before a City may perform a residential health and safety inspection. The Ohio Constitution, it has held, does not require a warrant in every circumstance. It requires only that a search be reasonable. *See Eaton*, 168 Ohio St. at 138.

I. Fourth Amendment jurisprudence can be informative when interpreting Article I, Section 14, but it is not dispositive of the meaning of the Ohio Constitution.

Although the question at issue in this case involves the meaning of the Ohio Constitution, the language of Article I, Section 14 is nearly identical to the wording of the Fourth Amendment to the United States Constitution. Before addressing the specific question at issue here, it is therefore necessary to briefly discuss the relationship

between the two documents and how the history and tradition of one influences the interpretation of the other.

A. The Court interprets the Ohio Constitution in a manner consistent with its text and the contemporaneous understanding of those who adopted it.

Article 1, Section 14 of the Ohio Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized." That protection against unreasonable searches and seizures was carried over from the very first Ohio Constitution, which was adopted in 1802 and which imposed similar requirements. *See Eichenlaub v. State*, 36 Ohio St. 140, 142–43 (1880) (noting that "the fifth section of the eighth article of the constitution of 1802 has no other or different meaning than article 1, section 14"). Although the 1802 Constitution prohibited "unwarrantable" searches rather than "unreasonable" ones, that is a distinction without a difference. As used in 1802, the term "unwarrantable" meant "unjustified" and was largely synonymous with "unreasonable." It did not indicate that a warrant was required. *Cf., e.g.*, *Simms v. Slacum*, 7 U.S. 300, 310 (1806) (Patterson, J., dissenting) (using the term "unwarrantable").

This Court has held that its duty is "to interpret the language of the Constitution according to its fair and reasonable import and the common understanding of the people who framed and adopted it." *Pfeifer v. Graves*, 88 Ohio St. 473, 487 (1913);

Vill. Of Newburg Heights v. State, 2022-Ohio-1642, ¶17. It assumes that the framers "used language with reference to its popular and received signification; and applied it as it had been practically applied for a long series of years." *Hill v. Higdon*, 5 Ohio St. 243, 247–48 (1855). And it gives "undefined words in the Constitution their common, everyday meaning." *City of Centerville v. Knab*, 2020-Ohio-5219, ¶24. If "the meaning of a provision cannot be ascertained by its plain language," *Toledo City Sch. Dist. Bd. Of Edn. v. State Bd. Of Edn.*, 2016-Ohio-2806, ¶16, the Court may also consider "the object of the people in adopting" the relevant constitutional provision, *Castleberry v. Evatt*, 147 Ohio St. 30, syl.¶1 (1946). The Court, however, "must not ignore the words of [the] Constitution … in order to reach a result which [it] believe[s] to be desirable in [a] particular case." *Johnson v. Indus. Comm. of Ohio*, 164 Ohio St. 297, 302 (1955); *see also Cleveland Tel. Co. v. City of Cleveland*, 98 Ohio St. 358, 368 (1918) ("It is not the province of [the] court to write Constitutions or to give to the language used such forced construction as would warp the meaning to coincide with the court's notion of what should have been written therein.").

B. Decisions interpreting the Fourth Amendment can be informative when interpreting Article I, Section 14 because the text and history of the two provisions are largely identical.

Like Article I, Section 14, the Fourth Amendment protects against unreasonable searches and requires warrants to be supported by probable cause. It states that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly

describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

It is not just the language of the Ohio and United States Constitutions that is similar. The method of interpretation is as well. Like this Court, the United States Supreme Court also focuses on "the statutes and common law of the founding era to determine the norms that the Fourth Amendment was meant to preserve." *Virginia v. Moore*, 553 U.S. 164, 168 (2008). When evaluating the scope of rights protected by the Fourth Amendment, it considers "the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing." *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995). And when "history has not provided a conclusive answer" to that question, the United States Supreme Court has "analyzed a search or seizure in light of traditional standards of reasonableness 'by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.'" *Moore*, 553 U.S. at 171 (quoting *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999)). The Fourth Amendment, that Court has held, must be "construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens." *Carroll v. United States*, 267 U.S. 132, 149 (1925).

Because the Fourth Amendment predates Article I, Section 14 of the Ohio Constitution, and because the language of the two provisions is nearly identical, it should come as no surprise that Ohio courts have frequently held that the protections the

two provisions provide are similar. An Ohio court noted as early as 1888 that the Fourth Amendment and Article I, Section 14 are "substantially alike" and that the Ohio and United States Constitutions provide similar protections. *Moliter v. State*, 1888 WL 289, *4 (Cuyahoga Common Pleas, Jan. 1, 1888).

This Court has done the same. It has "interpreted Section 14, Article I of the Ohio Constitution to protect the same interests and in a manner consistent with the Fourth Amendment to the United States Constitution." *State v. Andrews*, 57 Ohio St. 3d 86, 87 n.1 (1991). The United States Supreme Court's interpretation of the Fourth Amendment, this Court has written, "should be very persuasive" evidence of the meaning of Article I, Section 14 because "the Bill of Rights in the Constitution of the United States is in almost the exact language of that found in our own." *Nicholas v. Cleveland*, 125 Ohio St. 474, 484 (1932) (overruled on other grounds by *State v. Lindway*, 131 Ohio St. 166 (1936)). The Court has held that it will "harmonize [its] interpretation of Section 14, Article I of the Ohio Constitution with the Fourth Amendment, unless there are persuasive reasons to find otherwise." *State v. Robinette*, 80 Ohio St. 3d 234, 239 (1997).

C. This Court has held that the reasonableness and the warrant clauses of Article I, Section 14 are distinct.

While Fourth Amendment jurisprudence can be instructive about the meaning of the Ohio Constitution, however, it can rarely answer the question that this Court is most concerned with: how voters in 1851 would have understood the words used in Article I, Section 14. That is because, in the years following the adoption of the Bill of Rights, there were very few published decisions that interpreted the Fourth

Amendment. One scholar has estimated that prior to 1886, the Fourth Amendment's "search and seizure provisions probably were mentioned in fewer than fifty cases." David E. Steinberg, *An Original Misunderstanding: Akhil Amar and Fourth Amendment History*, 42 San Diego L. Rev. 227, 247 (2005).

The gap between ratification and interpretation has created confusion about how the Fourth Amendment was originally understood. Some leading scholars believe that the Fourth Amendment was never intended to require that searches be conducted pursuant to a warrant. They have argued that it requires only that searches be reasonable. Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757, 759 (1994); Telford Taylor, *Two Studies in Constitutional Interpretation*, 41 (1969). In the eyes of those scholars, "our constitutional fathers were not concerned about warrantless searches, but about overreaching warrants." Taylor, *Two Studies in Constitutional Interpretation* at 41. According to them, the Fourth Amendment's warrant clause was designed not to require warrants but to restrict their use. They believe that the Fourth Amendment treats warrants "as an enemy, not a friend." *Id.*

Other scholars disagree. Some have contended that the Fourth Amendment was not originally understood as imposing a general reasonableness requirement and that the Amendment's Framers wanted only to protect the sanctity of the home by prohibiting general warrants. *See* Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 551 (1999); Steinberg, *An Original Misunderstanding: Akhil Amar and Fourth Amendment History*, 42 San Diego L. Rev. at 265–66. Others eschew what they view as a dogmatic reliance on history and advocate for a

more pragmatic approach to interpreting the Fourth Amendment's protections. *See generally* David A. Sklansky, *The Fourth Amendment and Common Law*, 100 Colum. L. Rev. 1739 (2000).

One of the only things that scholars can seem to agree on, in fact, is that the state of Fourth Amendment jurisprudence is hopelessly confused. The Fourth Amendment has been described as "a mass of contradictions and obscurities that has ensnared" the United States Supreme Court, Craig M. Bradley*, Two Models of the Fourth Amendment*, 83 Mich. L. Rev. 1468, 1468 (1985), and its "patchwork of results" as "a theoretical embarrassment to scholars and judges alike," Orin S. Kerr, *An Equilibrium-Adjustment Theory of the Fourth Amendment*, 125 Harv. L. Rev. 476, 480 (2011); *see also* Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. at 757 (describing the Fourth Amendment as "an embarrassment"). The Supreme Court, in the words of one scholar, has "vacillated" for "decades" about the relationship between the Fourth Amendment's reasonableness clause and its warrant clause. Thomas K. Clancy, *The Role of History*, 7 Ohio St. J. Crim. L. 811, 816 (2009).

The problems that plague Fourth Amendment jurisprudence have not yet infected this Court's interpretations of Article I, Section 14 of the Ohio Constitution—and they do not need to. Unlike the Fourth Amendment, the Court's Article I, Section 14 jurisprudence is not beset by rules, exceptions to the rules, and exceptions to those exceptions. *Cf.* Bradley, *Two Models of the Fourth Amendments*, 83 Mich. L. Rev. at 1473–74 (identifying over twenty exceptions to the Fourth Amendment's probable cause requirement, warrant requirement, or both). That is in part because the Court

has declined to adopt some of the most heavily criticized Fourth Amendment innovations. It has, for example, refused to adopt the exclusionary rule as a matter of Ohio constitutional law. *Lindway*, 131 Ohio St. at syl.¶¶4–5; *cf. also Stone v. Powell*, 428 U.S. 465, 496–502 (1976) (Burger, C.J., concurring) (criticizing the exclusionary rule and describing it as "a doctrinaire result in search of validating reasons").

It is also because the Court has not blindly followed the United States Supreme Court's lead. It has continued to adhere to its own independent analysis of Article I, Section 14, even when the United States Supreme Court has subsequently adopted a conflicting interpretation of the Fourth Amendment. The Court in *State v. Jones*, 88 Ohio St.3d 430 (2000), for example, was confronted with a novel question: did the Fourth Amendment and Article I, Section 14 of the Ohio Constitution prohibit custodial arrests for minor misdemeanors. *Id.* at 440. It held that they did. A few years later, the United States Supreme Court disagreed. *See Atwater v. Lago Vista*, 532 U.S. 318, 354 (2001). This Court did not yield, however. It reaffirmed its original analysis of the text and history of Article I, Section 14 of the Ohio Constitution. *State v. Brown*, 2003-Ohio-3931, ¶22; *see also State v. Brown*, 2015-Ohio-2438, ¶¶21–24.

II. This Court correctly held in *Eaton* that the Ohio Constitution does not require a housing inspector to obtain a warrant before performing a residential health and safety inspection.

With the interpretive table finally set, it is at last possible to proceed to the main course. Over sixty years ago, the Court held in *Eaton* that Article I, Section 14 does not require that a health and safety inspection be supported by a warrant; it requires only that the inspection be *reasonable*. *Eaton*, 168 Ohio St. at 137–38. *Eaton* was

driven primarily by the text of Article I, Section 14. *See id.* And it was consistent with the long history of laws that allowed for warrantless health and safety inspections. *See Frank*, 359 U.S. at 367–70 (overruled by *Camara*, 387 U.S. 523).

A. The text of Article I, Section 14 requires only that searches be reasonable.

The Court's analysis in *Eaton* rested primarily on the plain language of Article I, Section 14, which states in full that:

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

Ohio Const., art. I, §14. As is clear from the text, Article I, Section 14 consists of two separate clauses, separated by a semicolon. The first clause prohibits "unreasonable searches and seizures." *Id.* The second states that warrants may be issued only "upon probable cause" when "supported by oath or affirmation." *Id.*

The Court in *Eaton* refused to blur the lines between the two clauses. It noted that, at least in the civil context, the relevant question is whether a search is reasonable—not whether it was supported by a warrant. It rejected the position that "any search without a search warrant would be unreasonable." *Eaton*, 168 Ohio St. at 137. To do so would have rendered the first clause of Article I, Section 14 superfluous and that was a step that the Court was not willing to take. It was not "ready to say that the framers of the Constitution used the word, 'unreasonable,' for no purpose whatsoever." *Id.*

Eaton's analysis was consistent with how Ohioans would have understood Article I, Section 14 when they ratified it in 1851. By then, courts in several other states had already held, in the context of warrantless arrests, that the warrant clauses of their respective state constitutions were designed only "to guard against the abuse of warrants issued by magistrates." *Mayon v. Wilson*, 1 N.H. 53, 60 (1817); *Wakely v. Hart*, 6 Binn. 316, 318 (Penn. 1814). Those decisions align with the views of scholars who have argued that the Fourth Amendment was never designed to impose a broad warrant requirement. *See* Taylor, *Two Studies in Constitutional Interpretation* at 41. (It does not matter that many early cases involved arrests not searches because, in most cases, searches and arrests (or seizures) were paired, as they are in Article I, Section 14. *See* Ohio Const., art. 1, §14 (prohibiting "unreasonable searches and seizures") *and* N.H. Const, art. 19 (prohibiting "all unreasonable searches and seizures").)

Not long after voters ratified Article I, Section 14, the United States Supreme Court adopted an interpretation of the Fourth Amendment that also emphasized the reasonableness of a search. *Boyd v. United States*, 116 U.S. 616 (1886) is widely considered to be the first significant United States Supreme Court decision interpreting the Fourth Amendment. *See* Sklansky, *The Fourth Amendment and Common Law*, 100 Colum. L. Rev. at 1740. The Court in that case held that a law requiring defendants to produce their books and papers for use at trial violated the Fourth and Fifth Amendments to the United States Constitution. *Boyd*, 116 U.S. at 634–35. Although *Boyd*'s primary holding has since been rejected, *see Fisher v. United States*, 425 U.S.

391, 407–08 (1976), that decision is nevertheless relevant to how early Ohio voters would have understood the nearly identical Ohio Constitution.

Substantively, *Boyd* is significant for at least two reasons. *First*, *Boyd* accepted that the Fourth Amendment imposed a reasonableness requirement. The Court discussed the "'unreasonable searches and seizures' condemned in the Fourth Amendment," *Boyd*, 116 U.S. at 633, showing that it understood the Amendment as primarily concerned with the reasonableness of a search. *Second*, *Boyd* indicated that not every search is subject to the Fourth Amendment. It noted that the type of unreasonable searches that the Fourth Amendment prohibits are "almost always made for the purpose of compelling a man to give evidence against himself." *Id.* The cause of action in *Boyd*, it held, was "quasi-criminal" in nature and was therefore a "criminal proceeding[] for all the purposes of the Fourth Amendment of the Constitution." *Id.* While *Boyd* may have post-dated the adoption of Article I, Section 14, the principles that decision discussed likely reflected the views held by the voters that, just a few years earlier, had ratified Ohio's new Constitution.

B. Ohio had a well-established tradition of safety inspections at the time voters ratified Article I, Section 14 of the Ohio Constitution.

It is not just the history of comparable search and seizure protections found in the Fourth Amendment and in other state constitutions that supports the Court's decision in *Eaton*. The history of building inspections in Ohio does as well. The Court in *Eaton* noted that for many years it was "taken for granted throughout the United States that inspections of buildings, including dwellings, under reasonable

regulations did not constitute 'unreasonable search and seizure' in the constitutional sense." *Eaton*, 168 Ohio St. at 130. That history has not changed.

At the time that Ohio voters ratified the 1851 constitution, several of Ohio's largest cities imposed inspection requirements that allowed fire wardens to inspect buildings—including homes—for fire hazards. Cincinnati, for example, adopted an ordinance in 1826 that allowed fire wardens "to enter any house or building, lot, yard, or premises, in the city" during the daytime on a weekday for the purpose of inspecting the home, identifying fire hazards, and ordering the owner or occupant to remedy the hazard. Charter, Amendments, and General Ordinances of the City of Cincinnati 202, 208 (Day & Co. 1850); AG App'x A-4, A-10. Those who refused entrance to the fire warden, or refused to remedy a hazard, were subject to a fine that increased with every day of noncompliance. *Id.* Cleveland adopted a similar ordinance in 1836. Charters of the Village of Cleveland and the City of Cleveland, with their Several Amendments: To Which Are Added the Laws and Ordinances of the City of Cleveland 70, 72 (Harris, Fairbanks & Co. 1851); AG App'x A-13, A-15. Dayton did the same only a few years later, in 1846. Laws and Ordinances of the City of Dayton 273–74 (Anthony Stephens & Josiah Lovell eds., Dayton Empire 1862); AG App'x A-17–A-18.

Confirming that the ratification of Article I, Section 14 did not impose a new warrant requirement, several of Ohio's other cities followed suit in the years following 1851. Toledo adopted an ordinance that allowed fire wardens to perform inspections in 1858. Laws and Ordinances, Published by Authority of the City Council of the City of Toledo 171–72 (Commercial Steam Book & Job Press 1864); AG App'x A-23–A-24.

Columbus adopted an ordinance in 1866 that required the chief engineer of the fire department to certify that a building was safe before it could be used. General Ordinances of the City of Columbus, Ohio 48–49 (H.E. Bryan, ed., Gazette Printing and Publishing House 1882); AG App'x A-30–A-31; *cf. also* 1973 Op. Att'y Gen. No. 73-116 (inspection authority can be implied), *superseded on other grounds by* 1998 Op. Att'y Gen. No. 98-018. And the General Assembly, in 1868, adopted a new state-wide municipal code that allowed municipalities to appoint a fire engineer with the power to "enter any building for the purpose of examination." Act of May 7, 1869, 66 Ohio Laws 149, 205; AG App'x A-34. A few years later, the General Assembly adopted a statute aimed at combating nuisances that "authorized and empowered" a nuisance inspector "to enter upon the premises of any person in any county." H.B. No. 209, 87 Ohio Laws 350, 350–51; AG App'x A-36–A-37. A version of that law remains on the books today. *See* R.C. 3767.28.

These laws, many of which were in place at the time voters ratified the 1851 constitution, show that Ohioans would not have understood Article I, Section 14 as demanding that all health and safety inspections be performed pursuant to a warrant. They would have instead understood that reasonableness was the stick against which such inspections needed to be measured. Several of the ordinances imposed limits designed to ensure that an inspection was reasonable, *see, e.g.,* Laws and Ordinances of the City of Dayton at 273; AG App'x A-17 (requiring that the inspections be "between sun rising and sun setting, on any week day"), but none of them required a fire warden to obtain a warrant before performing an inspection. Ohioans would not have

expected Article I, Section 14 to require anything different. *See Pfeifer*, 88 Ohio St. at 487 (the Court construes the Ohio Constitution "according to its fair and reasonable import and the common understanding of the people who framed and adopted it").

The portions of the Revised Code that explicitly authorized the type of rental-licensing ordinance at issue here have similarly deep historical roots. In 1902, the General Assembly granted municipalities the power to regulate *and inspect* "all buildings or other structures" and the "sanitary condition thereof." S.B. No. 1, 96 Ohio Laws 20, 23–24, 106; AG App'x A-97–A-98. A few years later, in 1908, it granted them the power to regulate "the use, control, repair and maintenance of buildings used for human occupancy or habitation … for the purpose of insuring the healthful, safe and sanitary environment of the occupants." S.B. No. 364, 99 Ohio Laws 124, 124; AG App'x A-100. Those grants of authority have not changed in any meaningful way in the century plus after they were adopted; they can now be found in R.C. 715.26 and R.C. 715.29, respectively.

The Court, in other contexts, has also discussed the well-established history of building inspections in Ohio. It approvingly discussed a Dayton ordinance that "required permits to be obtained for plumbing installation and the inspection thereof by plumbing inspectors." *Direct Plumbing Supply Co. v. Dayton*, 138 Ohio St. 540, 547 (1941). Those unchallenged inspection requirements, it held, made a separate ordinance that required retailers to track and report the sale of plumbing fixtures unnecessary. *See id.* The Court noted in that case that it was not just plumbing that cities

could inspect. "[B]uilding inspection laws," it wrote "are as common as plumbing codes." *Id.* at 548–49.

Ohio's early inspection programs were consistent with the practices of other, older, States. Maryland and Pennsylvania, for example, both adopted provisions in the late eighteenth century that allowed warrantless inspections for a variety of purposes. *See Frank*, 359 U.S. at 369 & n.9, n.10. The history of such inspections was one reason why the United States Supreme Court in *Frank* upheld a warrantless inspection scheme just a year after this Court decided *Eaton*. *See id.* And even though the United States Supreme Court in *Camara* overruled *Frank*, it did not do so because the history of inspection ordinances had changed. The only meaningful change between *Frank* and *Camara* was the makeup of that Court. Even then, *Camara* relied on the very same history that the Court had relied on in *Frank*. It cited the lengthy history of inspection programs as evidence that *Camara*'s revised probable-cause standard was reasonable, noting that such inspection "programs have a long history of judicial and public acceptance." *Camara*, 387 U.S. at 537 (citing *Frank*, 359 U.S. at 367–71).

Finally, approaching the issue from the other direction, Ohio's early Code of Criminal Procedure shows that the Ohio voters who ratified Article I, Section 14 would not have understood that section's warrant requirement as applying to inspections of the type at issue here. The statutes that comprised the Code authorized magistrates to issue warrants for only a limited number of purposes, including searches for stolen goods, forged or counterfeit currency, obscene items, and gambling paraphernalia.

See Act of May 6, 1869, 66 Ohio Laws 287, 289; AG App'x A-41; Act of May 5, 1877, 74 Ohio Laws 310, 313–15; AG App'x A-47–A-49; *see also Nicholas*, 125 Ohio St. at 477–78 (Ohio statute allowed warrants authorizing searches for things concealed in a house); *id.* at syl.¶1. Ohio's statutes were, in that respect, consistent with the original understanding that the Fourth Amendment's Warrant Clause applied to searches for stolen goods, or other "familiar uses of warrants—to seize disease-infected or adulterated goods, or dangerous substances such as gun powder." Taylor, *Two Studies in Constitutional Interpretation* at 44. That understanding of the limited role of warrants was reflected in the "mere evidence rule," which, until the United States Supreme Court abandoned it in 1967, instructed that "search warrants could be obtained only to seize fruits of crime, instrumentalities of crime, or contraband." Orin S. Kerr, *The Modest Role of the Warrant Clause in National Security Investigations*, 88 Tex. L. Rev. 1669, 1672 (2010) (discussing *Gouled v. United States*, 255 U.S. 298 (1921)).

C. The Court's *Eaton* decision was consistent with the majority view at the time that health and safety inspections needed only to be reasonable.

In addition to the significant historical support for the Court's *Eaton* decision, there was significant contemporaneous legal support as well. That is true with respect to both the meaning of the language found in Article I, Section 14 generally and the constitutional restrictions on administrative searches. There is certainly no basis to conclude that *Eaton* was wrong at the time it was decided. *See Westfield Ins. Co. v. Galatis*, 2003-Ohio-5849, syl.¶1.

As a general matter, this Court was hardly an outlier in concluding that the reasonableness clause must mean something because the Framers of Article I, Section 14 did not use the word "'unreasonable,' for no purpose whatsoever." *See Eaton*, 168 Ohio St. at 137. By the time the Court decided *Eaton*, the United States Supreme Court had already made clear that it is only "unreasonable searches that are prohibited by the Fourth Amendment." *United States v. Rabinowitz*, 339 U.S. 56, 60 (1950) (citing *Carroll*, 267 U.S. at 147). It had also emphasized that what is reasonable must be determined on a case-by-case basis because the Fourth Amendment "does not define what are 'unreasonable' searches" and that reasonableness "is not to be determined by any fixed formula." *Rabinowitz*, 339 U.S. at 63.

Eaton was also consistent with decisions from other States that had more specifically addressed whether health and safety inspections required a warrant. The Iowa Supreme Court, for example, had held almost fifty years before the Court decided *Eaton* that the power of the Iowa legislature "to provide for inspection of premises in the interests of public safety and the public health is so well established that we will not enter upon a discussion of it." *Hubbell v. Higgins*, 148 Iowa 36, 46 (1910).

Despite this general consensus, only two cases had discussed health and safety inspection requirements in any significant detail by the time the Court decided *Eaton*. The Maryland Supreme Court had rejected challenges to a health and safety inspection scheme similar to the one at issue in *Eaton*. *Givner v. State*, 210 Md. 484, 505 (1956). The D.C. Circuit had done the opposite; it had held that such a scheme was

unconstitutional. *District of Columbia v. Little*, 178 F.2d 13, 20 (D.C. Cir. 1949). The Court in *Eaton* sided with *Givner*. *Eaton*, 168 Ohio St. at 133–38.

Eaton found the Maryland Supreme Court decision in that case persuasive for at least two reasons. *First*, *Givner* had noted the limited purposes for which search warrants had historically been obtained and emphasized that "the abuses which gave rise to constitutional provisions against unreasonable searches and seizures grew out of searches for evidence to be used in criminal prosecutions." *Givner*, 210 Md. at 503–04. *Second*, *Givner* had emphasized that "prohibitions against unreasonable searches and seizures do not bar *reasonable* searches and searches and seizures." *Id.* at 504 (emphasis added). Accounting for both factors, *Givner* held that the inspection requirements at issue in that case were "not unreasonable and hence … not unlawful." *Id.* at 505. *Eaton* approved of *Givner*'s reasoning. It wrote that the Maryland Supreme Court's decision was "squarely in point" with the question that it confronted. *See Eaton*, 168 Ohio St. at 134.

Further confirmation that *Eaton* was no outlier at the time it was decided can be found in the United States Supreme Court's now-overruled decision in *Frank*. Approximately a year after this Court decided *Eaton*, the United Sates Supreme Court was asked to determine whether the Fourth Amendment required that health and safety inspections be conducted pursuant to a warrant. *See generally Frank*, 359 U.S. 360. The United States Supreme Court in *Frank* held that it did not. *Id.* at 373. No search warrant was required, *Frank* wrote, because the health inspection at issue in that case was designed "merely to determine whether conditions exist which the

Baltimore Health Code proscribes," and "[n]o evidence from criminal prosecution [was] sought to be seized." *Id.* at 366. *Frank* rejected the idea (eventually adopted in *Camara*) that a warrant should be required for health inspections, but that such warrants should be easier to obtain. "A loose basis for granting a search warrant," *Frank* wrote, would simply be a "back door" way of recognizing the reasonableness of such inspections in light of "their intrinsic elements, their historic sanctions, and their safeguards." *Id.* at 373. Following *Frank*, at least one additional state supreme court upheld a warrantless administrative inspection scheme. *See Commonwealth v. Hadley*, 351 Mass. 439, 445 (1966).

It was not until *Camara* that the United States Supreme Court changed course and held that health and safety inspections *do* require a warrant. *See Camara*, 387 U.S. at 528. But it is *Camara* that was the aberration, not *Eaton*. Among other things, *Camara* is "widely regarded as the first case in which the Court explicitly applied the Fourth Amendment to circumstances where the individual was not suspected of criminal behavior." Mary B. Spector, *Crossing the Threshold: Examining the Abatement of Public Nuisances Within the Home*, 31 Conn. L. Rev. 547, 570 (1999). Until then, most decisions interpreting the Fourth Amendment had indicated that the warrant clause applied only in the criminal context. A federal court in the Northern District of Georgia held in 1869, for example, that "[s]earch warrants were never recognized by the common law as processes which might be availed of by individuals in the course of civil proceedings, or for the maintenance of any mere private right; but their use was confined to cases of public prosecutions, instituted and pursued for

the suppression of crime or the detection and punishment of criminals." *In re Meador*, 16 F. Cas. 1294, 1299 (N.D. Ga. 1869). The Georgia district court was not the only court to do so; other courts had reached similar conclusions. *See Camden Cnty. Beverage Co. v. Blair*, 46 F.2d 648, 650 (D.N.J. 1930); *In re Strouse*, 23 F. Cas. 261, 261–62 (D. Nev. 1871); *but see In re Andrews' Tax Liability*, 18 F. Supp. 804, 807–08 (D. Md. 1937). Even *Boyd*, which did not directly address whether the Fourth Amendment was confined to criminal searches, nevertheless implied that it was. *See Boyd*, 116 U.S. at 634.

D. The Court should reaffirm *Eaton* and hold that searches conducted pursuant to North Canton's rental-licensing ordinance are reasonable.

This Court has interpreted Article I, Section 14 of the Ohio Constitution and it does not need to (indeed, should not) abandon that interpretation simply because the United States Supreme Court subsequently breaks new Fourth Amendment ground. If the Court's original interpretation of the Ohio Constitution is correct, then it should reaffirm that interpretation—regardless of what the United States Supreme Court says about the federal Constitution. That is what this Court has done in the past, *see Brown*, 2003-Ohio-3931 at ¶¶21–22, and it is what the Court should do again here. It should not abandon its earlier *Eaton* decision to conform to *Camara*. If anything, it is *Camara*'s demand for a warrant that is out of step with the Fourth Amendment's text and history.

None of the traditional *stare decisis* factors favor overruling *Eaton* now. *See Galatis*, 2003-Ohio-5849 at syl.¶1. There can be little doubt, based on the text and history

of Article I, Section 14, on the long-standing history of health and safety inspections, and on prevailing Fourth Amendment jurisprudence, that the Court's decision in *Eaton* was well within the legal mainstream when it was issued. No compelling argument can therefore be made that "the decision was wrongly decided at [the] time" it was issued. Nor does *Eaton* defy practical workability. At least some scholars have maintained the opposite: that *Eaton*'s approach is the preferable one. They have written that "[i]nspectorial searches … can much better be dealt with by requiring that they be 'reasonable' within the first clause of the fourth amendment." Taylor, *Two Studies in Constitutional Interpretation* at 99. Finally, abandoning *Eaton*, while at the same time adopting CF Home's heightened probable-cause standard, would create an undue hardship. As discussed in greater detail below, *see* 45–48, local governments and the State have relied on existing search and seizure jurisprudence when crafting administrative-search programs.

The Court should do more than just reaffirm *Eaton*, however. It should also hold that North Canton's rental-inspection is reasonable and therefore passes muster under Article I, Section 14 of the Ohio Constitution. There are several factors that demonstrate the reasonableness of the City's ordinance.

First, the rental-licensing ordinance complies with *Camara*'s requirements. Although the parties may disagree about whether *Camara*'s requirements are sufficient to establish probable cause, there should be no dispute that they are relevant to the question of reasonableness. The United States Supreme Court has confirmed as much. Discussing the probable-cause standard adopted in *Camara*, it has written

that "[i]n the administrative search context, we formally require that administrative warrants be supported by 'probable cause,' because in that context we use that term as referring not to a quantum of evidence, but *merely to a requirement of reasonableness*." *Griffin v. Wisconsin*, 483 U.S. 868, 877 n.4 (1987) (emphasis added); *see also* Comment, *The Fourth Amendment and Housing Inspections*, 77 Yale L.J. 521, 525 (1968) (noting that the *Camara* court could have achieved its objectives equally well under the warrant clause *or* the reasonableness clause).

North Canton's rental-licensing ordinance is reasonable under the standard that *Camara* established. As a condition of probable cause, *Camara* requires "reasonable legislative or administrative standards" for inspections that "guarantee that a decision to search private property is justified by a reasonable governmental interest." *Camara*, 387 U.S at 538–39. Among other things, such standards must impose a clear limitation on "the inspector's power to search," *id.* at 532, and must ensure that there is "a relatively limited invasion of the urban citizen's privacy," *id.* at 537. The rental-licensing ordinance does. It makes clear that the purpose of the inspection is to "ensure compliance with the Part 17 [sic] of the Codified Ordinances." North Canton Ordinance §703.04(c). It is also targeted to an important public interest: "[t]ime and experience have forcefully taught that the power to inspect dwelling places … is of indispensable importance to the maintenance of community health." *Camara*, 387 U.S. at 537 (quoting *Frank*, 359 U.S. at 372).

Second, the Fourth Amendment, at least, would permit North Canton to enforce its rental-licensing ordinance even more aggressively than it does. The Sixth Circuit

recently held that a city does not violate the Fourth Amendment when it refuses to provide a rental license to landlords who decline to consent to a health and safety inspections of their properties. *Herschfus v. City of Oak Park*, ___ F.4th ___, 2025 WL 2218494, at *7 (6th Cir. Aug. 5, 2025) (Nalbandian, J.); *cf. also Cedar Point Nursery v. Hassid*, 594 U.S. 139, 161 (2021) (there is generally no unconstitutional taking when "the government conditions the grant of a benefit such as a permit, license, or registration on allowing access for reasonable health and safety inspections.").

Third, even though the rental-licensing ordinance requires city inspectors to obtain a warrant before performing an inspection, it nevertheless satisfies the more demanding standard for *warrantless* inspections that the United States Supreme Court adopted in *City of Los Angeles v. Patel*. The Court in that case held that a law authorizing warrantless administrative inspections is reasonable when it provides an opportunity for "precompliance review before a neutral decisionmaker." *See Patel*, 576 U.S. at 420. The rental-licensing ordinance's administrative warrant process provides such an opportunity—even though the ordinance does not impose any penalties, criminal or otherwise, for refusing to consent to an inspection. So even if the Court were to conclude that an administrative warrant is not formally a "warrant" for purposes of Article I, Section 14, the rental-licensing ordinance would satisfy the reasonableness requirements that apply to certain types of warrantless inspections. *See id.*; *see also Herschfus*, 2025 WL 2218494 at *5 (discussing *Patel*).

III. *Camara*'s probable-cause standard is consistent with the requirements of Article I, Section 14 of the Ohio Constitution.

CF Homes in this case asks the Court to adopt the portion of *Camara* that it likes—the warrant requirement—but reject the part that it does not—*Camara*'s probable-cause standard. *See* CF Homes Br.8–20.[1] Constitutional jurisprudence is not a buffet, however. The Court should therefore affirm even if it decides to overrule *Eaton* and adopt *Camara*'s holding that administrative health and safety inspections require warrants. The mere fact that North Canton's ordinance refers to warrants, as *Camara* and the Fourth Amendment demand, does not mean that a warrant is required as a matter of Ohio Constitutional law—or that the same standard should apply to warrants that Article I, Section 14 *does* require.

Camara's adoption of a warrant requirement cannot be divorced from the probable-cause standard that it also adopted. The United States Supreme Court reaffirmed in that case that "[t]ime and experience have forcefully taught that the power to inspect dwelling places … is of indispensable importance to the maintenance of community health." *Camara*, 387 U.S. at 537 (quoting *Frank*, 359 U.S. at 372). It reasoned that such inspections were reasonable for purposes of the Fourth Amendment and that, because a "valid public interest" justifies the inspection, "there is probable cause to issue a suitably restricted search warrant." *Id.* at 539.

[1] The brief that CF Homes filed on August 8, 2025 did not comply with the Court's rules regarding margin or font size. *See* S.Ct.Pra.R.3.09(B)(2) and (3). North Canton moved to strike CF Homes's brief and asked the Court to order CF Homes to refile a brief that complied with the Court's rules. The Court had not ruled on the City's motion as of the date of this filing. All citations to CF Homes's brief therefore refer to the brief that it filed on August 8, 2025.

There is no reason for the Court to adopt a different standard under Article I, Section 14. The Court has held that it will "harmonize [its] interpretation of Section 14, Article I of the Ohio Constitution with the Fourth Amendment, unless there are persuasive reasons to find otherwise." *Robinette*, 80 Ohio St. 3d at 239. There are no such reasons here. Both this Court and the United States Supreme Court have recognized that "probable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Illinois v. Gates*, 462 U.S. 213, 232 (1983); *State v. Martin*, 2022-Ohio-4175, ¶16 (same). All that *Camara* did was define probable cause for a specific context. The mere fact that CF Homes dislikes that definition does not provide a persuasive reason to reject it.

IV. Neither CF Homes nor its *amici* provide any persuasive reasons why the Court should hold that North Canton's rental-licensing ordinance violates Article I, Section 14 of the Ohio Constitution.

Although CF Homes offers a variety of arguments in support of its constitutional challenge, none of them are persuasive. CF Homes overlooks the Court's *Eaton* decision and assumes that administrative health and safety inspections like the one at issue here require a warrant. It is wrong, for the reasons discussed above. None of CF Homes's other arguments fare any better. The Court should therefore affirm the Fifth District's decision rejecting CF Homes's challenge to the constitutionality of North Canton's rental-licensing ordinance.

A. Neither CF Homes nor its *amici* provide any reason to ignore or overrule *Eaton*.

CF Homes does not cite, let alone discuss, *Eaton*. While it asserts that noncriminal home inspections require warrants, the cases that it cites for that proposition all relied on the Fourth Amendment, not on the Ohio Constitution. Three of the cases that CF Homes cites were *federal* cases. And the only Ohio case that it cites, *Wilson v. Cincinnati*, 46 Ohio St. 2d 138 (1976), applied federal, not state, constitutional law. *Id.* at 145. *Wilson* therefore stands for nothing more than the well-settled principle that "the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall." *State v. McAlpin*, 2022-Ohio-1567, ¶60 (quoting *Arnold v. Cleveland*, 67 Ohio St. 3d 35, syl.¶1 (1993)).

Amicus, Institute for Justice, makes a similar mistake. Unlike CF Homes it at least cites *Eaton*. But the case on which it relies when it argues that *Eaton* no longer applies, *State v. VFW Post 3562*, 37 Ohio St. 3d 310 (1988), did not overrule (or even cite) that decision, nor did it engage in any meaningful discussion of Article I, Section 14 of the Ohio Constitution. As amicus admits, the Court in that case did not separately consider the Ohio Constitution; it simply referenced it briefly on the way to applying federal precedent. *See* Institute for Justice Br.9; *see also VFW Post 3562*, 37 Ohio St. 3d at 311. The key analysis in *VFW Post 3562* revolved around *Camara* and the Fourth Amendment, not *Eaton* and Article I, Section 14 of the Ohio Constitution. *VFW Post 3562*, 37 Ohio St. 3d at 312–15. *Eaton*, as Judge King noted in his concurrence below, has therefore never been overruled and remains good law. *See* App.Op.¶¶34–35 (King, J., concurring).

B. Even if CF Homes is right about the problems with *Camara*'s probable-cause standard, it is wrong about the solution.

Having skipped over the threshold question of whether Article I, Section 14 of the Ohio Constitution demands that health and safety inspections be conducted pursuant to a warrant, CF Homes argues that *Camara* improperly watered down the probable-cause standard and that the Court should reject that standard as a matter of Ohio constitutional law. It is not the first to make such a mistaken argument, though.

Concerns about watering down the Fourth Amendment's probable cause requirement have arisen in many of the United States Supreme Court decisions addressing administrative searches. The United States Supreme Court majority in *Frank*, for example, dismissed the suggestion that searches could be carried out pursuant to warrants supported by a lesser probable-cause standard, characterizing such warrants as "synthetic search warrant[s]" that would "dispense with the rigorous constitutional restrictions" for the issuance of a warrant. *Frank*, 359 U.S. 373.

Several members of that court continued to make a similar point after *Camara* overruled *Frank*. The dissent in *Camara*'s companion case, *See v. Seattle*, for example, described the standard the majority adopted as a "newfangled 'warrant' system that is entirely foreign to Fourth Amendment standards." 387 U.S. 541, 547 (1967) (Clark, J., dissenting). The criticism continued in future cases with dissenters asserting that if administrative inspections "undertaken without a warrant" are in fact "unreasonable in the constitutional sense" then the issuance of a *Camara* warrant "without any true showing of particularized probable cause would not be sufficient to

validate them." *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 328 (1978) (Stevens, J., dissenting)

What CF Homes overlooks, however, is that the members of the United States Supreme Court have broadly agreed that the Fourth Amendment permits administrative health and safety inspections. The only disagreement has been over *why* such searches are permissible. The justices who have criticized *Camara*'s probable-cause standard would not have adopted CF Homes's argument that administrative searches require a greater showing of probable cause—they would have rejected *Camara*'s requirement that such searches be conducted pursuant to a warrant. *See id.* at 328 (Stevens, J., dissenting) ("Fidelity to the original understanding of the Fourth Amendment, therefore, leads to the conclusion that the Warrant Clause has no application to routine, regulatory inspections of commercial premises."). These justices would have done what this Court did in *Eaton,* they would have judged administrative searches against a reasonableness standard, rather than "dilute the requirements of the Warrant Clause in an effort to force every kind of governmental intrusion which satisfies the Fourth Amendment definition of a 'search' into a judicially developed, warrant-preference scheme." *Id.* (Stevens, J., dissenting).

At least one of the authorities that CF Homes cites supports this approach. CF Homes repeats the criticisms of *Camara* that are reflected in Scott E. Sundby's law review article, *A Return to Fourth Amendment Basics: Undoing the Mischief of* Camara *and* Terry, 72 Minn. L. Rev. 383 (1988). But it fails to mention that Sundby's

solution is to *abandon* the warrant requirement for housing inspections and to evaluate them on the basis of reasonableness alone. *Id.* at 425–28.

Amicus Pacific Legal Foundation suggests that there was a general prohibition on all warrantless inspections at the time the Fourth Amendment was ratified. The authority that it cites for that proposition does not support it. It cites J. Chitty for the principle that warrantless entry into a home was a form of "extreme violence" by the State. *See* Pacific Legal Foundation Br.7–8, 11. But the passage that the Pacific Legal Foundation cites discussed criminal searches, not administrative ones. More importantly, that passage was concerned with the "breaking of doors." 1 Chitty, J., *Criminal Law* 51–59 (1816); AG App'x A-52–A-60. It was that type of forcible intrusion, not searches generally that, in Chitty's eyes, constituted "extreme violence." *See id.* at 52.

C. None of the historical authorities that CF Homes or its *amici* cite indicate that the same probable-cause standard traditionally applied to criminal searches applies to administrative inspections as well.

CF Homes is wrong when it argues that Article I, Section 14 of the Ohio Constitution demands that the same probable-cause standard apply to criminal searches *and* civil administrative health and safety inspections. CF Homes cites *Ash v. Marlow*, 20 Ohio 119 (1851) as definitively establishing the meaning of probable cause in all circumstances, even though it arose in the criminal context. *See* CF Homes Br.21–23. At the time the Court decided *Ash*, however, no one thought that health and safety inspections required warrants. *See above* 17–22. *Ash* therefore could not have established a probable-cause standard for a nonexistent warrant requirement.

Even putting aside whether a warrant is required, some of the authorities that CF Homes cites confirm that the meaning of probable cause is not nearly as established as CF Homes would have the Court conclude. CF Homes cites a law review article by Fourth Amendment scholar Orin Kerr, for example. CF Homes Br.9. But the article that CF Homes cites *contradicts* its argument here. The article notes, for example, that the warrant requirement has not been as "fixed" and "immutable" as the text of the Fourth Amendment might suggest. Kerr, *The Modest Role of the Warrant Clause in National Security Investigations*, 88 Tex. L. Rev. at 1671. Instead, Kerr writes, the "historical development of the warrant standard shows that the Supreme Court has repeatedly changed the warrant standard, both in terms of when warrants are required and what the government must show to obtain a warrant." *Id.*

The Institute for Justice's other historical comparisons are equally inapt. The Institute discuss historical abuses such as general warrants and the intrusive searches at issue in *Entick v. Carrington*, 19 St. Tr. 1029 (K.B. 1765) and *Wilkes v. Wood*, 98 Eng. Rep. 489 (K.B. 1763). Institute for Justice Br.20. Unlike general warrants, however, *Camara* warrants are not a license to go rummaging around looking for evidence of criminal wrongdoing; they do not authorize "exploratory" searches that look "for whatever might be turned up." *Cf. Rabinowitz*, 339 U.S. at 62. That, after all, is the whole point of the *Camara* standard. It ensures that there are "lawful limits of the inspector's power to search" and to guarantee that the "inspector … is acting under proper authorization." *Camara*, 387 U.S. at 532.

While courts and scholars have cited *Entick* and *Wilkes* frequently, they have done so for inconsistent reasons. There is no general agreement about what those cases stand for; the "multiple evils presented by" the warrants at issue *Entick* and *Wilkes*, "and the multiple reasons given for their invalidation, make these cases a kind of doctrinal Rorschach test, amenable to any number of readings." Sklansky, *The Fourth Amendment and Common Law*, 100 Colum. L. Rev. at 1799–800. Despite the frequent citations to these cases, their "'lessons'" therefore "remain very much up for grabs." *Id.* at 1801; *cf. also* T.T. Arvind and Christian R. Burset, *A New Report of Entick v. Carrington (1765)*, 110 Ky. L.J. 265, 265 (2021–2022) (identifying a new version of *Entick* that "challenges prevailing assumptions about *Entick*'s legal and historical meaning").

A similar problem plagues the Institute for Justice's reliance on William J. Cuddihy's detailed history of warrants and searches in the centuries leading up to the adoption of the Fourth Amendment. The Institute cites Cuddihy's work in support of its argument that the traditional criminal probable-cause standard should apply to administrative warrants as well. *See* Institute for Justice Br.19–21. But the key to its argument is again the mistaken comparison of narrowly constrained administrative searches to the broad, open-ended searches that general warrants permitted.

D. The presence of a semicolon in Article I, Section 14 does not mean that that the Ohio and United States Constitutions must be interpreted differently.

CF Homes argues that Article I, Section 14 must provide greater protections than the United States Constitution because, unlike the Fourth Amendment, the Ohio

Constitution contains a semicolon. CF Homes Br.30–31. That single punctuation mark cannot bear the weight that CF Homes places on it. "No more than isolated words or sentences is punctuation alone a reliable guide for discovery of a statute's meaning." *United States Nat'l Bank v. Indep. Ins. Agents of Am.*, 508 U.S. 439, 455 (1993). But while "[n]o intelligent construction of a text can ignore its punctuation," Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 161 (2012), and while a "statute's plain meaning must be enforced, of course, and the meaning of a statute will typically heed the commands of its punctuation[,]" "a purported plain-meaning analysis based only on punctuation is necessarily incomplete and runs the risk of distorting a statute's true meaning," *United States Nat'l Bank* at 508 U.S. at 454; *cf. also State v. Jackson*, 2004-Ohio-3206, ¶14 (noting that the Court applies the same rules of construction when interpreting statutes and the Ohio Constitution).

The fact that a semicolon separates the reasonableness clause from the warrant clause in Article I, Section 14 says nothing about what constitutes probable cause in a civil context. If anything, the semicolon's presence undermines CF Homes's assumption that the warrant clause applies in this case. As discussed above, *see* 12–13, there is significant scholarly dispute about the relationship between the Fourth Amendment's reasonableness clause and its warrant clause. *See also Groh v. Ramirez*, 540 U.S. 551, 571 (2004) (Thomas, J., dissenting) ("The precise relationship between the [Fourth] Amendment's Warrant Clause and Unreasonableness Clause is unclear."). The semicolon in Article I, Section 14 marks a more significant break

between those two clauses. It shows that they *are* independent requirements: the first, a prohibition on unreasonable searches, and the second, a limitation on when warrants may issue. *Cf.* Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. at 760 n.4. Article I, Section 14's punctuation, in other words, supports the Court's conclusion in *Eaton* that no warrant is required for the type of health and safety inspection at issue here.

The Minnesota Supreme Court has rejected a nearly identical argument to the one that CF Homes makes here. That court was one of the first to be asked to hold that its state constitution requires greater justification for an administrative-inspection warrant than does *Camara*. *See City of Golden Valley v. Weisbesick*, 899 N.W.2d 152, 154–55 (Minn. 2017). It declined to do so. Among other things, it noted that the language of the relevant provision of the Minnesota Constitution is, like Article I, Section 14 of the Ohio Constitution, "'textually identical' in all relevant respects" to the Fourth Amendment, with the only meaningful difference being the presence of a semicolon instead of a comma between the reasonableness and warrant clauses. *Id.* at 158. The Minnesota Supreme Court held that such a minor typographical difference did not justify expanding the warrant requirement beyond that which *Camara* already requires. *Id.* at 158–60.

The Iowa Supreme Court has given weight to the presence of a semicolon in the Iowa Constitution, but it did so only in a case involving a search of an individual on probation. *See State v. Short*, 851 N.W.2d 474, 481, 483 (Iowa 2014). It has not extended that decision to administrative inspections. When given the opportunity to do

just that, it declined to hold that the Iowa Constitution imposes greater restrictions on such inspections than *Camara* does. *See Singer v. City of Orange City*, 15 N.W.3d 70, 76 (Iowa 2024).

E. Amicus Institute for Justice is wrong about the history of administrative inspections in Ohio.

The Institute for Justice writes in its amicus brief that, at the time Ohio voters ratified the 1851 constitution, Ohio had "no established history … of suspicionless, residential code-compliance inspections, whether by warrant or without." Institute for Justice Br.25. If that were true, then it might provide compelling evidence that *Eaton* was wrongly decided. But it is not true. As already discussed above, Ohio *did* have an established history of warrantless health and safety inspections, both before and after Ohio voters ratified Article I, Section 14. *See above* 17–22

The early Ohio authorities that the Institute for Justice cites do not show otherwise. None of the cases that the Institute cites, for example, involved administrative health and safety inspections. *See* Institute for Justice Br.23. *Antoszewski v. State*, for example, involved a criminal search for illegal alcohol. 31 N.E.2d 881, 881–82 (8th Dist. 1936). And *Holek v. Taylor*, did not involve a search at all—it was a wrongful death action brought by a widow against individuals who sold her husband alcohol after she warned them not to do so. 3 Ohio Law Abs 105 (7th Dist. 1924).

The early Ohio statutes that the Institute for Justice cites also do not support its argument. The Institute gives several examples of statutes that, it claims, required government agents to obtain a warrant before they could conduct a search. *See* Institute for Justice Br.24–26. But even if the Institute is right about what the statutes

it cites say, the fact that warrants were required in *some* situations does not mean that warrants were required in *all* situations. The gambling prohibition statute that the Institute cites, for example, permitted the issuance of warrants for the purpose of enforcing a prohibition on gambling and allowed for the seizure of gambling devices. *See* Institute for Justice Br.24 (citing Act of Jan. 17, 1846, §§1, 5, 44 Ohio Laws 10, 10–12; AG App'x A-61–A-63). That merely confirms what has already been said: that the seizure of gambling paraphernalia was one of the purposes for which a warrant was historically issued. *See above* 21–22 (citing 66 Ohio Laws 287, 289; AG App'x A-41 and 74 Ohio Laws 310, 313–15; AG App'x A-47–A-49). At most, the statutes that the Institute cites show that the General Assembly knows how to impose a stringent probable-cause standard when it wants to do so.

The Institute also misreads some of the statutes that it cites, however. It claims, for example, that coroners "were required to obtain a warrant on evidence of a person's death." Institute for Justice Br.24. What the cited law actually said is that a coroner shall "issue his warrant" to a jury of twelve individuals upon learning of a dead body that may have met its end through violence. Act of Jan. 5, 1805, §6, 3 Ohio Laws 156, 158; AG App'x A-66. The term "warrant" in that context did not mean a search warrant; it referred instead to the coroner's authority to begin an inquest into the cause of death. It referred, in other words, to the coroner's exercise of authority granted to him. *Cf. In re Victor*, 31 Ohio St. 206, 209 (1877) (writing that the governor "by his warrant" may commute a sentence). The property tax assessor statute that the Institute cites is also of limited help here. All that statute said was that a

property tax assessor was "required to enter, with the consent of the owner or occupant thereof, and fully to examine all buildings and structures," for the purpose of determining their value. Act of Mar. 2, 1846, §25, 44 Ohio Laws, General Acts, 85, 95–96; AG App'x A-80–A-81. The statute did not require a warrant, nor did it say what to do if the property owners or occupants withheld their consent—or if they even could. *See id.*

The Institute for Justice ultimately concedes that Article I, Section 14 does not require a warrant "in all instances." Institute for Justice Br.27. That is no small concession; it is ultimately fatal to CF Homes's argument here, which rests upon the assumption that a warrant *is* required for every search. If no warrant is required, then the only question is the one that the Court posed in *Eaton*: Are the searches authorized by North Canton's rental-licensing ordinance reasonable? That is a question that CF Homes does not address. (The answer is yes. *See above* 26–29.)

F. Amicus Ohio Realtors raise an issue that is not presented in this case.

Amicus Ohio Realtors suggest that Ohio courts lack the authority to issue administrative warrants like those contemplated by *Camara*. The Realtors cite R.C. 2933.21(F), which allows courts to issue warrants "when governmental inspections of property are authorized or required by law." They also cite R.C. 2933.22(B), which states that a "warrant of search to conduct an inspection of property shall issue only upon probable cause to believe that conditions exist upon such property which are or may become hazardous to the public health, safety, or welfare." The Realtors' argument with respect to these statutes is not entirely clear, but they at least seem to

imply that the statutes limit the ability of Ohio courts to issue the type of warrants that *Camara* envisions. *See* Ohio Realtors Br.6–8.

If that is indeed the Realtors argument, then there are at least three problems with it. *First*, the rental-inspection ordinance *is* targeted at conditions that "may become" become hazardous. *Second*, the Realtors' argument is not presented here. The proposition of law that the Court accepted asks whether Article I, Section 14 of the Ohio Constitution demands a greater showing of probable cause for administrative inspections than the Fourth Amendment does. That constitutional question is significantly different from the statutory one that the Realtors appear to be raising. If the Court adopts CF Homes's interpretation of Article I, Section 14, its decision would not just restrict the power of municipalities to adopt administrative inspection requirements; it would also restrict the power of the General Assembly as well. It is that constitutional question, and its potential restriction on the General Assembly's power, that is the Attorney General's concern in this case.

Third, the restrictive reading of R.C. 2933.22(B) that Realtors appear to advance fails to account for the fact that the statute is found in the portion of the Ohio Revised Code that governs criminal procedure and it ignores that there may be other statutes that provide different standards for issuing civil administrative inspection warrants. The General Assembly has, for example, specifically bestowed on municipalities the power to regulate "buildings used for human occupancy or habitation … for the purpose of insuring the healthful, safe, and sanitary environment of the occupants thereof," R.C. 715.29(A), and to "[p]rovide for the inspection of buildings or other

structures," R.C. 715.26(B). It has similarly granted inspection authority to numerous state agencies. Under R.C. 3752.12(A), for example, the Director of the Ohio EPA may obtain a R.C. 2933.21(F) warrant simply upon stating "the purpose and necessity of an inspection" to determine compliance with certain environmental laws. The statutes that regulate ownership of dangerous wild animals provide another example. Under R.C. 935.19, the Director of Agriculture is allowed to "enter at all reasonable times any premises at which a dangerous wild animal or restricted snake is confined." R.C. 935.19(A)(1). If the property owner refuses to consent to an inspection, the Director may obtain a warrant if there "is probable cause to believe that the person is not in compliance with" the laws that govern dangerous wild animal ownership. R.C. 935.19(A)(3). Because it does not require any evidence of conditions that are or may become hazardous, the warrant standard under the dangerous wild animal statute is different from the one that R.C. 2933.22(B) imposes. No one would suggest, however, that R.C. 2933.22(B) prevents courts from issuing the type of warrant that R.C. 935.19(A)(3) independently authorizes.

Should the Court require further confirmation that R.C. 2933.22(B) does not apply to all civil administrative inspections, it need look no further than R.C. 2933.24(B). That statute requires an individual who conducts a health, safety, or welfare inspection pursuant to R.C. 2933.21(F) to prepare a report documenting the condition of the inspected property. But no similar requirement appears in the statutes that govern the inspection authority of the Director of the Ohio EPA or the Department of Agriculture. The report requirement therefore shows that the General Assembly intended

R.C.2933.21, .22, and .24 to work together to provide authority to inspect property for hazardous conditions when no other statute applies—not to supersede or restrict other, independently authorized, civil administrative inspection programs, like those generally authorized by R.C. 715.26(B), or by North Canton's rental-licensing ordinance more specifically.

V. The consequences of adopting CF Homes's constitutional argument would extend far beyond the confines of this case.

Although practicalities are ultimately irrelevant when the text of the Constitution is clear, *Johnson*, 164 Ohio St. at 302, it is nevertheless worth highlighting some of the consequences of CF Homes's argument in this case. That is because the scope of a decision adopting that argument would have far-reaching, and likely unforeseen, consequences. The United States Supreme Court has observed that the "standard of probable cause is peculiarly related to criminal investigations, not routine, non-criminal procedures." *South Dakota v. Opperman*, 428 U.S. 364, 370 n.5 (1967). There are therefore many areas in which the Fourth Amendment does not require a warrant supported by the same probable-cause standard that applies to criminal warrants. As discussed next, these include routine inspections of restaurants, inspections of closely regulated businesses, *Terry* stops, and national security searches just to name a few. All of these established doctrines or practices could be called into question if the Court holds that the Ohio Constitution imposes greater limits on searches than the Fourth Amendment does.

Numerous Ohio agencies have the authority to conduct inspections and to obtain a warrant if a property owner does not voluntarily consent to an inspection.

Consistent with historic practice, *see above* 17–22, the State Fire Marshall has the authority to "enter into all buildings and upon all premises … for the purpose of examination." R.C. 3737.14(A). The Director of Agriculture has the authority to conduct a variety of inspections and may obtain a warrant if a property owner refuses to consent. *See, e.g.,* R.C. 905.07 (agricultural additives); R.C. 921.18 (pesticides); R.C. 923.47 (animal feed production); R.C. 928.07 (hemp); R.C. 941.04 and .042 (animal diseases). And the Director of the Ohio EPA has a similarly wide variety of inspection responsibilities and, like the Director of Agriculture, can seek administrative warrants to aid in carrying out those responsibilities. He is required, for example, to inspect facilities that accept construction and demolition debris at least annually. R.C. 3714.08(A). If the owner of a disposal facility refuses to consent to an inspection, R.C. 3714.08(C) authorizes an inspector to obtain a warrant. The Director of Ohio EPA may also obtain a warrant to determine whether other types of waste, including hazardous waste, was disposed of properly, R.C. 3734.20(A)(2), and to ensure compliance with regulations regarding the cessation of operations at a regulated facility, R.C. 3752.12(A). In each of these cases, the General Assembly imposed requirements that were sufficient to comply with the requirements of the Fourth Amendment. If the Court holds that those Fourth Amendment requirements no longer pass muster under the *Ohio* Constitution, its decision will upend these laws as well.

Administrative searches are not the only types of searches for which courts have modified the applicable probable cause requirement. A reduced probable-cause standard also applies to searches conducted for national security purposes. *United*

States v. United States District Court (Keith), 407 US 297, 321–23 (1972); *see also* Kerr, *The Modest Role of the Warrant Clause in National Security Investigations*, 88 Tex. L. Rev. at 1675–76 (discussing *Keith*). And the United States Supreme Court in *Terry v. Ohio* held that brief investigatory stops and searches for dangerous weapons required neither a warrant nor probable cause. 392 U.S. 1, 20, 27 (1968). In doing so, it relied in part on *Camara*'s focus on the reasonableness of government conduct. *See id.* at 27; *see also id.* at 17 n.15.

The possibility that a decision adopting CF Homes's argument might undermine the ability of police officers to conduct *Terry* stops is not mere speculation. In support of its claim to greater protection against searches under Article I, Section 14 of the Ohio Constitution, CF Homes cites a law review article that criticizes both *Camara* and *Terry*. *See* CF Homes Br.8–9 (citing Sundby, *A Return to Fourth Amendment Basics: Undoing the Mischief of Camara and Terry*, 72 Minn. L. Rev. at 385–87). And while that article advocates abandoning the warrant requirement for administrative searches like the one at issue here, *see* Sundby, *A Return to Fourth Amendment Basics: Undoing the Mischief of* Camara *and* Terry, 72 Minn. L. Rev. at 425–27, it *also* advocates applying a *heightened* standard to *Terry* stops by evaluating them under the narrow exigent circumstances exception to the warrant requirement, *id.* at 420–25. It therefore does not take much imagination to conclude that, if the Court holds that Article I, Section 14 imposes a heightened probable-cause standard here, it is likely to soon face a challenge to *Terry* stops as well.

Even CF Homes does not appear to appreciate the scope of the rule that it has asked this Court to adopt. It suggests that any constitutional problems that North Canton's rental-licensing ordinance poses could be remedied by requiring private inspections, rather than inspections by government officials. That, CF Homes argues with approval, is what Springdale and Toledo have done. *See* CF Homes Br.47. The government cannot evade the Fourth Amendment or Article I, Section 14 by outsourcing searches to private parties, however. *See State v. Morris*, 42 Ohio St. 2d 307, 316 (1975); *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 614 (1989) ("Whether a private party should be deemed an agent or instrument of the Government for Fourth Amendment purposes necessarily turns on the degree of the Government's participation in the private party's activities."). So if governmental inspections are not proper, then legally mandated private inspections may not be either. They are, at the very least, likely to be challenged. CF Homes does not appear to realize that the rule for which it advocates could invalidate nearly all administrative searches—including the alternative practices that it suggests North Canton should have adopted.

The above examples highlight just a handful of ways that adopting CF Homes's argument would reverberate beyond the confines of this case. There are likely other as-yet unforeseen consequences. The only thing that can be said with certainty is that CF Homes has presented the Court with a Pandora's Box. It should decline to open it.

CONCLUSION

For the foregoing reasons, the Court should affirm the Fifth District's decision.

Respectfully submitted,

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I hereby certify that a copy of the foregoing Brief of Amicus Curiae Ohio Attorney General Dave Yost was served on September 22, 2025, by e-mail on the following:

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APPENDIX

Exhibit A

CHARTER,

AMENDMENTS,

AND

GENERAL ORDINANCES,

OF THE

CITY OF CINCINNATI.

REVISED, A. D. 1850

PUBLISHED BY ORDER OF THE CITY COUNCIL.

DAY & CO., PRINTERS.

1850.

Discharge of fire-arms, fire-works, &c. prohibited.

persons in military array, discharging cannon or fire-arms in some public display, or commemoration of some extraordinary event,) shall hereafter discharge any cannon, carronade, blunderbuss, swivel, musket, fowling-piece, rifle, pistol, or other fire-arms, within the limits of said city, or if any person or persons shall hereafter fire any squib or squibs, or crackers, or other fire-works of any description whatever, in any of the streets, alleys or market spaces, or on the public commons of said city, every person so offending shall, for every such offense, on conviction thereof before the mayor, forfeit and pay to the city of Cincinnati any sum not exceeding two dollars, nor less than one dollar, with costs of prosecution.

Penalty.

On steamboats, &c.

2. Sec. II. That if any person or persons, owning or having charge of, or commanding any steamboat or other vessel, on the river off said city, or when passing by, stopping at, or leaving the same, shall cause or permit any cannon, carronade, blunderbuss, swivel, or other gun or fire-arms, to be discharged upon or from such steamboat or other vessel, every person so offending shall, for every such offense, on conviction thereof before the mayor, forfeit and pay to the city of Cincinnati any sum not exceeding ten dollars, nor less than five dollars, with costs of prosecution.

Penalty.

Passed June 4th, 1828.

FIRE DEPARTMENT.

AN ORDINANCE for preventing and extinguishing fires, and to regulate the keeping of gunpowder; also, to prevent the erection of wooden buildings, within certain limits.

Firemen to receive certificate of membership from city clerk.

1. SECTION I. *Be it ordained by the city council of the city of Cincinnati*, That the firewarden company, No. 1, and the several fire-engine companies, to-wit: No. 1, No. 2, No. 3, and No. 4, and the hook and ladder company, No.

1, and the hose company, No. 1, and all other engine companies that may be hereafter formed, and accepted by the city council, shall be entitled to receive a certificate of membership individually from the clerk of the city council, which certificate may be properly adduced as evidence of their right to the privilege of the ninth section of the city charter, exempting firemen from military duty. And each of the above named companies, and such other companies as may be hereafter accepted by the city council, may form a constitution, and enact such by-laws, to be enforced under such penalties for the regulation and prompt attendance of their own company, as a majority of said company may think proper, (provided such by-laws are not repugnant to the laws of this city, this state, or the United States;) and all fines and penalties incurred by any fireman for the violation of any of the by-laws thus made, may be recovered by prosecution before the mayor, and all fines or forfeitures so collected shall be paid to the foreman of the company in which the forfeit was made, for the benefit of the said company.

Fire-companies may form a constitution, enact by-laws, &c.

Fines, penalties, &c. may be sued for before the mayor.

2. Sec. II. That when any of the aforesaid companies shall be disbanded, or when new companies shall become necessary, volunteers may offer, by enrolling themselves into a company, choosing a foreman and secretary, and reporting their names to the city council for acceptance, their number being limited by the city council: but from the consideration that practice and long experience approach towards perfection, it is considered inexpedient to make annual or frequent changes in the members of the fire department, but that they should hold their appointments during the pleasure of the city council: *Provided, however*, that all companies belonging to the fire department, and each individual composing those companies, shall be subject to the control of the city council, and whole companies or individuals shall be liable to be displaced for any improper conduct, or when the public interest may require a change, and successors appointed.

How new companies may be formed.

Proviso.

3. Sec. III. (Repealed.)

Duties and powers of firewardens.

4. Sec. IV. That the firewardens are hereby authorized to enter any house or building, lot, yard, or premises, in this city, between sun rising and setting, on any week day, for the purpose of examining any fireplaces, hearths, chimneys, stoves, or stove pipes, ovens, boilers, kettles, or other apparatus or fixtures, which may be dangerous in causing or promoting fires; and when any danger shall appear, from any apparatus as aforesaid, of fires taking place, they shall, or any of them may direct, in writing, the owner, agent, or occupant of any premises containing any of the dangers aforesaid, to remove, alter, or amend the same, in such manner and within such time, as they or either of them may deem reasonable and just; and any person or persons who shall resist the entrance of the firewardens as aforesaid, into any premises as aforesaid, or shall neglect or refuse to attend to the directions given for altering, amending, or removing any of the dangers aforesaid, shall forfeit and pay for every such offense, any sum not exceeding fifty dollars, to be recovered before the mayor, with costs of suit, and the further sum of five dollars, to be recovered before the mayor, with costs of suit, for every day they shall suffer the same to remain, after reasonable time given as aforesaid.

Persons refusing to attend to the directions of the wardens.

Penalty.

Construction of hearths, &c.

5. Sec. V. That it shall be the duty of all persons hereafter building any hearth or hearths, within the boundaries of the corporation, to construct the same on a stone or brick arch, and in all cases where the back of the fireplace shall be three feet or more wide, the hearth shall extend at least twenty-four inches in front beyond the jambs; and where the back of the fireplace shall be less than three feet wide, the hearth shall extend not less than twenty-two inches in front beyond the jambs.

Platforms for stoves.

6. Sec. VI. That it shall be the duty of all persons using a tight stove or stoves, in any house, store, shop or building, within the corporation, to have a platform of stone, brick, sheet iron or earth, under the said stove or stoves,

extending at least six inches in every direction beyond that part of the lower plate that fronts the door of said stove or stoves; and that all stove pipes, at their intersection with any floor, partition, roof, or side of a house through which they pass, shall be made to pass through a crock, or, if through a window, it shall be enclosed with tin; and all chimneys shall in all cases extend at least two feet and a half beyond the roof or side of a house through which it passes, and, if through the side of a house, it shall be capped with a cross pipe not less than eighteen inches in length, and no person shall be permitted to place a stove pipe through any building so as to project into the street: *Provided, nevertheless,* that if, from any peculiar circumstance, it should be the opinion of any three of the firewardens as aforesaid, that further precautions are necessary beyond what are defined in the fifth and sixth sections of this ordinance, they may give such further directions as to them the circumstances of the case may seem to require, and their directions shall be considered lawful; and any person or persons offending against any of the provisions of this or the preceding section, shall be fined in any sum not exceeding twenty dollars, and not less than five dollars, with costs of suit, on conviction thereof before the mayor.

Crocks, &c. for stove pipes.

Proviso.

Penalty.

7. Sec. VII. (Superseded.)

8. Sec. VIII. That it shall not be lawful for any person or persons to boil oil or varnish in this city, within twenty feet of any building, and in all cases the boiler must be placed in a furnace, and previous to its being used, the owner or occupant must receive from one or more of the firewardens of the ward in which the furnace is placed a certificate of safety from danger of communicating fire; and any person offending against the provisions of this section shall be liable for all damages, and be fined in any sum not exceeding one hundred dollars, with costs, on conviction thereof before the mayor.

Boiling of varnish.

Penalty.

9. Sec. IX. (Repealed.)

10. Sec. X. (Repealed.)

11. Sec. XI. (Repealed.)

12. Sec. XII. (Repealed.)

Lighted candles in stables, &c. prohibited.

13. Sec. XIII. That no owner or owners, or occupant of any livery or other stable within the limits of the corporation, nor any person or persons in their employ, shall be allowed to use therein any lighted candle, or other light, except the same be secured within a tin, horn, or glass lantern, under the penalty of ten dollars, on conviction thereof before the mayor.

Penalty.

Duties of firewardens, marshal, &c.

14. Sec. XIV. That it shall be the duty of the firewardens, and the marshal and his deputies, when proper information is given to any one or more of them of any offence against any preceding part of this ordinance, to lodge complaint before the mayor for prosecution.

Owners to provide marked fire-buckets, &c.

Number to be provided.

15. Sec. XV. That the owner or occupant of every house within this city, having less than four fireplaces, shall provide one leather fire-bucket, and having four fireplaces and less than eight, two leather buckets, and having eight fireplaces or more, four leather fire-buckets, to be marked with at least the initials of the owner's name: and the owner or occupant of every brewhouse, distillery, or sugar-house, or air furnace, shall provide four fire-buckets for each, in addition to those required for dwelling houses; and the owner or occupant of every soap house and candle factory, and bakehouse, shall provide himself with two additional buckets as aforesaid, all of which buckets shall be well made, painted or glazed, and capable of containing two and a half gallons, and shall be suspended in some convenient place, ready to be delivered and used for the extinguishment of fires, whenever any may occur; and all leather buckets as aforesaid, shall be procured by the persons inhabiting or occupying any house or building, and if a tenant, at the expense of the owner of the house or building; and in case of neglect or refusal, after having been notified by some person duly authorized by the city council, to furnish all or any of the fire-buckets aforesaid,

the person or persons so offending shall forfeit and pay, for every month they shall neglect or refuse to procure the same, fifty cents, to be recovered before the mayor, with costs: and every inhabitant having any fire-buckets in their possession, and shall neglect or refuse to deliver them for use on alarm of fire, shall forfeit and pay for every bucket so retained, fifty cents. Penalty for neglecting to provide and use buckets.

16. Sec. XVI. That whenever any of the fire-buckets aforesaid shall be lost or destroyed in the public use, at any fire that may occur within this city, the person owning the same, on producing proof of the same to the city council, shall be entitled to receive an order on the treasury of the city for three dollars, if new, or if damaged by use, such sum as may be deemed right, for every bucket so lost as aforesaid, for the express purpose, and no other, of procuring other buckets in lieu of those lost or destroyed. Lost buckets to be paid for out of city treasury.

17. Sec. XVII. That it shall be the duty of the marshal, or some other person employed by the city council, to examine all dwellings and other buildings twice in each year, whose owners or occupants are required to furnish fire-buckets by the provisions of this ordinance; and when he shall find any person or persons that have not furnished themselves with buckets agreeably to the requisitions of this ordinance, he may receive from all such persons the sum of three dollars for each fire-bucket they may lack as aforesaid, and receipt for the same, which receipt shall remain good for eight years, and no longer; and all moneys thus received by the marshal, shall be paid into the city treasury, to be applied exclusively to the fire department; and the marshal or other person shall receive such compensation for his services as aforesaid, as the city council may direct. Marshal, &c. to examine buildings. Receipt for money in lieu of buckets. How receipts shall be applied.

18. Sec. XVIII. That if any chimney within this city shall take fire by neglect of being properly cleansed or swept, the owner or occupant of the house to which such chimney appertains, shall forfeit and pay the sum of five dollars; and no person or persons shall set or put fire Chimney fired through negligence.

in their chimneys for the purpose of cleansing the same, except in the day-time, nor then unless it is raining, or snow on the roofs of the houses, under the penalty of five dollars for every such offense, on conviction thereof before the mayor.

Penalty.

Injuring fire-engines.

19. Sec. XIX. That any person or persons who shall injure any of the fire-engines belonging to or in the public use of the city, or any of the apparatus thereunto belonging, or any of the houses in which they may be placed, or shall place any obstruction in the way so as to hinder in any manner the free access to the engines, or hook and ladder carriage, or hose carriage, at all times, or shall injure or remove any of the fire-hooks or ladders from their proper places of deposit, except it be at the alarm of fire, for the purpose of extinguishing the same, or by order of the proper officer, for the purpose of washing, cleansing, exercising, repairing, or other necessary purpose, shall be fined in any sum not exceeding one thousand dollars, on conviction thereof before any court having jurisdiction thereof.

Obstructing way.

Penalty.

20. Sec. XX. (Repealed.)

21. Sec. XXI. (Repealed.)

Duties of the marshal and deputies, on alarm of fire.

22. Sec. XXII. That it shall be the duty of the marshal and his deputies, on every alarm of fire, to repair to the place where such fire may happen, for the preservation of the public peace, for the removal of all suspicious persons, or others not usefully employed in the extinguishment of fires or the preservation of property.

Duties of firemen, on an alarm.

23. Sec. XXIII. That it shall be the duty of the fire-engine men, at every alarm of fire, to repair immediately to their respective engines, and convey them to or near the place where such fire may happen, and there, in conformity to the directions of the foreman of said company, work and manage their respective engines with all their skill and power for the extinguishment of the fire; and when the fire is extinguished, they shall return their respective engines, with all the implements and apparatus

When the fire is extinguished.

belonging thereto, well washed and cleansed, to their several places of deposit. And it shall be the duty of the foreman of each fire-company aforesaid to appoint one or more of his company, whose duty it shall be to convey to any fire that may occur all the fire-buckets that may be in their possession, and when the fire is extinguished, to return them, well washed and clean, to their respective places of deposit. And the engine companies shall, at least once in every month, under the direction and order of the foreman, draw out their engines, and wash, cleanse and exercise the same. And all firemen created under the provisions of this or any former ordinance, shall enjoy all the privileges thereof so long as they continue to perform the duties required of them, and no longer.

To exercise once in a month.

24. Sec. XXIV. That the hook and ladder company now organized, or such other company as may be hereafter organized, shall, at every alarm of fire, repair immediately to their hook and ladder carriage, and convey the same, with the hooks and ladders, near the place where such fire may happen, and there exert themselves in the use of said hooks and ladders agreeably to the direction of the officer then commanding.

Hook and ladder companies' duties, on an alarm.

25. Sec. XXV. That the hose company now organized, or such other company as may be hereafter organized, shall, at every alarm of fire, repair immediately, with their carriage and hose, near the place where such fire may happen, and there be ready to exert themselves in applying the hose to use agreeably to the directions of the commanding officer then present.

Hose companies.

Their duties, on an alarm.

26. Sec. XXVI. That the protection society now organized and accepted by the city council, as well as others that may hereafter be organized and approved, shall have power to enforce all their by-laws, not repugnant to the laws of this city, the laws of this state, or the laws of the United States, in the same manner as fire-companies are by the provisions of the first section of this ordinance, and governed in all respects as fire-companies are, except that they

Protection society.

Powers and duties.

shall not be controlled by any authority but the officers of their own company: and they shall have power, under their direction, to take such measures for the preservation of lives and property in times of fire, as may be deemed proper and expedient; to remove all improper and suspicious persons from meddling or interfering with the removal of property, and place such guards over such property as may be removed as shall be requisite, and use all reasonable endeavors for the safe keeping and return of all property taken under their care to the owners thereof as may be in their power.

Use of public cisterns, &c., except by the fire department, prohibited.

27. Sec. XXVII. That no person or persons shall be allowed to take any water from any of the public cisterns or hydrants in this city, except for the purpose of extinguishing fires, or for washing, cleansing or exercising the public engines or other apparatus belonging to the fire department; nor shall any person be allowed to open any of the public cisterns in this city, and leave them uncovered; and any person or persons offending against any of the provisions of this section shall, on conviction thereof before the mayor, be fined in any sum not exceeding ten dollars, with costs of suit.

Penalty.

Passed December 16th, 1826.

AN ORDINANCE supplementary to an ordinance entitled "an ordinance for preventing and extinguishing fires," &c., passed 16th December, 1826.

Persons not members of fire department, meddling after notice from the marshal, fined.

28. SECTION I. *Be it ordained by the city council of the city of Cincinnati*, That if any person or persons, except regularly appointed by the city council, shall assume the direction and control, or assist in the management of any fire-engine belonging to the city of Cincinnati, after being notified by the marshal that the city council do not recognize them as belonging to the fire department, every such person shall forfeit and pay, on conviction thereof before the mayor, the sum of fifty dollars, with costs of suit, and a further sum of twenty-five dollars for every twenty-four

Penalty.

Exhibit B

CHARTERS

OF THE

VILLAGE OF CLEVELAND,

AND THE

CITY OF CLEVELAND,

WITH THEIR

SEVERAL AMENDMENTS:

TO WHICH ARE ADDED THE

LAWS AND ORDINANCES

OF THE

CITY OF CLEVELAND.

PUBLISHED BY ORDER OF THE CITY COUNCIL.

CLEVELAND:
HARRIS, FAIRBANKS & CO., DAILY HERALD JOB OFFICE.
1851.

OF THE PREVENTION AND EXTINGUISHMENT OF FIRES.

Of the Prevention of Fires.

SEC. 1. Stove pipes, how to be put up.
2. Hay, straw, &c., not to be put in exposed situations.
3. No lighted lamp or candle to be used where hay or straw are kept.
4. Hay, &c., not to be burnt in streets.
5. Shavings, &c., to be moved from shops three times in each week.
6. Combustible matter not to be scattered in streets.
7. Fire Warden to examine premises.
8. Penalty for obstructing Fire Wardens.
9. Powers and duties of Mayor and Councilmen as to boats containing powder.
10. Fire not to be carried openly in streets.
11. Ashes, how to be kept.
12. Squibs, &c., not to be fired without permission.
13. Cannon not to be fired without permission.
14. Houses to have scuttles.
15. Fire buckets to be kept by owners of houses.

Stove pipe to be secured.

§1. Be it ordained, &c., That no pipe of any stove or Franklin shall be put up unless it be conducted into a chimney made of brick or stone, except in cases where the mayor, or any two aldermen, or councilmen, shall deem it equally safe if otherwise put up, to be certified under his or their hand; and any person putting up the pipe of any stove or Franklin contrary to this section, shall for every offence forfeit five dollars, and the further sum of one dollar for every twenty-four hours the same shall remain so put up after notice given by the mayor or fire warden.

Hay, Straw, &c., not to be kept in exposed situations.

§2. No hay, straw, or other combustible substance, shall be deposited within fifteen feet of any place where fire or ashes are kept, unless the said combustible substance be kept, in a close and secure building, under the penalty of one dollar for every offence, and the like penalty for every twenty-four hours the same shall thereafter remain.

Candles & lamps not to be used without lanterns.

§3. No lighted candle or lamp shall be used in any stable, or other place or building where hay, straw, or other combustible materials shall be kept, unless the same shall be well secured in a lantern, under a penalty of two dollars for each offence. And no fire shall be used or kept in any stove or otherwise, in any such building, without permission from the mayor, under a penalty of ten dollars; and an

additional penalty of five dollars for each and every twelve hours that said fire shall so remain.

Combustibles not to be burned in streets.

§4. No hay, straw, chips, shavings, or other combustible substance, shall be set on fire or burned in any street, or on any lot within two hundred feet of any building, in the city, without permission of the mayor, an alderman, or a councilman, under the penalty of five dollars upon any person directing or causing the same to be done; and it is hereby made the special duty of the marshal and the general street commissioner to enforce the requirements of this section.

Joiners to clear out shops.

§5. Every person keeping or occupying a shop wherein shavings or other combustible matter may be contained, shall, under a penalty of two dollars for every neglect, clean and remove the same out of such buildings and the yard belonging thereto, at least three times in each week; provided said buildings are situated within two hundred feet of any other building. And no lighted candle shall be used in any such shop or building, except it be placed in a candlestick of a material not liable to take fire, under the penalty of two dollars for every offence.

Shavings, &c. not to be scattered in streets.

§6. No person, in removing any chips, shavings, or other combustible matter, shall scatter or throw them in any street or shall at any time direct, permit or suffer any chips, shavings, or other combustible matter, to be taken to, or thrown or scattered on any street or lane, under a penalty of two dollars for every offence.

Fire wardens to examine premises.

§7. It shall be the duty of the fire wardens, in their respective wards, to examine carefully, and at all times during the year, under the direction of the city council, every house, store, or building, and places for the keeping and deposite of ashes; and to ascertain and report to the city council all violations of the preceding sections; and also to remove or abate, with the consent of the mayor, or any alderman or councilman, [and in neglect or refusal of the owner or occupant,] any cause from which immediate danger of fire may be apprehended; and to cause all buildings, chimneys, stoves, stove pipes, hearths, ovens, boilers, ash-houses, and apparatus used in every building or manufactory, which shall be found in such condition as to be considered unsafe, to be, without delay, at the expense of the owner or occupant thereof, put in such condition as not to be dangerous in causing or promoting fires.

Penalty for obstructing fire wardens.

§8. If any person shall obstruct or hinder any warden in the performance of his duty under the preceding section, such person shall for every such offence forfeit the penalty of twenty-five dollars.

§9. The mayor, any alderman, or a councilman, may give such directions as he may deem proper, relative to the

laying, fastening, and berths of all boats having on board gunpowder, or being loaded with hay or other combustible materials; or to direct such gunpowder, hay, or other combustible matter, to be removed to a place of safety; or if gunpowder, to be placed in a powder-house, within such time and in such manner as either of said mayor, alderman or councilman, shall direct: and it shall be lawful for either the said councilman, alderman, or mayor, with the aid of the marshal, or any constable, to put in force, himself, the orders or directions so given. Every person who shall refuse or neglect to obey the directions or orders given under this section, shall for every offence forfeit twenty-five dollars. Gunpowder on boats.

§10. No person shall carry fire in or through any street or lot, except the same be placed or carried in some close and secure pan or other vessel, under the penalty of one dollar for each offence. Fire not to be carried in streets.

§11. No ashes, (except at the manufactories where ashes are used,) shall be kept or deposited in any part of the city, unless the same be in a close and secure metalic or earthen vessel, or brick or stone ash-room, under the penalty of three dollars for every offence, und a further penalty of one dollar for every twenty-four hours the same shall thereafter remain. Ashes, how to be kept.

§12. No person shall fire or set off any squib, cracker, gunpowder, or fire-works, or fire any gun or pistol, in any part of the city, unless by permission of the mayor, or two aldermen and councilmen, under the penalty of two dollars for each offence. Repealed, see amendment.

§13. Every person firing a cannon within the city, unless by permission of the mayor. two aldermen, or councilmen, shall forfeit the penalty of not less than five dollars. Cannon not to be fired.

§14. Every dwelling-house, or other building more than one story in height, within the city, shall have a scuttle through the roof, and a convenient stairway or ladder to the same: and any person constructing such dwelling-house, or other building, without having such a scuttle, and every owner of any such house or building now erected, (not having other permanent and convenient means of access to the roof,) neglecting to comply with the requisitions of this section for the space of thirty days after notice, shall forfeit twenty-five dollars, and the further sum of five dollars for every ten days the non-compliance shall continue to exist. Buildings to have scuttles.

§15. Every dwelling-house, or other building containing one fire place or stove, shall have one good painted leather fire bucket, with the initials of the owner's name painted thereon. Every building with two or more fire places or stoves, shall have two such buckets, and one additional buck- Every building to have fire buckets.

et for every two additional fire places or stoves. Every owner of such building not provided with buckets as aforesaid, shall forfeit two dollars for each deficient bucket, and the further sum of one dollar for each month after notice being given by a fire warden.—Passed May 7, 1836.

To Amend an Ordinance for the Prevention of Fires, passed May 7, 1836.

Squibs, crackers, guns, pistols, &c. not to be fired without permission.

§1. Be it ordained &c. That no person shall fire or set off any squib, cracker, gunpowder or fire works, or fire any gun or pistol in any part of the city within the old corporation limits, unless by permission of the mayor, or two aldermen, or councilmen, under the penalty of four dollars for each offence—the complainant to have one fourth of the fine.

12th section repealed.

§2. The twelth section of the Ordinance, to which this is an amendment, is hereby repealed, saving all penalties that have accrued to the city under the same.—Passed June 13, 1836.

To amend an Ordinance for the Prevention of Fires, Passed May 7, 1836.

Stove pipe to be secured.

§1. Be it ordained &c. That no pipe of any stove or Franklin, shall be put up, unless it be conducted into a chimney made of stone or brick, except in cases where the mayor, or any two aldermen or councilmen, shall certfy the same to be equally safe against fire: and any person putting up the pipe of any stove contrary to this section, or the owner or occupant who shall suffer any pipe to remain put up contrary to this section, shall forfeit the penalty of five dollars, and the further sum of one dollar for each twenty-four hours the same shall remain so put up, after notice given by the mayor or fire warden.

Duties of fire wardens.

§2. That when any fire warden, in the performance of his duty by virtue of the seventh section of the Ordinance to which this is an amendment, shall deem any building, chimney, stove, stove pipe, hearth, oven, boiler, ash-house, or apparatus used or suffered to be used in any building or manufactory, unsafe, and shall direct any thing to render the same more safe against fire, the owner or occupant thereof shall comply with such order or direction of the warden, with as little delay as the nature of the case will admit, and in default thereof forfeit and pay not less than five nor more than fifty dollars with the costs of suit.

§3. Every dwelling-house, or other building containing one fire place or stove, shall have one good painted fire

Exhibit C

LAWS

AND

ORDINANCES

OF THE

CITY OF DAYTON,

Containing

THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THE STATE OF OHIO, THE LAWS OF THE STATE PROVIDING FOR THE ORGANIZATION OF CITIES AND INCORPORATED VILLAGES, ALL THE GENERAL ORDINANCES OF THE CITY IN FORCE JUNE 1862, THE ELECTION LAWS, A LIST OF THE OFFICERS AS ORGANIZED UNDER THE ACT OF MAY 3D, 1852, WITH THE AMOUNT OF TAXES LEVIED IN EACH YEAR TO CARRY ON THE DIFFERENT DEPARTMENTS OF THE CITY, TOGETHER WITH THE RULES FOR THE REGULATION OF THE CITY COUNCIL.

COMPILED AND REVISED BY
ANTHONY STEPHENS & JOSIAH LOVELL.

DAYTON:
FROM THE PRESS OF THE DAYTON EMPIRE.
1862.

(11.) SEC. II. In case said railroad companies shall fail to comply with the requirements of the first section of this ordinance, the said railroad companies are hereby prohibited from running their locomotives, with or without trains attached, through the streets of said city, by steam motive power, and any person or persons found guilty of so running locomotives through the streets of the city, unless flag men are stationed as aforesaid, shall, on conviction thereof before the mayor, be fined in any sum not less than five, nor more than fifty dollars, together with costs of prosecution for each offense. Penalty for failing to comply.

AN ORDINANCE to amend the ordinance passed October 17th, 1856, requiring railroad companies to station flag men at certain points.

[*Passed June* 15, 1858.]

(12.) SEC. I. *Be it ordained by the City Council of the City of Dayton*, That the provisions of the first section of said ordinance be and the same are hereby extended to Prairie street in said city, and the penal provisions of that ordinance shall be held and regarded as applicable also to said Prairie street. Extending to Prairie street.

(13.) SEC. II. This ordinance shall be and remain in force from and after its passage.

CHAPTER 46.

FIRES.

AN ORDINANCE for preventing and extinguishing fires within the city of Dayton.

[*Passed April* 17, 1846.]

SEC. I. *Be it ordained by the City Council of the City of Dayton*, Repealed. (See section 28.)

SEC. II. Repealed. (See section 28.)

(1.) SEC. III. And the said wardens and each of them are hereby authorized to enter any house or building, lot, yard or premises, in this city, between sun rising and sun setting, on any week day, for the purpose of examining any fire places, hearths, chimneys, stoves or stove pipes, ovens, boilers, kettles, or other apparatus or fixtures, which may be Same subject.

dangerous in causing or promoting fires: and when they shall be satisfied any danger is likely to occur from any apparatus, fixture, fire place or thing aforesaid of fires taking place, they, or any two of them shall direct in writing, the owner, agent or occupant of any premises containing any of the dangers aforesaid, to remove, alter or amend the same, in such manner and within such time as they, or either two of them may deem reasonable and just. And any person or persons who shall resist the entrance of the fire wardens, or any of them, as aforesaid, into any premises as aforesaid, or shall neglect or refuse to attend to the directions given for altering, amending or removing any of the dangers aforesaid, shall forfeit and pay for every such offense any sum not exceeding fifty dollars and costs, to be recovered by suit before the mayor. And a further sum of two dollars and costs to be recovered by suit before the mayor, for every day he, she, or they shall suffer the same to remain after the reasonable time as aforesaid.

Penalty for violating or resisting wardens.

How fire places &c to be constructed.

(2.) SEC. IV. That it shall be the duty of all persons using a tight stove or stoves in any house, store, shop or other building within this city, to have a platform of stone brick or earth, or plate of sheet iron or zinc under the said stove or stoves, extending at least six inches in every direction beyond that part of the lower plate that fronts the door of said stove or stoves; and that all stove pipes at their intersection with any floor, partition or side of a house, shall pass through a crock—or if through a window, it shall be encircled with tin; nor shall any stove pipe extend through the roof of any building; and all chimneys shall in all cases, extend at least two feet and a half beyond the roof or side of the building through which it passes; and no person shall be permitted to place a chimney or stove pipe through any building so as to project into the street. Any person offending against any of the provisions of this section, shall be fined in any sum not exceeding twenty dollars, nor less than one dollar with costs of suit, on conviction thereof before the mayor.

(3.) SEC. V. That it shall not be lawful for any person

or persons to boil oil, varnish, or any other dangerous or inflammatory matter or substance in this city, within twenty feet of any building, and in all cases the boiler must be placed in a furnace, and previous to its being used, the owner or occupant must receive from one or more of the fire wardens of the ward in which the furnace is placed, a certificate of safety from danger of communicating fire: and any person offending against the provisions of this section shall, upon conviction thereof before the mayor, be fined in any sum not exceeding one hundred dollars with costs.

Penalty for making varnish, &c., under certain limits.

(4.) SEC. VI. That it shall be unlawful for any person within this city, to place or keep any wheat, rye, oats, barley, hay, straw, fodder, in the sheaf, stack or pile, within fifty yards of any building within said city, [except it be in a stable, barn or warehouse,] or in any dwelling house whatsoever, where fire is used for any purpose. Every person offending against any of the provisions of this section, shall, on conviction thereof before the mayor, be fined in any sum not exceeding fifty dollars, nor less than one dollar with costs.

Keeping straw, hay, oats, &c., provided for.

(5.) SEC. VII. That no person or persons being the occupant, or having the care or control of any store, dwelling house, warehouse, cellar or other building, or any part thereof, or any other person, shall keep, place or permit to be kept or placed in any such store, dwelling house, warehouse, cellar or other building, any ashes or other articles from which fire may originate, unless the same be placed in an iron, earthen, stone, or other incombustible vessel, nor shall any person suffer any shavings, or other combustible materials to be placed or to accumulate in or about his, her or their shop, store or premises; but he, she or they shall cause the same to be removed to some place of safety, as soon as they are thrown out of the same. Every person offending against any of the provisions of this section, shall, on conviction thereof before the mayor, pay a fine of not exceeding fifty dollars and costs.

Ashes—how to be kept.

(6.) SEC. VIII. If any chimney within this city shall take fire by neglect of being properly cleansed, the owner or occupant of the building to which said chimney appertains,

Chimney becoming foul.

shall forfeit and pay a fine, upon conviction thereof before the mayor, of not exceeding ten dollars and costs; and no person or persons shall set or put fire in any chimney or chimneys in this city for the purpose of cleansing the same, except in the day time, nor then, unless it is raining, or snow on the roofs of the houses, under the penalty of five dollars for every such offense, on conviction thereof before the mayor.

Duty of marshal and his deputies, and the city constables at fires.

(7.) SEC. IX. That it shall be the duty of the city marshal and his deputy or deputies, and the city constables, on every alarm of fire, to repair forthwith to the place where such fire may happen, for the preservation of the public peace, for the removal of all disorderly or suspicious persons, or others not usefully employed in the extinguishment of fires or the preservation of property. And any person or persons who shall resist any of the officers in this section mentioned, in the discharge of any duty hereby enjoined, or who shall not promptly obey the commands of any of said officers legally given, as aforesaid, shall, on conviction thereof before the mayor, pay a fine not exceeding one hundred dollars and costs.

As to how certain lights used by certain persons are to be kept.

(8.) SEC. X. That no owner or owners or occupant of any livery or other stable within this city, nor any person or persons in their employ, shall be allowed to use therein any lighted candle, or other light, except the same be secured within a tin, glass or horn lantern, under the penalty of not exceeding ten dollars and costs, on conviction thereof before the mayor.

Certain officers to make complaint.

(9.) SEC. XI. That it shall be the duty of the fire wardens, the city marshal and his deputies, when proper information shall be given to any one or more of them, of any offense against any of the provisions of this ordinance, to lodge complaint before the mayor for prosecution.

Repealing section.

(10.) SEC. XII. That all that part of the ordinance entitled "an ordinance for preventing and extinguishing fires, and to regulate the keeping of gunpowder, passed by the common council of the town of Dayton, April 23, 1831, which relates to the preventing and extinguishing fires," and all ordinances and parts of ordinances contrary to the pro-

visions of this ordinance, be, and the same are hereby repealed. This ordinance to take effect and be in force from and after the publication.

AN ORDINANCE for the organization of the Fire Department of the city of Dayton.

[*Passed April* 24, 1846.]

Certain fire companies exempt from working on the roads, and from military duty in time of peace.

(11.) SEC. I *Be it ordained by the City Council of the City of Dayton*, That the several members of the several fire engine companies heretofore organized in this city, to-wit: the Safety engine company, the Independence engine company, the Oregon engine company, the Fire Guards and the Hook and Ladder company, and all other fire or fire engine companies that may be hereafter formed, and accepted by the city council, shall be entitled to receive a certificate of membership, individually, from the city clerk and recorder, which certificate may be properly adduced as evidence of their right to the privilege of exemption from military duty under the provisions of "an act of the General Assembly of the State of Ohio, entitled 'an act to encourage the organization of fire companies,'" passed March 13, 1843, which certificate shall also exempt the holder thereof from the performance of labor on the roads and highways within this city; Provided, always, that no member of any such company heretofore organized, or which may hereafter be organized, shall receive such certificate unless he is at the time an active member of some one of said companies, or has been at the time such active member continuously for the space of five years next before the issuing of said certificate; nor shall any certificate be granted to any person as aforesaid, unless the company of which he is a member shall keep duly and efficiently organized, by keeping all the officers thereof duly elected, and holding their regular monthly meetings, and otherwise faithfully discharging the duties of such company, imposed by the constitution and by-laws thereof, and under such regulations as the said council may from time to time impose.

Certificates to members—how obtained.

(12.) SEC. II. That it shall be the duty of the secretary or clerk of each fire company, fire guards, hook and ladder company aforesaid, to deliver to the city clerk and recorder,

Exhibit D

LAWS

AND

ORDINANCES,

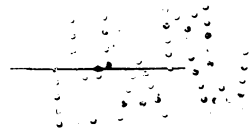
PUBLISHED BY AUTHORITY

OF THE

CITY COUNCIL

OF THE

CITY OF TOLEDO.



TOLEDO:
COMMERCIAL STEAM BOOK & JOB PRESSES.
1864.

place, nor shall any of the fire apparatus belonging to the city be used with any such view as aforesaid.

SEC. 2. That no trial of capacity or power of engine, or contest for superiority in working the same between any fire companies of this city, shall be made entered into or engaged in between any fire companies, except in the legitimate effort to prevent or extinguish fires, unless expressly directed by the chief engineer. And he shall give no such direction at any other time than at one of the semi-annual parades of said department, nor then except under proper regulations, to prevent unnecessary injury to any of the fire apparatus, and to avoid endangering the harmony and efficiency of the fire department.

Annual parades excepted.

SEC. 3. That it shall be the duty of the chief and assistant engineers of said department, strictly to enforce the foregoing prohibitions of this ordinance, and to report promptly and specifically every violation of the same.

Duty of chief and assistant engineer.

AN ORDINANCE

[Passed March 16, 1858,] to prevent fires and regulate the number and appointment of fire wardens, and fix their compensation.

SECTION 1. *Be it ordained by the City Council of the City of Toledo*, That there shall be one fire warden appointed by the Council for each ward in the city, who shall hold their offices for one year, and until their successors are appointed and qualified. In case of absence or disability of either of the wardens, it shall be the duty of the warden in the adjoining ward to act during the absence or disability of the warden aforesaid.

Fire wardens for each ward.

Compensation.

SEC. 2. Said wardens shall each be entitled to compensation at the rate of 30 cents an hour, for all the time by them respectively employed in the actual and necessary performance of duties under the 3d section of this ordinance, and shall be paid only on rendering to the Council a detailed account, specifying the premises on which the services were rendered, and the occasion of rendering the same.

Duty.

SEC. 3. It shall be the duty of the fire wardens, in their respective wards, to examine carefully, and at all times during the

To inspect buildings, &c.

year, whenever there may be occasion, every house, store, shop or building, and all places for the keeping or deposit of ashes; and to ascertain and report to the city solicitor all violations of the succeeding sections of this ordinance; and also to remove or abate, or cause to be removed or abated, in case of neglect or refusal of the owner, or occupant, any cause from which immediate danger from fire may be apprehended. And they shall give to the proper owner or occupant of any premises such directions to remove, abate or repair, as they may deem necessary to avoid danger from fire.

SEC. 4. When any fire warden shall, after careful inspection, deem any building, chimney, stove, stove-pipe, hearth, oven, boiler, ash-house, premises or apparatus, used or suffered to be used in or in connection with any building or manufactory unsafe, and shall order or direct anything to be done or omitted by the owner or occupant thereof, to render the same more safe, such owner or occupant shall comply with such order or direction of the warden, within the time fixed by him.

Gunpowder.

SEC. 5. No person shall keep, within the city, any quantity of gun powder exceeding twenty-five pounds, or of gun cotton exceeding five pounds, for a longer period than twenty-four hours, except in a powder magazine, the location, construction and keeper of which has been expressly approved by the Council. And the quantity of gun powder or of gun cotton not herein prohibited, shall be kept in tin or copper canisters, covered with tin or copper cap; neither of which shall contain over one quarter of the quantity allowed to be kept of either article, and each of such canisters shall be labelled "gun powder," or "gun cotton," according to the contents, in bold, distinct letters, and kept in plain sight, and convenient of access, near the front or rear entrance of every building in which the same is contained. And no gun powder or gun cotton, shall be retailed, sold, or handled for exhibition or sale, between sun-down and sun-rise.

Boats having gun powder on board.

SEC. 6. The mayor, harbor master or either fire warden, may give such directions as either of them may think proper, relative to the location of any boat having on board gun powder, gun cotton, hay, or other combustible materials; or may direct

said articles to be removed to a place of safety; or if gun powder or gun cotton, to be placed in a powder house, within such time, and in such manner as the mayor, harbor master, or fire warden may direct. Each of said officers are hereby respectively empowered to put in force any order or direction, given under this section. Any person refusing or neglecting to obey such order or direction, shall be liable to the penalty provided in the last section of this ordinance.

Transportation of gun powder.

SEC. 7. No person shall bring into, or through the said city, by land carriage, more than fifty pounds of gun powder at any one time, upon any vehicle, unless the ends and sides thereof, are higher than the wheels.

Stove pipe, ashes.

SEC. 8. No person shall put up or suffer to be kept up, the pipe of any stove, unless it be conducted into a chimney made of brick or stone. Every occupant of any building shall deposit and keep the ashes made in and about said building, in a close and secure metallic or earthen vessel, or in a brick or stone ash room.

Lanterns to be used.

SEC. 9. No person shall place any hay, straw or other combustible substance within fifteen feet of any place where the fire is kept; nor use a lighted candle or lamp in any building where hay or straw is kept, unless the same be secured in a tin, horn or glass lantern, or keep a fire in such building without permission of one of the fire wardens.

Bonfires, &c.

SEC. 10. No person shall set on fire any hay, straw, chips, shaving, barrels or other combustible substances, or make any bon-fire in any street, lane, alley or public ground, or in any lot within two hundred feet of any building, without permission from the mayor or fire wardens.

Clearing out shavings, &c.

SEC. 11. Every person keeping or occupying a shop wherein shavings or other combustible matter be contained, shall clean and remove the same out of such building, and the yard belonging thereto, at least three times in each week; nor shall he use a lighted candle, unless it be placed to a candlestick of incumbustible material.

Scattering chips &c. in streets.

SEC. 12. No person in removing any chips, shavings or other combustible matter, shall scatter or throw them, or direct,

permit or suffer any chips, shavings, or other combustible matter to be taken to, or thrown, or scattered on any street, lane, alley, or public ground; nor shall any person carry fire in or through any street or lot, except the same be placed or carried in some close and secure pan, or other vessel.

Thimble for chimney.

SEC. 13. No person shall make or keep a hole in the chimney for a stove pipe, unless there be a sheet iron or earthen thimble inserted in said chimney, imbedded in mortar; and a tin, or sheet iron stopper, with a flange at least one inch wide, outside the chimney, to be used whenever the pipe is removed.

Foundation of chimneys.

SEC. 14. No person shall hereafter build or cause to be built any chimney, resting on any part of a building liable to settle, unless the chimney be permanently connected with the buildings, so that the whole may settle together; nor shall any person build or cause to be built, a chimney beginning on or above the first story of any building, unless there are fixed stairs, easy of access, leading to the said beginning.

Chimney for steam engines.

SEC. 15. No person shall build, or cause to be built, any chimney to be used for carrying off the smoke of any steam boiler or steam engine, less than forty-five feet in height, and made of brick, stone or iron.

Lumber within fire limits.

SEC. 16. No person shall keep for sale, within the fire limits any lumber; nor shall any person keep on hand, over ten thousand feet of lumber within said limits, at any one time, for manufacturing, or for any purpose.

Scuttles.

SEC. 17. The owner or occupant of any dwelling-house or other building, more than one story in height, shall have a scuttle through the roof, and a convenient stairway or ladder to the same.

Burning buildings.

SEC. 18. No owner, lessee or occupant of any building, whatever may be his interest therein, shall set fire to, or attempt to set fire to, or burn said building; nor shall any person owning in fee simple, or for life, or by curtesy, any land, set fire to, or attempt to set fire to, or burn any building situate wholly, or jointly on said land. Any person violating any provision of this section, shall, on conviction thereof, be fined in any sum, not exceeding three hundred dollars.

Penalty.

SEC. 19. Any person violating any provision of any section of this ordinance, except the eighteenth, shall, on conviction thereof, be fined in any sum not exceeding twenty dollars, and be further fined in the sum of three dollars, for every day said violation shall continue. Penalty.

CHAPTER VIII.—GAS.

AN ORDINANCE

[Passed Aug. 3, 1854,] to provide and regulate the excavation, re instating and repairing streets by the Toledo Gas-light Company.

SECTION 1. *Be it ordained by the City Council of the City of Toledo*, That in all cases in which the Toledo Gas light company shall make or cause to be made, any excavation in any of the streets of the city, for the purpose of laying down their pipes, or for any other purpose, they shall, and are hereby required, without delay, to replace the earth excavated in making said ditches, and all other materials, which they have removed or may remove or disturb, in making said excavations, so that the street shall be put in as good and permanent condition, and repair, as the same was before they made such excavation, or removed such materials. And in no case shall the said company have more than fifteen rods of ditch open on any one street at any one time, but shall before breaking ground on more than fifteen rods, as aforesaid, have fully reinstated and repaired all other portions of said street which they may have disturbed.

Gas companies required to replace earth and other material in streets, when removed by them.

Not to open more than 15 rods at once.

SEC. 2. In case the said gas light company shall refuse or neglect to comply with all or any of the conditions contained in the first section of this ordinance, it is hereby made the duty of the street commissioner to cause said ditches to be filled, and street or streets repaired, and collect the expense and cost of the same from said gas company.

In case gas companies refuse, street commissioner to fill up and repair street at their cost.

AN ORDINANCE

[Passed Oct. 6, 1857,] for the protection of public lamps and lamp posts.

SECTION 1. *Be it ordained by the City Council of the City of Toledo*, That any person who shall intentionally or carelessly,

Exhibit E

GENERAL ORDINANCES

OF THE

CITY OF COLUMBUS, OHIO,

IN FORCE JANUARY 1ST, 1882,

WITH AN APPENDIX AND AN ADDENDA.

COLLATED BY

H. E. BRYAN, CITY CLERK.

PUBLISHED BY ORDER OF THE CITY COUNCIL.

COLUMBUS, O.:
GAZETTE PRINTING AND PUBLISHING HOUSE.
1882.

do and perform all such duties as may be enjoined upon him by any of the ordinances of said city or the laws of the State of Ohio.

Repealing clause

(11) SEC. IV. The ordinance entitled "an ordinance to create the office of civil engineer of the city of Columbus, and provide for the appointment of such officer and prescribe his duties," passed June 26, A. D., 1871, be, and the same is hereby repealed.

(12) SEC. V. This ordinance shall take effect and be in force from and after its passage and publication according to law.

FIRES.

SECTION.

1. Ashes and combustible material to be kept in iron, stone or incombustible vessel; penalty.
2. Chief Engineer of fire department to remove dangerous stove-pipes or flues; penalty.
3. Ashes and combustible material; penalty.
4. Stoves, pipes, furnaces, etc.; penalty.
5. Burning out chimneys; penalty.
6. Lighted candles or lamps in stables, etc., prohibited; penalty.
7. Hanging lamps or light outside of wooden buildings prohibited; penalty.

SECTION.

8. Certificate of chief engineer as to safety of buildings must be obtained before using; penalty.
9. False alarm of fire, etc.; penalty.
10. Ordinances repealed.
12. Hay or straw; quantity to be kept at one time; penalty.
14. Unlawful to tamper with keys.
15. Penalty.
17. Unlawful to haul, drive, push or pull vehicle over hose, etc.
18. Unlawful to turn in alarm of fire after one alarm has been given.
19. Penalty.

AN ORDINANCE

For the prevention of fires by the safe-keeping of ashes and other combustible materials.

(Passed January 10, 1859.)

Ashes and combustible material to be kept in iron, stone or incombustible vessel.

(1) SECTION I. *Be it ordained by the City Council of the city of Columbus*, That no person or persons, being the occupant or having the care and control of any store, dwelling-house, warehouse, cellar, or other building, or any part thereof, or any other person, shall keep, place, or permit to be kept or placed in any such store, dwell-

ing-house, warehouse, cellar, or other building, any ashes or other article from which fire may originate, unless the same be placed in an iron, stone, or other incombustible vessel, nor shall any person suffer any shavings or other combustible materials to be placed or to accumulate in or about his shop, store, or on his premises; but he or they shall cause such ashes, shavings or combustible materials to be removed to some place of safety wherever directed to do so by the city marshal, or any policeman; and any person offending against any or either of the provisions of this ordinance, shall, upon conviction thereof before the mayor, be fined in any sum not exceeding five dollars, for each and every day such ashes, shavings or other combustible materials are suffered to so remain, after being notified to remove the same.

Penalty.

AN ORDINANCE

To prevent the extension of injuries from fires in the city of Columbus.

(Passed February 12, 1866.)

Chief engineer of fire department to remove dangerous stove-pipe or flues.

(2) SECTION I. *Be it ordained by the City Council of the city of Columbus*, That any person or persons having stove-pipes or flues that are dangerous, or from which fires are likely to occur, shall be ordered by the chief engineer of the fire department to have the same removed or made secure, and if the same are not removed or made secure, within twenty-four hours after notice has been given, such person or persons shall, upon conviction before the mayor, be fined ten dollars, and five dollars for each day thereafter that the same remains unremoved or not made secure.

Penalty.

Ashes and combustible material.

(3) SEC. 2. If any person or persons shall keep any ashes in any vessel made of wood, or shall set on fire after seven o'clock P. M., any straw, shavings, or other combustible material, in any street, lane, alley, or other public place within the limits of the city of Columbus, shall, upon conviction before the mayor, be fined in any sum not exceeding five dollars and costs.

Penalty.

(Section 3, as amended October 6, 1873.)

Stoves, pipes, furnaces, etc.

(4) SEC. 3. It shall be unlawful for any person, within the corporate limits of the city of Columbus, to use any stove in said city that the pipe thereof is not constructed

into a chimney; nor shall any person or persons be permitted to conduct any smoke-stack through any roof, or through any floor, unless the same is constructed of brick; nor shall any person or persons use any stove-pipe, fireplace, furnace, chimney, or places for depositing ashes, after the same has been adjudged by the chief engineer of the fire department of said city to be defective and unsafe for use, and any person so offending shall, upon conviction thereof before the mayor, be fined in the sum of fifteen dollars. Penalty.

Burning out chimneys.

(5) SEC. 4. If any person shall burn out or set fire to his or her chimney, stove-pipe or flue, at any time except between nine o'clock A. M. and four o'clock P. M., or unless the roof of his own and the neighboring houses and buildings are at the time well wet or covered with snow, such person shall, upon conviction before the mayor, be fined in any sum not exceeding ten dollars. Penalty.

Lighted candles or lamps in stable, etc., prohibited.

(6) SEC. 5. That no person or persons shall carry a lighted candle or lamp into any stable, carpenter-shop or warehouse, containing combustible matter, or make use of it there, unless the same is well secured in a glass or tin lantern, under a penalty of five dollars. Penalty.

Hanging lamps or light outside of wooden buildings prohibited.

(7) SEC. 6. That no person or persons shall be permitted to hang or place any lamp or light on the outside of any wooden building, unless such lamp be made of the same materials as the city lamps, and placed at the distance of two feet six inches from such wooden building; and any person or persons offending against the provisions of this section, shall, upon conviction before the mayor, be fined in the sum of five dollars, and five dollars for each succeeding day that they shall permit such lamp to remain. Penalty.

Certificate of chief engineer as to safety of buildings must be obtained before using.

(8) SEC. 7. That any person or persons who shall erect or add to any building in the city of Columbus, shall, before said building or addition is occupied or used, obtain from the chief engineer of the fire department a certificate that said building is safe and in accordance to the laws of the city; and any person or persons violating the provisions of this section, shall, upon conviction thereof before the mayor, be fined in the sum of fifty dollars for each month during which said building is occupied without said certificate. Penalty.

False alarm of fire, etc.

(9) SEC. 8. That if any person or persons shall knowingly give a false alarm of fire in said city, or shall aid to assist in making a false alarm of fire, or shall knowingly proclaim that any fire is extinguished or out when it is not, such person or persons shall, upon conviction before the mayor, be fined in the sum of twenty-five dollars; and if any person or persons shall give a false alarm at either of the engine-houses, or shall falsely represent himself or themselves, said person or persons shall, for every such offense, upon conviction thereof before the mayor, be fined in the sum of twenty dollars; and if taken in the act, or in immediate pursuit, such person may be arrested by any public officer, special constable, or member of the fire department, without a warrant, and detained until a prosecution can be commenced against him.

Penalty.

Ordinances repealed.

(10) SEC. 9. That all ordinances or parts of ordinances inconsistent with this, are hereby repealed.

(11) SEC. 10. This ordinance shall take effect from and after its passage.

AN ORDINANCE

For the prevention of fires in the city of Columbus.

(Passed July 22, 1872.)

Hay or straw; quantity to be kept at one time.

(12) SECTION 1. *Be it ordained by the City Council of the city of Columbus*, That it shall be unlawful for any person or persons, or corporation, within the limits of the city of Columbus, to store or keep, or suffer or permit to be stored or kept at one time, in any wooden or frame barn or stable, or other wooden or frame building or structure, situate within one hundred feet of any other building within the city, hay, or straw, in a greater quantity than five tons; and any person or persons, or corporation, violating the aforesaid provision, shall, upon conviction thereof before the mayor, be fined in any sum not exceeding fifty dollars, and shall further be liable for the costs of prosecution; and each day's continuance of such offense shall be deemed a repetition of the offense, and the person or persons or corporation, so repeating or continuing such offense, shall, upon conviction thereof before the mayor, be fined in any sum not exceeding ten

Penalty.

Exhibit F

AN ACT

To provide for the Organization and Government of Municipal Corporations.

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

PRELIMINARY PROVISION.

SECTION 1. All municipal corporations in this state now existing, or which may hereafter be created, shall be governed by the provisions of this act, and the territorial limits and wards of existing municipal corporations shall remain as they now are until changed in the manner herein provided. Application to all municipal corporations.

CHAPTER I.

CLASSIFICATION OF MUNICIPAL CORPORATIONS.

SECTION
2. Classification.
3. Cities of first class.
4. Cities of second class.
5. Villages.
6. Villages for special purposes.
7. Population requisite for cities and villages.
8. Bodies politic and corporate.

SEC. 2. Municipal corporations shall be divided into cities of the first class, cities of the second class, incorporated villages, and incorporated villages for special purposes. Classification.

SEC. 3. All existing municipal corporations, organized as cities of the first class, shall be deemed cities of the first class. Cities of the first class.

SEC. 4. All existing municipal corporations, organized as cities of the second class, shall be deemed cities of the second class until advanced to the grade of cities of the first class, in the manner provided in this act. Cities of the second class.

SEC. 5. All existing municipal corporations, organized as incorporated villages, shall be deemed incorporated villages until advanced to the grade of cities of the second class, in the manner provided in this act. Villages.

SEC. 6. All existing municipal corporations, organized as special road districts, shall be deemed incorporated villages for special purposes until advanced to the grade of incorporated villages, in the manner provided in this act. Villages for special purposes.

SEC. 7. No city of the second class shall be advanced to the grade of a city of the first class until it shall have attained a population of twenty thousand. No incorporated village shall be advanced to the grade of a city of second class until it shall have attained a population of five thousand. No incorporated village for special purposes shall be advanced to the grade of an incorporated village until it shall have attained a population of five hundred; and no incorporated village shall hereafter be organized until the inhabitants to be embraced in it exceed in number one thousand. Population requisite for cities and villages.

more than ten feet high, unless the outer walls be made of brick and mortar, or of stone and mortar, or of iron, or stone or brick and mortar, and to provide for the removal of any buildings or additions erected contrary to such prohibition.

To invest fire engineer with power, &c

SEC. 330. The council shall have power to invest the fire engineer, or any other officer of the fire or police department, with the power, and impose on him the duty, to be present at all fires, investigate the cause thereof, examine witnesses and papers, and compel the appearance and production of the same, and to do and perform all such other acts as may be necessary to the effective discharge of such duties.

Engineer, &c., may administer oaths, &c.

SEC. 331. Such officer shall have power to administer oaths, make arrests, and enter any building for the purpose of examination, which, in his opinion, is in danger from fire; and he shall report his proceedings to the council at such times as may be required.

His compensation.

SEC. 332. For his services herein specified, such fire engineer or other officer shall receive such compensation as the council may prescribe.

Council may prohibit erection of wooden buildings, &c.

SEC. 333. In all cities of the first class, the council shall have power to prohibit, within such limits as may be deemed proper, the erection of any building, unless the outer walls thereof be constructed of iron, brick and mortar, or stone and brick and mortar.

CHAPTER XXV.

WATER WORKS.

SECTION
334. Council may construct and regulate water works.
335. Trustees of water works.
336. Their salary and duties.
337. By-laws, &c.
338. Water rents.
339. Disposition of surplus.
340. Monthly reports, and weekly deposits.
341. Money to be kept as a distinct fund.
342. Trustees to make contracts, &c.
343. Annual investigation.
344. No charge for water to extinguish fires, &c.
345. Protection of attachments, &c.
346. Rules as to contracts.
347. Contractors must give bond, &c.
348. Extension of aqueducts, &c. beyond corporation limits.
349. Construction and regulation thereof.
350. Water works in contiguous cities or villages.
351. Construction and regulation thereof.
352. Contracts to supply contiguous cities or villages.
353. Cost thereof, how raised.
354. Works to be joint property, &c.
355. Termination of contract upon annexation.
356. Tax to be levied for payment of interest
357. Payment of interest on loans.
358. Tax to be a lien upon property.
359. Laying of water pipes in highways.
360. Extent of jurisdiction.

Council may construct and regulate water works.

SEC. 334. The council of any city or incorporated village shall have power to enter upon and take possession of any land obtained for the construction or extension of water works, reservoirs, or the laying down of pipe, and also any water rights or easements connected with the use of water; and any land, water right or easement so taken possession of for water works purposes, shall not be used for any other purpose, except by authority of the trustees and consent of the council.

S. & S., p. 765. An act supplementary to an act to authorize the erection, improving, enlarging or constructing additions to town halls, and to repeal an act therein named, passed April 2, 1866, passed April 13, 1867.

Same. An act supplementary to an act passed April 13, 1867, entitled an act supplementary to an act authorizing the erection, improving, enlarging or constructing additions to town halls, and to repeal an act therein named, passed April 2, 1866, passed May 6, 1868.

O. L. vol. 66., p. 25. An act to amend section sixty-nine of an act entitled an act to provide for the organization of cities and incorporated villages, passed May 3, 1852, as amended March 25, 1862, as amended April 29, 1862, and to repeal section one of the last named act, passed March 15, 1869.

S. & S., p. 722. An act to authorize cities of the second class to receive donations of library buildings and libraries, and keep up and maintain the same, passed February 24, 1868.

This act to take effect July 1, 1869. SEC. 731. This act shall take effect and be in force from and after the first day of July 1869.

F. W. THORNHILL,
Speaker of the House of Representatives.
J. C. LEE,
President of the Senate.

Passed May 7, 1869.

Exhibit G

said furrows are plowed consents, and is a party thereto; provided, also, that the board of health of any municipal corporation may allow said contents to be deposited within the corporate limits into trenches or pits or furrows, situate, distant and to be covered as aforesaid.

SECTION 2. That said section 6923, as amended April 14, 1888, be and the same is hereby repealed; and this act shall take effect and be in force from and after its passage.

A. C. ROBESON,
Speaker pro tem. of the House of Representatives.
WILLIAM V. MARQUIS,
President of the Senate.

Passed April 28, 1890.
280G

[House Bill No. 158.]

AN ACT

To repeal an act entitled an act to correct abuses of the appointing power by boards of county commissioners, passed April 12, 1889 (O. L., vol. 86, page 277).

Repeal

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the act recited in the above title be and the same is hereby repealed.

SECTION 2. This act shall take effect and be in force from and after its passage.

A. C. ROBESON,
Speaker pro tem. of the House of Representatives.
WILLIAM V. MARQUIS,
President of the Senate.

Passed April 28, 1890.
281G

[House Bill No. 209.]

AN ACT

To amend section 6925 (as amended April 16, 1888, O. L. vol. 85, p. 286), and section 7231, and to enact supplementary sections 6920*a*, 6920*b*, and 6920*c* of the Revised Statutes.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That section 7231 and section 6925 (as amended April 16, 1888, O. L., vol. 85, p. 286), be amended, and that supplemental sections with sectional numberings as 6920*a*, 6920*b*, and 6920*c*, be added to section 6920, so as to read as follows:

Inspector of nuisances; when and by whom appointed; powers; duties, etc.

Sec. 6920*a*. The county commissioners of any county, whenever there is a violation of any of the provisions of either of said sections named in section 6919, are authorized to employ and reasonably compensate, at such times as they may deem proper, one inspector of nuisances who shall be vested with police powers, and shall be authorized to examine all cases of violation of the provisions of said sections, and for such purpose and for the purpose of obtaining evi-

dence, he shall be fully authorized and empowered to enter upon the premises of any person in any county, and it shall be the duty of such inspector to make or cause to be made a complaint and to institute prosecution against any person or corporation violating the provisions of either of said sections, and such inspector shall not be required in the prosecution of any such proceeding to give security for costs

Prosecuting attorney made legal adviser of inspector; compensation.

Sec. 6920*b*. The prosecuting attorney shall be the legal adviser of such inspector and the attorney in all such prosecutions, and in lieu of any percentage on fines and costs, he shall be allowed a compensation for such services by the county commissioners, to be paid out of the county treasury.

Judgment for fine and costs: how collected.

Sec. 6920*c*. A judgment for fine and costs rendered against any person or corporation for the violation of the provisions of either of said sections mentioned in said section 6919, when the defendant has no property, or when the defendant has not a sufficient amount of property within the county upon which to levy to satisfy such judgment and costs, may be enforced and collected in the same manner as judgments are collected in civil cases, upon execution duly issued from any such court to any sheriff of any county of the state.

Permitting emptying of coal dirt, petroleum, etc., into rivers, etc.

Sec. 6925. Whoever intentionally throws or deposits, or permits to be thrown or deposited, any coal dirt, coal slack, coal screenings, or coal refuse from coal mines, or any refuse or filth from any coal oil refinery or gas works, or any whey or filthy drainage from a cheese factory, upon or into any of the rivers, lakes, ponds, or streams of this state, or upon or into any place from which the same will wash into any such river, lake, pond or stream; or whoever shall, by himself, agent or employe, cause, suffer or permit any petroleum or crude oil, or refined oil or refuse matter or filth from any oil well, or oil tank, or oil vat, or place of deposit of crude or refined oil, to run into, or be poured, or emptied, or thrown into any river, or ditch, or drain, or water-course, or into any place from which said petroleum, or crude oil, or refuse matter, or filth or refined oil may run or wash, or does run or wash into any such river, or ditch, or drain, or water-course, shall be fined in any sum not more than one thousand dollars nor less than fifty dollars; and such fine and costs of prosecution shall be and remain a lien on said oil well, oil tank, oil refinery, oil vat and place of deposit, and the contents of said oil well, oil tank, oil refinery, oil vat or place of deposit, until said fine and costs are paid; and said oil well, oil tank, oil refinery, oil vat or place of deposit, and the contents thereof, may be sold for the payment of such fine and costs, upon execution duly issued for that purpose.

Penalty.

Summons and indictment against corporations.

Sec. 7231. When an indictment is presented against a corporation, a summons commanding the sheriff to notify the accused thereof, and returnable on the seventh day after its date, shall issue on the precipe of the prosecuting attorney; such summons, together with a copy of the indictment, shall be served and returned in the manner provided for service of summons upon such corporation in civil actions; and if the service can not be made in the county where the prosecution began, then the sheriff may make service in any county of

the state upon either its president, secretary, superintendent, clerk, cashier, treasurer, managing agent, or other chief officer, or by a copy left at any general or branch office, or usual place of doing business of such corporation, with the person having charge thereof; the corporation, on or before the return day of a summons duly served, may appear by one of its officers, or by counsel, and answer to the indictment by motion, demurrer or plea, and upon its failure to make such appearance and answer, the clerk shall enter a plea of "not guilty;" and upon such appearance being made, or plea entered, the corporation shall be deemed thenceforth continuously present in court until the case is finally disposed of.

SECTION 2. Said original section 7231 and said section 6925, as amended April 16th, 1888, be and the same are hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage.

NIAL R. HYSELL,
Speaker of the House of Representatives.
WILLIAM V. MARQUIS,
President of the Senate.

Passed April 28, 1890.
2826

[House Bill No. 305.]

AN ACT

To amend section 2 of an act passed April 5, 1888 (O. L., v. 85, p. 158), entitled an act to amend sections 1, 2, 3, and 4 of an act entitled an act to amend sections 1, 2, and 3, of an act entitled an act to provide for the relief of indigent Union soldiers, sailors, and marines, and the indigent wives, widows and minor children of indigent or deceased Union soldiers, sailors and marines, passed March 4, 1887, as amended April 15, 1889; and to amend section 4 of an act passed May 19, 1886 (O. L., v. 83, p. 232), passed March 16, 1887 (O. L., v. 84, p. 100), as amended March 27, 1889, and April 15, 1889.

Indigent soldiers' relief fund:

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That sections 2 and 4 of the above entitled act be amended to read as follows:

Lists of persons entitled to relief; by whom made.

Sec. 2. It is hereby made the duty of the soldiers' relief commission hereinafter provided, in each county in this state, as soon as practicable after the passage of this act, and annually thereafter on the first Monday in January in each year, to appoint for each township, in such county, and for each ward in any city in any such county, a soldiers' relief committee, consisting of three persons, residents of each such township and ward, who shall be honorably discharged Union soldiers, sailors or marines; provided, that if there are no such soldiers, or sailors or marines who [are] residents of any such township or ward, then there shall be appointed three reputable citizens, one of whom shall be designated as chairman of such township or ward soldiers' relief committee; and to fill all vacancies that may occur in any such committee, and to remove any member of any such committee for cause; and

Exhibit H

AN ACT

To establish a Code of Criminal Procedure for the State of Ohio.

Be it enacted by the General Assembly of the State of Ohio, in manner following—that is to say:

CODE OF CRIMINAL PROCEDURE

FOR THE STATE OF OHIO.

TITLE I.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIME.

SECTION
1. Complaint to keep the peace.
2. Proceedings when the party complained of brought before the magistrate.
3. What shall be done in default of recognizance.
4. When the person complained of shall be discharged.
5. Condition of recognizance.
6. How and when recognizance shall be returned.
7. Proceedings in court of common pleas.
8. What shall be done in default of recognizance.
9. Who shall pay costs.
10. Proceedings when complaining party fails to appear.
11. Who shall pay costs when accused discharged.
12. Proceedings when a person creates a disturbance in presence of justice.
13. When search warrant may be issued.
14. Proceedings as to issuing.
15. What warrant shall contain.
16. When warrant may direct search in night time.
17. What disposition to be made of property seized.
18. Same.
19. Same.
20. When property liable for payment of fines, &c.

Complaint to keep the peace.

SECTION 1. Whenever any person shall make complaint in writing upon oath before any justice of the peace, mayor of any city or incorporated village, or police judge, that he has just cause to fear and does fear that another will commit any offense against the person or property of himself, his ward or child, it shall be the duty of the magistrate before whom such complaint is made, to issue a warrant in the name of the state to any constable of the county, commanding him forthwith to arrest the person complained of, and him to take before such magistrate, or any other magistrate named in this section, of the same county, to answer such complaint.

Proceedings when the party complained of brought before the magistrate.

SEC. 2. When the party complained of shall be brought before the magistrate, he shall be heard in his defense, and all witnesses produced shall be examined upon oath, and if

upon such examination the magistrate shall be of opinion there is just cause for the complaint, he shall order the person complained of to enter into recognizance, with good and sufficient security, in any sum not less than fifty dollars nor more than five hundred dollars, for his appearance before the court of common pleas on the first day of the next term thereof, and in the mean time that he shall keep the peace and be of good behavior generally, and especially toward the person complaining.

What shall be done in default of recognizance.

SEC. 3. In default of such recognizance and security as provided in the preceding section, the magistrate shall commit the person complained of to the jail of the county, there to remain until discharged by due course of law.

When the person complained of shall be discharged.

SEC. 4. But if the magistrate on the examination shall be satisfied that there is no just cause for the complaint, it shall be his duty to discharge the accused and render judgment in the name of the state against the party complaining for the costs of the prosecution, and the same shall be collected by execution as in civil cases.

Condition of recognizance.

SEC. 5. If any recognizance be taken under the provisions of this title in term time of that court to which the same may be returnable, every such recognizance shall require the person bound thereby to appear forthwith before such court.

How and when recognizance shall be returned.

SEC. 6. All recognizances authorized to be taken as aforesaid, either in term time or vacation of that court to which the same may be returnable, shall be delivered or transmitted by the magistrate taking the same, to the clerk of such court without unnecessary delay and before the commencement of the term of the court next thereafter to be holden, if such recognizance be taken in vacation; but if the same be taken in term time, then it shall be returned forthwith.

Proceedings in court of common pleas.

SEC. 7. The court of common pleas to which any recognizance to keep the peace as aforesaid, shall be returned, shall, upon the appearance of the parties complaining and complained of, examine the witnesses produced upon oath, and may either discharge the accused from his recognizance or may order him to enter into such other and further security as may be just, thereafter to keep the peace and be of good behavior for such term of time as the court may order.

What shall be done in default of recognizance

SEC. 8. For want of such security the court shall commit the person accused to the jail of said county, there to remain until such order be complied with or he be otherwise discharged by due course of law; but in no case shall a person so failing to give security be confined for a period of time exceeding one year.

Who shall pay costs.

SEC. 9. Whether such person be held to bail or be committed for want thereof, the court shall in either case render judgment against him for the costs of the prosecution, and award execution therefor.

Proceedings when complaining party fails to appear.

SEC. 10. When any person shall have been recognized to the court of common pleas to keep the peace as aforesaid, and the complainant shall fail to prosecute his complaint, the party recognized shall be discharged unless good cause to the contrary be shown.

Who shall pay costs when accused discharged.

SEC. 11. If the court of common pleas shall discharge the person accused on examination of the complaint, or because the complainant has failed to appear, said court shall render judgment against the person complaining for the costs of prosecution, and award execution therefor.

Proceedings when a person creates a disturbance in presence of justice.

SEC. 12. Every person who, in the presence of any magistrate specified in the first section, shall make an affray or threaten to kill or beat another, or to commit any offense against the person or property of another, and every person who, in the presence of such officer, shall contend with hot and angry words to the disturbance of the peace, may be ordered without process or any other proof, to give such security as above specified in this title, and in case of failure or refusal he may be committed in like manner as above specified.

SEARCH WARRANT.

When search warrant may be issued

SEC. 13. It shall be lawful for any magistrate named in section one to issue warrants to search any house or place—

1st. For property stolen, embezzled or obtained under false pretenses or tokens.

2d. For forged or counterfeit coins, stamps, labels, trademarks, bank-bills or other instruments of writing.

3d. For books, pamphlets, ballads or printed papers containing obscene language, prints, pictures or descriptions manifestly tending to corrupt the morals of youth, and intended to be sold or circulated.

4th. For any gaming table, establishment, device or apparatus kept or exhibited for the purpose of unlawful gaming, and for any money or personal property won by unlawful gaming.

Proceedings as to issuing

SEC. 14. No warrant for search, as described in the preceding section, shall be issued until a complaint in writing, upon oath, has been filed with the magistrate; such complaint shall be signed by the complainant, and particularly describe the house or place to be searched, the person to be seized, and the things to be searched for, and allege substantially the offense in relation thereto, and that the complainant verily believes that such things are there concealed.

What warrant shall contain.

SEC. 15. The warrant for search shall be directed to the proper officer, and shall recite by reference to the complaint annexed or otherwise, all the material facts alleged in the complaint, and particularly describe the thing for which the search is to be made, the house or place to be searched, and the person to be seized. It shall command the officer to search such house or place in the day time, for the property or other things; and if found, to seize and bring the same, together with the person to be seized, before the magistrate or some other magistrate of the county having cognizance of the same.

When warrant may direct search in night time.

SEC. 16. If the magistrate is satisfied that there is urgent necessity therefor, the warrant may order the searching of such house or place in the night time.

What disposition to be made of property seized.

SEC. 17. When the warrant is executed by the seizure of the property or things described therein, the same shall be safely kept by the magistrate to be used as evidence.

Same.

SEC. 18. If, upon the examination, the magistrate shall be satisfied that the offense set forth in the complaint in reference to the property or other thing seized by the officer, has been committed, it shall be his duty either to keep possession of such property or other things, or deliver them to the sheriff of the proper county, there to remain until the case against the offender has been disposed of, or the claimant's right has been otherwise ascertained.

Same.

SEC. 19. Upon the conviction of the offender, the property stolen, embezzled or obtained under false pretenses, shall be returned to its owner, and the other things specified, shall be burnt or otherwise destroyed, under the direction of the court; but if the alleged offender shall be discharged, either before the magistrate or the court before which he is recognized to appear, the property or other things shall be returned to the person in whose possession they were found.

When property liable for payment of fines, &c.

SEC. 20. When the person in whose possession money or other property won at gambling has been found, shall be convicted of any of the offenses described in sections one and two of the "act more effectually to prevent gambling," passed January 17, 1846, and section nine of the "act for the prevention of gaming," passed March 12, 1831, such money or other property shall be liable to pay any judgment which may be rendered against such person.

TITLE II.

OF ARREST, EXAMINATION, COMMITMENT AND BAIL.

SECTION

21. Who may arrest.
22. When a person other than an officer may.
23. Who may issue warrants.
24. When a warrant shall issue.
25. Security for costs.
26. What the warrant shall contain.
27. When person flees, the officer may arrest in any county in state.
28. Proceedings when person charged with offenses escapes.
29. Officer may break outer doors, &c.
30. The officer shall take person arrested before a magistrate.
31. Adjournment of the examination.
32. Recognizance when case adjourned.
33. When person recognized fails to appear.
34. Proceedings when defendant pleads guilty of misdemeanor.
35. Proceeding where there is no plea of guilty.
36. When witnesses may be examined separately.
37. When prisoner to be discharged.
38. Proceedings when there is probable cause to believe prisoner guilty.
39. Recognizance of witness.
40. Same.
41. Where witness refuses to enter into a recognizance.
42. Docket to be kept and transcript to be returned to clerk.
43. Recognizance—its condition, &c.
44. Condition of recognizance when court in session.
45. Prisoner may be held to answer for a higher crime than charged.
46. Proceedings when prisoner fails to give bail.

SECTION

47. Proceedings when recognizance returned to the clerk.
48. Examining court to be held by probate judge—when and how.
49. Court may recognize prisoner and witnesses.
50. Duty of court when prisoner fails to give security.
51. Proceedings to discharge prisoner on recognizance.
52. Deposit of recognizance, and discharge of prisoner.
53. Judges of criminal courts to have concurrent jurisdiction with probate judge.
54. Recognizance may be taken by officer if offense a misdemeanor when shown
55. Return thereof and the writ.
56. On indictment for felony, court may order the amount of recognizance.
57. Which shall be endorsed on warrant by clerk.
58. Officer to take recognizance accordingly, &c.
59. When and how surety recognizance may deliver up defendant.
60. Delivering up of defendant in vacation.
61. Return of recognizances.
62. Proceedings when party recognized fails to appear.
63. How a forfeited recognizance proceeded upon.
64. Court may remit or reduce penalty—when.
65. Same.
66. What shall not defeat an action on recognizance.

SEC. 233. This act shall take effect and be in force from and after the first day of August next. When this code to take effect.

F. W. THORNHILL,
Speaker of the House of Representatives.
J. C. LEE,
President of the Senate.

Passed May 6, 1869.

AN ACT

Amendatory of and supplementary to the act to regulate Insurance Companies, passed April 16, 1867. (64th O. L., p. 157.)

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That section seven of said act be so amended as to read as follows:

Section 7. Upon receiving notification that the proceedings required by the sections foregoing have been had, the auditor of state shall cause an examination to be made, either by himself or by some disinterested person, specially appointed by him for that purpose, who shall certify under oath that the capital herein required of the company named, according to the nature of the business proposed to be transacted by such company, has been paid in and is possessed by it in money, or in such stocks and bonds and mortgages as are required by the sixth section of this act, or if a mutual company, that it has received and is in actual possession of the capital, premiums, or bona fide engagements of insurance, or other securities, as the case may be, to the extent and value required by the third section of this act; and the name and residence of the maker of each premium note forming part of the capital, and the amount of such note, shall be returned to the said auditor; and the corporators or officers of such company shall be required to certify, under oath, that the capital exhibited to those persons is bona fide the property of the company. Such certificates shall be filed in the office of the said auditor, who shall thereupon deliver to such company a certified copy of said certificates, which, on being placed on record in the office of the recorder of the county where the company is to be located, by the recorder, in a book provided for that purpose by him, shall be their authority to commence business and issue policies; and such certified copy of said certificates may be used in evidence for or against said company, with the same effect as the originals. Examination of stock, capital, &c. Certificates.

SEC. 2. That section fifteen of said act be so amended as to read as follows:

Section 15. It shall not be lawful for the directors, trustees, managers or officers of any insurance company organized under any of the laws of this state, directly or indirectly, to Dividends, &c.

Exhibit I

AN ACT

To amend, revise, and consolidate the statutes relating to criminal procedure.

Be it enacted by the General Assembly of the State of Ohio, That the laws relating to criminal procedure be amended so as to read as follows:

TITLE II. CRIMINAL PROCEDURE.

CHAPTER 1. PROCEEDINGS TO PREVENT CRIME.
CHAPTER 2. ARREST, EXAMINATION, BAIL AND COMMITMENT.
CHAPTER 3. THE GRAND JURY, AND ITS PROCEEDINGS.
CHAPTER 4. INDICTMENT, AND PROCEEDINGS THEREON.
CHAPTER 5. PROCEEDINGS BETWEEN INDICTMENT AND TRIAL.
CHAPTER 6. TRIAL, AND PROCEEDINGS INCIDENT THERETO.
CHAPTER 7. VERDICT, AND JUDGMENT, AND PROCEEDINGS THEREON.
CHAPTER 8. NEW TRIALS, MOTIONS IN ARREST, AND ERROR.
[CHAPTER 9. ACTS REPEALED.]

CHAPTER 1.

PROCEEDINGS TO PREVENT CRIME.

SECTION
1. Complaint to keep the peace.
2. A form of warrant to keep the peace.
3. When accused to be discharged.
4. When accused required to give recognizance.
5. When accused to be committed to jail.
6. When transcript and recognizance to be transmitted to court.
7. Accused to be discharged if complainant fails to prosecute.
8. Proceedings in court.
9. When court shall commit accused to jail.
10. Disturbers of the peace in presence of magistrates may be committed.
11. Convicts of misdemeanor may be required to enter into recognizance.

SECTION
12. Sheriff and other officers shall arrest person intending to engage in prize-fight; when accused to give recognizance [or] be committed.
13. Recognizance to be returned to common pleas and recorded.
14. Sheriff may suppress prize-fight, and arrest offenders.
15. When search-warrant may be issued.
16. Affidavit for search-warrant.
17. Search-warrant, and what it shall contain.
18. A form of search-warrant.
19. Property seized to be kept by magistrate.
20. Disposition of property when accused held for trial.
21. Disposition of same when accused is discharged or convicted.
22. When money and property seized liable for payment of fines, etc.
23. Searches for dead human bodies

PEACE WARRANT.

Complaint to keep the peace.

SECTION 1. When complaint is made in writing, upon oath, before a justice of the peace, mayor, or police judge, that complainant has just cause to fear, and does fear, that another will commit any offense against the person or property of himself, or of his ward, or child, the magistrate shall issue a warrant, in the name of the state, to the sheriff or to any constable of the county, or, if the same be issued by an officer of a municipal corporation, then to the marshal or other police officer of such corporation, commanding him forthwith to arrest the person complained of, and him to take before such magistrate, or any other magistrate named in this section, of the same county, to answer such complaint. [66 v. 287, § 1; 36 v. 18, § 1; S. & C., 1402.]

A form of warrant to keep the peace.

SEC. 2. A warrant substantially in the form following shall be deemed sufficient:

THE STATE OF OHIO, ——— COUNTY, ss.

To any Constable of said County, greeting:

Whereas complaint has been made before me by one C. D., on oath, that he has just cause to fear, and does fear, that one E. F. will [*here state the threatened injury or violence according to the fact as sworn to.*]

These are therefore to command you to apprehend the said E. F., and bring him forthwith before me, or some other magistrate having cognizance of the matter, in said county, to show cause why he should not find surety to keep the peace and be of good behavior toward the citizens of the state generally, and the said C. D. especially, and for his appearance before the proper court.

Given under my hand, this —— day of ——, ——.

A. B., *Justice of the peace.*

[35 v. 87, § 33; S. & C. 817.]

When accused to be discharged.

SEC. 3. When the accused is brought before the magistrate he shall be heard in his defense, and all witnesses produced shall be examined on oath; and unless the magistrate is satisfied that there is just cause for the complaint, he shall discharge the accused, and render judgment in favor of the state against the complainant for the costs of prosecution, and issue execution therefor. [66 v. 288, § 4.]

When accused required to give recognizance.

SEC. 4. If the magistrate is of the opinion that there is just cause for the complaint, he shall order the accused to enter into a recognizance, in a sum not less than fifty nor more than five hundred dollars, with sufficient surety, for his appearance before the court of common pleas, on the first day of the next term thereof, or before the probate court, if that court has jurisdiction of the matter, on the first day of the next term thereof for the trial of criminal cases, and in the meantime to keep the peace and be of good behavior generally, and especially towards the person named in the complaint; or, if such court is at the time in session, the recog-

nizance shall require the accused to appear forthwith before it. [71 v. 70, § 1; 66 v. 228, § 5.]

When accused to be committed to jail.

SEC. 5. In default of such recognizance, the magistrate shall commit the accused to the jail of the county, there to remain until discharged by due course of law. [66 v. 288, § 3.]

When transcript and recognizance to be transmitted to court.

SEC. 6. When the magistrate has found there is reasonable ground for the complaint, he shall forthwith make a certified transcript of the proceedings, including a copy of the complaint, and file the same in the office of the clerk of the court having jurisdiction of the complaint, or forward the same to him, together with the recognizance, if any has been taken; and if the court is then in session, the accused, if in custody, shall be tried at that term, unless cause for continuance be shown, and if he is under recognizance he may be tried at the same term, with the assent of the prosecuting attorney. [66 v. 288, § 6; 71 v. 70, § 1.]

Accused to be discharged if complainant fail to prosecute.

SEC. 7. If the complainant fail to prosecute his complaint, the accused shall be discharged, unless good cause to the contrary be shown, and the court shall render judgment against the complainant for the costs of prosecution, and award execution therefor. [66 v. 288, §§ 9, 10.]

Proceedings in court.

SEC. 8. The court, upon the appearance of the parties, shall hear the witnesses produced on oath, and may either discharge the accused, and render judgment against the complainant for costs, and award execution therefor, or order him to enter into such further security, and for such time, as may be just, to keep the peace and be of good behavior, and render judgment against him for costs, and award execution therefor. [66 v. 288-9, §§ 7-11.]

When court shall commit accused to jail.

SEC. 9. For want of such security the court shall commit the accused to jail, there to remain until such order be complied with, or he be discharged by due course of law, and shall render judgment against him for costs, and award execution therefor; but in no case shall he be thus confined longer than one year; and after such commitment the court may at any time discharge him on his own recognizance, when it shall seem proper to do so. [66. v. 288, §§ 8, 9.]

Disturbers of the peace in presence of magistrates may be committed.

SEC. 10. Whoever, in the presence of a magistrate named in section one, makes an affray, or threatens to beat or kill another, or to commit an offense against the person or property of another, or contends with hot and angry words, to the disturbance of the peace, may be ordered, without process, or any other proof, to give security as provided in section seven of this chapter, and in default thereof may be committed as is provided in the same section. [66 v. 289, § 12.]

Convicts of misdemeanor may be required to enter into recognizance.

SEC. 11. Any person convicted of a misdemeanor may be required by the court to enter into a recognizance, with sufficient surety, in such sum as the court may deem proper, to keep the peace and be of good behavior for such length of time, not exceeding two years, as the court shall direct; and the court may order such person to stand committed until

such order be complied with, or he be otherwise discharged by due course of law; but the court may, after such commitment, at any time discharged [discharge] such person own [on] his own recognizance. [29 v. 144, § 57; S. & C. 435.]

PRIZE-FIGHTS.

Sheriff and other officers shall arrest persons intending to engage in prize-fight.

SEC. 12. When a sheriff, constable, marshal, or other police officer, has reason to believe that any person in his bailiwick is about to engage as principal or second in any premeditated fight or contention, commonly called a prize-fight, or is in training or preparation to engage as principal in such fight, he shall forthwith arrest such person, and take him before a judge of the court of common pleas, or magistrate named in section one, and give notice to the prosecuting attorney, who shall immediately attend before such officer, and, upon the proper affidavit being filed, prosecute the complaint; and such officer shall hear the witnesses produced on oath, and if he find the complaint true, order the accused to enter into a recognizance, with sufficient sureties, in a sum not less than five hundred nor more than ten thousand dollars, that he will not engage in any such fight or contention within one year thereafter, in this state or elsewhere; and in default of such recognizance such officer shall commit the accused to jail, there to remain until such order be complied with; but if, after the expiration of one month of confinement, the accused is unable to give such recognizance, a judge of the court of common pleas, or probate judge, may discharge him upon his own recognizance, in the same amount, and with the like conditions, upon proof by his own affidavit, and other evidence, that he will never engage in such fight or contention. [65 v. 29, § 3; S. & S. 274.]

When accused to give recognizance or be committed.

Recognizance to be returned to common pleas, and recorded.

SEC. 13. Every such recognizance shall be, by such judge or magistrate, certified to the court of common pleas of the county, where the same shall be recorded; and the prosecuting attorney, when he has reason to believe that the condition of the same has been broken, shall immediately bring suit thereon in any county, and collect the amount due thereon, and pay the same into the county treasury. [65 v. 30, § 4; S. & S. 274.]

Sheriff may suppress prize-fight, and arrest offenders.

SEC. 14. When a sheriff has reason to believe that such fight or contention is about to take place in his county, he shall forthwith summon a force of citizens of the county, sufficient for the purpose, and suppress such fight or contention, and arrest all persons found thereat violating any law, and take them before a judge of the court of common pleas, or a magistrate, to be dealt with as provided by law. [65 v. 29, § 5; S. & S. 274.]

SEARCH-WARRANT.

SEC. 15. Magistrates named in section one of this chapter may issue warrants to search any house or place—

When search-warrant may be issued.

1. For property stolen, taken by robbers, embezzled, or obtained under any false pretense.

2. For forged or counterfeit coins, stamps, imprints, labels, trade-marks, blank [bank] bills, or other instruments of writing, and dies, plates, stamps, or brands for making the same.

3. For books, pamphlets, ballads, or printed papers containing obscene language, prints, pictures, or descriptions manifestly tending to corrupt the morals of youth, and for obscene, lewd, or indecent or lascivious drawings, lithographs, engravings, pictures, daguerreotypes, photographs, stereoscopic pictures, models or casts, and for instruments or articles of indecent or immoral use, or instruments, articles or medicines for procuring abortion, or for the prevention of conception, or for self-pollution.

4. For any gaming table, establishment, device, or apparatus kept or exhibited for the purpose of unlawful gaming, or to win or gain money or other property, and for any money or property won by unlawful gaming. [66 v. 289, § 13; 56 v. 86, § 4, S. & C. 455; 73 v. 159, § 3.]

Affidavit for search-warrant.

SEC. 16. No warrant for search shall be issued until there has been filed with the magistrate an affidavit particularly describing the house or place to be searched, the person to be seized, and the things to be searched for, and alleging substantially the offense in relation thereto, and that affiant believes, and has good cause to believe, that such things are there concealed. [66 v. 289, § 14.]

Search-warrant, and what it shall contain.

SEC. 17. The warrant for search shall be directed to the proper officer, and shall show, by a copy of the affidavit inserted therein, or annexed and referred to, or recite, all the material facts alleged in the affidavit, and particularly describe the thing to be searched for, the house or place to be searched, and the person to be seized. It shall command the officer to search such house or place for the property or other things, and, if found, to bring the same, together with the person to be seized, before the magistrate, or some other magistrate of the county having cognizance of the same; and the command of the warrant shall be that the search be made in the day time, unless there is urgent necessity for a search in the night, in which case such search in the night may be ordered. [66 v. 289, §§ 15, 16.]

A form of search-warrant.

SEC. 18. A warrant for search substantially in the form following shall be deemed sufficient:

THE STATE OF OHIO, ——— COUNTY, SS.:

To any Constable of said County, greeting:

Whereas, there has been filed with me an affidavit, of which the following is a copy: [*Here copy the affidavit.*]

These are, therefore, to command you, in the name of the state of Ohio, with the necessary and proper assistance, to enter, in the day time [*or in the night time*], into [*here describe the house or place as in the affidavit*] of the said E. F., of the

township of ——, in the county aforesaid, and there diligently search for the said goods and chattels, to wit: [*here describe the articles as in the affidavit*], and that you bring the same, or any part thereof, found on such search, and also the body of E. F., forthwith before me, or some other magistrate of the county having cognizance thereof, to be disposed of and dealt with according to law.

Given under my hand, this — day of ——, ——.

A. B., *Justice of the Peace.*

[35 v. 87, § 33; S. & C. 817.]

Property seized to be kept by magistrate.

SEC. 19. When the warrant is executed by the seizure of the property or things described therein, the property or things shall be safely kept by the magistrate to be used as evidence. [66 v. 289, § 17.]

Disposition of property when accused held for trial.

SEC. 20. If, upon the examination, the magistrate is satisfied that the offense charged with reference to the things seized has been committed, he shall keep such things, or deliver them to the sheriff of the county, there to remain till the accused has been tried, or the claimant's right has been otherwise ascertained. [66 v. 290, § 18.]

Disposition of same when accused is discharged or convicted.

SEC. 21. If the accused be discharged, either by the magistrate or the court, the property or other things seized shall be returned to the person in whose possession they were found; but if he be convicted, the property only shall be returned to its owner, and the other things shall be destroyed under the direction of the court. [66 v. 290, § 19.]

When money and property seized liable for payment of fines, etc.

SEC. 22. Upon conviction, under sections four, five, and six of chapter eight, of title one, of this part, of the person in whose possession there has been found money or other property won at gaming, such money or property shall be liable for any judgment which may be rendered against him. [66 v. 290, § 20.]

Searches for dead bodies.

SEC. 23. When an affidavit is filed before any judge or magistrate named in section one of this chapter, alleging that affiant has good reason to believe, and does believe, that a dead human body, procured or obtained contrary to law, is secreted in some building or other place in the county, and which is therein particularly specified, such judge or magistrate, taking with him a justice of the peace, or if such place is within a municipal corporation, then two officers of such corporation may enter, inspect, and search any such building or other place for such dead body; and in making such search they shall have the powers of officers executing warwants of search. [44 v. 77, § 2; S. & C. 437.]

act to establish a code of criminal procedure for the state of Ohio, passed May 6, 1869,' passed March 30, 1874."

72 v. 46. 37. The act of March 3, 1875, entitled "An act to amend 'an act to amend section fourteen of an act directing the mode of trial in criminal cases,' passed March 7, 1831, as amended by an act passed March 14, 1862, as amended by an act passed February 1, 1864, passed April 18, 1870."

72 v. 53. 38. The act of March 15, 1875, entitled "An act amendatory of and supplementary to 'an act supplementary to an act entitled an act for the punishment of crimes, and of the several acts amendatory and supplementary thereto,' passed April 7, 1863."

72 v. 80. 39. The act of March 23, 1875, entitled "An act to amend section fifty-three of 'an act to provide for the uniform government and better regulation of the lunatic asylums of the state, and the care of idiots and the insane,' as amended March 31, 1874."

73 v. 43. 40. Section thirty-five of the act of March 16, 1876, entitled "An act to regulate and govern the Ohio penitentiary, and to repeal certain acts therein named."

73 v. 219. 41. Section five of the act of April 11, 1876, entitled "An act for the prevention of cruelty to minors."

73 v. 248. 42. The act of April 12, 1876, entitled "An act to amend section one hundred and sixty-one of an act entitled 'an act to establish a code of criminal procedure for the state of Ohio,' passed May 6, 1869."

SEC. 2. This act shall take effect and be in force from and after July 1, 1877.

C. H. GROSVENOR,
Speaker of the House of Representatives.
H. W. CURTISS,
President of the Senate.

Passed May 5, 1877.

Exhibit J

A

PRACTICAL TREATISE

ON

THE CRIMINAL LAW;

COMPRISING THE

PRACTICE, PLEADINGS,

AND

EVIDENCE

WHICH OCCUR IN THE COURSE OF CRIMINAL PROSECUTIONS,

WHETHER BY

INDICTMENT OR INFORMATION:

WITH A COPIOUS

COLLECTION OF PRECEDENTS

OF

INDICTMENTS, INFORMATIONS, PRESENTMENTS, AND EVERY DESCRIPTION OF PRACTICAL FORMS, WITH COMPREHENSIVE NOTES AS TO EACH PARTICULAR OFFENCE, THE PROCESS, INDICTMENT, PLEA, DEFENCE, EVIDENCE, TRIAL, VERDICT, JUDGMENT, AND PUNISHMENT.

IN FOUR VOLUMES.

VOL. I.

BY J. CHITTY, ESQ.

OF THE MIDDLE TEMPLE.

London:

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1816.

to the parties whom they come to apprehend, notwithstanding they demand the sight of it; but that these, and all other persons making an arrest ought to acquaint the party whom they are to apprehend with the substance of their warrants. It is also enjoined on all private persons to whom a warrant may be directed, and even officers if they be not sworn and commonly known, or if they act out of their own precinct, to show their warrants if demanded. (*h*) And in a late case, (*i*) the doctrine, that even a known officer is not obliged to show his authority when demanded, was considered as dangerous, because it may affect the party criminally in case of resistance; and if homicide ensue, the legality of the warrant enters materially into the merits of the question. And Lord Kenyon observed, that he did not think a person is bound to take it for granted, that another who says he has a warrant against him without producing it speaks truth. It is, therefore, very important that in all cases where an arrest is made by virtue of a warrant, that the warrant should at least, if demanded, be produced, to leave a delinquent no excuse for resistance.

Of breaking open doors.

We have now to enquire in what cases doors may be broken, in furtherance of the purposes of justice, a subject of equal delicacy and importance, as it often becomes material in cases of homicide; and as it affects the security and peace of domestic habitations. As there is a considerable degree of intricacy and confusion in the authorities which relate to this subject, we will investigate the law in the following order: 1stly, in what cases the house of the suspected party may be broken open; and 2dly, when that of a third person may be forced in order to advance the execution of justice. And in pursuing the first of these inquiries, we will consider when the

(*h*) Hawk. b. 2. c. 13. s. 28. 2 Hale, 116. 1 Hale, 583. 1 East, P. C. 312, 314, 319. Dick. J. Arrest III.

(*i*) 8 T. R. 188.

house of the party suspected may be thus entered—1st, without warrant—2dly, under a warrant to apprehend—and 3dly, under a warrant to search for goods suspected to have been stolen.

But first it may be proper to observe that, in general, a man's own house is regarded as his castle, which is only to be violated when absolute necessity compels the disregard of smaller rights, in order to secure public benefit; and, therefore, in all cases where the law is silent and express principles do not apply, this extreme violence is illegal. (*k*) There seems some doubt as to the distinction which may exist between the power of constables and private individuals in this respect; for it is said that the former being enjoined by law, on a reasonable charge, to apprehend the party suspected, may be justified in breaking open doors to apprehend him on mere suspicion of felony, and will be excused though it appear that the suspicion was groundless; but a private individual acts at his own peril, and would, if the party were innocent, be liable to an action of trespass for breaking open doors without a warrant. (*l*) But when *it is certain* that a treason, or felony has been committed, or a dangerous wound given, and the offender being pursued takes refuge in his own house, either a constable, or private individual without distinction, may without any warrant break open his doors after proper demand of admittance. (*m*) And when an affray is made in a house, in the view or hearing of a constable, he may break open the outer door in order to suppress it. (*n*) So, in some extreme cases, it has been holden lawful even for a private individual to break and enter the

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(*k*) 3 Bla. Com. 288. 14 East 79, 116, 7, 8.—154, 5. 5 Co. 91. Cowp. 1.

(*l*) 2 Hale, 82, 92. 2 B. & P. 260. Dick. J. Arrest III.

(*m*) 1 Hale, 588, 589. Hawk. b. 2. c. 14. s. 7. 4 Bla. C. 292. 2 Hale 82, 3. 88. 96. 14 East 157, 8. Barl. J. Arrests.

(*n*) 2 Hale, 95. Hawk. b. 1. c. 63. Hawk. b. 2. c. 14. Dick. J. Arrest III.

house of another in order to prevent him from murdering another who cries out for assistance. (*o*) Authors, however, differ on the point whether the same power be invested in the officer or private person when felony is only *suspected* and has not been committed *within the view* of the party arresting. It is, indeed, certain that a constable may break open doors, upon the positive information of another who was actually a witness to the felony, (*p*) and one material distinction between the power of officers and private individuals, is that the latter can act only on their own knowledge, while the former may proceed on the information of others. (*q*) We may, therefore, take it as settled that a private person may break doors after a proper demand and notice where he is certain a felony has been committed, and that a constable may do the same upon the information of the party in whom the knowledge, or reasonable suspicion exists.

As to how far doors may be broken open, upon *suspicion of felony*, Lord Coke (*r*) seems to imply that this may be done by the party originally suspecting, but by no other unless by the constable in his presence. And therefore he contends that no justice can issue a warrant before indictment, unless the suspicion arise from himself, an idea which constant usage has refuted. And Lord Hale positively lays it down, that doors may be broken open, without warrant, on *suspicion* of felony. (*s*) This doctrine is as positively denied by Foster, though his general leaning is against the protection of offenders by the sanctity of private dwellings. According to him a bare suspicion will never authorize an arrest, even though a felony has actually been committed. (*t*) And this opinion is the stronger as it proceeds

(*o*) 2 B. & P. 260.
(*p*) 1 Hale, 589. 2 Hale, 92. Dick. J. Arrest 111.
(*q*) Cald. 291. Dougl. 359.
(*r*) 4 Inst. 117. 14 East, 155.
(*s*) 1 Hale, 583.
(*t*) Fost. 321.

from one who just before had declared, that "no regard "ought to be paid to the houses of malefactors, which "were the dens of thieves and murderers." This opinion is followed by Hawkins, and adopted by Mr. East: the latter author, however, qualifies it by observing that *at least* the party arresting must prove not only that his suspicion was reasonable, but that the person arrested was actually guilty. (*u*)

Upon the whole, therefore, it seems to be the better opinion that a private individual, in order to justify breaking open doors without warrant, must in general prove the actual guilt of the party arrested, and that it will not suffice to show that a felony has actually been committed by another person, or that reasonable ground of suspicion existed; but that an officer, acting bonâ fide on the positive charge of another, will be excused, and the party making the accusation will alone be liable. (*w*) But the breaking an outer door is, in general, so violent, obnoxious and dangerous a proceeding, that it should be adopted only in extreme cases, where an immediate arrest is requisite.

We have now to inquire in what cases doors may be broken open, under the warrant of a Justice of the Peace. Lord Coke seems to have thought that no arrest could take place under a warrant *before indictment*, by any other than the accuser himself, (*x*) but now it is clear that in all cases doors may be broken open, if the offender cannot otherwise be taken, under warrant, for treason, felony, suspicion of felony, or actual breach of the peace, or to search for stolen goods. (*y*) In these cases too, a warrant is a complete justification to the person to whom it is directed, acting bonâ fide under it,

(*u*) 1 East, P. C. 322. Hawk. b. 2. c. 14. s. 7. Dalt. J. c. 78.

(*w*) Dougl. 358. Dick. J. Arrest III.

(*x*) 4 Inst. 177.

(*y*) Fost. 320. 1 Hale, 583. Hawk. b. 2. c. 14. s. 7. 1 East, P. C. 322. 2 Hale 117. Dalt. J. c. 169, 151. Dick. J. Arrest III.

even though the party accused should prove his innocence. (*z*) And if in the attempt to execute a lawful warrant by breaking into the house of a felon, after previous demand of admittance, the officer be killed by the party attempting to resist, it will be murder in all concerned; and if, on the other hand, he unavoidably kill any of the parties opposing him, the homicide will be justifiable, because in furtherance of justice. (*a*) And even where there is some error in the process which does not affect the justice of the case, the complexion of the offence of the party resisting will not be varied; (*b*) though if it be altogether defective, as if there be a mistake in the name or addition of the party, or if the name of the officer be inserted without authority, after the issuing of the process, or it be executed without the jurisdiction, the crime will be reduced to manslaughter. (*c*) It has been held, in several cases, that where the defect in the process is substantial, or the officer exceeds his authority, third persons may lawfully interfere, and if they kill the officers, it will amount only to manslaughter—because the view of an illegal arrest, is a sufficient provocation to the subjects of all England. (*d*) But Mr. Justice Foster strongly contests the principle thus laid down, in which he is followed by Mr. East, and they regard the earlier cases cited, as decided on their own peculiar circumstances. (*e*) At all events, if the parties interfering, wantonly strike with destructive weapons, from which malice may be fairly presumed, it is murder. (*f*)

(*z*) 24 Geo. II. c. 44. 4 Bla. Com. 288. Hawk. b. 2. c. 13. s. 11. Cro. Eliz. 130.

(*a*) 1 Hale, 494. Fost. 270.

(*b*) 1 East, P. C. 310. Fost. 135.

(*c*) 1 Hale, 458. Cro. Car. 371. Fost. 312.

(*d*) Cro. Car. 371. 2 Ld. Raymd. 1296. Kel. 5. 9. 5 East, 308.

(*e*) Fost. 314. &c. 1 East, P. C. 328.

(*f*) Fost. 135, and see Leach, 206. 1 East, P. C. 329. S. C. 5 East, 308.

We have thus seen that on a warrant for treason, felony, or breach of the peace, the doors of the party accused may be broken open, if admittance cannot otherwise be obtained; but there seems no well-founded authority for extending this right to misdemeanours unaccompanied by violence.

A contempt, however, of a court of justice, or of either House of Parliament, will authorize this proceeding under a warrant from the speaker. (*g*) And it seems that whenever the crime is of a public nature, this may be permitted,(*h*) though it is clearly unjustifiable upon mere civil process. (*i*) And if, in the attempt to execute civil process by such forcible entry, the officer, being a known bailiff, be killed, it will be manslaughter, and no more; manslaughter, because he was known to be an officer, and no more, because his attempt was illegal. (*k*) And, if he be no officer, or out of his proper district, he may lawfully be killed to prevent his entry. (*l*) It is however settled, that in case of an actual affray made in a house, within the view or hearing of a constable, or where those who have made an affray in his presence, fly to a house and are pursued by him, he may break open the doors to arrest the affrayers, or suppress the tumult.(*m*) And it has been decided, that upon a violent cry of murder in a house, any person may break open the door to prevent the commission of a felony, and may restrain the party threatening, till he appear to have changed his purpose. (*n*) And in all cases whatever, it is absolutely necessary that a demand of admittance should be made, and be refused, before outer doors can be broken. (*o*)

Upon *search warrants* regularly granted, and speci-

(*g*) 14 East, 157, 162.
(*h*) 14 East, 116.
(*i*) 5 Co. 91. Fost. 319.
(*k*) 1 Hale, 458. 1 East, P. C. 321.
(*l*) 5 Co. 91. b.
(*m*) 2 Hale, 95. Hawk, b. 2. c. 14. s. 8.
(*n*) 2 Bos. and Pul. 260.
(*o*) Fost. 320. Hawk. b. 2. c. 14. s. 1. 3 Bos. and Pul. 229. Barl. J. Arrests. Dick. J. Arrest, III.

fically directed, it seems to be settled, that after the proper precautions, the house to be searched may be broken open, and whether the property is found there or not, the officer will be excused. (*p*) A distinction seems to have been made, though never distinctly recognized, as far as respect *criminal* proceedings, that the officer would be justified, or not, according to the event of his search, but as all persons who act bonâ fide under a warrant, are now protected from any liabilities resulting from its having been improperly framed, this idea could not now be supported. (*q*) It appears, however, that the party maliciously procuring a search-warrant is answerable to the person aggrieved in an action on the case. (*r*) As warrants to search "all suspected places" are illegal, (*s*) unless when they are issued under the provision of the particular statutes hereafter considered, it seems that a constable breaking open doors under the color of their authority cannot be justified. (*t*) The general doctrine, therefore, to be adduced from all the books relative to search-warrants, is, that if they are altogether illegal, the officer cannot be justified; but that if they are legal in form, though improperly granted, he may safely break open the doors to execute them, whether his search succeed, or the charge be malicious or mistaken.

The house of a third person, if the offender fly to it for refuge, is not privileged, but may be broken open after the usual demand; for it may even be so upon civil process. (*u*) But then it is said, it is at the peril of the officer that the party, against whom he has obtained the warrant, be found there; for otherwise he will be a trespasser. (*w*) And this doctrine, as far as it respects civil

(*p*) 2 Hale, 151.

(*q*) Quære, see 3 Esp. R. 135. 1 T. R. 535. 3 B. and P. 223. 1 Marsh. R. 565.

(*r*) 2 Hale, 151. 1 T. R. 535. 3 Esp. R. 135. 3 Bos. and Pul. 225.

(*s*) 4 Bla. Com. 288. 10 St. Tr. 426. Hawk. b. 2. c. 135. s. 10.

(*t*) Hawk. b. 2. c. 13. s. 10. 3 Burr. 1767. Loft. 18. 11 St. Tr. 312.

(*u*) 5 Co. 91. 2 Hale, 117.

(*w*) 2 Hale, 117. 5 Co. 63. a.

process has been recognised in modern decisions. (*x*) It is necessary to observe, that all the privileges attendant on private dwellings, relate to arrests *before indictment*, and there is no question whatever that *after indictment found*, a criminal of any degree may be arrested in any place, and no house is a sanctuary to him. (*y*) So also upon a Capias from the king's bench or chancery, to compel a man to find sureties for his good behaviour, and even on a warrant of a justice for that purpose, doors may be forced, if necessary. (*z*) So also upon a Capias utlagatum, or Capias pro fine, in any action whatever. (*a*) So a constable, or other officer, having a warrant to levy the money adjudged by a justice to be levied, by virtue of an act of parliament, which authorises him to convict in a penalty, to a part of which the king is entitled, may break open doors in order to effect his purpose, though he is compelled first to show his warrant, if demanded. (*b*) It is also to be observed, that after a party has been once actually arrested, and escapes from custody, any door may be broken open to retake him after proper demand of admittance. (*c*) And when the officer, after obtaining admittance, is locked in, or otherwise prevented from retiring, he may lawfully break out by any means in his power, whether he be engaged in executing civil or criminal process; and the sheriff may break open the door of a house to rescue his bailiffs unlawfully detained within it. (*d*) And when once the officer has entered the house, either upon civil or criminal process, he may,

(*x*) 1 Marsh. R. 565. 3 B. and B. 223. Dick. J. Arrest, III.

(*y*) 12 Co. 131. 4 Inst. 131. Hawk. b. 2. c. 14. s. 3. Dick. J. Arrest, III. Barl. J. Arrests.

(*z*) Hawk. b. 2. c. 14, s. 3. Moor, 606, 668. Fost. 136. Dick. J. Arrest, III. Barl. J. Arrests.

(*a*) Hawk. b. 2. c. 14. s. 4. Yelv. 28. Barl. J. Arrests. Dick. J. Arrest, III.

(*b*) Sir T. Jones, 233, 4. Hawk. b. 2. c. 14. s. 5. Dick. J. Arrest, III.

(*c*) Fost. 320. 6 Mod. 173, 4. Salk. 79. 1 Hale, 459. Hawk. b. 2. c. 14. s. 9. Barl. J. Arrests. Dick. J. Arrest, III.

(*d*) Cro. Jac. 555. Fortes. 319. 6 Mod. 173. Hawk. b. 2. c. 14. s. 11. 1 Hale, 459. Dick. J. Arrest, III. Barl. J. Arrests.

after ineffectually demanding entrance, break open any inner door that obstructs his progress, though the process be without a "non omittas" and if he be killed it will be murder. (*e*) A hue and cry gives to all parties engaging in it the same protection as a warrant, and therefore any one may, upon this proceeding, break open a house, to which the felon has escaped, for all are then required to act as officers. (*f*)

What may be done after the Arrest.

When the officer has made his arrest, he is, as soon as possible, to bring the party to the gaol or to the justice, according to the import of the warrant; and if he be guilty of unnecessary delay, it is a breach of duty. (*g*) But if the time be unseasonable, as in or near the night, whereby he cannot attend the justice, or if there be danger of a rescue, or the party be ill, and unable at present to be brought, he may, as the case shall require, secure him in the stocks, or in case the quality of the prisoner, or his indisposition so require, detain him in a house till the next day, or until it may be reasonable to bring him. (*h*) It is said, that where an arrest has been made without warrant, the constable may, in some cases, take the party's word for his appearance before a magistrate. (*i*) And this is usually done where the charge is for an assault of a trifling nature, and the defendant is of good repute, and there is no probability of his absconding. But if a constable, having arrested a party under a warrant, suffer him to go at large, upon his promise to come again and find sureties, it is doubted whether he can afterwards be arrested upon the same process, though it should seem, that as the public are interested in the offender's being brought to justice, there is no well founded objection to such second arrest. (*k*) And it is certain,

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(*e*) 1 Hale 459. Fost. 319. 3 Bos. and Pul. 229.
(*f*) 2 Hale, 102. 5 Co. 92. b.
(*g*) Fortes. 143. 2 Hale, 119.
(*h*) 2 Hale, 119, 120. 95, 96.
(*i*) 1 Esp. Rep. 295. 2 New Rep. 211.
(*k*) Hawk. b. 2. c. 13. s. 9. c. 19. s. 12. Bac. Ab. constable, D. Dick. J. Arrest. III.

Exhibit K

one, the assessor shall list such as resided in his township, on the first day of March of said year, and in taking the list of cattle and horses, they shall be taken in the name of the person or persons owning the same, on the first day of March, and in the manner and under the provisions regulated by law, except as to time.

When county auditors to perform their duty.

SEC. 2. County auditors, in the counties named in the first section of this act, shall, unless otherwise provided by law, on the tenth day of March of said year, discharge the duties pointed out in the fifteenth and sixteenth sections of the act named in the first section of this act, and, on the tenth day of April of each year, discharge the duties pointed out in the fourteenth section of said act.

SEC. 3. The township assessors in the counties named in the first section of this act, now in office, shall, unless otherwise provided by law, hold their offices until the eleventh day of April, one thousand eight hundred and forty-six, and until their successors are elected and qualified.

Privileges granted to commissioners in counties above named.

SEC. 4. The commissioners of the counties above named, unless otherwise provided by law, may, at their annual meeting, on the first Monday of March next, fix the per centum to be levied for road purposes, for said year, or, at their option, may hold a special session, at any time by them to be determined, within the month of April next, for that purpose.

ELIAS F. DRAKE,
Speaker of the House of Representatives.
SEABURY FORD,
Speaker of the Senate.

January 13, 1846.

AN ACT

More effectually to prevent Gambling.

Penalty for renting or keeping any room, &c., to be used for gambling.

SEC. 1. *Be it enacted by the General Assembly of the State of Ohio,* That if any person shall keep a room, building, arbor, booth, shed, or tenement, to be used or occupied for gambling, or shall knowingly permit the same to be used or occupied for gambling; or if any person, being the owner of any room, building, arbor, booth, shed, or tenement, shall rent the same, to be used or occupied for gambling, the person so offending shall, on conviction thereof, be fined in any sum not less than fifty nor more than five hundred dollars; and if the owner of any room, building, arbor, booth, shed, or tenement, shall know that any gaming tables, apparatus, or establishment is kept or used, in such room, building, arbor, booth, shed, or tenement, for gambling and winning, betting or gaining money, or other property, and shall not forthwith cause complaint to be made against the person so keeping or using such room, build-

ing, arbor, booth, shed, or tenement, he shall be taken, held, and considered to have knowingly permitted the same to be used and occupied for gambling.

SEC. 2. If any person shall keep or exhibit any gaming table, establishment, device, or apparatus, to win or gain money, or other property of value, or to aid, assist, or permit others to do the same, or if any person shall engage in gambling for a livelihood, or shall be without any fixed residence, and in the habit or practice of gambling, he shall be deemed and taken to be a common gambler, and upon conviction thereof, shall be imprisoned and kept at hard labor in the penitentiary, not less than one nor more than five years, and be fined five hundred dollars, to be paid into the treasury of the county where such conviction shall take place, for the use of the common schools therein.

What acts shall subject to imprisonment in penitentiary.

SEC. 3. If an affidavit shall be filed with the magistrate before whom complaint shall be made, of an offence against any provision of this act, stating that the affiant has reason to believe, and does believe, that the person charged in such complaint has, upon his person, or at any other place named in such affidavit, any money, or any specified articles of personal property, or any gaming table, device, or apparatus, the discovery of which might tend to establish the truth of such charge, the said magistrate shall, by his warrant, command the officer who is authorized to arrest the person so charged, to make diligent search for such money or property, and table, device, or apparatus, and, if found, to bring the same before such magistrate; and the officer seizing the same shall retain possession thereof, subject to the order of the magistrate before whom he takes the same, until the discharge or commitment, or letting to bail of the person charged; and in case of such commitment or letting to bail of the person so charged, such officer shall retain such property, subject to the order of the court before which such offender may be required to appear, until his discharge or conviction; and in case of the conviction of such person, the gaming table, device, or apparatus, shall be destroyed, and the money and other property shall be liable to pay any judgment which may be rendered against such person; and in case of the discharge of such person, by the magistrate or court, the officer having such property in his custody shall, on demand, deliver it to such person.

Upon complaint warrants may be issued to arrest offenders.

SEC. 4. If any person called to testify on behalf of the state, before any justice of the peace, grand jury, or court, upon any complaint, information, or indictment, for any offence made punishable by this act, shall disclose any fact tending to criminate himself in any matter made punishable by this act, he shall thereafter be discharged of and from all liability to prosecution or punishment for such matter or offence.

Witnesses protected.

SEC. 5. It shall be lawful for any justice of the peace, chief magistrate of any municipal incorporation, or judge of any

Upon complaint, warrant issued to seize and possess gambling apparatus, &c.

court of common pleas, upon complaint, on oath, that any gaming table, establishment, apparatus, or device is kept, by any person, for the purpose of being used to win or gain money or other property, by the owner thereof, or any other person, to issue his warrant, commanding any sheriff, constable, or any marshal of any municipal corporation, to whom the same shall be directed, within the proper jurisdiction, after demanding entrance, to break open and enter any house or other place where such gaming establishment, apparatus, or device shall be kept, and to seize and safely keep the same, to be dealt with as herein after provided.

Apparatus to be destroyed, unless appeal is taken and bond given.

SEC. 6. Upon return of said warrant executed, the authority issuing the same shall proceed to examine and inquire touching the said complaint, and if satisfied that the same is true, he shall order the officer so seizing such gaming establishment, apparatus or device, forthwith to destroy the same, which order the said officer shall proceed to execute, in the presence of said authority, unless the person charged as keeper of said gaming establishment, apparatus or device, shall, without delay, enter into recognizance, in the sum of two hundred dollars, with sufficient sureties, to be approved by said authority, for the appeal of said complaint to the court of common pleas, next to be held in the proper county, conditioned that the defendant will appear at the next term of the court to which he appeals, and abide the order of such court, and for the payment of the full amount of the fine and all costs, in case he shall be found guilty of the offence charged, and judgment be rendered against him in said court.

Recognizance to be returned to clerk of court.

SEC. 7. The officer taking such recognizance shall return the same to the clerk of the court to which said appeal is taken, forthwith; and such clerk shall file the same in his office, and the complaint shall be prosecuted in such court by indictment, as in other criminal cases; and upon conviction, the appellant shall be fined, not more than fifty dollars, and shall pay the costs of prosecution, and such gaming establishment, apparatus or device, shall be destroyed.

SEC. 8. It shall be the duty of all sheriffs, constables, marshals of incorporated cities, towns, and boroughs, and of all prosecuting attorneys, to inform and prosecute all offences against this act.

SEC. 9. This act shall be given in charge to the grand jury by the president judge of the court of common pleas, in the respective counties.

SEC. 10. This act shall take effect on the first day of March next.

ELIAS F. DRAKE,
Speaker of the House of Representatives.
SEABURY FORD,
Speaker of the Senate.

January 17, 1846.

Exhibit L

CHAPTER XXI.

An act, defining the duties of sheriffs and coroners, in certain cases.

Sheriff and coroners to give bond to commissioners.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio*, That the sheriff and coroner of each and every county shall, within ten days after they shall have received their commissions, severally give bond to the commissioners of the county, with two or more sufficient sureties, approved of by the commissioners, which bonds the commissioners shall cause to be recorded in the same book in which their other proceedings shall be recorded, a certified copy of which record, signed by two of the commissioners, shall be as valid in law, to all intents and purposes, as the original bond or bonds; the bond of the sheriff shall be for four thousand dollars, and the bond of the coroner for two thousand dollars, payable to the commissioners and their successors, conditioned for the faithful discharge of their duties respectively, from which bond the sheriff or coroner and their sureties, shall not be released but by an order from the court of common pleas of the proper county, which order shall certify, that the sheriff or coroner, as the case may be, has performed the duties of his office, and that he has paid over, agreeable to law, all the monies by him collected, or that he was legally authorized to collect and pay over, or that he has otherwise been legally discharged therefrom.

In what sum.

Condition.

How released.

Sheriff to keep the peace.

Sec. 2. *Be it further enacted*, That it shall be the duty of the sheriff to keep and preserve the peace, and cause all offenders against law, in his view or within his knowledge, to enter into

recognizance with sureties, for keeping the peace and appearing at the next term of the court of common pleas in the county, and to commit, in case of refusal, and return said recognizance, certified, to the said court. It shall also be his duty to quiet and suppress all affrays, routs, riots, unlawful assemblies and insurrections, for which purpose, he is hereby empowered to call to his aid such persons or power of the county, as he may deem necessary; he shall pursue, apprehend and commit to jail, all felons and traitors; shall execute all warrants, writs and other process, which by law appertain to the duties of his office and which shall be directed to him by legal authority; he shall duly attend upon all courts of common pleas and supreme courts, holden within the county, during their session; do and perform all other acts and duties enjoined by law.

To commit.

and execute process.

Sec. 3. *Be it further enacted*, That it is made the duty of the sheriff and he is hereby required, to take charge of all criminals and persons committed to prison, for which purpose he shall, by himself or deputy, attend at the jail and take care of it and the prisoners, and see that they are confined and safely kept and supplied with necessary sustenance, agreeable to law; and if any sheriff shall refuse or neglect to perform the duties enjoined by law, he shall, for every such offense, be fined in any sum not exceeding four thousand dollars, at the discretion of the court, to be recovered by attachment or otherwise, as the court may direct, agreeable to law; the fines in criminal cases, to be paid into the county treasury, for the use of the county, and in civil cases, applied as the court may direct.

And take charge of criminals.

Penalty for neglect of duty.

Fines, how disposed of.

Coroner's duty when office of sheriff becomes vacant.

Sec. 4. *Be it further enacted*, That whenever the office of sheriff shall become vacant in any county, either by death, resignation or otherwise, the coroner of said county shall be bound to perform all duties and be vested with all the power of sheriff for said county, during such vacancy, and in case the sheriff, for any cause, shall be committed to jail, the coroner shall, by himself or such other person as he may appoint, be keeper of the jail during the time the sheriff shall remain a prisoner.

His duty when sheriff is a party, etc.

Sec. 5. *Be it further enacted*, That the coroner shall execute process of every kind wherein the sheriff is a party or interested in the suit, or for other just cause is rendered incapable of executing the same.

Coroner's duty when informed of a dead body, etc.

Sec. 6. *Be it further enacted*, That the coroner shall, so soon as he is informed of the dead body of any person, supposed to have come to his or her death by violence or casualty, found dead within the county, issue his warrant, directed to a constable of the township where the dead body is found, requiring him forthwith to summon a jury of twelve men of the township, to appear at the place where the dead body shall be, at the time specified in the warrant, to enquire, on the view of the body of the person or persons there lying dead, how and in what manner, and by whom he or she came by his or her death; and the constable shall forthwith execute the same, and repair to the place where the dead body shall be at the time mentioned, and make return of the warrant and his proceedings thereon to the coroner; and every constable failing, unnecessarily, to execute such warrant and return the

To summons jury.

Penalty on constable for neglect, etc.

same as aforesaid, shall forfeit and pay a fine of fifty dollars; and if any person, summoned as a juror, shall fail to appear, without having a reasonable excuse, shall pay a fine of five dollars, which fines aforesaid, shall be recovered on suit of the coroner, before any court having jurisdiction thereof, and be paid into the county treasury for the use of the county.

On juror failing to appear.

Sec. 7. *Be it further enacted*, That the coroner shall swear the jury severally, in form following, viz.: You do solemnly swear or affirm, as the case may be, that you will diligently enquire into and true presentment make, according to the best of your understanding, how, in what manner and by whom the deceased person, who here lies dead, came to his or her death, as the case may be, and deliver to me a true inquest thereof, according to such evidence as shall be laid before you.

Coroner to swear jury.

Form of oath.

Sec. 8. *Be it further enacted*, That the coroner shll be empowered to summon witnesses forthwith to come before him and the jury, and give evidence concerning the matter in question, and when the jury are sworn, shall call upon the evidences and examine them on oath or affirmation, and make all necessary enquiry whether the person found dead died of felony, mischance or accident, and if of felony, who were principals or accessories, in what manner, by what means and with what instruments, with all the circumstances which may come to their knowledge, and if by mischance or accident, whether by the act of man and whether by hurt, fall, stroke, drowning or otherwise; also to enquire of the persons who (if any) were present, the finders of the body, his or her relations and neighbors, whether he or she was

To summon witnesses.

killed in the same place where the body was found, and if elsewhere, by whom and how the body was brought thence, and all other circumstances relating to the said death.

Evidence to be reduced to writing and signed.

Sec. 9. *Be it further enacted*, That the evidence of the witnesses shall be reduced to writing and signed by them severally, and if it relate to the trial of any person concerned in the death of the deceased, the coroner shall bind such witnesses by recognizance, in a reasonable sum, for their personal appearance at the next term of the court where the offense is cognizable within the county, there to give evidence accordingly, and commit to the common jail of the county, any witness refusing to enter into such recognizance, and shall return the inquisition, written evidence and recognizance by him taken, to the court aforesaid.

Witnesses recognized.

Committed in case of refusal.

Jury, their duty.

Sec. 10. *Be it further enacted*, That the jury having viewed the body, examined and heard the evidences, and made all the enquiry within their dower, they shall draw up their verdict, sign the same and deliver it to the coroner, and if the inquisition found, be felony or misfortune of another person, the coroner shall speedily inform one or more of the justices of the peace thereof, who are most convenient within the county, to the intent that the person killing or being any way instrumental to the death, may be apprehended, examined and secured, in order for trial, and if the felon or felons be present, the coroner shall bring him, her or them, before a justice of the peace for examination, and if any coroner shall refuse or neglect to perform any of the duties of his office, he shall be fined in a sum not exceeding

Coroner's duty in certain cases.

two thousand dollars, at the discretion of the court, which shall be applied as in case of the sheriff. Penalty on coroner, for neglect of duty.

Sec. 11. *And be it further enacted*, That a law establishing general courts of quarter sessions, etc., published at Marietta, August 23, 1788; a law appointing coroners, published December 21, 1788; a law concerning the power and duty of coroners, published June 16, 1795, and all other laws and parts of laws, coming within the intent and meaning of the provisions of this act, which are contrary thereto, are hereby repealed. Certain laws repealed.

This act shall take effect and be in force, from and after the first day of June next. Commencement.

JOHN SLOANE,
Speaker pro tem. of the house of representatives.

JOSEPH KERR,
Speaker pro tem. of the senate.

January 5, 1805.

CHAPTER XXII.

An act, making certain instruments of writing negotiable.

Sec. 1. *Be it enacted by the general assembly of the state of Ohio*, That all promissory notes without seal, and bills of exchange, foreign and inland, drawn for any sum or sums of money certain, and made payable to any person or persons, Notes without seals and bills of exchange for the payment of money negotiable

Exhibit M

AN ACT

For levying taxes on all property in this State according to its true value.

SEC. 1. *Be it enacted by the General Assembly of the State of Ohio*, That all property, whether real or personal, within this state, and the moneys and credits of persons residing therein, except such as is hereinafter expressly exempted, shall be subject to taxation; and such property, moneys and credits, or the value thereof, shall be entered on the lists of taxable property, for that purpose, in the manner prescribed by this act. Property subject to taxation.

DEFINITIONS.

SEC. 2. The terms "real property" and "land," wherever used in this act, shall be held to mean and include not only the land itself, whether laid out in town lots, or otherwise, with all things contained therein, but also all buildings, structures and improvements, trees and other fixtures of whatsoever kind thereon, and all rights and privileges belonging, or in any wise appertaining thereto, including all stoves in any building belonging to the owner of such building, and used instead of fireplaces. Definitions of terms used in descriptions of property, persons, &c.

The term "personal property," wherever used in this act, shall be held to mean and include—

1st. Every tangible thing, being the subject of ownership, whether animate or inanimate, other than money, and not forming part of any parcel of real property, as hereinbefore defined.

2d. The capital stock, undivided profits, and all other means, not forming part of the capital stock, of every company, whether incorporated or unincorporated, and every share, portion or interest in such stock, profits or means, by whatsoever name the same may be designated, inclusive of every share or portion, right or interest, either legal or equitable, in and to every ship, vessel or boat, of whatsoever name or description, used, or designed to be used, either exclusively or partially, in navigating any of the waters within, or bordering on this state, whether such ship, vessel or boat shall be within the jurisdiction of this state or elsewhere, and whether the same shall have been enrolled, registered or licensed at any collector's office or within any collection district in this state, or not.

The term "money" or "moneys," wherever used in this act, shall be held to mean and include gold and silver coin and bank notes, in actual possession, and every deposit, which the person owning, holding in trust, or having the beneficial interest therein, is entitled to withdraw, in money, on demand.

The term "credits," wherever used in this act, shall be held to mean and include every claim or demand for money, labor or other valuable thing due or to become due, and every annu-

ity or sum of money receivable at stated periods, and all money invested in property of any kind, which is secured by deed, mortgage or otherwise, which the person holding such deed, or mortgage, or evidence of claim, is bound, by any lease, contract or agreement, to reconvey, release or assign, upon the payment of any specified sum or sums: Provided, that pensions receivable from the United States or from any of them, salaries or payments expected to be received for labor or services to be performed or rendered, shall not be held to be annuities within the meaning of this act: and provided, also, that claims or demands for property sold, work done, or services rendered, having no connection with the loaning of money, when the credit given is for a time not exceeding six months, and when there shall have been no agreement or understanding for a continuance of the credit beyond six months, shall not be considered credits subject to taxation.

The terms "separate parcel of real property" and "separate parcel of land," wherever used in this act, shall be held to mean any contiguous quantity or parcel of land belonging to the same owner or owners, whether comprised in one, or in more than one section, tract, lot or other survey, or subdivision of either, which parcel of land or real property shall be disconnected from any other parcel belonging to the same owner or owners

The word "town," wherever used in this act, shall be taken and held to mean "city," "village," "borough," and every place, however designated, which is laid out into town lots.

The words "he," "him" or "his," wherever so used as to refer to a female, or to more than one person, shall be understood to mean "she," "her" or "hers," or "they," "them" or "theirs," as the sense may require.

Wherever an oath is required by this act of any person who has conscientious scruples against taking an oath, an affirmation may be substituted in its place; and in all such cases, the word "oath" shall be held to mean "affirmation," and the word "swear" shall be held to mean "affirm."

PROPERTY EXEMPT FROM TAXATION.

SEC. 3. All property described in this section, to the extent herein limited, shall be exempt from taxation; that is to say:

Property exempt from taxation.

1st. All buildings occupied or used exclusively as public school houses, or as places of public worship, or both, with the furniture and books therein, used exclusively for the accommodation of schools or religious meetings, together with the grounds, not exceeding, in any case, twenty acres, occupied thereby, if not leased or otherwise used with a view to profit.

2d. All lands used exclusively as graveyards, or grounds for burying the dead.

3d. All buildings belonging to scientific, literary or benevolent societies, used exclusively for scientific, literary or benevolent purposes, together with the land actually occupied by such institutions, not leased or otherwise used with a view to profit, and all books, papers, furniture, apparatus and instruments belonging to such societies, used solely for literary, scientific or benevolent purposes. But no society, other than such as are public, and such as shall have been instituted, and shall be devoted exclusively to scientific, literary or benevolent purposes, shall be deemed a literary, scientific or benevolent society, within the meaning of this act.

4th. All moneys and credits belonging exclusively to universities, colleges, academies or public schools, of whatsoever name, or to religious, scientific, literary or benevolent societies, and appropriated solely to sustaining such institutions or societies, not exceeding in amount, or in the income arising thereon, the amount prescribed by the charter of such society.

5th. All property, whether real or personal, belonging exclusively to this state, or to the United States, and all lands sold by the United States for five years after such sale.

6th. All buildings belonging to counties, used for the holding of courts, for jails, or for county offices, with the ground, not exceeding, in any county, ten acres, on which such buildings are erected.

7th. All lands, houses and other buildings belonging to any county, township or town, used exclusively for the accommodation or support of the poor.

8th. All market houses, public squares, or other open public grounds, town or township houses used, in either case, exclusively for public purposes, and all works, machinery and fixtures belonging to any town, and used exclusively for conveying water to such town.

9th. All fire engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe keeping thereof, and for the meetings of fire companies, whether belonging to any town, or to any fire company organized therein.

10th. All claims against the state, evidenced by certificates of stock or funded debt, heretofore issued.

11th. All kitchen furniture, beds and bedding, belonging to private families, and other household furniture and books belonging to any family, not exceeding one hundred dollars in value; and each keeper of a tavern or boarding house shall be entitled to hold, exempt from taxation, kitchen furniture, beds and bedding, not exceeding in value two hundred dollars.

12th. The wearing apparel of every person and family, which shall not be construed to include watches of any kind.

13th. All articles of food provided by the head of a family to sustain the members thereof: Provided, that no person from

whom any compensation for board or lodging is received, or expected to be received, shall be considered a member of a family, within the meaning of this act.

14th. All animals not specified in the ninth section of this act.

15th. Farming implements, actually used for farming purposes, owned by any person engaged in the business of farming, which shall not be held to include road wagons, or wagons used principally for other than farming purposes.

16th. Mechanics' tools, not exceeding in value one hundred and fifty dollars, owned by any person actually engaged in carrying on any mechanical trade or profession.

17th. The head of every family shall be entitled to hold, exempt from taxation, one cow, eight sheep and four hogs, unless he shall have other property, over one hundred dollars in value, subject to taxation.

BY WHOM, WHERE, AND IN WHAT MANNER PROPERTY SHALL BE LISTED.

By whom property shall be listed.

SEC. 4. Every person of full age and sound mind, not a married woman, shall list the real and personal property, subject to taxation, of which he is the owner, situate or being in the county in which he resides, and all moneys in his possession; and he shall also list moneys deposited subject to his order, check or draft, and credits due from, or owing by any person or persons, body corporate or politic, whether in or out of such county.

The property of every ward shall be listed by his guardian;

Of every minor child having no other guardian, by his father, if living; if not, by his mother, if living; and if neither father nor mother be living, by the person having such property in charge;

Of every wife, by her husband, if of sound mind; if not, by herself;

Of every person for whose benefit property is held in trust, by the trustee;

Of every estate of a deceased person, by the executor or administrator;

Of corporations whose assets are in the hands of receivers, by such receivers;

Of every company, firm, body politic or corporate, by the principal accounting officer, partner, or agent thereof;

Every person required to list property on behalf of others, by the provisions of this section, shall list it in the same township in which he would be required to list it if such property were his own; but he shall list it separately from his own, specifying in each case the name of the person, estate, company or corporation to whom it belongs; and all real property,

and merchants' and manufacturers' stock, shall be returned for taxation, and taxed in the township and town in which it is situated; and all other personal property, except such as is taxable for state purposes only, shall be entered for taxation in the township and town in which the person charged with the tax thereon resided, at the time a list thereof was taken by the assessor, if such person reside in the county where such property was listed; and if not, then such property shall be entered for taxation and taxed in the township where situated when listed, any thing in this act to the contrary notwithstanding.

Property taxable for State purposes only, may be listed in any township of the county where the proprietor resides.

SEC. 5. Property of whatsoever kind, situate or being in any county other than that in which the owner or owners thereof, or other person, required by the foregoing section to list the same resides, except the property of such companies as are required to give in a statement thereof, in the township where the principal office of such company is kept, and merchants' and manufacturers' stock, which is required to be listed where the same is situated, shall be listed in the township where the same is situate, by the agent of the owner, or other person having possession or charge thereof, unless the owner shall list or cause the same to be otherwise listed in the township where such property may be.

Property to be listed in the township where situated.

SEC. 6. In case portions of any separate parcel of real property, as hereinbefore defined, be situate in two or more different townships, in consequence of a division thereof by a township line or lines, the portion thereof situate in each township shall be considered a separate parcel and listed accordingly.

Real property situate in two or more townships shall be considered separate parcels, and listed proportionably in each.

SEC. 7. Property held under a lease, and belonging to any religious, literary, scientific, or benevolent society or institution, whether incorporated or unincorporated, shall be considered, for all purposes of taxation, as the property of the person so holding the same, and shall be listed as such by such person or his agent, as in other cases; but nothing in this act shall be so construed as to subject any land held under a lease from any university, college, or other literary institution, or any other school land or lands granted by congress for religious purposes, held under a lease, during the continuance of such lease, to the payment of any tax from which such leasehold estate is exempt by the law authorizing the lease.

Leasehold property belonging to religious or other institutions, shall be, for purposes of taxation, considered the property of the holder, and by him listed.

Proviso—Exemptions.

SEC. 8. Each person required by this act to list property shall make out, and, at any time after ten days from the time of leaving notice by the township assessor, that a statement of property subject to taxation is required of him, on demand of such assessor, verify by his oath, and deliver to him a statement or statements of all personal property, moneys and credits, which, by the provisions of this act, he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent, or factor.

Articles specified to be listed by owners or assessor;

SEC. 9. Such statement shall truly and distinctly set forth,

First: The number of horses over two years old, and the value thereof;

Second: The number of neat cattle over two years old, and the value thereof;

Third: The number of mules and asses over one year and a half old, and the value thereof;

Fourth: The number of sheep over six months old, and the value thereof;

Fifth: The number of hogs over six months old, and the value thereof; and the first day of June, of the year when the statement is made, shall be taken as the time to which the ages of all animals subject to taxation shall refer;

Sixth: Every pleasure carriage, of whatsoever kind, and the value thereof;

Seventh: Every gold or silver watch, and the value thereof;

Eighth: Every piano forte, and the value thereof;

Ninth: The total value of all other articles of personal property which the person making such statement is required to list: Provided, that if such person shall exhibit to the assessor the animals or other articles of personal property above enumerated, the value of such property so exhibited may be omitted in such statement, and the assessor shall, in such case, determine their value without requiring the oath of the person making such statement, as to the value thereof; and such person shall, in that case, be required only to make oath to the value of the remainder of the personal property, which he is required to list. As to money and credits, such statement shall set forth the total amount of moneys and credits, as defined in the second section of this act, after deducting therefrom the amount of debts which the person making such statement is entitled to deduct agreeably to the provisions of this act.

Owner to make oath to value of such personal property as is not shown to assessor; —From list of moneys and credits deduct the amount of debts due by the person listing, and return the balance.

Stock in companies or corporations, which, by the laws of the State, are exempt, or pay a tax on capital or income, not to be returned;

SEC. 10. No person shall be required to include in his statement, as part of the personal property which he is required to list, any share or portion of the capital stock or property of any company or corporation, which company or corporation is by law exempt from taxation, or is required to list its capital and property for taxation in this state, nor any share or portion of the capital stock or property of any company or corporation which is or shall be required by any law of this state to pay a tax on its income, profits, or dividends; each and every incorporated railroad company, canal, or slackwater navigation company, and bridge company, in this state, and every turnpike company, when the net profits of such turnpike company, and the salaries and compensation of its officers and agents shall be not less than three per centum per annum on the amount of such capital stock paid in by individual stockholders, shall list for taxation, by their president, secretary, or other proper accounting officer, the full amount of the capital stock of said company paid in by individual stockholders, at the true value

Stock in railroad, canal, slackwater, bridge, and turnpike companies—how returned and taxed.

of said stock in money; and said stock so listed shall be subject to taxation as provided by this act.

Property specifically exempt not to be returned to assessor.

SEC. 11. No person shall be required to list or insert in his statement, any property, nor the value of any personal property, which, by the third section of this act, is specifically exempt from taxation.

If there be no real property, or if there be no personal property, or if there be no moneys or credits which the person with whom the assessor shall have left notice to make out a statement of property for taxation, is by this act required to list on his own account, or on account of others, he shall set forth such fact as the case may require, on the blank statement left with him by the assessor.

RULES FOR VALUING PROPERTY.

Rules for valuation.

SEC. 12. Each separate parcel of real property shall be valued at its true value in money, excluding the value of crops growing thereon, but the price for which such real property would sell at auction, or at a forced sale, shall not be taken as the criterion of such true value.

Each parcel of real property belonging to any religious, literary, scientific or benevolent society, or institution, whether incorporated or unincorporated, and school and ministerial lands, and held under lease, shall be valued at such price as the assessor believes could be obtained at private sale for such leasehold estate, upon the terms of sale above specified.

Personal property of every description shall be valued at the usual selling price of similar property at the time of listing, and at the place where the same may then be; and if there be no usual selling price known to the person whose duty it shall be to fix a value thereon, then at such price as it is believed could be obtained therefor, in money, at such time and place.

Money, whether in possession or on deposit, shall be entered in the statement at the full amount thereof: Provided, that depreciated bank notes shall be entered at their current value.

Every credit for a sum certain, payable either in money, property of any kind, labor or services, shall be valued at the full amount of the sum so payable; if for a specific article, or for a specified number, or quantity of any article or articles of property, or for a certain amount of labor or services of any kind, it shall be valued at the current price of such property, or of such labor or services, at the place where payable.

Annuities shall be valued at the price which the person listing the same believes them to be worth in money.

All manufactured articles, remaining unsold in the hands of any mechanic by whom they shall have been made, shall be valued at so much as the materials entering into their composition shall have cost such mechanic; and sheep shall be valued without reference to the value of the unshorn fleece.

But no person shall be required to list a greater portion of any credit than he believes will be received, or can be collected with or without resort to legal process; nor any greater portion of any obligation given to secure the payment of rent, than the amount of rent that shall have accrued on the lease, and shall remain unpaid at the time of such listing.

Same subject.

SEC 13. No person shall be required to list any part of any crop which may have been harvested on any farm of which he is the owner, or lessee, or occupant, within one year next previous to the time of such listing, and which may then remain on hand; nor any wool shorn from his own sheep within six months previous.

Personal property shall be listed in the name of owner, if resident of the county, if not, in the name of person in possession.

SEC. 14. Personal property, of every description other than that of merchants and manufacturers, shall be listed as the property of the person who shall be the owner thereof, if a resident of the county where the same shall be, and if not, of the person having possession or charge thereof at the time when the same shall be listed, and the value to be attached thereto shall be the value thereof at such time.

OF DEDUCTIONS FROM MONEYS AND CREDITS.

Amount of moneys and credits—how made up.

SEC. 15. In making up the amount of moneys and credits which any person is required to list for himself, or any other person, company or corporation, he shall be entitled to deduct from the gross amount of moneys and credits the amount of all bona fide debts owing by such person, company or corporation, to any other person, company or corporation: but no acknowledgment of indebtedness, not founded on an actual consideration, believed, when received, to have been adequate, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the meaning of this section; and so much only of any liability, as surety for others, shall be deducted, as the person making out the statement believes the surety is legally or equitably bound to pay, and so much only, as he believes such surety will be compelled to pay, on account of the inability or insolvency of the principal debtor; and if there are other sureties who are able to contribute, then only so much as the surety in whose behalf the statement is made, will be bound to contribute.

No deduction allowed for notes to mutual insurance companies, or subscriptions to religious or other societies.

SEC. 16. No person, company or corporation shall be entitled to any deduction on account of any bond, note or obligation of any kind given to any mutual insurance company; nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society; nor on account of any subscription to, or installment payable on the capital stock of any company, whether incorporated or unincorporated.

OF LISTING AND VALUING THE PROPERTY OF MERCHANTS AND MANUFACTURERS.

Property of merchants and manufacturers —how determined and listed.

SEC. 17. Every person that shall own, or have in his possession, or subject to his control, any personal property, within this State, with authority to sell the same, which shall have been purchased either in or out of this State, with a view of being sold at an advanced price or profit, or which shall have been consigned to him from any place out of this State, for the purpose of being sold at any place within this State, shall be held to be a merchant; and, at all times, when he shall be by this act required to make out and deliver to the assessor a statement of his other personal property, he shall state and attest, on oath, the value of such property appertaining to his business as a merchant; and, in estimating the value thereof, he shall take as the criterion the average value of all such articles of personal property which he shall have had from time to time in his possession, or under his control, during the year next previous to the time of making such statement, if so long he shall have been engaged in business, and if not, then during such time as he shall have been so engaged, and the average shall be made up by taking the amount in value on hand, as nearly as may be, in each month of the next preceding year in which the person making such statement shall have been engaged in business, adding together such amounts, and dividing the aggregate amount thereof, by the number of months that the person making the statement may have been in business during the preceding year: provided, that no consignee shall be required to list for taxation the value of any property, the product of this State, which shall have been consigned to him, for sale or otherwise, from any place within the State, nor the value of any property consigned to him from any other place for the sole purpose of being stored or forwarded: provided he shall, in either case, have no interest in such property, or in any profit to be derived from its sale; and the word person, as used in this, and the two succeeding sections, shall be held to mean and include "firm," "company," and "corporation."

Property on storage not to be listed.

Manufacturing and manufactured articles —how estimated.

SEC. 18. Every person who shall purchase, receive, or hold personal property of any description, for the purpose of adding to the value thereof, by any process of manufacturing, refining, rectifying, or by the combination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer; and he shall, at all times, when by this act he is required to make and deliver to the assessor a statement of the amount or value of his other personal property subject to taxation, also state the average value estimated, as provided in the preceding section, of all articles purchased, received, or otherwise held, for the purpose of being used in whole, or in part in any process or operation of manufacturing, combining,

rectifying, or refining, which, from time to time, he shall have had on hand during the year next previous to the time of making such statement, if so long he shall have been engaged in such manufacturing business, and if not, then during the time he shall have been so engaged, which statement he shall attest on oath; but in determining the value of all articles manufactured by him, and which shall remain on hand unsold, the cost of the materials entering into their combination or of which they were made, with the cost of the materials used or consumed in the process of manufacturing, combining, rectifying, or refining, shall be taken as the criterion of their value, for the purposes of taxation.

SEC. 19. Every person owning a manufacturing establishment of any kind, and every manufacturer, shall list, as part of his personal property, the value over one hundred and fifty dollars of all engines and machinery, of every description, used, or designed to be used, in any process of refining or manufacturing, (except such fixtures as shall have been considered as part of any parcel or parcels of real property,) including all tools and implements of every kind, used, or designed to be used, for the aforesaid purposes.

DISTRICT ASSESSORS—HOW AND WHEN APPOINTED.

District assessors—when and how appointed.

SEC. 20. The county commissioners, of each county in this State, shall meet at the office of the county auditor (except the counties of Ashland and Mahoning, the associate judges of which shall meet in the former at Jeromesville, and in the latter in Canfield) on the third Monday in March, one thousand eight hundred and forty six, and when they, or any two of them, shall be so convened, they shall proceed to divide their county into at least two, and not more than four districts, except the county of Hamilton, which may be divided into any number of districts not less than six, nor more than twelve; and to appoint some well qualified citizen of such county as assessor for each district therein.

SEC. 21. Each person appointed to the office of district assessor shall be forthwith notified by the county auditor of his appointment; and each person so appointed, shall, within ten days after receiving such notice, file with such auditor his bond, payable to the State of Ohio, with at least one good freehold surety, to the acceptance of the county auditor, in the penal sum of two thousand dollars, conditioned that he will diligently, faithfully, and impartially perform all and singular the duties enjoined on him by this act; and he shall moreover take and subscribe, on said bond, an oath that he will, according to the best of his judgment, skill, and ability, diligently, faithfully, and impartially, perform all the duties enjoined on him by this act.

Bond—when and how given.

SEC. 22. If any person so appointed shall fail to give bond, or shall fail to take an oath as required in the preceding section,

within the time therein prescribed, the office to which he was appointed shall be considered vacant, and shall be forthwith filled by the commissioners, or associate judges, as the case may require, (who shall be immediately called together for that purpose by the county auditor,) by the appointment of some other suitable competent citizen of the county; and the person appointed to such vacancy, shall be notified by the county auditor, shall give bond, and take an oath of office, within the time, after receiving such notice, and in the manner prescribed in the foregoing section.

Vacancy in office of assessor —how filled.

SEC. 23. If there shall be a vacancy in the office of district assessor, in any district of any county, after the tenth day of April next, such vacancy shall be forthwith filled by the auditor, treasurer, and recorder, of the county in which such vacancy shall occur, or any two of them, if they can find any competent and suitable citizen of their county, who will accept and perform the duties of such office; and if no such person can be found, the auditor shall, within five days after he shall come to the knowledge of such vacancy, notify the state auditor thereof, who shall forthwith proceed to fill such vacancy.

Assessor to make out description of real estate, and how.

SEC. 24. It shall be the duty of each district assessor to make out, from the maps and descriptions furnished him by the county auditor, and from such other sources of information as shall be in his power, a correct and pertinent description of each parcel of real property in his district, and when he shall deem it necessary to obtain an accurate description of any separate parcel of real property in his district, he may require the owner or occupier thereof to furnish the same, with any title papers he may have in his possession; and if such owner or occupier, upon demand made for the same, shall neglect or refuse to furnish satisfactory description of such parcel of real property to such assessor, he may employ a competent surveyor to make out a description of the boundaries and location thereof, and a statement of the quantity of land therein; and the expense of such survey shall be returned by such assessor to the auditor of his county, who shall add the same to the tax assessed upon such real property, and it shall be collected by the treasurer of the county with such tax, and when collected, shall be paid on demand to such assessor, for the use of the persons to whom the same is due; and he shall in all cases, from actual view, and from the best sources of information within his reach, determine, as nearly as practicable, the true value of each separate parcel of real property in his district, according to the rules prescribed by this act for valuing real property.

Assessor authorized to enter and examine buildings.

SEC. 25. For the purpose of enabling the assessor to determine the value of buildings and other improvements, he is hereby required to enter, with the consent of the owner or occupant thereof, and fully to examine all buildings and structures,

of whatsoever kind, which are not by this act expressly exempted from taxation.

Assessor to make return to county auditor on or before 10th July—and how.

SEC. 26. Each district assessor shall, on or before the tenth day of July, one thousand eight hundred and forty-six, make out and deliver to the auditor of his county a return, in tabular form, contained in a book to be furnished him by such auditor, of the amount, description, and value, of all the real property subject to be listed for taxation in his district; which return shall contain:

1st. The names, arranged in alphabetical order, of the several persons, companies, or corporations, in whose names the several parcels of real property, other than town property, in each township within his district shall have been listed, and in appropriate columns, opposite each name, the description of each parcel of such real property listed in such name, and the value of each separate parcel of such real property, as determined by the assessor;

2d. The names, arranged in alphabetical order, of the several persons, companies, or corporations, in whose names the several parcels of real property, in any town or towns in his district shall have been listed; and in the appropriate columns opposite each name,

The description of each parcel of real property in each town in his district; and

The value thereof, as determined by the assessor; and such return shall distinctly set forth,

The name or names of the owner or owners of each separate parcel of real property, if known, and if unknown, that fact shall be set forth; also,

A correct and pertinent description of each separate parcel of land, or real property, if a town lot or part thereof;

The name of the town;

The number, or other designation, of the lot; and if part of such lot; then

The proportion and situation thereof, and

The extent, in feet, along the principal street on which it shall abut.

If the parcel of real property be other than a town lot, or part thereof,

The number of acres;

The land district;

The range of townships;

The number of the township;

The number of the section, tract, lot, or subdivision of either, as the case may require.

If such land be situated in the Virginia military district, or is not embraced in any land district, it shall set forth the original survey or surveys, part or parts thereof contained in each separate parcel so listed; and if any separate parcel of land shall comprehend the whole or parts of any two or

more sections, lots, tracts, or surveys, then the statement shall set forth, as nearly as may be, the number of acres taken from each section, lot, tract, or survey included in such parcel.

SEC. 27. Each district assessor shall take and subscribe an oath, which shall be certified by the magistrate administering the same, and attached to the return which he is required to make to the county auditor, in the following form:

"I, assessor for the district, in the county of , do solemnly swear that the return to which this is attached contains a correct description of each parcel of real property within said district, as far as I have been able to ascertain the same, and that the value attached to each parcel in said return is, as I verily believe, the full value thereof, estimated agreeably to the rules prescribed therefor in the 'act for levying taxes on all the property of this state according to its true value.' "

POWERS AND DUTIES OF TOWNSHIP ASSESSORS.

Assessors in cities and incorporated towns to be elected on the first Monday in April.

SEC. 28. In each township of this state, in which is situated any city or incorporated town, which is divided into wards, there shall be elected, on the first Monday of April, annually, by the qualified electors of such township, one assessor for each ward in such city or town, and one assessor for such part of such township as is not included in such city or town; and for all purposes of listing and valuing property for taxation, and assessing and collecting taxes, every such ward and remaining part of a township shall be held to be a township, and whenever used in this act, shall be held to extend to, and mean "ward and such remaining part of a township."

Assessor to take an oath, and give bond.

Township clerk to notify auditor of county.

SEC. 29. Each township assessor shall give bond and take the prescribed oath of office within ten days after his election, and the township clerk shall forthwith notify the county auditor thereof; and if, after the expiration of fifteen days from the time of such election, the county auditor shall have received no notice of the qualification of the assessor in any one of the townships in his county, he shall consider such office vacant, and shall notify the county treasurer and county recorder thereof, and said auditor, treasurer and recorder, or any two of them, shall immediately proceed to fill such vacancy by the appointment of some competent citizen of such township: Provided, any such can be found who will accept and perform the duties of said office; and if not, by the appointment of some competent and suitable citizen of the county, who shall, in either case, give bond and take the required oath of office within five days after such appointment; and if any vacancy shall thereafter occur, or if any township assessor shall neglect or refuse to perform the duties of his office, such office shall be considered vacant, and the county auditor, treasurer and recorder, or any two of them, shall, on coming to a knowledge thereof, immediately proceed to fill such vacancy.

When office considered vacant.

Vacancy—how filled.

Assessor to leave with each person a notice and blanks, before 10th June, annually.

SEC. 30. The assessor of each township shall, on or before the tenth day of May, annually, leave with each person resident in his township, of full age, not a married woman, or insane person, or at the office, usual place of residence or business of such person, a written or printed notice, requiring such person, within ten days from the time of leaving such notice, to make out and hold in readiness for such assessor, a statement of the property which by this act he is required to list, accompanied with printed forms, in blank, of the statements required of such person.

Assessor to call on each person for his lists.

SEC. 31. Each township assessor shall, before the tenth day of June, annually, call upon each person in his township with whom he is required to leave notice, for the statement which such person is required by this act to make out, unless he shall have previously made out and delivered the same; and he shall require each of such persons to take and subscribe on such statement an oath to the truth thereof, in such form as the auditor of state shall prescribe, which oath the assessor is hereby authorized and required to administer; and he shall, also, for the year eighteen hundred and forty-six, ascertain and return to the county auditor, the value and description of all new structures, and of all structures that may have been destroyed, as township assessors are required by this act to do, annually, thereafter; and each county auditor shall correct, according to such return, the valuation of real property, as required by this act, and assess taxes thereon for the year eighteen hundred and forty-six, according to such corrected valuation.

Persons refusing to make out and deliver statement, under oath, assessor may examine others.

SEC. 32. In every case where any person shall refuse to make out and deliver to the township assessor a statement of personal property, moneys and credits, as provided by this act, or shall refuse to take and subscribe an oath as to the truth of such statements, or any part thereof which he is by this act required to verify by his oath, the assessor shall, in every such case, proceed to ascertain the number of each description of the several articles of personal property, enumerated in the ninth section of this act, the value thereof, the value of the personal property subject to taxation, other than enumerated articles, and the value of the moneys and credits, of which a statement shall have been withheld as aforesaid, as the case may require; and to enable him so to do, he is hereby authorized to examine, on oath, any person whom he may suppose to have knowledge of the amount or value of the personal property, moneys or credits which the person so refusing, was required to list.

SEC. 33. If any person who shall be required by the assessor to give evidence, as provided in the preceding section, shall refuse to be sworn by the assessor, or having been so sworn, if he shall refuse to answer such questions as the assessor shall put to him, touching the subject of inquiry, any justice of the peace of the county to whom the assessor may make applica-

tion therefor, shall summon such person to appear before him at such time as the assessor shall designate, and answer, on oath, all pertinent questions which may be put to him by the assessor or his order, touching the amount and value of the personal property, moneys and credits which the person required to list the same on oath has refused to list; and every constable and witness shall be subject to the same penalties for refusal or neglect to obey the process of such justice, as they are by law subject to, for refusing to obey the process of justices of the peace in civil cases, and shall receive the same fees as for like services in civil cases; and such justice of the peace shall immediately proceed to enter judgment for all such fees and for his own costs in favor of the state of Ohio, against the person who shall have refused to make and deliver to the assessor a statement of the property which, by this act, he was required to list, or who shall have refused to take the prescribed oath as to the amount or value thereof, and proceed to collect and pay over the same as in civil cases.

Assessor to make return of his assessment on or before the 10th June, annually.

SEC. 34. Each township assessor shall, on or before the tenth day of June, annually, make out and deliver to the auditor of his county, in tabular form and alphabetical order, the names of the several persons, companies, or corporations, in whose names any personal property, moneys, or credits shall have been listed in his township, and separately, in appropriate columns, opposite each name, the aggregate value of all articles of personal property enumerated in the ninth section, the value of all non-enumerated articles of personal property, other than the stock of merchants and manufacturers, the value of merchants' and manufacturers' stock, and the value of the moneys and credits listed in the name of each, as attested on oath by the person required to list the same, or as determined by the assessor.

Assessor to return whether list was made by owner or from other sources.

SEC. 35. The township assessor shall enter in a column to be provided for that purpose, opposite each entry of personal property, or of moneys and credits, in his return, the words "by the owner," or "by the assessor," as the same shall have been listed and valued by the person required to list the same or by himself. In every case where any person whose duty it is to list any personal property, moneys, or credits, for taxation, shall have refused to take and subscribe the oath required of him by this act, in regard to the truth of his statement, or in regard to the value of personal property, moneys, or credits, the assessor shall enter the words "refused to swear;" and in every case where any person required to list property for taxation shall have been absent, or unable, from illness or otherwise, to list the same, the assessor shall enter opposite his name the word "absent," "sick," or such other word as will express the cause of such inability;* and each township assessor shall, on or before the tenth day of June, annually, make out

* All of section 35, after the word inability, in the 16th line, was copied into the enrolled bill by mistake. It is, as amended, contained in section 34.

and deliver to the auditor of his county, in tabular form and alphabetical order, the names of the several persons, companies, or corporations, in whose names any personal property, moneys, or credits shall have been listed, in each township within his district, and separately, in appropriate columns opposite each name, the aggregate value of all articles of personal property enumerated in the ninth section, the value of all non-enumerated articles of personal property other than the stock of merchants and manufacturers, the value of merchants' and manufacturers' stock, and the value of the moneys and credits listed in the name of each, as attested on oath by the person required to list the same, or as determined by the assessor.

Assessor shall return to county auditor all statements of property received.

SEC. 36. Each township assessor shall, at the time he is required by this act to make his return of taxable property to the county auditor, also deliver to him all the statements of property which he shall have received from persons required to list the same, arranged in alphabetical order; and the auditor shall carefully file and preserve the same.

Assessor to make oath to his return.

SEC. 37. Each township assessor shall take and subscribe an oath, which shall be certified by the magistrate administering the same, and attached to the return which he is required to make to the county auditor, in the following form:

I, assessor for township, in the county of , do solemnly swear, that the value of all personal property, moneys, and credits, of which a statement has been made and attested by the oath of the person required by the act for levying taxes on all property in this State according to its true value, to list the same, is truly returned, as set forth in such statement; that in every case where by law I have been required to ascertain the amount or value of the personal property, moneys, or credits, of any person, company, or corporation, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value of all such property, moneys, and credits; and that, as I verily believe, the full value thereof, estimated by the rules prescribed by said act, is set forth in the annexed return; that in no case have I knowingly omitted to demand, of any person of whom by said act I was required to make such demand, a statement of the description, of the amount and value of personal property, or of the amount of moneys and credits which he was required to list, or in any way connived at any violation or evasion of any of the requirements of said act, in relation to the listing or valuation of property, moneys, or credits, of any kind, for taxation.

DUTIES OF COUNTY AUDITORS.

County auditors' duties.

SEC. 38. The county auditor of each county shall, as soon as practicable after the fifteenth day of March, one thousand eight hundred and forty-six, make out, and deliver to the assessor of each district in his county, an abstract from the books in his office, containing a description of each parcel of real

property, situate within such district, with the name of the owner thereof, if known, and the number of acres or quantity of land contained therein, as the same shall appear on his books; and also a map of each township and town within such district.

Same subject.

SEC. 39. Each county auditor shall add to the value, as returned by the assessor, of all personal property, and of all moneys and credits, which the owner, or other person in behalf of the owner, whose duty it is made by this act to list the same, has neglected or refused to list, or to the value of which such person shall have refused to swear when required so to do, in obedience to the provisions of this act, fifty per centum on the value so returned by the assessor; and, in every such case, if said auditor shall have reason to believe that the value so returned by the assessor is below the true value of such personal property, or of such moneys and credits, he may at any time institute such further examination as to the amount and value of such property, moneys and credits, as he shall deem proper and necessary, and, for that purpose, he is hereby invested with all the authority conferred by this act on assessors in similar cases; and if it shall appear, upon examination, to the satisfaction of the auditor, that the value so returned by such assessor is below the true value of such property, the person whose duty it shall have been to list such property, moneys or credits, shall be liable for all costs attending such examination.

Persons unavoidably prevented from making statements for assessor, may make out and deliver same to auditor before taxes assessed.

SEC. 40. If any person required to list property for taxation, shall have been prevented by sickness, absence, or other unavoidable occurrence, from making out and delivering to the assessor such statement, such person, or his agent, having charge of such property, may, at any time before the assessment of taxes thereon by the county auditor, make out, and attest on oath before the proper assessor, or the county auditor, who is hereby authorized to administer such oath, a statement as required by this act; and the assessor or the county auditor shall, in such case, make an entry thereof on the return for the proper township, or correct the corresponding item or items in the return made by the assessor, as the case may require: but no such statement shall be received by the county assessor or auditor, or by the county commissioners, from any person who shall have refused to make out, attest on oath, and deliver to the assessor, such statement, within the time required by this act, nor from any person, unless he shall first make, and file with the county auditor or assessor, an affidavit that the person required by this act to list the same, was absent from his township, without design to avoid the listing of his property, or was prevented by sickness, or other unavoidable occurrence, (stating the same,) from making out and delivering to the assessor the required statement, within the time prescribed by law.

Auditor shall correct returns of assessor, and how.

SEC. 41. If, from a careful examination of the returns made by the district assessors, the county auditor shall discover that any parcel of land, town lot, or part of either, in his county, shall have been omitted in the returns of such assessors, he shall add the same to his list of real property, as a separate parcel, with the name of the owner, if known, or add the same to any parcel of real property returned by the assessor, as the case may require; and he shall forthwith notify the assessor in whose returns such omission occured, thereof, who shall forthwith proceed to ascertain, and return to the county auditor, the value of the parcel, or part thereof so omitted.

Same subject.

SEC. 42. Each county auditor shall, from time to time, correct any error which he may discover in the description, or in the quantity of land contained in his list of real property in his county; but in no case shall he make any deduction from the valuation of any parcel of real property, except such as shall have been ordered, either by the state board, or by the county board of equalization, in conformity with the provisions of this act, or upon the written order of the auditor of state, which written order shall only be made upon a statement of facts submitted to the auditor of state in writing.

Same subject.

SEC. 43. If any county auditor upon receiving the return of any township assessor, shall be satisfied that he has omitted any property, moneys, or credits, in his township, which he was bound to return, such auditor may authorize and require such assessor to proceed to correct any error or omissions which may have occurred in assessing the property, moneys, or credits of his township, and in such case, such assessor shall, within ten days after being so required and authorized, proceed to correct such errors and omissions, and make return thereof to the auditor of his county; but nothing herein contained shall authorize any assessor to reduce the amount assessed against any person in his former return.

COUNTY BOARD OF EQUALIZATION.

County board of equalization —how constituted, and their duties.

SEC. 44. The county auditor, the county surveyor, the county commissioners, and the district assessors, or a majority of them, shall form a county board of equalization. They shall meet on the first Monday of August next, at the court house in their county, if the court be not in session, but if in session, at some other convenient place at the county seat; when the county auditor shall lay before them the returns of the real property, made by the several district assessors of such county, with the additions he shall have made thereto, and having each taken an oath, fairly and impartially, to equalize the value of the real estate of such county, agreeably to the provisions of this act, they shall immediately proceed to equalize such valuation, so that each parcel shall be entered on the tax list at its true value; and for this purpose, they shall observe the following rules:

1st. They shall raise the valuation of such parcels of real property as, in their opinion, have been returned below their true value, to such price or sum as they may believe to be the true value thereof, agreeably to the rules prescribed therefor, in the twelfth section of this act.

2d. They shall reduce the valuation of such parcels as, in their opinion, have been returned above their true value, as compared with the average valuation of the real property of such county, having due regard to the relative situation, quality of soil, improvements, natural and artificial advantages possessed by each parcel.

3d. They shall not reduce the aggregate value of the real property of the county, as returned by the assessors, with the additions made thereto by the auditor, as hereinbefore required.

4th. They shall equalize the valuation of the several new structures returned by the several assessors of their county; and in so doing, they shall not reduce the aggregate value of all new structures so returned, but such aggregate value, deducting therefrom the value of structures destroyed by fire, flood, or otherwise, as returned by the assessors under the provisions of this act, shall be added to the previous valuation of the real property of such county.

County auditor to make out an abstract of the real property in his county, and transmit to Auditor of State—and when.

SEC. 45. Each county auditor shall, on or before the first day of September next, make out, and transmit to the auditor of state, an abstract of the real property of each township in his county; in which he shall set forth:

1st. The number of acres, exclusive of town lots, returned by the several assessors in his county, with such additions as he shall have made thereto.

2d. The aggregate value of all such real property, other than town lots, as returned by the several assessors of his county, inclusive of such additions as shall have been made thereto under the provisions of this act.

3d. The aggregate value of the real property in each town in his county, as returned by the several assessors, with such additions as shall have been made thereto, and the number of the separate parcels.

County auditor to transmit to the Auditor of State aggregate value of personal property, stock in trade, and aggregate value of real property — and when.

SEC. 46. Each county auditor shall, on or before the first day of July next, make out and transmit to the auditor of state, a statement setting forth the aggregate value of personal property, other than the stock of merchants and manufacturers; the aggregate value of the stock of merchants and manufacturers; and the aggregate amount of moneys and credits in his county, as returned by the assessor, including the additions that he shall have made to each of said aggregates, agreeably to the requirements of this act; and also the amount added to the aggregate value of real property, under the provisions of the thirty-first section of this act.

STATE BOARD OF EQUALIZATION.

State board of equalization — how organized, and duties.

SEC. 47. There shall be appointed, by joint resolution of the present general assembly, in each senatorial district of this state, some competent and suitable person, who shall have been a resident of the state at least ten years, and of the district for which he is appointed at least five years next preceding the time of his appointment, for the purpose of equalizing the valuation of real property among the several counties of this state; each of whom shall, within thirty days after such appointment, be notified thereof by the governor, and shall, before the first day of May next, inform the governor of his acceptance or nonacceptance of such appointment; and in each case where the governor shall not, within the time above specified, be informed of such acceptance, he shall consider said place vacant, and shall immediately appoint some person having the qualifications above required, to fill such vacancy, and notify the person so appointed thereof, who shall inform the governor of his acceptance or nonacceptance.

Same subject.

SEC. 48. The several persons so accepting such appointment, shall meet at Columbus on the fourth Monday of October next, and having reported themselves to the governor, who shall forthwith fill any vacancy that may then exist, shall each take an oath honestly and impartially, to the best of his knowledge and ability, so far as the duty devolves on him, to equalize the valuation of real property among the several counties and towns in the state, according to the rules prescribed by this act for valuing and equalizing the value of real property; and the persons so appointed and convened, together with the auditor of state, shall constitute a state board of equalization; and having received from the auditor of state the abstracts of real property transmitted to him by the several county auditors, shall proceed to equalize the same among the several towns and counties of the state, in the manner hereinafter prescribed.

1st. They shall add to the aggregate valuation of every county, which they shall believe to be valued below the average valuation of other counties of the state, such per centum, in each case, as will raise the same to the average valuation of all the counties of the state, according to the actual value of each, as compared with other counties.

2d. They shall deduct from the aggregate valuation of every county, which they shall believe to be valued above the average valuation of other counties, such per centum, in each case, as will reduce the same to the average valuation of all the counties of the state, according to the actual value of each, as compared with other counties.

3d. If they shall believe that right and justice requires the valuation of the real property of any town or towns in any county, or of the real property of such county not in towns, to be raised or to be reduced, without raising or reducing the

total valuation of such county, or without raising or reducing it in the same ratio, they may, in every such case, add to or take from the valuation of any one or more of such towns, or of property not in towns, such per centum as they shall believe to be right and just.

They shall not add to or take from the aggregate valuation of all the real property of the state, as contained in the abstracts of the several county auditors, so as to raise or reduce such aggregate more than five million dollars.

DUTIES OF STATE AUDITOR.

State Auditor's duties.

SEC. 49. When the state board of equalization shall have completed their equalization of real property among the several counties, the auditor of state shall transmit to each county auditor a statement of the per centum to be added to or deducted from the valuation of the real property of his county, specifying the per centum added to or deducted from the valuation of the real property of each of the several towns, and of the real property not in towns, in case an equal per centum shall not have been added to or deducted from each; and the county auditor shall forthwith proceed to add to or deduct from each parcel of real property in his county, the required per centum on the valuation thereof, as it stands after the same shall have been equalized by the county board of equalization; adding, moreover, or deducting, in each case, any fractional sum of less than fifty cents, so that the value of any separate parcel of real estate shall contain no fraction of a dollar.

Same subject.

SEC. 50. The auditor of state shall, on or before the fifteenth day of July, annually, determine the aggregate per centum to be levied on the whole taxable property of the state, in order to produce such sums as the general assembly shall, from year to year, direct to be levied for the following purposes:

1st. For defraying the ordinary expenses of the state government and of its public institutions, to be denominated the "general revenue."

2d. For the support of common schools, to be denominated "the common school fund." And also to produce such sum as he shall determine to be necessary, when added to the net income of the public works, to pay the interest on the debt of the state, to be denominated the "interest fund;" and he shall immediately give notice to each county auditor of the rate per centum so to be assessed for the purposes named in this section, which shall be denominated on the tax lists, "tax for state purposes."

DUTY OF COUNTY AUDITORS AS TO MAKING TAX LISTS AND DUPLICATES AND ASSESSING TAXES.

Duplicates—how made, and where.

SEC. 51. Each county auditor shall make out, in a book to be prepared for that purpose, in such manner as the state auditor shall prescribe, a complete list or schedule of all the taxable

property, and the value thereof, arranged in the form following, that is to say:

Each separate parcel of real property in each township of his county, other than town property, shall be contained in a line or lines opposite the name of the owner or owners, which names shall be arranged in alphabetical order.

Each separate parcel of real property, in each town, shall be set down in a line or lines opposite the name of the owner or owners, arranged in alphabetical order, in each town.

The value of personal property of each person, company or corporation, within each township, shall be set down opposite the name of the owner or person in whose name the same is listed, and which names shall, within each township, be arranged in alphabetical order, specifying, in separate columns, the value of personal property, other than merchants' and manufacturers' stock; the value of merchants' and manufacturers' stock, and the value of moneys and credits.

Same subject.

SEC. 52. Each county auditor, after receiving from the auditor of state, and from such other officers and authorities as shall be legally empowered to determine the amount of taxes to be levied for the various purposes authorized by law, statements of the amounts so to be levied, shall forthwith proceed to determine the sum or sums to be levied upon each parcel of real property, and upon the amount of personal property, moneys and credits listed in his county, in the name of each person, company or corporation, which shall be assessed and set down in three or more columns, in such manner and form as the auditor of state shall prescribe: Provided, that all taxes levied for state purposes, and all taxes levied for county purposes, shall each be set down in a separate column: and provided, also, that each county auditor, in determining the per centum to be levied for any purpose or purposes, on any property entered in his books for taxation, when the amount so levied is to be set down in one column, shall assume such per centum not containing any fractions of less than one-fifth of a mill, as will produce a gross sum nearest the amount which he is required to levy for such purposes, and in extending the sum levied on any parcel or amount of property, money or credits, he shall carry out no fraction of a cent, but in any case when such fraction is greater than half a cent, it shall be carried out one cent.

Auditor shall assess taxes on one half of the value of personal property, and whole value of real estate for 1846.

SEC. 53. In assessing taxes for the year one thousand eight hundred and forty-six, the county auditor shall assume as the value of all personal property and of money and credits, one-half the value, as returned by the assessors, under the provisions of this act, for the year one thousand eight hundred and forty-six, including such additions as he shall have made thereto, in obedience to its requirements, and upon such assumed value, and upon the whole value of real property, as the same now stands upon the lists of taxable property, he shall assess an equal per centum of taxes.

SEC. 54. For the year one thousand eight hundred and forty-seven, and for each succeeding year, each county auditor, for every purpose for which he is required to assess taxes, shall assess an equal per centum of tax on all real and personal property, and moneys and credits subject to such tax, agreeably to the value thereof, as determined and equalized under the provisions of this act.

Shall assess equal per centum on all property, for 1847, and thereafter.

DUTY OF COUNTY COMMISSIONERS IN REGARD TO TAX FOR COUNTY PURPOSES.

SEC. 55. The county commissioners of each county shall, at their June session, annually, determine on the amount to be raised (instead of the per centum to be assessed, as heretofore,) for ordinary county purposes, for bridges, for public buildings, and for the support of the poor, and also the sum to be raised for road purposes, not exceeding in amount, for either of those purposes, the sum which, the per centum, they are, by existing laws, authorized to assess on the taxable property of their county, now entered on the list or duplicate, will produce: Provided, that the county commissioners of the counties of Ashtabula, Trumbull, Portage, Geauga, Lake, Cuyahoga, Lorain, Summit, Medina, Ottawa, Monroe, Belmont, Huron and Erie shall, at their meeting on the first Monday of March, in each year, determine the amount of road tax to be levied for that year, and the same shall be assessed upon the duplicate of property of the preceding year, and said tax shall be expended upon the roads in the manner pointed out by the law now regulating road taxes in said counties.

County commissioners' duties in levying county tax.

Commissioners of Ashtabula, Trumbull, Portage, Geauga, Medina, and others—when and how to levy road tax.

DUTY OF TOWNSHIP TRUSTEES, AS TO LEVYING TAX FOR TOWNSHIP PURPOSES.

SEC. 56. The trustees of the several townships in each county shall, on or before the fifteenth day of June, annually, determine the amount necessary to be raised in their townships, respectively, for the various purposes for which they are authorized by the second section of the act passed January fifteen, one thousand eight hundred and thirty-three, to amend the act entitled "an act to provide for the incorporation of townships," not exceeding, for either of such purposes, the amount which the per centum on the present amount of the taxable property of such township, authorized by said section, will produce; and said trustees shall immediately give notice to the auditor of their county, of the amount so to be levied.

Trustees of townships—when and how to levy township tax.

REVALUATION OF PROPERTY.

SEC. 57. Every sixth year, computing from the year one thousand eight hundred and forty-six, the real property of the state shall be relisted, valued, returned and equalized in the

Revaluation—when and how.

manner pointed out in this act; and for those years, district assessors shall be appointed in the manner hereinbefore prescribed.

Township assessor to list annually all real property not before subject to taxation.

SEC. 58. Each township assessor shall, annually, at the time of taking a list of personal property, also take a list of all real property situate in his township, that shall have become subject to taxation since the last previous listing of property therein, with the value thereof, estimated agreeably to the rules prescribed therefor by the twelfth section of this act, and of all new buildings, or other structures of any kind, of over one hundred dollars in value, the value of which shall not have been previously added to, or included in the valuation of the land on which such structures have been erected, and shall make return to the county auditor thereof, at the same time he is required by this act to make his return of personal property; in which return he shall set forth the parcel of real property on which each of such structures shall have been erected, the kind of structure so erected, and the true value added to such parcel of real property, by the erection thereof; and the additional sum which it is believed the land on which the structure is erected would sell for, at private sale, in consequence thereof, shall be considered the value of such new structure; and in case of the destruction, by fire, flood or otherwise, of any building or structure of any kind, over one hundred dollars in value, which shall have been erected previous to the last valuation of the land on which the same shall have stood, or the value of which shall have been added to any former valuation of such land, the assessor shall determine, as nearly as practicable, how much less such land would sell for, at private sale, in consequence of such destruction, and make return thereof to the county auditor, as in this section before provided.

County auditor to correct valuation from year to year, & how.

SEC. 59. Each county auditor shall correct the valuation of any parcel of real property on which any new structure, of over one hundred dollars in value, may have been erected, or on which any structure of the like value shall have been destroyed, as specified in the preceding section, agreeably to the return thereof, made in accordance with the provisions of said section, by the assessor, and assess taxes for that, and for each succeeding year, upon such corrected valuation.

Capital stock of banks and other corporations to be taxed—and how.

SEC. 60. The capital stock paid in and remaining as capital stock undiminished by losses, inclusive of the value of all personal property, moneys, and credits of whatsoever kind, not forming part of such capital stock, belonging to any banking company or other joint stock company, that shall have been, or may hereafter be incorporated in this State, (including stage companies,) deducting from the moneys and credits of such company the amount of debts actually owing by such company, shall be listed for taxation by the principal accounting officer of such company, as property owned by natural persons is required to be listed in the township where the principal office of such company is kept; and taxes thereon shall be assessed,

collected, paid over and appropriated as prescribed in the succeeding section of this act; but the provisions of this section shall not extend to any banking or other joint stock company, which now is or may hereafter be organized, whose charter or act of incorporation shall have guarantied to such company an exemption from taxation, or has prescribed any other as the exclusive mode of taxing the same.

Auditor of State to determine the per centum to be levied on banks, &c., and notify county auditor.

SEC. 61. The auditor of state, annually, as soon as he shall have received from the several county auditors statements of the aggregate value of taxable property in their respective counties, and of the total amount of taxes of all descriptions assessed therein for such year, as required by this act, shall determine from such statements the average per centum assessed throughout the State, upon the total value of all the property entered on the grand list for taxation, and notify each county auditor, in whose county the principal accounting office of such banking or other joint stock company may be situated, of such average per centum; and every such county auditor shall assess, on the capital stock and other personal property listed by or on behalf of every such company, as prescribed in the preceding section, the per centum of tax so ascertained, and set down the whole amount thereof in the column of taxes for "state purposes;" and such tax shall be collected, accounted for, and paid over, as other taxes levied for State purposes.

Assessor may employ an assistant—and how.

SEC. 62. Any district or township assessor who shall deem it necessary, to enable him to complete, within the time prescribed by this act, the listing and valuation of the property, moneys, and credits of his district or township, may, with the approbation of the county auditor, appoint some well qualified citizen of his county or township, as the case may be, to act as an assistant, and assign to him such portion of his district or township as he shall think proper; and each assistant so appointed shall, within the division of such district or township assigned him under the direction of the assessor, after giving bond and taking an oath, as prescribed in this act, perform all the duties enjoined upon, vested in, or imposed upon assessors by the provisions of this act.

Fees of assessors, board of equalization, & others.

SEC. 63. Each assessor, and each member of the county board of equalization, shall be entitled to receive, for each day necessarily employed in the performance of the duties enjoined on him by this act, such sum as the commissioners of his county shall allow, not exceeding two dollars, to be paid out of the county treasury, on the order of the county auditor. Each member of the state board of equalization shall receive, for each day he shall attend on the sessions of said board, two dollars, and the like sum for every twenty-five miles he shall necessarily travel in going to and returning from Columbus, to be paid out of the state treasury, on the order of the auditor of state.

Penalty for neglect or refusal to perform duties.

SEC. 64. Every county auditor, and every district and township assessor who shall, in any case, refuse or knowingly neglect to perform any duty enjoined on him by this act, or who shall consent to, or connive at any evasion of its provisions, whereby any proceeding required by this act shall be prevented or hindered, or whereby any property required to be listed for taxation shall be unlawfully exempted, or the valuation thereof be entered on the tax list at less than its true value, shall, for every such neglect, refusal, consent or connivance, forfeit and pay to the state not less than two hundred nor more than one thousand dollars, at the discretion of the court, to be recovered before any court of record in the state.

Auditor of State to transmit copies to auditors of counties, and with Attorney General to decide questions arising as to the construction of this act. Appeals allowed. Laws repealed.

SEC. 65. The auditor of state shall, as soon as practicable, after the passage of this act, prepare and transmit to the several county auditors all such forms and instructions as he shall deem necessary to carry into effect its provisions; and, with the advice of the attorney general, he shall decide all questions which may arise as to the true construction of this act, subject, however, in all cases, to an appeal to the supreme court.

SEC. 66. All laws and parts of laws inconsistent with the provisions of this act, and all such laws and parts of laws as are superseded by the provisions of this act, be, and the same are hereby repealed.

ELIAS F. DRAKE,
Speaker of the House of Representatives.
SEABURY FORD,
Speaker of the Senate.

March 2, 1846.

AN ACT

Supplementary to the "Act for levying taxes on all property in this State, according to its true value."

Commissioners of county may meet on other day than third Monday in March.

SEC. 1. *Be it enacted by the General Assembly of the State of Ohio*, That if, from any cause, the county commissioners, or associate judges, of any county shall be prevented from meeting on the third Monday in March, of the present year, for the purpose of performing the duties enjoined on them by the twentieth section of the act to which this is supplementary, it shall be their duty to meet as soon thereafter as practicable, for the purpose of performing such duties; and all acts lawfully done by them, in obedience to the requirements of said section, at such subsequent meeting, shall be as valid as if done at a meeting held on said third Monday in March.

Commissioners of certain counties—when to levy road tax.

SEC. 2. The commissioners of the counties of Trumbull, Portage, Geauga, Lake, Cuyahoga, Medina, Lorain, Summit, Huron, Ashtabula, Erie, Belmont, and Monroe, may levy the

Exhibit N

[Senate Bill No. 1.]

AN ACT

To provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent the abuse of such powers, as required by the constitution of Ohio, and to repeal all sections of the Revised Statutes inconsistent herewith.

Be it enacted by the General Assembly of the State of Ohio:

I.

CLASSIFICATION OF MUNICIPALITIES.

Classification.

SECTION 1. All municipal corporations, which, at the last federal census, had a population of five thousand or more, shall be cities. All other municipal corporations shall be villages. All cities which, at any future federal census, have a population of less than five thousand shall become villages. All villages which, at any future federal census, have a population of five thousand or more, shall become cities.

Advancement and reduction.

SECTION 2. When this act takes effect, and whenever the result of any future federal census is officially made known to the secretary of state, he shall forthwith issue a proclamation, stating the names of all municipal corporations having a population of five thousand or more, and the names of all municipal corporations having a population of less than five thousand, together with the population of all such corporations. A copy of said proclamation shall forthwith be sent to the mayor of each municipal corporation, which copy shall be forthwith transmitted to council, shall be read therein and made a part of the records thereof, and from and after thirty days after the issuance of said proclamation each municipal corporation shall be a city or village, in accordance with the provisions of this act. All officers of a village advanced to a city, or of a city reduced to a village, shall continue in office until succeeded by the proper officers of the new corporation at the next regular election, and the ordinances thereof not inconsistent with the laws relating to the new corporation shall continue in force, until changed or repealed.

Abolishment of township offices when boundaries of municipality become identical with those of township; exception.

SECTION 3. When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, excepting that justices of the peace and constables shall continue to exercise their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employes, and such justices and

Auctions.

8. To regulate auctioneering; and to regulate, license or prohibit the sale at auction of goods, wares and merchandise or of live domestic animals at public auction in the streets or other public places within the corporation; and to regulate, license or prohibit the selling of goods, merchandise or medicines on the streets.

Carriages, drays, etc.

9. To regulate the use of carts, drays, wagons, hackney coaches, omnibuses, automobiles, and every description of carriages kept for hire or livery stable purposes; and to license and regulate the use of the streets by persons who use vehicles, or solicit or transact business thereon; to prevent and punish fast driving or riding of animals, or fast driving or propelling of vehicles through the public highways; to regulate the transportation of articles through such highways and to prevent injury to such highways from overloaded vehicles, and to regulate the speed of interurban, traction and street railway cars within the corporation.

Animals running at large.

10. To regulate, restrain and prohibit the running at large, within the corporation, of cattle, horses, swine, sheep, goats, geese, chickens and other fowls and animals, and to impound and hold same, and on notice to the owners, to authorize the sale of the same for the penalty imposed by any ordinance, and the cost and expenses of the proceedings; and to regulate or prohibit the running at large of dogs, and provide against injury and annoyance therefrom, and to authorize the disposition of the same when running at large contrary to the provisions of any ordinance.

Explosives.

11. To regulate the transportation, keeping and sale of gunpowder and other explosives or dangerous combustibles and materials and to provide or license magazines for the same.

Weighing.

12. To regulate the weighing and measuring of hay, wood and coal and other articles exposed for sale, and to provide for the seizure, forfeiture and destruction of weights and measures, implements and appliances for measuring and weighing which are imperfect or liable to indicate false or inaccurate weight or measure, or which do not conform to the standards established by law and which are known, used or kept to be used for weighing or measuring articles to be purchased, sold or offered or exposed for sale.

Buildings, fences, etc.

13. To regulate the erection of buildings and the sanitary condition thereof, fences, bill boards, signs, and other structures within the corporate limits; to require and regulate the numbering and renumbering of buildings by the owners or occupants thereof; to regulate the repair of, alteration in and addition to buildings; to provide for the construction, erection and placing of elevators, stairways and fire escapes in and upon build-

ings; to regulate the construction and repair of wires, poles, plants and all equipment to be used for the generation and application of electricity; to provide for the removal and repair of insecure buildings, bill boards, signs and other structures, and to provide for the inspection of all buildings or other structures and for the licensing of house-movers, plumbers and sewer-tappers and vault cleaners.

Police and fire departments.

14. To organize and maintain police and fire departments, erect the necessary buildings and purchase and hold all implements and apparatus required therefor.

Waterworks.

15. To provide for a supply of water, by the construction of wells, pumps, cisterns, aqueducts, water pipes, reservoirs and waterworks, and for the protection thereof, and to prevent unnecessary waste of water, and the pollution thereof, and to apply moneys received as charges for water to the maintenance, construction, enlargement and extension of the works, and to the extinguishment of any indebtedness created therefor; and to establish and maintain municipal lighting, power, and heating plants, and to establish, maintain and operate natural gas plants and to furnish the municipality and the inhabitants thereof with natural gas for heating, lighting and power purposes, and to acquire by purchase, lease or otherwise the necessary lands for such purposes, within and without the municipality.

Lighting, power and heating plants.

Health.

16. To provide for the public health; to secure the inhabitants of the corporation from the evils of contagious, malignant and infectious diseases, and to erect, maintain and regulate pest houses, hospitals and infirmaries.

Cemeteries and crematories.

17. To provide public cemeteries and crematories for the burial or incineration of the dead and to regulate public and private cemeteries and crematories.

Streets.

18. To lay off, establish, plat, grade, open, widen, narrow, straighten, extend, improve, keep in order and repair, light, clean and sprinkle streets, alleys, public grounds, places and buildings, wharves, landings, docks, bridges, viaducts and market places within the corporation, including any portion of any turnpike or plank road therein, surrendered to or condemned by the corporation; to regulate public landings, public wharves, public docks, public piers and public basins, and to fix the rates of landing, wharfage, dockage and use of the same; and to regulate the planting, trimming and preservation of shade trees in public places and grounds.

Canals and sewers.

19. To construct, open, enlarge, excavate, improve, deepen, straighten, or extend any canal, ship canal or water course located in whole or in part within the corporation, or lying contiguous and adjacent thereto; to

Repeals.

levies for special purposes," passed May 12, 1902 (95 O. L., 570).

An act entitled, "An act to amend section 1545-276 of the Revised Statutes of Ohio as amended May 2, 1902," passed May 12, 1902 (95 O. L., pp. 589-590).

An act entitled, "An act to amend section 1946 of the Revised Statutes of Ohio," passed May 12, 1902 (95 O. L. pp. 594, 595).

An act entitled, "An act to further supplement section 2330 of the Revised Statutes of Ohio," passed May 12, 1902 (95 O. L., 604).

An act entitled, "An act to further supplement section 1692 of the Revised Statutes of Ohio," passed May 12, 1902 (95 O. L., 561).

An act entitled, "An act to further supplement section 2330 of the Revised Statutes of Ohio," passed May 12, 1902 (95 O. L., 604).

An act entitled, "An act to provide for certain contracts in regard to bridges between cities of the second grade of the second class and street railroad purposes," passed April 25, 1902 (95 O. L., p. 806).

An act entitled, "An act to provide for bridge bonds for cities of the second grade of the second class, passed March 12, 1902 (95 O. L., pages 696, 697 and 698).

This act shall supersede all acts and parts of acts, not herein expressly repealed, which are inconsistent herewith.

W. S. McKinnon,
Speaker of the House of Representatives.

H. L. Gordon,
President of the Senate.

Passed October 22, 1902. 15 G

Exhibit O

Preference to be given Ohio organizations.

United States government, preference shall be given to those who served in Ohio military organizations.

SECTION 2. That section 2 of the act of April 30, 1886 (83 v. 107), entitled, "An act to provide for the establishment of a home for disabled and indigent ex-soldiers and marines of Ohio," as amended March 12, 1890 (87 v. 56), is hereby repealed.

FREEMAN T. EAGLESON,
Speaker of the House of Representatives.

JAMES M. WILLIAMS,
President of the Senate.

Passed April 15, 1908.
Approved April 15, 1908.

ANDREW L. HARRIS,
Governor.
79G.

[Senate Bill No. 364.]

AN ACT

To enable municipal corporations to regulate the use, control and maintenance of buildings used for purposes of human occupancy or habitation and to supplement the Municipal Code of 1902, by adding section 7-*ff*

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 7 of the Municipal Code of 1902, be supplemented by adding thereto the following:

Sec. 7-*ff*. Municipal corporations shall have the right to regulate by ordinance, the use, control, repair and maintenance of buildings used for human occupancy or habitation, the number of occupants, and the mode and manner of occupancy, for the purpose of insuring the healthful, safe and sanitary environment of the occupants thereof; to compel the owners of such buildings to alter, re-construct or modify the same, or any room, store, compartment or part thereof, for the purpose of insuring the healthful, safe and sanitary environment of the occupants thereof, and to prohibit the use or occupancy of such building or buildings until such rules, regulations and provisions have been complied with.

Sanitation.

FREEMAN T. EAGLESON,
Speaker of the House of Representatives.

JAMES M. WILLIAMS,
President of the Senate.

Passed April 15, 1908.
Approved April 15, 1908.

ANDREW L. HARRIS,
Governor.
80G.