A

DIGEST

OF THE

LAWS OF THE STATE OF ALABAMA:

CONTAINING

ALL THE STATUTES

OF

A PUBLIC AND GENERAL NATURE,

IN

FORCE AT THE CLOSE OF THE SESSION OF THE GENERAL ASSEMBLY, IN JANUARY, 1833.

TO WHICH ARE PREFIXED,

THE DECLARATION OF INDEPENDENCE; THE CONSTITUTION OF THE UNITED STATES; THE ACT TO ENABLE THE PEOPLE OF ALABAMA TO FORM A CONSTITUTION AND STATE GOVERNMENT, &c.; AND THE CONSTITUTION OF THE STATE OF ALABAMA.

WITH

AN APPENDIX, AND A COPIOUS INDEX.

COMPILED, UNDER THE AUTHORITY OF THE GENERAL ASSEMBLY,

BY

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PHILADELPHIA:

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AND

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1833.

after the juror is sworn to make true answers to such questions as may be demanded of him by the court, to ask the juror if he has formed and expressed an opinion as to the guilt or innocence of the prisoner at the bar. If the juror answers that he has formed and expressed an opinion, then the court shall demand of him, whether the opinion he has so formed and expressed, is formed upon his own knowledge of the facts, or upon rumor. If he answer that the opinion so formed and expressed, is formed upon his own knowledge of the facts, then he shall be rejected: but if he answer, that his opinion so formed and expressed, is formed upon rumor, then he shall be sworn in chief, unless challenged by the prisoner or prosecuting officer.

for preconceived opinion, how tested.

§ 51. In all capital cases, the attorney for the state shall have the right to four peremptory challenges of the jury.

Ib. Sec. 2. State's challenges in capital cases.

§ 52. It shall not be lawful for any defendant, on trial for any offence made capital by law, committed after the passage of this act, to challenge more than sixteen jurors, without showing good and lawful cause for such challenge.

Ib. Sec. 4. Defendant's challenges in capital cases.

§ 53. In the trial of any person charged with any felonious offence not capital, twelve peremptory challenges shall be allowed the prisoner, and four to the state.

Ib. Sec. 5. In felonies not capital, defendant 12, and state 4 challenges.

10. Costs and Restitution.

§ 54. The lands, tenements, goods and chattels, of any person or persons convicted of any crime or misdemeanor, shall be liable and subject in preference to all other demands whatever, (except dower and jointure) in the first place to the discharge of the expenses incurred by the territory or county, in the prosecution and conviction of such offender; and in the next place, to what restitution or reparation may be adjudged to the injured party; and if the estate of the person or persons shall be incompetent to the said purposes, then in that case, after deducting the expenses of prosecution and conviction as aforesaid, the surplus, if any, shall go towards making reparation to the party injured.

1807—(6) *Sec.* 51. Lands or goods of persons convicted, liable for costs and restitution.

§ 55. It shall be the duty of the attorney general, to mark on all bills of indictment the name of the prosecutor; and if the territory shall fail in the prosecution, it shall be the duty of the court (either with or without a motion to that effect[a]) if the prosecution appear frivolous or malicious, to order the prosecutor to pay costs.

1811—(8) *Sec.* 1. In certain cases, prosecutor to be taxed with the costs. [a 1826—(21) *Sec.* 2.]

11. Trial of Persons of Color.

§ 56. No person having interest in a slave, shall sit upon the trial of such slave.

1807—(6) *Sec.* 58.

§ 57. And for a declaration of what shall be deemed legal evidence in such cases, *Be it further enacted*, That the court may take for evidence the confession of the offender, the oath of one or more credible witnesses, or such testimony of negroes or mulattoes, bond or free, with pregnant circumstances, as to them shall seem convincing.

Ib. Sec. 59. Evidence admissible.

§ 58. Any slave may be tried for any offence not capital, by any justice of the peace on warrant, and may be sentenced to receive any number of stripes not exceeding one hundred, which sentence shall be executed by the constable: *Provided however*, That no slave

1814 (2) *Sec.* 1. Slaves may be tried by justices of the peace for offences not capital.

Number of lashes.

shall be sentenced to receive more than thirty-nine lashes, unless two respectable slave-holders to be summoned by the justice for the purpose of trying said slave, concur with him in the sentence; and any such justice of the peace shall summon and compel the attendance of all witnesses necessary to establish any fact for or against such slave, and shall duly examine such witnesses.

Justice to summon witnesses.

1824—(25) *Sec.* 1. Jury convicting slave to assess his value. *Ib. Sec.* 2.

§ 59. All slaves which may be hereafter executed in pursuance of law shall be paid for in the manner hereinafter provided.

§ 60. Whenever, on the trial of any slave for a capital offence, the jury shall return a verdict of guilty, the presiding judge shall have the same jury sworn to assess the value of said slave, and the verdict of said jury, shall be entered on the records of the court; and the master or owner of such slave producing to the comptroller of public accounts, a transcript from the record of the court regularly certified by the clerk, and the certificate of the sheriff, that any slave has been executed in pursuance of the sentence of the court, shall be entitled to receive a warrant on the treasurer for one-half of the amount assessed by the jury, to be paid out of the fund hereinafter provided for that purpose.[a]

One half of the amount assessed to be paid to owner. [a *But see* § 64.]

Ib. Sec. 3. Tax on negroes to raise a fund for this purpose.

§ 61. To raise a fund for the purpose aforesaid, it shall be the duty of the assessors annually to assess a tax of one cent on all negroes under ten years, and two cents on all negroes over ten and under sixty; and it shall be the duty of the tax-collectors to collect and return the same at the same time, and in the same manner, they are now compelled by law to collect and return the state tax; and it shall be the duty of the treasurer to keep said fund separate and distinct from the revenue of the state.

Ib. Sec. 4. Owner to employ counsel, or court to assign.

§ 62. If the owner of any slave charged with a capital offence, shall fail to employ good and sufficient counsel, on behalf of said slave, it shall be the duty of the presiding judge, before whom such slave may be tried, to assign counsel learned in the law to defend said slave, who shall be entitled to receive from the owner the sum of twenty dollars for his services.

Ib. Sec. 5. Penalty for secreting an accused slave.

§ 63. If the owner, or any other person having charge or government of any slave, who shall be charged with any capital crime, shall conceal or carry away any such slave, so that he or she cannot be brought to condign punishment, every owner or other person so offending, shall forfeit the sum of five hundred dollars.

Ib. Sec. 6. Jury shall determine what portion of the value the owner shall have.

§ 64. After the jury have found the value of the negro as aforesaid, they shall also say what portion of the same the master shall have, which in no case shall exceed one-half of the value so found; and the prosecuting officer shall inquire as to all facts which would go to show the portion of blame attached to the master, that the jury may rightly assess the amount he shall have.

Ib. Sec. 7. This act not to extend to cases of rebellion, &c.

§ 65. This act shall not be so construed as to extend its benefits to the payment of slaves, executed in cases of rebellion or insurrection, or where neither the master or slave is settled in this state.

1832—(4) *Sec.* 1. Judge of county court and two justices authorized to try persons of colour.

§ 66. The judge of the county court of each and every county in this state, together with two justices of the peace, to be associated with him, or in case there should be no judge of the county court, then any three justices of the peace, shall constitute a court for the trial of all slaves and free persons of colour, charged with any crime or misdemeanor of a higher grade than petit larceny.

Ib. Sec. 2. Mode of bringing the offender to trial under this act.

§ 67. Whenever any slave or free person of color, shall be brought before any justice of the peace, charged with the commission of any crime or misdemeanor of a higher grade than petit larceny, if the justice, after examining the witnesses on the part of the prosecutor,

shall believe there exists any reasonable or probable grounds of the guilt or criminality of such slave or free person of color, he shall immediately commit him or her to jail, and shall, at the same time, issue a notice to the judge of the county court of his county, and also to some justice of the peace, which notice shall be served by the sheriff or some constable of the county, informing them of such commitment, and state the time and place of trial, which shall not be less than ten, nor more than fifteen days from the date of said notice; and the said justice who shall make the commitment, as aforesaid, and the judge of the county court, or if there be no judge of the county court, two justices of the peace, summoned as aforesaid, shall form a court to try and determine the said offence; and it shall be the duty of the magistrate to order the sheriff or coroner of his county to summon twenty-four jurors, to be and appear at the place and time appointed, for the trial of said offence, one-half of whom shall be slave-holders; and should the judge of the county court, or any justice summoned to attend said trial, fail to attend, any justice of the peace shall forthwith cause to be summoned two justices of the peace to be associated with him in forming said court, and may adjourn from day to day till the business before them is disposed of.

Ib. Sec. 3. Jury, how formed.

§ 68. Out of the number of jurors summoned by the sheriff, there shall be drawn twelve, who shall compose and be a jury for the trial of any one prosecuted under this act: *Provided always*, That the accused shall have the right of twelve peremptory challenges; and the state shall have the right of four peremptory challenges; and if the original panel should be exhausted by challenge or otherwise, so that a sufficient number be not left to compose a jury, the court shall order the sheriff to summon a sufficient number of talesmen from the by-standers for that purpose.[1]

Challenges by the accused and by the state.

Ib. Sec. 4. Written statement by solicitor, sufficient without indictment or presentment.

§ 69. In all trials had under this act, it shall be sufficient for the solicitor, or the counsel appointed by the court to prosecute, to write out a brief statement of the nature of the crime or misdemeanor charged against the defendant, and sign his name thereto; and no indictment or presentment shall be necessary.

Ib. Sec. 5. Court may appoint counsel to prosecute or defend, who shall receive 10 dolls.

§ 70. If at any court held under this act, the solicitor of the circuit should not be present, the court shall appoint counsel to prosecute, whose fee, amounting to the sum of ten dollars, shall be paid by the state. And if the owner of any slave prosecuted under this act, shall not employ counsel to defend such slave, it shall be the duty of said court to appoint counsel for that purpose, whose fee, amounting to the sum of ten dollars, shall be paid by the owner of said slave; and if any free person of color prosecuted under this act, shall be unable to employ counsel to defend him or her, it shall be the duty of the court to appoint counsel for this purpose, whose fee, amounting to ten dollars, shall be paid out of the county treasury.

Ib. Sec. 6. Clerk to issue, and sheriff to serve subpœnas.

§ 71. It shall be the duty of the clerk to issue all subpœnas or other legal process, as well for the defendant as the state, all of which shall be executed by the sheriff; and the said clerk and sheriff shall receive the same fees therefor, as now provided by law for similar services, and none other.

Ib. Sec. 7. Sentence and execution.

§ 72. If any slave or free person of color shall be found guilty under this act, it shall be the duty of the court to pronounce sentence in the manner now prescribed by law, which sentence shall be carried into execution by the sheriff: *Provided always*, That if any slave or free person of color shall be found guilty of any capital crime,

[1] See "Slaves," &c.—§ 21. "Witnesses"—§ 9.

there shall not be less than five nor more than ten days, between the day of passing sentence and the day of execution, except in cases of conspiracy, insurrection, or rebellion, when the sentence of the court may be executed forthwith.

DEPOSITIONS.

1807—(32) *Sec.* 11. Depositions of non-resident and infirm witnesses.

§ 1. When a person who may be a witness in any cause in any of the courts, shall reside out of this territory, or shall, by reason of age or bodily infirmity, or any other cause, be incapable of attending, to give his or her testimony in court, oath thereof being made to any judge, justice, or clerk of the court wherein such suit is depending, such judge, justice, or clerk is hereby empowered to issue, or order the clerk of the court wherein such cause is depending, to issue a commission to one or more persons, to take and receive the deposition of such witness; which being duly taken and returned, as hereinafter directed, shall be received as legal testimony: *Provided*, That the party praying such commission shall give such notice to the adverse party of the time and place, when and where such commission is to be executed, as the court, judge, justice, or clerk shall think proper; and the adverse party shall have liberty to cross-examine any witness whose deposition shall be so taken.

Ib. Sec. 12. Of witnesses about to leave the territory.

§ 2. If any person, who may be a witness in any cause, depending in any of the said courts, shall be under the necessity of leaving this territory before such cause is to be tried, or even before it be at issue, upon oath thereof being made before any judge or justice of the court, wherein the cause is depending, such judge or justice is hereby empowered to take the deposition of such witness, provided it shall appear by the oath of an indifferent person, that sufficient notice of the time and place of such application has been given to the opposite party: or such judge or justice may order the clerk of the court wherein such cause is depending to issue a commission to one or more persons to take the deposition of such witness; such notice being first given to the adverse party of the time and place, when and where such deposition is to be taken, as the judge or justice, awarding such commission, shall direct, which deposition, when returned, taken in manner aforesaid, shall be received as legal evidence. (1)

Ib. Sec. 13. Testimony of absent witnesses may be taken by interrogatories.

§ 3. In any case, depending as aforesaid, either party wishing to improve the testimony of witnesses absent from the territory, may take the same by interrogatories, the party making oath before any one of the judges, justices, or clerk of the court, where such cause is depending, of the absence of such witness, and that he believes his testimony material; such judge, justice, or clerk may, if the oath be taken before the clerk, issue, or if it be taken before a judge or justice, may order the clerk of the court, in which such cause is depending, to issue a commission as aforesaid, directing the commissioner or commissioners to call the witness or witnesses before him or them, at a time and place, by him or them to be appointed. But the party applying for such *dedimus* shall file his interrogataries in the clerk's office, and serve the opposite party with a copy thereof, with notice of

(1) Depositions may be valid, though in the hand-writing of the attorney of the party offering them. Wynn & Wife *v.* Williams, *Min. Rep.* 136. Notice of taking depositions, left at the dwelling-house of the party, with his clerk, is not sufficient. M'Ewen *v.* Morgan, 1 *Stewt. Rep.* 190. See also, Braham *v.* Debrell, *ib.* 14.

in this act contained, shall be construed to extend to any keel-boat or barge engaged in the navigation of the Mobile, Alabama, or Tombeckbee rivers, or their tributaries.

This act not to include barges, on certain rivers.

SLAVES, AND FREE PERSONS OF COLOR.

§ 1. THE general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state: *Provided*, That such person or slave be the *bona fide* property of such emigrants: *And provided also*, That laws may be passed to prohibit the introduction into this state of slaves who have committed high crimes in other states or territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have full power to prevent slaves from being brought into this state as merchandise, and also to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

Con. Ala. Art. 6. (Slaves.) *Sec.* 1. Powers of the general assembly in relation to slaves.

§ 2. In the prosecution of slaves for crimes of a higher grade than petit larceny, the general assembly shall have no power to deprive them of an impartial trial by a petit jury.

Sec. 2. Trial for crimes.

§ 3. Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

Sec. 3. Dismembering or killing slave.

§ 4. No slave shall be admitted a witness against any person, in any matter, cause, or thing whatsoever, civil or criminal, except in criminal cases, in which the evidence of one slave shall be admitted for or against another slave.

1805—(4) *Sec.* 1. Slave not to be a witness except in trial of slave.

§ 5. No slave shall go from the tenement of his master or other person with whom he lives, without a pass, or some letter or token, whereby it may appear that he is proceeding by authority from his master, employer, or overseer; if he does, it shall be lawful for any person to apprehend and carry him before a justice of the peace, to be by his order punished with stripes, or not at his discretion, not exceeding twenty stripes.

Ib. Sec. 2. Slaves not to go from home without a pass,

§ 6. If any slave shall presume to come and be upon the plantation of any person whatsoever, without leave in writing from his or her owner or overseer, not being sent upon lawful business, it shall be lawful for the owner or overseer of such plantation, to give or order such slave ten lashes on his or her bare back, for every such offence.

Ib. Sec. 3. nor upon the plantation of any person without leave in writing.

§ 7. No slave shall keep or carry any gun, powder, shot, club, or other weapon whatsoever, offensive or defensive, except the tools given him to work with, unless he is ordered by his master, mistress, or overseer, to carry the said articles from one place to another; but all and every gun, weapon, or ammunition, found in the possession or custody of any slave, may be seized by any person, and upon due

Ib. Sec. 4. Slaves not to carry weapons, offensive or defensive.

Weapons forfeited to the seizer thereof.

proof made thereof, before any justice of the peace of the county or corporation where such seizure shall be made, shall, by his order, be forfeited to the seizer, to his own use; and moreover, every such offender shall receive, by order of such justice, any number of lashes not exceeding thirty-nine, on his bare back, for every such offence: *Provided*, That any justice of the peace may grant, in his proper county, permission in writing to any slave, on application of his master or overseer, to carry and use a gun and ammunition within the limits of his said master's or owner's plantation, for a term not exceeding one year, and revocable at any time within such term, at the discretion of said justice.

May be licensed to carry gun within their owner's farm, with owner's consent.

Ib. Sec. 5. Penalty on persons permitting slaves, not their own, to remain on their plantations.

§ 8. And to prevent the inconveniences arising from the meeting of slaves, *Be it enacted*, That if any master, mistress, or overseer of a family shall knowingly permit or suffer any slave not belonging to him or her, to be and remain in or about his or her house or kitchen, or upon his or her plantation, above four hours at any one time, without leave of the owner or overseer of such slave, he or she so permitting, shall forfeit and pay ten dollars for every such offence; and every owner or overseer of a plantation, who shall so permit or suffer more than five negroes or slaves, other than his or her own, to remain upon his or her plantation or quarter at any one time, shall forfeit and pay ten dollars for each negro or slave above that number, which said several forfeitures shall be to the informer, and recoverable with costs, before any justice of the peace of the county or corporation where such offence shall be committed: *Provided*, That nothing herein contained shall be construed to prohibit the negroes or slaves of one and the same owner, though seated at different quarters, from meeting with their owner's or overseer's leave, upon any plantation to such owner belonging, nor to restrain the meeting of slaves, on their owner's or overseer's business, at any public mill; nor to prohibit their meeting on any other lawful occasion, by license in writing from their owner or overseer, nor their going to church, and attending divine service on the Lord's day, and between sunrising and sunsetting.

Ib. Sec. 6. Riots, &c., by slaves, punished with stripes.

§ 9. Riots, routs, unlawful assemblies, trespasses, and seditious speeches, by a slave or slaves, shall be punished with stripes, not exceeding thirty-nine, at the discretion of a justice of the peace; and he who will, may apprehend and carry him, her, or them, before such justice.

Ib. Sec. 7. Penalty on white person for attending unlawful meeting, or harboring slave.

§ 10. If any white person, free negro or mulatto, shall at any time be found in company with slaves, at any unlawful meeting, such person being thereof convicted before any justice of the peace, shall forfeit and pay twenty dollars for every such offence, to the informer, recoverable with costs before such justice.

Ib. Sec. 8. Powers of justices of the peace in case of such unlawful meetings.

§ 11. Every justice of the peace, upon his own knowledge of such unlawful meeting, or information thereof to him made within ten days after, shall issue his warrant to apprehend the persons so met or assembled, and cause them to be brought before him, or some other justice of his county or corporation, to be dealt with as this act directs; and every justice failing herein, shall forfeit and pay ten dollars for every such failure; and every sheriff or other officer, who shall fail, upon knowledge or information of such meeting, to endeavor to suppress the same, and bring the offenders before some justice of the peace to receive due punishment, shall be liable to the like penalty of ten dollars; both which penalties shall be to the informer, and recoverable with costs, by action of debt, in any county or corporation court; and every under-sherff, or constable who, upon knowledge or information of such meeting, shall fail to perform his duty in suppress-

Penalty on sheriffs and other officers for not endeavoring to suppress unlawful meetings.

ing the same, and apprehending the persons so assembled, shall forfeit and pay ten dollars for every such failure, to the informer, recoverable with costs, before any justice of the county or corporation wherein such failure shall be.

Ib. Sec. 9. Trading with slaves prohibited.

§ 12. No person whatsoever shall buy, sell, or receive, of, to, or from a slave, any commodity whatsoever, without the leave or consent of the master, owner, or overseer of such slave, expressive of the articles so permitted to be bought, sold, or bartered. And if any person shall presume to deal with any slave, without such leave or consent, he or she so offending, shall forfeit and pay to the master or owner of such slave, four times the value of the thing so bought, sold, or received, to be recovered with costs by action upon the case, in any court having cognizance of the same, and shall also forfeit and pay the further sum of twenty dollars, to any person who will sue for the same, with costs before any justice of the peace; or on failure or refusal so to pay, shall, by order of such justice, be committed to prison, until he or she make such payment; and any slave offering to sell any article, without leave in writing from his master or owner, shall receive ten lashes, by order of any justice of the peace before whom he or she is convicted.

Penalty.

Punishment of slave for offering to sell, &c.

Ib. Sec. 10. Masters not to license their slaves to trade as freemen,

§ 13. If any master or owner of a slave, shall license such slave to go at large and trade as a freeman, the master or owner shall forfeit and pay the sum of fifty dollars, one moiety to the use of any person suing for the same, and the other moiety to the use of the territory; and if after conviction, such slave shall be found so going at large and trading, the master or overseer shall again be liable to the like penalty, to be recovered as aforesaid, and so, as often after conviction as such slave shall be found so going at large and trading.

Ib. Sec. 11. nor to go at large, or hire themselves out.

§ 14. If any person shall permit his or her slave to go at large, or hire him or herself out, every person or persons so offending, shall forfeit and pay to the use of the territory, the sum of fifty dollars; and it shall be lawful for any person to apprehend and carry such slave before a justice of the peace, in the county or corporation where apprehended, and if it shall appear to the justice that such slave comes within the purview of this act, he shall order him or her to the jail of the county or corporation, there to be safely kept until the next court, when, if it shall be made to appear to the court, that the slave so ordered to jail hath been permitted or suffered to hire him or herself out, contrary to the meaning of this act, the court shall immediately proceed to enter up judgment, and award execution against such offender, for the amount of said forfeiture with costs: *Provided*, That if the owner or holder of such slave or slaves shall enter into bond before said justice, payable to the governor and his successors in office, with sufficient security, in double the amount of said forfeiture, conditioned to appear at the next county court of the proper county, to do and receive what shall be enjoined him by the court, then such slave may be suffered to remain with his or her owner.

Mode of proceeding against slave and owner.

Ib. Sec. 12. Runaway slaves, how to be dealt with.

§ 15. All runaway slaves may be lawfully apprehended by any person, and carried before the next justice of the peace, who shall either commit them to the county jail, or send them to the owner, if known, who shall pay for every slave so taken up, the sum of six dollars to the person apprehending him or her, and also all reasonable costs and charges.

Ib. Sec. 13. Powers of justices with respect to out-lying slaves.

§ 16. And whereas many times slaves run away and lie out, hid, and lurking in swamps, woods, and other obscure places, killing hogs, and committing other injuries to the inhabitants of this territory; therefore, *Be it enacted*, That in all such cases, upon intelligence given of

two or more slaves lying out as aforesaid, any one justice of the peace of the county where the slaves are supposed to lurk or to do mischief, is required, by warrant, reciting their names and owners' names if known, to direct the provost of the patrols to take such power with him as he shall think fit and necessary for the effectual apprehending of such out-lying slave or slaves, and go in search of them, and upon their being apprehended, to commit them or any of them, to the jail of his county for further trial; and for every such out-lying slave by him apprehended and committed to jail as aforesaid, he shall be entitled to a reward of thirty dollars, to be paid out of the territorial treasury, three-fourths of which sum shall be reimbursed to the treasury by the owner of such slave: *Provided*, That if the owner be an inhabitant of this territory, the said sum shall be added to his tax for the current year, and be collected and accounted for in the same manner as other public taxes are: *And provided also*, That any other person or persons who shall apprehend and commit to jail as aforesaid, any out-lying slave, shall be entitled to the same reward for every such apprehension and commitment.

Reward for apprehending out-lying slave.

Ib. Sec. 14. Slaves prohibited keeping dogs.

§ 17. All slaves are hereby prohibited from keeping dogs, under any pretence or consideration whatsoever; and the slave or slaves so offending, upon complaint thereof before any justice of the peace, shall be punished with not exceeding twenty-five stripes for every such offence, and the master or owner who shall permit his slaves to keep dogs contrary to this law, shall forfeit and pay the sum of five dollars for each dog so kept, to the use of the person complaining; and moreover, shall make good all damages done by dogs appertaining to, or kept by any of his or her slaves.

Ib. Sec. 15. Slaves not to own any horse or mare.

§ 18. No slave shall be allowed to own any horse, mare, gelding, or mule; and if any slave shall actually own such property, the same shall be forfeited and sold under the direction of the court of the county where such property shall be so owned; one moiety of the proceeds for the use of the territory, and the other moiety to any person who will sue for the same. It is also forbidden to slaves to keep hogs running at large, or to keep in enclosures more than they can conveniently maintain, the number of which to be regulated by the several owners, and to be distinctly marked, and register thereof made for the inspection of any person who shall require to see the same.

In what manner they may keep hogs.

Ib. Sec. 16. No cruel or unusual punishment to be inflicted on slaves.

§ 19. And whereas, it has been the humane policy of all civilized nations, where slavery has been permitted, to protect this useful but degraded class of men from cruelty and oppression; therefore, *Be it enacted*, That no cruel or unusual punishment shall be inflicted on any slave within this territory. And any owner of slaves authorizing or permitting the same, shall, on conviction thereof, before any court having cognizance, be fined according to the nature of the offence, and at the discretion of the court, in any sum not exceeding two hundred dollars, for the use of this territory.

Ib. Sec. 18. Conspiring or advising rebellion, murder, &c.

§ 20. If any slave shall, at any time, consult, advise, or conspire to rebel, or make insurrection, or shall plot, or conspire the murder of any person or persons whatsoever, every such consulting, plotting, or conspiring shall be adjudged and deemed felony, and the slave or slaves convicted thereof, in manner hereinafter directed, shall suffer death.

Ib. Sec. 20. Trial of slave for felony, or capital offence.

§ 21. The trial of a slave for felony, or any capital offence, shall be in all respects similar to the trial of a free citizen or inhabitant, for the like offence,[1] except that the jury, or two-thirds at least thereof,

[1] But see "Criminal Law,"— Trial of Persons of Color.

empannelled for such trial, shall be composed of owners of slaves. And the court may take for evidence, the confession of the offender, the oath of one or more credible witnesses, or such testimony of slaves, or negroes, with pregnant circumstances, as to them shall seem convincing.

Ib. Sec. 21. Benefit of clergy.

§ 22. When any slave shall be convicted of any offence within the benefit of clergy, judgment of death shall not be given against him or her upon such conviction; but he or she shall be branded on the face or breast by the jailer in open court, and suffer such corporal punishment as the court shall think fit to inflict, except where he or she once had the benefit of this act, and in those cases, such slave or negro shall suffer death without benefit of clergy.[1]

1805—(5) *Sec.* 1. Liable for debts contracted before emancipation.

§ 23. All slaves emancipated shall be liable to be taken by execution to satisfy any debt contracted by the person emancipating them, before such emancipation is made.

Ib. Sec. 2. Slaves may sue for their freedom by petition to the circuit court. Preliminary proceedings.

§ 24. Any slave in this territory claiming his or her freedom, shall proceed by petition to the circuit court of the county where his or her master or owner shall reside, who, if the slave be in his or her possession, shall enter into bond with approved security to the governor, in a sum to be adjudged of by the court, that the said slave shall be forthcoming and subject to the order of said court, and that he will abide by the judgment the said court may render in the premises; in which case such slave shall remain in the service of his owner, or person claiming him or her, until the determination of the suit; and if out of the possession of his or her owner, or person claiming him or her, such slave shall enter into recognizance with sufficient security, to be approved of by the court, to make good to his or her owner all such costs and damages as he shall have incurred, in consequence of the application of such slave for the recovery of his freedom, in case he eventually fail in substantiating the same, and that he will be forthcoming and abide the sentence of the said court: [a]which power vested in said court, to take bonds and recognizances, may be exercised by a judge of the territory, out of court as well as in court.

[a 1815—(3) *Sec.* 1.]

1809—(7) *Sec.* 1. Runaway slave committed to jail, if not claimed by his owner, in six months after publication of commitment, may be sold by the sheriff.

§ 25. When any slave shall be committed to the jail of any county as a runaway, and such runaway slave shall not be claimed and proved by the owner thereof within six months from the first publication of the commitment of such slave, in some newspaper published in this territory, it shall be lawful for the sheriff of the proper county to sell said runaway slave at public auction, at the court-house of his proper county, upon giving at least thirty days' previous notice of such sale, by advertisement published in some newspaper in this territory, at the court-house of the proper county, and at least two other public places within the same; and out of the proceeds arising from the sale of any runaway slave as aforesaid, the sheriff shall be entitled to the same commission and fees as are allowed in cases of execution; and the balance, after paying all prison fees, and the maintenance of said runaway slave while in jail, shall be for the use of the proper county: *Provided*, That if the owner of such runaway slave shall, after such sale, prove his property in any such slave, the proper county shall pay to him the amount that shall have been paid into the county treasury, on account of the sale of such slave, but the right to any slave sold as aforesaid, shall be and remain vested in the purchaser under the sale made by the sheriff, as aforesaid, any law to the contrary notwithstanding.

Proceeds, after deducting expenses, to go to the county. Owner, on proof, may recover amount paid, but not divest purchaser's title.

[1] But see "Crimes and Misdemeanors," § 37, abolishing the benefit of clergy in all respects.

1822—(17) *Sec.* 1. Negroes not to retail spirits.

§ 26. It shall not be lawful for any free negro or mulatto, either directly or indirectly, to retail any kind of spirituous liquors within this state.

Ib. Sec. 2. Penalty.

§ 27. Any free negro or mulatto, who shall directly or indirectly violate the provisions of this act, shall forfeit and pay the sum of ten dollars for every such offence; recoverable before any court having competent jurisdiction of the same, one half to the informer, and the other half to be paid into the county treasury.

Ib. Sec. 3. Punishment for a second offence.

§ 28. Any free negro or mulatto, who shall violate the provisions of this act, after having been once convicted and fined, shall, in addition to the fine imposed by this act, receive for every such offence, such corporal punishment on his or her bare back, not exceeding twenty-five stripes, as may be ordered by the court trying the same: *Provided*, that this act shall not affect any free negro, mulatto, or other person, who by the treaty between the United States and Spain, became a citizen of the United States, or the descendants of any such person.

1826—(3) Preamble.

Whereas, great injury and inconvenience are experienced by the citizens of many cities, towns, and neighborhoods, in the state of Alabama, in consequence of the illicit trade and traffic which is encouraged and carried on, by many evil disposed persons, with the slave population; for remedy whereof,

Sec. 1. Trading with slaves, without their owner's leave, indictable.

§ 29. *Be it enacted, &c.* That no person whatsoever shall buy, sell, or receive of, to, or from, any slave or slaves, any commodity of any kind or description whatsoever, without the leave or consent of the master, owner, or overseer of such slave or slaves in writing, expressing the articles permitted to be bought, sold, or bartered; or unless the master, owner or overseer of any such slave or slaves, shall personally authorize the same; and if any person or persons shall buy from, or sell to, or deal, or trade or barter with, any slave or slaves, without such consent and permission previously had, given, or obtained, he, she, or they so offending, shall be subject to indictment; and upon conviction, shall be fined not less than ten dollars, nor more than one hundred dollars, and imprisoned in the common jail of the county, not less than five days, nor more than six months, at the discretion of the jury by whom the indictment is tried, who may inflict one or both of the aforesaid penalties.

Penalty.

1832—(8) *Sec.* 9. Free persons of color for settling in the state, to receive thirty-nine lashes.

§ 30. From and after the first day of February next, it shall not be lawful for any free person of color to settle within the limits of this state; and should any free person of color, after that time, settle in this state, he, she, or they shall, on notice of this act, depart within thirty days, or shall be liable, on conviction before any justice of the peace, to receive thirty-nine lashes; and any person may arrest any such free person of color, and take him or her before any justice of the peace for trial; and if any such free person of color shall not depart this state within twenty days after the infliction of the punishment last mentioned, he or she shall be liable to be arrested by any person, and be taken before a justice of the peace for trial, and on conviction by such justice, shall be ordered to be sold as a slave for the term of one year for ready money, ten days' notice being given of the time of sale, one half of which, after paying all the expenses of the prosecution, (which shall be to the justice one dollar, the constable two dollars for summoning the witnesses, attending the trial, and selling the said free person of color, and fifty cents a day for each day he may keep such person of color, and fifty cents per day for each witness who may attend the trial,) shall be paid to the informer, and the other half to the state. And if any free person of color shall not depart this state within

Not departing within twenty days after punishment, to be sold as a slave for one year.

Proceeds, how applied.

twenty days after the expiration of said year, he or she shall forfeit his or her freedom; and upon conviction thereof before any circuit court of this state, shall, by order of said court, be sold to the highest bidder, and the proceeds of the sale of said free negro so forfeiting his or her freedom, shall go, one half to the informer, and the other half to the state.

Remaining still, may be sold as a slave for life.

§ 31. Any person or persons who shall attempt to teach any free person of color, or slave, to spell, read, or write, shall, upon conviction thereof by indictment, be fined in a sum not less than two hundred and fifty dollars, nor more than five hundred dollars.

Ib. Sec. 10. Penalty for attempting to teach slave, &c., to read, &c.

§ 32. Any free person of color who shall write for any slave, a pass or free-paper, on conviction thereof, shall receive for every such offence, thirty-nine lashes on the bare back, and leave the state of Alabama within thirty days thereafter; and should he or she again return to the state of Alabama, or be found within the same after the time above limited for his or her departure, on conviction of violating this provision of the law, he or she shall forfeit his or her liberty, and be sold as a slave for the term of ten years, by order of any two justices of the peace, before whom he or she may be taken and convicted, ten days' previous notice being given of the time and place of sale: one half of the proceeds of said sale, after paying one dollar each to said justices, and two dollars to the constable for attending the trial, and selling said free person of color, together with all other costs that may accrue, shall be paid to the use of the informer, and the other half to the use of the state.

Ib. Sec. 11. Penalty on free person of color for writing pass or free-paper for slave.

§ 33. Any slave who shall write for any other slave, any pass or free-paper, upon conviction, shall receive, on his or her bare back, fifty lashes for the first offence, and one hundred for every offence thereafter, by order of any justice of the peace before whom he or she may be convicted; and on every conviction, the owner of said slave shall pay one dollar to the justice of the peace, and two dollars to the constable for attending the trial and whipping the slave, together with all other costs that may lawfully accrue; and any persons may arrest any slave so offending, and take him or her before any justice of the peace for trial.

Ib. Sec. 12. Penalty on slave for writing pass or free paper for slave.

§ 34. If any free negro or person of color shall buy of any slave, or sell to any slave, any article or commodity whatsoever, without a written permission from the master, owner, or overseer of said slave, designating the article so to be bought or sold, said free negro or person of color, upon conviction thereof, before any magistrate of the county where such offence shall be committed, shall receive on his or her bare back, thirty-nine lashes well laid on.

Ib. Sec. 14. Penalty on free negroes, or persons of color, for trading with slaves.

§ 35. If any free negro or person of color shall be found in company with any slaves in any kitchen, out-house, or negro-quarter, without a written permission from the owner, master, or overseer of said slaves, said free negro or person of color shall, for the first offence, receive fifteen lashes, and for every subsequent offence, thirty-nine lashes, on his or her bare back, which may be inflicted by said master, owner, or overseer, or by any officer or member of any patrol company who may find said free negro or person of color, in any kitchen, out-house, or negro-quarter, associating with slaves without such written permission.

Ib. Sec. 15. Free persons of color forbidden to associate with slaves.

The punishment.

§ 36. If any slave, without a written permission of the master, owner, or overseer of said slave, shall be found in company with a free negro or person of color, in the dwelling-house or outhouse of said free negro or person of color, said free negro or person of color shall

Ib. Sec. 16. Same punishment if slave be found at the house of free person of color.

receive the same punishment, in the same manner, as is prescribed by the provisions of the fifteenth section of this act.

Ib. Sec. 17. More than five male slaves an unlawful assembly.

§ 37. It shall not be lawful for more than five male slaves, either with or without passes, to assemble together at any place off the proper plantation to which they belong; and if any slaves do so assemble together, the same shall be deemed an unlawful assembly.

Ib. Sec. 18. Unlawful assemblies to be dispersed by patrols and other officers. The punishment.

§ 38. It shall be the duty of all patrols and officers, civil and military, forthwith to cause said slaves so assembled, to disperse; and each of said slaves so assembled, shall be liable to receive any number of lashes, not exceeding ten: and any slave who may once be punished for attending such unlawful assembly, and shall again offend herein, shall be liable to be punished at the discretion of any magistrate before whom he may be carried for trial, by stripes not exceeding thirty-nine.

Ib. Sec. 19. Certain assemblies lawful.

§ 39. The provisions of this act shall not apply to any assemblage of slaves, attended by the master, owner, or overseer of such slaves.

Ib. Sec. 22. Slaves, &c., may attend public worship.

§ 40. Nothing in this act shall be so construed, as to prevent free persons of color and slaves from attending places of public worship held by white persons.

Ib. Sec. 23. Explanation of 17th section.

§ 41. Nothing in the provisions of the seventeenth section of this act shall be so construed, as to debar the master or owner of slaves from sending to his neighbor or neighbors any slave or slaves unaccompanied by master, owner, or overseer, for the purpose of assisting him or them to labor.

Ib. Sec. 24. Persons of color forbidden to preach to, or exhort other persons of color, except in presence of five slave-holders. Punishment. Proviso.

§ 42. If any slave or free person of color shall preach to, exhort, or harangue any slave or slaves, or free persons of color, unless in the presence of five respectable slave-holders, any such slave or free person of color so offending, shall, on conviction before any justice of the peace, receive, by order of said justice of the peace, thirty-nine lashes for the first offence, and fifty lashes for every offence thereafter; and any person may arrest any such slave or free person of color, and take him before a justice of the peace for trial: *Provided*, That the negroes so haranguing or preaching, shall be licensed thereto, by some regular body of professing Christians immediately in the neighborhood, and to whose society or church such negro shall properly belong.

SLAVE TRADE.

1815—(2) Slaves imported contrary to the laws of the U. S., to be condemned and sold.

§ 1. Any slave or slaves brought or imported into this territory, contrary to the laws of the United States, in such case made and provided, shall be condemned by any superior court of this territory, within whose jurisdiction the said slave or slaves shall be brought or be seized, upon libel filed in the said court; and shall be sold by the proper officer of the court to the highest bidder, at public auction, for ready money, after advertising the time and place of such sale, in some newspaper in this territory, at least fifteen days previous thereto.

Proceeds to go to the treasury, collector of the customs, and informer.

§ 2. The residue of the money arising from the sale, after deducting the costs of suit, shall be paid, one half to the collector of the customs within whose district the said slave or slaves shall have been seized, and the other half into the territorial treasury. But in case there shall have been an informer, one half of the amount directed to be paid to the collector of the district, shall accrue and belong to said informer.[a]

a *But see* § 8 & 9.

1823—(3) *Sec.* 1.

§ 3. The governor of this state is authorized and required to appoint some suitable person, as the agent of the state, to receive all and every

slave or slaves, or persons of color, who may have been brought into this state in violation of the laws of the United States, prohibiting the slave trade: *Provided*, That the authority of the said agent is not to extend to slaves who have been condemned and sold.

Governor to appoint an agent to receive slaves.

§ 4. The governor is required to take such bond or bonds from the said agent or other person, into whose possession the said slaves may be placed, in such amount, and with such conditions, as he may deem necessary to ensure their safe keeping and proper treatment.

Ib. Sec. 2. Agent required to give bond.

§ 5. The said slaves, when placed in the possession of the state as aforesaid, shall be employed on such public work or works, as shall be deemed by the governor of most value and utility to the public interest.

Ib. Sec. 3. Slaves to be employed on public works.

§ 6. Such part of the said slaves shall be hired out as will be sufficient to defray the expenditures necessary to the maintenance and support of those employed on the public works as aforesaid.

Ib. Sec. 4. Their maintenance.

§ 7. In all cases in which a decree of any court having competent authority, shall be in favor of any claimant or claimants, the said slaves shall be truly and faithfully, by said agent, delivered to such claimant or claimants; but in case of their condemnation, they shall be sold by such agent for cash to the highest bidder, by giving sixty days' notice in a newspaper, printed at Cahawba, Mobile, Tuscaloosa, Huntsville, and Florence.

Ib. Sec. 5. How disposed of after decree.

§ 8. The money arising from such sale or sales, shall be paid into the treasury of the state, except one-fourth thereof, which shall be paid to the informer, if there be one.

Ib. Sec. 6. Proceeds paid into the treasury.

§ 9. No informer shall be entitled to receive any part of the money arising from any such sales, except by virtue of the decree of the judge of the circuit court of the county into which such slave or slaves may have been first brought; and the circuit judges of this state are expressly authorized to try and decide all conflicting claims set up by informers in relation to said slaves.

Ib. Sec. 7. Judge empowered to decide on conflicting claims of informers.

§ 10. It shall be the duty of the said agent to ask for, and demand said slave or slaves of any person or persons in whose possession they may be found.

Ib. Sec. 8. Agent to demand slaves.

STOCK—OF THE STATE OF ALABAMA.

1833—(8) State stock assignable by endorsement.

§ 1. THE certificates of stock created in obtaining loans for the use of the state in pursuance of any of the laws heretofore passed for that purpose, and of all stock which may hereafter be created by the state, shall be assignable by endorsement made by the legal holder thereof, or by transfer in a book or books of the bank of the state of Alabama, made by the legal holder, or his attorney authorized by power duly authenticated; and it shall be the duty of the president and directors of said bank, to cause books to be kept for the purpose aforesaid; wherein also shall be kept an account of the said stock, and of all payments of principal and interest thereon, and of renewed certificates of stock, that may be issued in virtue of this act.

Manner of renewing lost certificate.

§ 2. In case any of the said certificates shall be lost or destroyed, the same may be renewed in the manner following, to wit: proof of such loss or destruction, and an affidavit declaring the property therein to be *bona fide* in the applicant for renewal, shall be made before a judge of the circuit court of this state, or of any state of the United States, or before a judge of the supreme or any district court of the United States, which proof shall be certified by such judge, together