

sueing the same, the defendant or defendants in said suit whose property is taken on said writ may give a written notice to the officer who has sued said writ, or who is in possession of the same. that he denies the courses set forth in the affidavit upon which said writ issued, and desires that the same may be tried by a jury; it shall be the duty of the officer upon receiving such notice to deliver the same to some justice of the peace in said county, together with a copy of the cause set forth in the affidavit of the plaintiff upon which said writ issued, upon the delivery of said notice and copy of the affidavit as aforesaid, the justice shall proceed to notify the parties and summon a jury, and proceed to try said issue in the same manner as the trial of the right of property is now had.

SEC. 2. Cause may be continued. That for good cause the justice may continue said cause in the same manner as other causes.

SEC. 3. Take effect. This act to take effect and be in force from and after its publication.

Approved, Jan. 15, 1849.

CHAPTER 123.

SCHOOL FUND.

AN ACT supplemental to the act of February 25th, 1847, entitled "An act to provide for the management and disposition of the school fund."

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

SECTION 1. Commissioners appointed to select lands granted to Iowa. That John M. Whitaker, of the county of Van Buren, William H. Morrison, of the county of Dubuque, and Robert Brown, of the county [150] of Jefferson, are hereby appointed agents to select the remainder of the five hundred thousand acres of land granted to the state of Iowa, upon the admission of said state into the Union, under the 8th section of the act of congress of September 4th, 1841. entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights:" *provided*, the said Whitaker shall confine the selections made by him to the Fairfield land district, said Morrison to the Dubuque land district, and the said Brown to the Iowa City land district.

SEC. 2. Agents to take oath. Said agents shall take and subscribe an oath before some clerk of the district court in this state, for the faithful discharge of the duties required of them by this act, and shall file an authenticated copy of the same with the register of each land office in this state.

SEC. 3. Agents to select land in accordance with instructions of commissioner of land office. They shall then proceed to select the land in accordance with the instructions of the commissioner of the general land office of August 6th, 1847, and to report the same to the register of the land office in whose land district the selection is made.

SEC. 4. Compensation. They shall each be allowed the sum of three dollars for every day they may be necessarily employed in the discharge of their duties, and shall present their respective accounts, verified by oath, to the auditor of state, who shall audit and allow the same, and shall draw a war-

rant in their favor for the amount thus verified, on the treasurer of state, to be paid out of any money in the treasury not otherwise appropriated.

SEC. 5. Duty of agents. It shall be the duty of each of the aforesaid agents to keep a correct record of the selections of land made by himself as herein provided, to estimate the value per acre of each quarter section, and to make a full report of the same on the first day of December next.

SEC. 6. Of secretary of state. The secretary of state shall file a duly authenticated copy of this act as soon as the same shall have been published, with the register of each land office in the state.

SEC. 7. Superintendent of public instruction to prepare blank forms. The superintendent of public instruction shall prepare, and have printed, suitable blank forms for reporting the selections of land as herein contemplated, and shall transmit the same, together with a copy of the instructions of the commissioner of the general land office aforesaid, to each of the aforesaid agents.

SEC. 8. Authorize sale of lands. The superintendent of public instruction may authorize the sale of any lands selected under the provisions of this act, in any organized county, by the school fund commissioner, at any rate per acre which the said superintendent of public instruction may determine, not less than the minimum fixed thereon by the selecting agent, upon the terms prescribed in the act to which this is supplemental.

SEC. 9. Fund commissioners may reserve lands from sale. When it shall appear to the fund commissioners [151] that the school fund is liable to be injured by bringing into market any portion of the 16th section, they may reserve the same from sale: *provided*, that this shall not be applicable to pre-emptions granted under former laws.

SEC. 10. Superintendent of public instruction to visit counties. The superintendent of public instruction shall visit the several counties of the state, and examine the books and accounts of the fund commissioners, and shall make such adjustment of the funds under their control as may be necessary to carry into effect any of the provisions of the general assembly relative to the same, according to their spirit and intent: *provided*, that the said superintendent shall not have control of the funds in the hands of any school fund commissioner, unless by express enactment of the general assembly.

SEC. 11. Fund commissioners to have land surveyed. When in the opinion of the school fund commissioner, it may be necessary to have any portion of the school lands within his county surveyed, he may employ a surveyor for the purpose, who shall be paid out of the interest of the school fund, and the commissioner aforesaid shall render an account of the expense thus incurred, together with all other contingent expenses of his office, in his annual report to the superintendent of public instruction: *provided*, that in all cases where a survey is not actually necessary, the allotment shall be made by the township trustees, as provided in the act to which this is supplemental.

SEC. 12. Person allowed to pre-empt only 160 acres. No person who may avail himself of the right of pre-emption, under the provisions of the act of January 24th, 1848, entitled "an act to amend an act entitled 'an act to provide for the management and disposition of the school fund,'" approved Feb. 25th, 1847, shall be permitted to pre-empt more than one hundred and sixty acres.

SEC. 13. Fund commissioner to report to prosecuting attorney. When any person to whom a portion of the school fund has been loaned, shall fail

to pay the interest thereon as prescribed in the 9th section of the act to which this is supplemental, it shall be the duty of the school fund commissioner to report the name of said delinquent to the prosecuting attorney of the county, within five days thereafter, who shall immediately commence suit against said delinquent for the collection of said interest.

SEC. 14. **Repealing section.** All acts and parts of acts contravening the provisions of this act, are hereby repealed.

SEC. 15. **Take effect.** This act shall take effect and be in force from and after its publication in the Iowa Capital Reporter and Iowa Republican.

Approved, Jan. 15, 1849.

Published in the Reporter the 24th, and Republican the 31st January, 1849.

[152] CHAPTER 124.

HOMESTEAD.

AN ACT to exempt a homestead from forced sale.

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

SECTION 1. **Real estate exempt from sale by execution—proviso.** That a homestead consisting of any quantity of land not exceeding forty acres used for agricultural purposes, and the dwelling house thereon and its appurtenances to be selected by the owner thereof, and not included in any recorded town plat, or city, or village, or instead thereof at the option of the owner, a quantity of land not exceeding in amount one fourth of an acre, being within a recorded town plat, or city, or village, and the dwelling house thereon, and its appurtenances owned and occupied by any resident of the state, shall not be subject to forced sale on execution or any other final process from a court, for any debt or liability, contracted after the fourth day of July in the year 1849: *provided*, that the value of such exempted homestead, or town lot and dwelling thereon shall in no case exceed the sum of five hundred dollars.

SEC. 2. **Exemption not affect mechanic's liens, or extend to mortgages, etc** Such exemption shall not affect any laborer's or mechanic's lien, or extend to any mortgage thereon lawfully obtained; but such mortgage or other alienation of such land by the owner thereof, if a married man, shall not be valid without the signature of the wife to the same.

SEC. 3. **Execution defendants to notify officer what he regards as his homestead.** Whenever a levy shall be made upon the lands or tenements of a householder whose homestead has not been selected and set apart by metes and bounds, such householder may notify the officer at the time of making such levy, of what he regards as his homestead with a description thereof within the limits above prescribed; and the remainder alone shall be subject to sale under such levy.

SEC. 4. **Officer to have property surveyed.** If the plaintiff in execution shall be dissatisfied with the quantity of land selected and set apart as aforesaid, the officer making such levy shall cause the same to be surveyed, beginning at a point to be designated by the owner and set off in a compact