

1655.

APPROVAL, REFUNDING BONDS OF JACKSON TOWNSHIP RURAL SCHOOL DISTRICT IN AMOUNT OF \$2,100.

Industrial Commission of Ohio, Columbus, Ohio.

COLUMBUS, OHIO, November 17, 1920.

1656.

MISDEMEANORS—PUNISHABLE BY FINE ONLY, ACCUSED NOT ENTITLED TO TRIAL BY JURY—EXCEPTION—EFFECT OF WAIVER OF TRIAL BY JURY IN MISDEMEANOR CASE—WHEN SECTION 13432 G. C. IS AND IS NOT APPLICABLE IN CERTAIN CASES—WHEN AFFIDAVIT CONSTITUTES TORTURE—OFFICES, CONSTABLE AND HUMANE AGENT NOT INCOMPATIBLE—WHAT IS NECESSARY UNDER STATUTES BEFORE COSTS CAN BE CLAIMED UNDER SECTION 3019 G. C.—BILLIES, BADGES AND GUNS MAY NOT LEGALLY BE FURNISHED SPECIAL DEPUTY SHERIFFS APPOINTED AS GUARDS FOR PROPERTY OF PRIVATE CORPORATIONS.

1. *In a misdemeanor case punishable by a fine only, the accused is not entitled to a trial by jury unless the law specifically gives such right in such case.*

2. *An affidavit filed by one not the party injured, in a misdemeanor case under section 13511 G. C., when the accused in a writing filed before trial waives trial by jury and submits himself to be tried by the magistrate, will give the magistrate the right to hear and determine such case.*

3. *Section 13432 G. C. applies to other cases than those catalogued under section 13423 G. C. e. g. 871-52b, 896-14, 5808, 5814, 1448 and some others; but not to cases governed by sections 13510 and 13511 G. C.*

4. *Striking and kicking a person unlawfully is an assault and battery. If the affidavit alleges other acts, with a description of the effects of the acts alleged upon the person injured, it may constitute torture under section 12428 G. C. If the accused make no objection to the complaint, a magistrate is required to hear the case upon the law invoked in the affidavit.*

5. *Constable and humane agent or officer are offices not incompatible where a physical impossibility to perform the duties of each by one person is not apparent.*

6. *Before claiming costs under section 3019 G. C., the provisions of law for securing costs to be paid by the one against whom they are adjudged must be complied with. Where, after conviction the conditions of the parole omit to require the costs to be paid by the prisoner or such conditions of parole remit costs, the magistrate may not ask payment by the county of costs so remitted by him.*

7. *Billies, badges and guns to arm special deputy sheriffs appointed as guards for the property of private corporations in the county may not legally be furnished at the expense of the county. Of course, deputy sheriffs may be legally appointed for this work.*

COLUMBUS, OHIO, November 18, 1920.

HON. A. V. DONAHEY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter enclosing a form of an affidavit and of a judgment and parole. The letter is as follows: